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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 15 COUNTY OF LOS ANGELES

16 THE ASSOCIATION OF CALIFORNIA  
 17 INSURANCE COMPANIES, THE PERSONAL  
 18 INSURANCE FEDERATION OF CALIFORNIA,  
 19 THE AMERICAN INSURANCE ASSOCIATION,  
 20 AND THE PACIFIC ASSOCIATION OF  
 21 DOMESTIC INSURANCE COMPANIES

22 Insurance Association  
 23 Petitioners and Plaintiffs,

24 v.

25 STEVE POIZNER, in his capacity as Insurance  
 26 Commissioner of the State of California; and  
 27 CALIFORNIA DEPARTMENT OF INSURANCE,

28 Respondents and Defendants,

29 THE FOUNDATION FOR TAXPAYER AND  
 CONSUMER RIGHTS,

Intervenor.

Case No. BS109154

**THE FOUNDATION FOR TAXPAYER  
 AND CONSUMER RIGHTS' REPLY  
 MEMORANDUM IN SUPPORT OF  
 MOTION FOR AN AWARD OF  
 ATTORNEYS' FEES AND EXPENSES;  
 SUPPLEMENTAL DECLARATION OF  
 PAMELA PRESSLEY IN SUPPORT  
 THEREOF**

Hearing Date: July 25, 2008  
 Time: 9:30 a.m.  
 Dept: 85  
 Judge: Hon. James C. Chalfant

Date Action Filed: May 25, 2007

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## INTRODUCTION

As to The Foundation for Taxpayer and Consumer Rights' ("FTCR" or "Intervenor")<sup>1</sup> Motion for an Award of Attorneys' Fee and Expenses ("Motion") under Code of Civil Procedure section 1021.5, Petitioners do not dispute anywhere in their opposition papers that 1) Intervenor is a prevailing party; 2) this Court's decision serves to vindicate an important public right; and 3) upholding the Commissioner's regulations confers a significant benefit on the public or a large class of individuals. Instead, Petitioners argue that FTCR has not met the financial burden and necessity prongs of section 1021.5. The bulk of Petitioners opposition to FTCR's entitlement to fees under section 1021.5 is nothing more than a blatant attempt to cast FTCR, a non-profit consumer education and advocacy organization with a 20 year history of defending and enforcing Proposition 103 on behalf of consumer policyholders, which has resulted in a savings to consumers of \$1.3 billion in premiums in rate proceedings in the last five years alone,<sup>2</sup> as being motivated to defend the insurance trade associations' attack on the Commissioner's Intervenor Regulations by nothing more than pecuniary aims to earn future fee awards. These claims are disingenuous at best.

As to Intervenor's entitlement to an award of fees and expenses under Insurance Code section 1861.10(b), Petitioners do not dispute that Intervenor represents the interests of consumers, but instead claim the provision does not allow recovery of fees in an action to challenge a regulation adopted by the Commissioner to enforce Proposition 103, or alternatively, that FTCR merely duplicated the work of the Commissioner's attorneys. The plain language of the statute and the record in this case easily refute these arguments.

Petitioners do not dispute most of the remaining elements of FTCR's Motion. They do not dispute the multitude and magnitude of professional services summarized in Intervenor's papers or the hours incurred. While they do make arguments that Intervenor's fees should be "reduced because they were duplicative of the Commissioner's work in this matter," they point to no specific hours that should be eliminated due to this alleged duplication as is their burden. Finally, Petitioners do not dispute the contingent risks justifying a 1.5 multiplier. Instead, their objection to a multiplier here is centered

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<sup>1</sup> The Foundation for Taxpayer and Consumer Rights has recently changed its name to Consumer Watchdog, but for ease of reference will continue to use FTCR for purposes of the instant case.

<sup>2</sup> See accompanying Supplemental Declaration of Pamela Pressley ("Supp. Pressley Decl."), ¶3.

1 entirely on their unfounded view, without any mention of the hours incurred by Petitioners' counsel or  
2 discussion of the factors courts consider in awarding a multiplier, that Intervenor spent too much time  
3 to defend against Petitioners' attack on the Commissioner's Intervenor Regulations enacted to enforce  
4 the right of consumer participation in rate proceedings. Intervenor addresses Petitioners' meager  
5 objections below.

6 Lastly, Intervenor provides its revised lodestar to include the reasonable hours and fees incurred  
7 to review Petitioners' opposing papers and prepare this reply, as well as an estimate of hours for the  
8 Court's hearing on July 25, 2007.

### 9 ARGUMENT

#### 10 **I. INTERVENOR PREVAILED IN THIS ACTION AND IS ENTITLED TO AN AWARD OF** 11 **ATTORNEYS' FEES AND EXPENSES UNDER CODE OF CIVIL PROCEDURE SECTION** 12 **1021.5.**

##### 13 **A. Petitioners' Argument that Intervenor Fails to Meet Section 1021.5's "Necessity"** 14 **Factor Errs Both In Law And Fact.**

15 Petitioners do not dispute that Intervenor was a prevailing party or that the decision denying  
16 their writ petition vindicated an important public right that will have a significant benefit on the public  
17 – namely, by protecting the right of consumers to participate in rate proceedings and, as a result save  
18 policyholders millions of dollars in unwarranted rate hikes. Instead, they argue that Intervenor fails to  
19 meet the "necessity of private enforcement" criterion under section 1021.5 (a prerequisite not found in  
20 section 1861.10(b)), or alternatively, that Intervenor's hours and fees should be substantially reduced  
21 for allegedly unnecessary or duplicative services. As stated in FTCR's Motion and as conceded by  
22 Petitioners,<sup>3</sup> under section 1021.5, the necessity of private enforcement does not turn on whether a  
23 governmental entity has also filed suit or defends the suit. (See, e.g., *Hewlett v. Squaw Valley Ski*  
24 *Corp.* (1997) 54 Cal.App.4th 499, 544-546 [rejecting argument that fee movant's enforcement was not  
25 necessary and affirming the trial court's award of fees notwithstanding involvement by the county  
26 deputy district attorney]; *Crawford v. Board of Education, supra*, 200 Cal.App.3d 1397, 1407 [fee  
27 awards are proper, as here, to "parties who, at some point during the course of public interest litigation,  
28 intervene and contribute in a significant way to the vindication of an important constitutional or

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<sup>3</sup> See Petitioners' Opp. Mem. at 10:27-28 ["Petitioners do not challenge the claim for attorney's fees merely because of the presence of the Attorney General in this proceeding"].)

1 statutory right”]; *Committee to Defend Reproductive Rights v. A Free Pregnancy Center* (1991) 229  
2 Cal.App.3d 633 [awarding fees to plaintiffs under CCP § 1021.5 where district attorney filed similar  
3 but not identical action which was consolidated].)

4 The insurance trade associations assert that the Insurance Commissioner “has been thoroughly  
5 and competently represented by the Attorney General,” and therefore Intervenor’s independent defense  
6 of the regulations “added very little that was not provided by the Attorney General.” (Opp. Mem. at  
7 10-11.) California courts have rejected Petitioners’ “after-the-fact”, “but-for” test of necessity. (*City of*  
8 *Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 86-88 [rejecting a “but-for” test for determining  
9 necessity, and holding that the factor does not examine the relative contributions of private parties].) In  
10 *City of Santa Monica*, the Court held that necessity is not determined “on an after-the-fact assessment  
11 of whether the intervenor’s participation was ‘necessary’ to the successful result achieved.” (*Id.* at 88.)  
12 Instead, the court held that “[a] party who satisfies the criteria for intervention and who contributes to  
13 the success of public interest litigation should be entitled to an award of attorneys’ fees on the same  
14 terms as any other party.” (*Id.* at 87.) Nor does the “necessity” factor involve speculation on whether  
15 the court would have reached the same result with the public agency’s participation alone. (E.g., *Hull*  
16 *v. Rossi* (1993) 13 Cal.App.4th 1763, 1769 [abuse of discretion and “clearly speculative” to deny fees  
17 on ground that court would have reached same result without aid of party’s attorney]; *City of*  
18 *Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1299 [rejecting contention that defendant was not  
19 entitled to fees because court would have reached conclusion it did without the defendant’s  
20 participation]; see also *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1468-  
21 1469 [rejecting contention that private enforcement was not “necessary” because public enforcement  
22 was available and invoked through state agency].)<sup>4</sup>

23  
24 <sup>4</sup> Other cases Petitioners cite are wholly distinguishable or support Intervenor’s entitlement. In *Ciani v.*  
25 *San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th 563, 572, the trial court decided that a fee award  
26 was not appropriate for the private *plaintiff* who had brought a suit identical to a government entity and  
27 had not advanced significant factual or legal theories or evidence that were not duplicative. Here, not  
28 only is FTICR an *intervenor* seeking to enforce and defend an important public interest statute, but the  
record also reveals that FTICR did contribute significantly through its briefing and by responding  
specifically to questions raised by the Court at oral argument that were not answered by  
Commissioner’s counsel. *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 544-546,  
*rejected* the argument that movant’s enforcement was not necessary and affirmed the trial court’s fee



1 Moreover, contrary to Petitioners' misstatement of the facts, which in turn leads them to  
2 misapply the law, the record readily demonstrates that Intervenor's representation was active  
3 throughout, not "nominal" or "duplicative." (*County of Humboldt v. Swoap* (1975) 51 Cal.App.3d 442,  
4 445.) FTCR "advance[d] significant factual or legal theories adopted by the court, thereby providing a  
5 material non de minimis contribution to its judgment." (See *Committee to Defend Reproductive Rights*  
6 *v. A Free Pregnancy Center* (1991) 229 Cal.App.3d 633, 642-643.) This fact is confirmed by the  
7 declaration of Pamela Pressley filed with Intervenor's moving papers, the timesheets of Intervenor's  
8 counsel, the Court's rulings adopting Intervenor's legal and factual arguments, and the hearing  
9 transcript (Mar. 7, 2008 Reporter's Transcript ("RT") attached as Exhibit A to the Decl. of Michael  
10 A.S. Newman in Support of Petitioners' Opp.).

11 The Court is already well aware of the independent contributions and quality of Intervenor's  
12 participation through counsel, summarized in Intervenor's moving papers. Nonetheless, Intervenor  
13 further illustrates the importance of its role in defeating Petitioners' petition for writ of mandate. As set  
14 forth in the Declaration of Pamela Pressley submitted with Intervenor's motion ("Pressley Decl."),  
15 Intervenor's counsel met with the Commissioner's attorneys at the beginning of the case to brief them  
16 on the issues framed by Petitioners' writ petition and complaint, the facts and history of the Proposition  
17 103 rate proceeding and intervenor regulations, the various errors in the insurance trade associations'  
18 petition/complaint and opening memorandum, and effective strategies for prevailing against  
19 Petitioners' petition and complaint. (Pressley Decl., ¶¶9 and 25.) The Commissioner's attorneys relied  
20 significantly on the factual and legal knowledge and expertise of Intervenor's counsel to aid their  
21 understanding of the case and preparation of the Commissioner's opposition. (*Ibid.*)

22 Secondly, a review of the Court's decision to deny Petitioners' writ petition tracks FTCR's  
23 arguments and citations significantly. For example, the Court's tentative ruling adopted as its final  
24 ruling closely tracked the background discussion of Proposition 103 and the Intervenor Regulations as  
25 set forth in FTCR's opposition memorandum. (Compare Tentative Ruling, Mar. 7, 2008, pp. 1-3,  
26 adopted as final ruling in Minute Order, filed Mar. 7, 2008 ["Mar. 7, 2008 Ruling"] with FTCR's Opp.

27  
28 award notwithstanding the county deputy district attorney's involvement, and thus supports  
Intervenor's claims here.

1 Mem., pp. 4-7 and FTICR's Complaint in Intervention, ¶¶15-34.) Just as FTICR argued that Petitioners'  
2 arguments should fail for the primary reason that the amended Intervenor Regulations track the  
3 language of Insurance Code section 1861.10(a), which refers to "any proceeding", the Court agreed.  
4 (See Mar. 7, 2008 Ruling, p. 5 ["As FTICR argues, the Amended Regulations merely define when a  
5 'rate proceeding' begins, and that is when a petition for hearing is submitted"].) The Court also relied  
6 on the Black's Law Dictionary definition of "proceeding" as FTICR recited in its opposition. (Mar. 7,  
7 2008 Ruling, p. 5; FTICR's Opp. Mem., p. 10.) The Court also agreed with FTICR's arguments that the  
8 Amended Regulations are consistent with Insurance Code section 1861.10(b) and its underlying  
9 purpose of encouraging consumer participation in rate proceedings, citing to *State Farm Mut. Auto. Ins.*  
10 *Co. v. Garamendi* (2004) 32 Cal.4th 1029. (Mar. 7, 2008 Ruling, p. 6; FTICR's Opp. Mem., pp. 10, 12-  
11 14.) The Court's ruling also tracked Intervenor's assessment of the prior appellate decision in  
12 *Economic Empowerment Foundation v. Quackenbush* ("EEF") (1997) 57 Cal.App.4th 677 and its  
13 relevance. (Mar. 7, 2008 Ruling, p. 6 and fn. 2; FTICR's Opp. Mem., pp. 11-12.)

14 Finally, a review of the hearing transcript reveals that FTICR's counsel did not merely  
15 "duplicate" the work of Commissioner's counsel, but did in fact "contribute in a significant way to the  
16 vindication of an important [] statutory right." (*Crawford, supra*, 200 Cal.App.3d 1397, 1407.) Counsel  
17 for FTICR responded specifically to questions raised by the Court and refuted arguments made by  
18 Petitioners' counsel. (See RT, Mar. 7, 2008, pp. 16-18 [including discussion and pin cite by  
19 Intervenor's counsel to the *Farmers* case as referring to an administrative *proceeding* to review a rate  
20 application, rather than rate *hearing*, colloquy with the Court regarding Petitioners' arbitrary distinction  
21 between "process" and "proceeding", and discussion of 10 CCR § 2661.3(e), which defines a petition  
22 to intervene as an "additional pleading"].) On this record and under a proper application of the relevant  
23 case law, Intervenor has met the "necessity" requirement of section 1021.5.

#### 24 **B. FTICR Meets the Financial Burden Requirement of Section 1021.5.**

25 While Petitioners seek to portray FTICR as purely out for financial gain, the true facts and  
26 circumstances of FTICR's status and participation reveal otherwise. FTICR is a non-profit tax-exempt  
27 consumer research, education, and advocacy organization that vigorously advocates on behalf of  
28 consumers before regulatory agencies, the legislature and the courts. (Pressley Decl., ¶2.) FTICR  
undertook the financial risk of this action, foregoing other important public-interest work, primarily

1 because of the threat that Petitioners' actions posed to the ability of consumer representatives to  
2 challenge proposed rate hikes and obtain substantial savings for consumer policyholders of millions of  
3 dollars in insurance premiums. (See, e.g., Pressley Decl., ¶¶7, 24-28.) FTCT received no monetary  
4 recovery and its primary motivation was to vindicate the important statutory right of the public to  
5 challenge excessive insurance rates and unfair and discriminatory insurance rating practices (*id.*, ¶¶24,  
6 26-28). Applying "a commonsense and practical analysis of the circumstances" (Opp. Mem. at 4:4-5)  
7 and "seek[ing] to implement the underlying policy goal of the section, to allow 'an incentive for the  
8 pursuit of public interest-related litigation that might otherwise have been too costly to bring'" (*Punsley*  
9 *v. Ho* (2003) 105 Cal.App.4th 102, 117), as urged by Petitioners (Opp. Mem. at 4:2-3), it is clear that  
10 FTCT has met the financial burden requirement of section 1021.5. (E.g., *Planned Parenthood v.*  
11 *Aakhus* (1993) 14 Cal.App.4th 162, 173 [awarding fees under section 1021.5 even though plaintiff had  
12 sufficient private interest to bring suit because suit also brought to protect its patrons' "mutual and  
13 inseparable" interests].)<sup>5</sup>

14 For the reasons set forth here and in its initial memorandum in support of its fee motion,  
15 Intervenor satisfies each of the criteria for entitlement to an award of attorneys' fees and expenses  
16 under section 1021.5, and thus should be awarded its reasonable attorneys' fees and expenses.

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18 <sup>5</sup> Moreover, the facts and circumstances of the cases relied upon by Petitioners are inapposite. At base,  
19 Petitioners argue that FTCT's primary goal in intervening in this action and successfully enforcing  
20 Insurance Code section 1861.10 and the Commissioner's Intervenor Regulations was "the collection of  
21 money." (Opp. Mem. at 8:25-26.) This argument is specious. In *Punsley*, the court found that "the  
22 litigation had primarily been pursued for the *personal* benefit of [plaintiff] and therefore was not the  
23 type of action contemplated by section 1021.5." (*Punsley, supra*, 105 Cal.App.4th at 118, emphasis  
24 added.) Both *Arnold v. California Exposition and State Fair* (2004) 125 Cal.App.4th 498 and *United*  
25 *Systems of Arkansas, Inc. v. Stamson* (1998) 63 Cal.App.4th 1001 involved plaintiffs, one an individual  
26 and the other a for-profit corporation, bringing suit to enable access to future for-profit contracts. In  
27 contrast to the private plaintiffs in those cases, as Petitioners do not deny, FTCT is a non-profit tax-  
28 exempt consumer advocacy organization that enforced an important public interest right and conferred  
significant benefits for millions of insured drivers and homeowners across California through the  
implementation and enforcement of Insurance Code section 1861.10's rights to public participation in  
the rate-setting process. As such, this case is not like *Arnold* or *United Systems* where the requester  
"brought suit to protect its property rights and not to further a significant public interest [citation], or  
the public benefit gained is coincidental to [the requester's] strong personal economic interests  
[citation]...." (*Arnold, supra*, 125 Cal.App.4th at 512, quoting *United Systems, supra*, 63 Cal.App.4th  
at 1013.)

1 **II. INTERVENOR IS ALSO ENTITLED TO REASONABLE ATTORNEYS' FEES AND**  
2 **EXPENSES UNDER INSURANCE CODE SECTION 1861.10.**

3 Petitioners do not dispute that fee shifting statutes that encourage private parties to enforce  
4 public rights are cumulative, not exclusive. (See FTCR's Motion, p. 8, fn. 6.) Nor do they dispute that  
5 FTCR meets the first prong of Insurance Code section 1861.10(b) by "represent[ing] the interests of  
6 consumers." Petitioners instead advance two flawed arguments against FTCR's entitlement to a fee  
award under section 1861.10(b).

7 First, Petitioners confusingly argue that FTCR cannot recoup its fees under section 1861.10(b) in  
8 this action because this proceeding is somehow not a "proceeding permitted or established pursuant to  
9 this chapter" for purposes of subdivision (a). (Opp. Mem. at 13:10-11.)<sup>6</sup> The argument is wrong on its  
10 face because it conflicts with the plain language of Proposition 103. Insurance Code section 1861.10(a)  
11 states: "[a]ny person may initiate or intervene in any proceeding permitted or established pursuant to  
12 this chapter, challenge any action of the commissioner, and enforce any provision of this article." Any  
13 rulemaking in which a regulation is adopted by the Commissioner to implement a provision of  
14 Proposition 103, here section 1861.10, and a court challenge to that regulation, is necessarily a  
15 proceeding that is "established" and is certainly "permitted" pursuant to Insurance Code section  
16 1861.10, the statute that the regulation seeks to implement. FTCR invoked Insurance Code section  
17 1861.10(a) to "intervene" in this proceeding, as it and other consumer groups (as well as insurers) have  
18 successfully done in other court actions seeking to challenge or uphold the Commissioner's regulations  
19 adopted pursuant to Proposition 103 or to enforce provisions of the initiative.<sup>7</sup> Moreover, subdivision  
20 (a) also authorizes FTCR to "enforce any provision of this article," and Petitioners do not dispute that  
21 this action resulted in the enforcement of the consumer participation provisions of Insurance Code  
22 section 1861.10. (FTCR's Motion, pp. 4-6.)

23  
24 \_\_\_\_\_  
25 <sup>6</sup> Petitioners insist this action is brought under the Government Code, but their petition for writ of  
mandate is brought pursuant to Code of Civil Procedure section 1085. (Ver. Pet. and Complaint at 6:8.)

26 <sup>7</sup> See, e.g., footnote 8, *infra*; see also *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th*  
27 *Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11  
28 Cal.4th 1243; *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473;  
*Spanish Speaking Citizens' Foundation, et al. v. Low* (2000) 85 Cal.App.4th 1179; *State Farm Mutual*  
*Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029; *The Foundation for Taxpayer and*  
*Consumer Rights v. Garamendi, et al.* (2005) 132 Cal.App.4th 1354.

1 Furthermore, Insurance Code section 1861.10(b) states that “a court shall award reasonable  
2 advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents  
3 the interests of consumers, and, (2) that he or she has made a substantial contribution to the adoption of  
4 any order, *regulation* or *decision* by the commissioner or a court.” (Ins. Code § 1861.10(b), emphasis  
5 added.) On its face, section 1861.10(b) thus applies both to judicial proceedings and administrative  
6 proceedings, and applies to a substantial contribution by any person to any “*regulation* or *decision* by  
7 the commissioner or a court.” (*Ibid.*; See *EEF, supra*, 57 Cal.App.4th 677, 689-690 [distinguishing  
8 court’s jurisdiction to award fees from agency’s jurisdiction].) Moreover, section 1861.10(b) should be  
9 applied in a manner “which best facilitates compensation.” (*EEF, supra*, 57 Cal.App.4th 677, 686.)  
10 Courts have routinely awarded intervenors reasonable attorneys’ fees and expenses under section  
11 1861.10(b) in proceedings brought either to challenge or uphold regulations adopted by the  
12 Commissioner pursuant to Proposition 103,<sup>8</sup> and Petitioners have failed to cite to any appellate court  
13 decision to the contrary.

14 Second, Petitioners claim that FTCR did not make a substantial contribution for purposes of  
15 subdivision (b) to this Court’s decision upholding the Commissioner’s amended Intervenor  
16 Regulations. FTCR’s substantial contribution is amply demonstrated in Sections I.A and III.A. of

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17  
18 <sup>8</sup> See Notice of Entry of Order Granting Intervenor’s Motion for Attorney Fees and Expenses,  
19 *American Insurance Assoc., et al. v. Garamendi* and *California Farm Bureau Federation v.*  
20 *Garamendi*, Nos. 06 AS 03053 and 06 AS 03036 (consolidated) (Sacramento Super. Court Sept. 13,  
21 2007) (McMaster, J.) [fees awarded to prevailing defendant-intervenors under CCP § 1021.5 and  
22 Insurance Code section 1861.02 in action by insurance trade associations seeking injunction and  
23 declaratory relief to invalidate auto rating factor regulations adopted by the Commissioner to enforce  
24 Insurance Code § 1861.02], attached to FTCR’s accompanying Request for Judicial Notice (“RJN”) as  
25 Exh. 1; Statement of Decision, *Minority/Low Income Consumer Coalition v. Garamendi*, No. 942151  
26 (S.F. Super. Ct. June 19, 1993) (Pollak, J.) [writ of mandate action under CCP § 1094.5 and complaint  
27 for declaratory relief challenging intervenor regulation and its application], Exh. 2 to RJN; see also  
28 Order Granting Fees under Ins. Code Section 1861.10(b), *Southern Christian Leadership Conference v.*  
*Quackenbush*, No. 976629 (S.F. Super. Ct., July 15, 1996) (Cahill, J.) [multiplier of 1.5 awarded in writ  
of mandate action under CCP § 1085 to enforce regulation requiring disclosure of redlining data, 10  
CCR § 2646.6], Exh. 3 to RJN; Order Granting Petitioners’ Attorneys’ Fees and Expenses, *Consumers*  
*Union, et al. v. Quackenbush*, No. 982181 (S.F. Super. Ct. May 9, 1997) (Cahill, J.) [multiplier of 1.5  
awarded in CCP § 1085 action to enforce Insurance Code section 1861.02], Exh. 4 to RJN; Order  
Granting the Petitioner’s Motion for Attorneys’ Fees and Expenses, *The Proposition 103 Enforcement*  
*Project v. Quackenbush*, No. 982646 (S.F. Sup. Ct. June 24, 1997) (Cahill, J.) [1.25 multiplier awarded  
in CCP § 1085 action to enforce Insurance Code section 1861.02], Exh. 5 to RJN.

1 FTCR’s Motion describing the work performed by its counsel, and in Section I.A. above discussing the  
2 record in this case. (See also Pressley Decl., ¶¶9, 24-25.) Petitioners quote from a regulation defining  
3 “substantial contribution” in proceedings before the Commissioner as follows:

4 “Substantial Contribution” means that the intervenor substantially contributed, as a  
5 whole, to a decision, order, regulation, or other action of the Commissioner by presenting  
6 relevant issues, evidence, or arguments which were separate and distinct from those  
7 emphasized by the Department of Insurance staff or any other party, such that the  
8 intervenor’s participation resulted in more credible, and non-frivolous information being  
9 available for the Commissioner to make his or her decision than would have been  
10 available to a Commissioner had the intervenor not participated.

(10 CCR § 2661.1(j).)

11 While this regulation is not specifically applicable to court proceedings, as set forth in Section  
12 I.A. above, FTCR nevertheless meets this standard here by having presented relevant issues and  
13 arguments that were distinct from those presented by the Commissioner’s attorneys, which resulted in  
14 this Court having more credible, non-frivolous information available to it to make its decision than if  
15 FTCR had not participated.

### 16 **III. PETITIONERS HAVE NOT MET THEIR BURDEN TO PROVIDE SPECIFIC** 17 **OBJECTIONS TO INTERVENOR’S HOURS.**

18 Petitioners do not dispute any of the specific time entries incurred for the professional services of  
19 FTCR’s counsel nor the reasonable “out-of-pocket” expenses incurred. (Pressley Decl., ¶¶9, 24-25 and  
20 Exhs. 1(a)-1(c).) They do not dispute that a fee-paying client would ordinarily compensate its attorneys  
21 for those services. Instead, they only object in general that, given the Commissioner’s presence,  
22 FTCR’s work was “duplicative” and therefore the number of hours should be reduced.

23 Under the applicable standards, counsel are entitled to be compensated “for all time reasonably  
24 expended in pursuit of the ultimate result achieved, in the same manner that an attorney traditionally is  
25 compensated by a fee-paying client for all time reasonably expended on a matter.” (E.g., *Serrano v.*  
26 *Priest* (1977) 20 Cal.3d 25, 48; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 624, 633, 639; see also  
27 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132.) Intervenor’s motion and supporting  
28 declaration of counsel provide a detailed description of the work that was actually and necessarily  
performed to defeat Petitioners’ writ petition and to prepare this fee motion. An attorney’s declaration  
identifying the work performed, hourly rates, and total fees incurred is *prima facie* evidence that the  
costs, expenses, and services listed were necessarily incurred. (E.g., *Hadley v. Krepel* (1985) 167

1 Cal.App.3d 677, 682.) If Petitioners have objections, it is their burden to “rebut th[is] presumption”  
2 with specific objections to any particular hours. (E.g., *Hadley, supra*, 167 Cal.App.3d at 684  
3 [“conclusory and unsubstantiated objections were simply inadequate to rebut the presumption  
4 defendant’s fees were reasonably and necessarily incurred”].) Here, Petitioners only proffer a general  
5 objection to the total hours incurred, without specificity or citation to the record. (Petitioners’ Opp.  
6 Mem., p. 14.) As a result, they have not met their burden.

7 **IV. THE LODESTAR SHOULD BE AUGMENTED BY A MULTIPLIER.**

8 Petitioners object generally to a multiplier (Opp. Mem., p. 14), but they do not dispute that  
9 Intervenor assumed substantial contingent risks in this proceeding. (See FTCR’s Motion, p. 13.)  
10 They do not dispute the Supreme Court’s opinion in *Ketchum v. Moses, supra*, stating that “a fee  
11 enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed,  
12 constitutes earned compensation.” (24 Cal.4th at 1138.) Petitioners do not dispute that the hourly rates  
13 are non-contingent rates without any provision for contingency and delay. (See FTCR’s Motion, p.  
14 13.) They do not dispute Mr. Pearl’s expert declaration that a 2.0 multiplier requested in a similar case  
15 is reasonable, indeed modest. (FTCR’s Motion, p. 14; Pearl Decl., ¶17.) For the reasons set forth in  
16 Intervenor’s moving papers, Intervenor has fully justified a 1.5 multiplier under section 1021.5 and  
17 section 1861.10(b), consistent with the standards set forth in *Ketchum v. Moses, supra*, 24 Cal.4th 1122.  
18 (See also RJN, Exhs. 3-5 [court orders awarding multipliers of 1.25 to 1.5 in similar Prop. 103 cases.]

19 **V. INTERVENOR SUPPLEMENTS THE AMOUNT REQUESTED TO INCLUDE HOURS  
INCURRED ON THIS REPLY AND THE COURT’S HEARING.**

20 Intervenor supplements the amount requested to include the hours reasonably and necessarily  
21 incurred to prepare a reply responding to Petitioners’ opposition papers, as well as an estimate of hours  
22 to be incurred for the Court’s hearing. (Pressley Supp. Decl., ¶¶2-3; Exhs. 1(a)-(c) (revised).) In  
23 summary, Intervenor requests that the Court award it \$196,227.50 in attorney fees (which includes a  
24 1.5 multiplier) and \$1,026.91 in reasonable expenses, totaling \$197,254.41.

25 **CONCLUSION**

26 WHEREFORE, Intervenor The Foundation for Taxpayer and Consumer Rights respectfully  
27 requests, for the reasons stated above, that the Court award it \$197,254.41 in reasonable attorneys’ fees  
28 and expenses, plus interest from the date of the Court’s decision.

1  
2 Dated: July 18, 2008

Respectfully Submitted

3 The Foundation for Taxpayer and Consumer Rights  
4 Harvey Rosenfield  
5 Pamela Pressley  
6 Todd Foreman

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BY:

*Pamela Pressley*  
Pamela Pressley



1 **SUPPLEMENTAL DECLARATION OF PAMELA PRESSLEY IN SUPPORT OF FTCR'S**  
2 **MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

3 I, Pamela Pressley, declare

4 1. I am over eighteen years of age and the Litigation Director for Intervenor in this matter,  
5 The Foundation for Taxpayer and Consumer Rights ("FTCR"). This declaration is submitted in support  
6 of FTCR's Motion for an Award of Attorneys' Fees and Expenses in the above-captioned matter. I  
7 have personal knowledge of the matters set forth herein, and if called as a witness, I could and would  
8 testify competently to the facts stated herein.

9 2. Attached as Exhibits 1a-c are true and correct printouts of updated time billing reports  
10 showing the tasks performed and hours expended by each FTCR attorney through July 18, 2008,  
11 including the time spent preparing this reply. My time billing reports are attached as Exhibit 1a,  
12 Harvey Rosenfield's time billing reports are attached as Exhibit 1b, and Todd M. Foreman's time  
13 billing reports are attached as Exhibit 1c.

14 3. I have reviewed all updated time billing reports for each FTCR attorney providing  
15 professional services in these matters, determining the number of hours reasonably incurred in this  
16 proceeding. FTCR estimates that it will spend 10 additional attorney hours preparing for and appearing  
17 at the hearing on its fee motion. Accordingly, the lodestar component of FTCR's attorney fees and  
18 expenses for work performed in this matter through July 25, 2008 including the estimated hours for  
19 preparation and appearance at the July 25, 2008 hearing, totals \$137,848.16 and applying a 1.5  
20 multiplier to the attorneys' fees portion yields a total amount of \$197,254.41 as follows.

21

22

Attorney	Total Hours Incurred through July 18, 2008	With Add'l Estimated Hours for July 25, 2008 Hearing	Hourly Rate	Total Lodestar
Harvey Rosenfield	34.95	37.95	575.00	\$21,821.25
Pamela Pressley	230.05	240	425.00	\$102,000.00
Todd M. Foreman	40.0	40.0	325.00	\$13,000.00

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1	<u>Total Attorneys' Fees</u>			<u>\$136,821.25</u>
2	<u>With 1.5 Multiplier<sup>9</sup></u>			<u>\$196,227.50</u>
3	<u>Other Expenses</u>			<u>\$1,026.91</u>
4	<b><u>Total FTCR Attorney Fees and Expenses</u></b>			<b><u>\$197,254.41</u></b>

5           4.       With additional decisions having been issued by the Commissioner in the last few  
6 months in rate proceedings involving Allstate's auto and homeowners' insurance rates and Fireman's  
7 Fund homeowners' insurance rates, the total savings to consumer policyholders in the last five years in  
8 rate proceedings in which FTCR has petitioned for hearing and/or intervened amounts to over \$1.3  
9 billion.

10  
11 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and  
12 correct.

13  
14 Executed on July 18, 2008 at Santa Monica, California.

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16   
17 Pamela Pressley  
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27 <sup>9</sup> The multiplier is calculated only on fees incurred through June 9, 2008 as included in FTCR's Motion  
28 (\$118,812.50), and does not include fees incurred on this reply or the estimated hours. Thus the  
multiplier portion is \$59,406.25.

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**PROOF OF SERVICE**  
**[BY OVERNIGHT, U.S. OR INTRA-AGENCY MAIL, FAX**  
**TRANSMISSION AND/OR PERSONAL SERVICE]**

**State of California, City Santa Monica, County of Los Angeles**

I am employed in the City of Santa Monica and County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1750 Ocean Park Blvd., Suite #200, Santa Monica, California 90405, and I am employed in the city and county where this service is occurring.

On July 18, 2008, I caused service of true and correct copies of the following document:

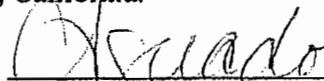
**THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS' REPLY  
MEMORANDUM IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND EXPENSES; SUPPLEMENTAL DECLARATION OF PAMELA PRESSLEY IN  
SUPPORT THEREOF**

upon the persons named in the attached service list, in the following manner:

1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.
2. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, by placing this date for collection for regular or overnight mailing true copies of the within document in sealed envelopes, addressed to each of the persons so listed. I am readily familiar with the regular practice of collection and processing of correspondence for mailing of U.S. Mail and for sending of Overnight mail. If mailed by U.S. Mail, these envelopes would be deposited this day in the ordinary course of business with the U.S. Postal Service. If mailed Overnight, these envelopes would be deposited this day in a box or other facility regularly maintained by the express service carrier, or delivered this day to an authorized courier or driver authorized by the express service carrier to receive documents, in the ordinary course of business, fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 18, 2008, at Santa Monica, California.

  
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Carmen Aguado

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**SERVICE LIST**

**Person Served**

**Method of Service**

Mark Richelson  
Christine Zarifian  
Deputy Attorneys General  
OFFICE OF THE ATTORNEY GENERAL  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Tel: (213) 897-2478  
Fax: (213) 897-5775

FAX  
 U.S. MAIL  
 OVERNIGHT MAIL  
 HAND DELIVERED  
 EMAIL

(Counsel for Respondents Insurance  
Commissioner, Steve Poizner and California  
Department of Insurance)

Robert Hogeboom  
Michael A.S. Newman  
Suh Choi  
BARGER & WOLEN LLP  
633 West Fifth Street, 47<sup>th</sup> Floor  
Los Angeles, CA 90071  
Tel: (213) 680-2800  
Fax: (213) 614-7399

FAX  
 U.S. MAIL  
 OVERNIGHT MAIL  
 HAND DELIVERED  
 EMAIL

(Counsel for Petitioners ACIC, PIFC, AIA and  
PADIC)

**EXHIBIT 1a**

# SLIP LIST BY TIMEKEEPER - FINAL REPORT

Slip#	Date	Activity/Expense	Matter# & Name	Matter	Hours	Rate	Amount
<b>PRESSLEY, PAM</b>							
18795	06/04/07	T Legal Services	86 Intervenor Regs	Telephone conference with H Rosenfield; Telephone conference with B Hentley	0.20	425.00	85.00
18796	06/06/07	T Legal Services	86 Intervenor Regs	conference with H Rosenfield; conference with Todd Foreman; Telephone conference with L Markey; conference with D Heller; review Notice of Related Case; Telephone conference with M Savage; conference with Todd Foreman; review suit papers	3.00	425.00	1,275.00
18797	06/07/07	T Legal Services	86 Intervenor Regs	conference with Todd Foreman, H Rosenfield; edit letter to Choi; Telephone conference with L Landsman Smith; conference with Todd Foreman re: dates; review court rules	1.10	425.00	467.50
18798	06/11/07	T Legal Services	86 Intervenor Regs	review Todd Foreman email and reply; conference with Todd Foreman re: peremp. challenge; email Mark Reback	0.30	425.00	127.50
18799	06/12/07	T Legal Services	86 Intervenor Regs	Telephone conference with L Landsman Smith; review regulations and court docs; conference with H Rosenfield	2.60	425.00	1,105.00
18887	06/28/07	T Legal Services	86 Intervenor Regs	Telephone conference with B Shapiro	0.20	425.00	85.00
18890	06/29/07	T Legal Services	86 Intervenor Regs	Telephone conference with deputy attorney general	0.25	425.00	106.25
18892	07/06/07	T Legal Services	86 Intervenor Regs	review regs	0.20	425.00	85.00
18893	07/18/07	T Legal Services	86 Intervenor Regs	draft petition to intervene	1.25	425.00	531.25
18894	07/20/07	T Legal Services	86 Intervenor Regs	conference with Todd Foreman re: complaint	0.50	425.00	212.50
18895	07/23/07	T Legal Services	86 Intervenor Regs	email M. Savage; draft, edit and review Petition to Intervene	3.00	425.00	1,275.00
18896	07/24/07	T Legal Services	86 Intervenor Regs	review and reply to emails; edit and complete Petition to Intervene; legal research	10.00	425.00	4,250.00
18897	07/25/07	T Legal Services	86 Intervenor Regs	conference with Todd Foreman re: sched. issues; review Petition for Writ of Mandate; edit complaints; conference with D Heller; edit Petition to Intervene; email Todd Foreman, H Rosenfield; conference with Todd Foreman; conference with H Rosenfield; review ct. rules; edit complaint	11.60	425.00	4,930.00
18900	07/26/07	T Legal Services	86 Intervenor Regs	calls to counsel; review Ex Parte Notice letter; edit declaration; conference with H Rosenfield re: edits to complaint; legal research re: ct rules; edit complaint and Petition to Intervene; prepare documents	8.50	425.00	3,612.50
18903	07/27/07	T Legal Services	86 Intervenor Regs	Draft and edit ex-parte application; review emails; organize and review docs	2.10	425.00	892.50
18904	08/07/07	T Legal Services	86 Intervenor Regs	edit stipulation and order; email M Richardson	0.30	425.00	127.50
18905	08/08/07	T Legal Services	86 Intervenor Regs	email counsel	0.20	425.00	85.00
18902	08/09/07	T Legal Services	86 Intervenor Regs	final Preparation of stipulation; conference with Mark Reback re: filing	0.85	425.00	361.25
18906	08/13/07	T Legal Services	86 Intervenor Regs	email final stipulation	0.10	425.00	42.50
18907	08/15/07	T Legal Services	86 Intervenor Regs	Telephone conference with court clerk	0.20	425.00	85.00
18908	08/16/07	T Legal Services	86 Intervenor Regs	download order; conference with courier; draft Notice of Entry; email parties; conference with Mark Reback	0.75	425.00	318.75
18909	08/27/07	T Legal Services	86 Intervenor Regs	email H Rosenfield re: schedule	0.40	425.00	170.00
18910	08/29/07	T Legal Services	86 Intervenor Regs	Telephone conference with H Rosenfield	0.25	425.00	106.25
18911	09/07/07	T Legal Services	86 Intervenor Regs	review and edit stipulation; edit declaration	1.00	425.00	425.00
18912	10/02/07	T Legal Services	86 Intervenor Regs	review mail/ emails; conference with Todd Foreman; review Opening Brief; conference with Todd Foreman	0.30	425.00	127.50
18914	10/15/07	T Legal Services	86 Intervenor Regs	Telephone conference with C Zarifian, M Newman; conference with H Rosenfield	0.25	425.00	106.25
18915	10/17/07	T Legal Services	86 Intervenor Regs	conference with H Rosenfield; edit email	0.25	425.00	106.25
18916	10/18/07	T Legal Services	86 Intervenor Regs	Prepare draft stipulation; email stipulation to C Zarifian, M Newman; review OB outline; conference with Todd Foreman re: OB outline	2.20	425.00	935.00
18917	10/19/07	T Legal Services	86 Intervenor Regs	email M Newman, C Zarifian re: stipulation; review Government Code	2.40	425.00	1,020.00

# SLIP LIST BY TIMEKEEPER - FINAL REPORT

Fri, Jul 18, 2008

00/00/00 TO 00/00/00

Page 2

Slip#	Date	Activity/Expense	Matter# & Name	Matter	Hours	Rate	Amount
18918	10/22/07	T Legal Services	86 Intervenor Regs	re: "proceeding"; legal research; conference with Todd Foreman re: legal research	0.50	425.00	212.50
18919	10/23/07	T Legal Services	86 Intervenor Regs	Prepare stipulation, POS; conference with Mark Reback re: filing; scan and email filing to Todd Foreman	5.00	425.00	2,125.00
18920	10/24/07	T Legal Services	86 Intervenor Regs	review case; email H Rosenfield re: "proceeding"; review stats, case and brief; legal research; conference with Todd Foreman	0.20	425.00	85.00
18921	10/25/07	T Legal Services	86 Intervenor Regs	review email and mail	0.20	425.00	85.00
18922	10/30/07	T Legal Services	86 Intervenor Regs	email C Zarifian, M Newman re: Order	0.10	425.00	42.50
18923	10/31/07	T Legal Services	86 Intervenor Regs	conference with Todd Foreman	3.50	425.00	1,487.50
18924	11/01/07	T Legal Services	86 Intervenor Regs	draft opposition; edit brief	1.75	425.00	743.75
18925	11/02/07	T Legal Services	86 Intervenor Regs	conference with Todd Foreman; legal research re: writs / standard of review	0.10	425.00	42.50
18926	11/13/07	T Legal Services	86 Intervenor Regs	email H Rosenfield	5.00	425.00	2,125.00
18929	11/14/07	T Legal Services	86 Intervenor Regs	Draft, edit brief	5.70	425.00	2,422.50
18930	11/17/07	T Legal Services	86 Intervenor Regs	legal research; edit brief	1.25	425.00	531.25
18931	11/18/07	T Legal Services	86 Intervenor Regs	edit brief	8.00	425.00	3,400.00
18932	11/19/07	T Legal Services	86 Intervenor Regs	edit brief	2.10	425.00	892.50
18933	11/20/07	T Legal Services	86 Intervenor Regs	edit brief; legal research	2.75	425.00	1,168.75
18934	11/21/07	T Legal Services	86 Intervenor Regs	Telephone conference with Mark Savage	0.25	425.00	106.25
18935	11/23/07	T Legal Services	86 Intervenor Regs	edit opposition brief	1.50	425.00	637.50
18936	11/27/07	T Legal Services	86 Intervenor Regs	review and reply to emails	0.50	425.00	212.50
18937	12/01/07	T Legal Services	86 Intervenor Regs	review emails; draft declaration	4.10	425.00	1,742.50
18938	12/02/07	T Legal Services	86 Intervenor Regs	draft, edit declaration	5.25	425.00	2,231.25
18939	12/04/07	T Legal Services	86 Intervenor Regs	conference with Todd Foreman; edit declaration; review brief re: exhibits; conference with Todd Foreman; conference with H Rosenfield; review CDI brief; Telephone conference with C Zarifian; edit brief; edit RJN; review rate hrg. decisions; conference with H Rosenfield; edit intro to declaration	11.20	425.00	4,760.00
18941	12/05/07	T Legal Services	86 Intervenor Regs	review, edit declaration/ exhibits; conference with H Rosenfield; edit opposition; edit RJN	8.10	425.00	3,442.50
18942	12/06/07	T Legal Services	86 Intervenor Regs	conference with Mark Reback re: filings; edit brief, RJN, declaration; conference with H Rosenfield; Telephone conference with C Zarifian; review rulemaking file; proof RJN, declaration	8.00	425.00	3,400.00
18943	12/07/07	T Legal Services	86 Intervenor Regs	finalize brief	5.00	425.00	2,125.00
18944	12/12/07	T Legal Services	86 Intervenor Regs	review opposition brief	0.30	425.00	127.50
18945	01/07/08	T Legal Services	86 Intervenor Regs	email H Rosenfield; conference with H Rosenfield	0.10	425.00	42.50
18946	01/08/08	T Legal Services	86 Intervenor Regs	email H Rosenfield	0.10	425.00	42.50
18947	01/18/08	T Legal Services	86 Intervenor Regs	legal research	1.00	425.00	425.00
18948	01/22/08	T Legal Services	86 Intervenor Regs	legal research; draft response to objection	3.50	425.00	1,487.50
18949	01/23/08	T Legal Services	86 Intervenor Regs	legal research; draft response; edit responses to objection	7.50	425.00	3,187.50
18950	01/24/08	T Legal Services	86 Intervenor Regs	legal research; edit response; conference with Todd Foreman; email H Rosenfield	3.50	425.00	1,487.50
18951	01/28/08	T Legal Services	86 Intervenor Regs	Telephone conference with M Newman; research profile	0.50	425.00	212.50
18952	01/31/08	T Legal Services	86 Intervenor Regs	conference with H Rosenfield; open and review mail	0.20	425.00	85.00
18953	03/03/08	T Legal Services	86 Intervenor Regs	review, edit indices; Prepare outline; edit outline; legal research	3.40	425.00	1,445.00
18954	03/04/08	T Legal Services	86 Intervenor Regs	review reply; draft outline; legal research; email Carmen Aguado; Prepare for oral argument; email C Zarifian; Prepare hrg outline	6.40	425.00	2,720.00
18955	03/05/08	T Legal Services	86 Intervenor Regs	conference with deputy attorney general; travel to and from court	6.40	425.00	2,720.00

# SLIP LISI BY TIMEKEEPER - FINAL REPORT

Slip#	Date	Activity/Expense	Matter# & Name	Matter	Hours	Rate	Amount
18956	03/06/08	T Legal Services	86 Intervenor Regs	hearing; conference with Carmen Aguado; Prepare for hearing; conference with H Rosenfield, Todd Foreman re: hearing preparation	2.60	425.00	1,105.00
18957	03/07/08	T Legal Services	86 Intervenor Regs	conference with J Flanagan; Prepare for hearing	1.00	425.00	425.00
18958	03/11/08	T Legal Services	86 Intervenor Regs	email M Savage; email A Schwartz; edit and review PR	1.90	425.00	807.50
18959	03/12/08	T Legal Services	86 Intervenor Regs	review proposed judgment; draft email to C Zarifian; legal research; search for minute order; email Carmen Aguado re: transcript	0.50	425.00	212.50
18960	03/13/08	T Legal Services	86 Intervenor Regs	email C Zarifian; Telephone conference with C Zarifian re: proposed judgment; review emails	2.75	425.00	1,168.75
18961	03/14/08	T Legal Services	86 Intervenor Regs	legal research; email B Hogeboom; review email and forward to H Rosenfield, D Heller	0.10	425.00	42.50
18962	03/20/08	T Legal Services	86 Intervenor Regs	review C Zarifian email	1.00	425.00	425.00
19023	05/26/08	T Legal Services	86 Intervenor Regs	Telephone conference with court reporter; Telephone conference with C Zarifian; review proposed judgment, minute order; draft email; legal research	2.50	425.00	1,062.50
19021	05/30/08	T Legal Services	86 Intervenor Regs	draft fee motion memo and P Pressley declaration	0.10	425.00	42.50
19022	06/02/08	T Legal Services	86 Intervenor Regs	conference with Carmen Aguado re time billing records	1.20	425.00	510.00
19015	06/03/08	T Legal Services	86 Intervenor Regs	Telephone conference with D Heller re expenses	5.10	425.00	2,167.50
19016	06/04/08	T Legal Services	86 Intervenor Regs	review and edit time entries; conference with Carmen Aguado re same; draft and edit memo in support of fee motion	0.50	425.00	212.50
19017	06/04/08	T Legal Services	86 Intervenor Regs	edit fee declaration	1.25	425.00	531.25
19018	06/05/08	T Legal Services	86 Intervenor Regs	legal research; draft and edit fee motion	4.60	425.00	1,955.00
19019	06/06/08	T Legal Services	86 Intervenor Regs	legal research; edit P Pressley declaration; conference with Carmen Aguado re dates; review costs; edit memo in support of fee motion	4.20	425.00	1,785.00
19020	06/06/08	T Legal Services	86 Intervenor Regs	edit motion in support of fee motion; edit P Pressley declaration; review time billing records, Pearl Declaration; conference with Carmen Aguado re preparation of exhibits	2.50	425.00	1,062.50
19025	06/06/08	T Legal Services	86 Intervenor Regs	draft fee motion, P Pressley declaration	0.70	425.00	297.50
19026	06/08/08	T Legal Services	86 Intervenor Regs	review time billing reports; conference with Carmen Aguado re same; edit motion; review cases	1.25	425.00	531.25
19030	06/09/08	T Legal Services	86 Intervenor Regs	edit fee motion; edit P Pressley declaration	3.00	425.00	1,275.00
19533	06/09/08	T Legal Services	86 Intervenor Regs	edit memorandum of points and authorities in support of fee motion; edit P Pressley Declaration; prepare proposed order and Exhibit A; conference with Carmen Aguado re preparation for filing/service.	0.60	425.00	255.00
19531	07/14/08	T Legal Services	86 Intervenor Regs	finalize fee motion, P Pressley Declaration; conferences with Carmen Aguado re filings; email Carmen Aguado	1.00	425.00	425.00
19534	07/15/08	T Legal Services	86 Intervenor Regs	review opposition; email C Zarifian; conference with H Rosenfield, D Heller	1.90	425.00	807.50
19535	07/16/08	T Legal Services	86 Intervenor Regs	review cases; conference with Todd Foreman; draft reply	7.10	425.00	3,017.50
19536	07/17/08	T Legal Services	86 Intervenor Regs	review files; conference with H Rosenfield; draft reply	6.45	425.00	2,741.25
19537	07/17/08	T Legal Services	86 Intervenor Regs	draft reply; telephone conference with M Savage; conference with Carmen Aguado; edit P Pressley supplemental declaration; conference with Todd Foreman; conference with H Rosenfield; edit reply, declaration and Request for Judicial Notice	3.80	425.00	1,615.00
19542	07/18/08	T Legal Services	86 Intervenor Regs	edit reply, P Pressley Supp Declaration; conference with Todd Foreman re same; review time billing records	5.25	425.00	2,231.25
				edit reply; conference with H Rosenfield; conference with Todd Foreman			
Totals for Timekeeper PRESSLEY, PAM					230.05		\$ 97,771.25
GRAND TOTALS							\$ 97,771.25



**EXHIBIT 1b**

# SLIP LIST BY TIMEKEEPER - FINAL REPORT

Fri, Jul 18, 2008

00/00/00 TO 00/00/00

Page 1

Slip#	Date	Activity/Expense	Matter# & Name	Matter	Hours	Rate	Amount
<b>ROSENFELD, HARVEY</b>							
14208	06/04/07	T Legal Services	86 Intervenor Regs	discussion with CDI re suit. Telephone conference with P Pressley. email Gary Cohen, GC, CDI.	0.30	575.00	172.50
14187	06/05/07	T Legal Services	86 Intervenor Regs	Telephone conference with P Pressley re lawsuit, strategy.	0.25	575.00	143.75
14236	06/07/07	T Legal Services	86 Intervenor Regs	review and revise letter to CDI re current proceedings. discussion with P Pressley, Todd Foreman. review P Pressley email. discussion with P Pressley. discussion with P Pressley, Todd Foreman. email Gary Cohen, GC, CDI.	1.00	575.00	575.00
14325	06/12/07	T Legal Services	86 Intervenor Regs	discussion with P Pressley re status and arguments.	0.10	575.00	57.50
14428	06/18/07	T Legal Services	86 Intervenor Regs	review ACIC complaint.	0.50	575.00	287.50
14886	07/13/07	T Legal Services	86 Intervenor Regs	Telephone conference with Gary Cohen, GC, CDI re CDI position.	0.20	575.00	115.00
15057	07/25/07	T Legal Services	86 Intervenor Regs	discussion with P Pressley. review draft complaint in intervention.	0.40	575.00	230.00
15061	07/25/07	T Legal Services	86 Intervenor Regs	discussion with P Pressley and Todd Foreman. discussion with P Pressley.	2.00	575.00	1,150.00
15062	07/26/07	T Legal Services	86 Intervenor Regs	review P Pressley email and reply. review P Pressley draft. discussion with P Pressley. research insurance industry use of .10a.	2.40	575.00	1,380.00
15086	07/27/07	T Legal Services	86 Intervenor Regs	review ex parte papers. travel to (1.5) and ex parte hrg re FTICR m/ intervene (.5) discussion with P Pressley.	2.40	575.00	1,380.00
15357	08/14/07	T Legal Services	86 Intervenor Regs	discussion with P Pressley, Todd Foreman. email re date for AG meeting.	0.20	575.00	115.00
15417	08/19/07	T Legal Services	86 Intervenor Regs	review CAHSH v DHS case.	0.10	575.00	57.50
15661	08/30/07	T Legal Services	86 Intervenor Regs	meeting with P Pressley, AG attorneys re suit.	2.60	575.00	1,495.00
16127	10/08/07	T Legal Services	86 Intervenor Regs	review opening brief of petitioners. review notes. email P Pressley. review email re fee payments from other proceedings.	0.50	575.00	287.50
16230	10/13/07	T Legal Services	86 Intervenor Regs	Research CDI regs and forward to P Pressley, etc.	0.20	575.00	115.00
16261	10/17/07	T Legal Services	86 Intervenor Regs	discussion with P Pressley. draft email to R Hogeboom re calendar/ extension.	0.40	575.00	230.00
16301	10/18/07	T Legal Services	86 Intervenor Regs	Reply from R Hogeboom re stip to calendar change. reply. discussion with P Pressley.	0.10	575.00	57.50
16343	10/22/07	T Legal Services	86 Intervenor Regs	memo to P Pressley re suit. email case to P Pressley	0.25	575.00	143.75
16407	10/27/07	T Legal Services	86 Intervenor Regs	email P Pressley.	0.10	575.00	57.50
16541	11/02/07	T Legal Services	86 Intervenor Regs	email P Pressley re H Rosenfield comments on opening brf.	0.10	575.00	57.50
16715	11/20/07	T Legal Services	86 Intervenor Regs	review ins's opening brief, edit draft FTICR opening brief.	1.50	575.00	862.50
16721	11/21/07	T Legal Services	86 Intervenor Regs	review docs. discussion with P Pressley re edits and strategy on FTICR opening brief (.75).	1.25	575.00	718.75
16740	11/26/07	T Legal Services	86 Intervenor Regs	left message for Dep AG M Richelson re declaration.	0.10	575.00	57.50
16764	11/29/07	T Legal Services	86 Intervenor Regs	review declarations of J Court, D Goodell in SCPIE case. email P Pressley re Telephone conference with AG.	0.40	575.00	230.00
16773	11/29/07	T Legal Services	86 Intervenor Regs	Telephone conference with Christine @ AG's office re status of briefing. email P Pressley re same. review outline J Court declaration.	0.50	575.00	287.50
16811	12/02/07	T Legal Services	86 Intervenor Regs	email from P Pressley - reply.	0.10	575.00	57.50
16901	12/03/07	T Legal Services	86 Intervenor Regs	review P Pressley oppo and declaration. email P Pressley.	0.40	575.00	230.00
16826	12/04/07	T Legal Services	86 Intervenor Regs	review petition and regs. review and revise P Pressley draft oppo.	5.40	575.00	3,105.00
16888	12/05/07	T Legal Services	86 Intervenor Regs	review and revise P Pressley draft oppo to petition.	1.50	575.00	862.50
16859	12/11/07	T Legal Services	86 Intervenor Regs	review final opposition.	0.30	575.00	172.50
16959	12/18/07	T Legal Services	86 Intervenor Regs	review CDI oppo to petition.	0.50	575.00	287.50
17057	01/10/08	T Legal Services	86 Intervenor Regs	review Reply by ACIC.	0.50	575.00	287.50

# SLIP LISI BY TIMEKEEPER - FINAL REPORT

Slip#	Date	Activity/Expense	Matter# & Name	Matter	Hours	Rate	Amount
17120	01/14/08	T Legal Services	86 Intervenor Regs	review ACIC objections to declarations by FTCR, CDI.	0.10	575.00	57.50
17189	01/22/08	T Legal Services	86 Intervenor Regs	discussion with P Pressley re hearing.	0.10	575.00	57.50
17222	01/24/08	T Legal Services	86 Intervenor Regs	review P Pressley draft reply re ACIC objections to P Pressley declaration. email P Pressley re same.	0.40	575.00	230.00
17740	03/04/08	T Legal Services	86 Intervenor Regs	review P Pressley notes for hearing.	0.25	575.00	143.75
17739	03/05/08	T Legal Services	86 Intervenor Regs	discussion with P Pressley, Todd Foreman re hearing.	1.40	575.00	805.00
17763	03/06/08	T Legal Services	86 Intervenor Regs	review ACIC reply and all briefing to prepare for hearing.	0.50	575.00	287.50
17757	03/07/08	T Legal Services	86 Intervenor Regs	review docs for, travel to and attend hearing; discussion with team.	3.00	575.00	1,725.00
17816	03/11/08	T Legal Services	86 Intervenor Regs	review judgment draft P Pressley, reply.	0.20	575.00	115.00
17873	03/15/08	T Legal Services	86 Intervenor Regs	review ACIC response re draft judgment and reply to P Pressley.	0.10	575.00	57.50
19082	06/03/08	T Legal Research	86 Intervenor Regs	reply to Carmen Aguado re TS for fee app.	0.10	575.00	57.50
19002	06/04/08	T Legal Research	86 Intervenor Regs	review time entries for billing purposes. email Carmen Aguado re same.	0.55	575.00	316.25
19393	07/14/08	T Legal Research	86 Intervenor Regs	review oppo to fee motion, discussion with P Pressley re same.	0.20	575.00	115.00
19544	07/17/08	T Legal Research	86 Intervenor Regs	discussion with P Pressley re fee motion. review and discussion with P Pressley. review and revise P Pressley edit to reply.	0.70	575.00	402.50
19543	07/18/08	T Legal Research	86 Intervenor Regs	review and revise draft of reply to oppo to fee motion. discussion with P Pressley re same.	0.80	575.00	460.00

Totals for Timekeeper ROSENFELD, HARVEY

34.95 \$ 20,096.25

GRAND TOTALS

34.95 \$ 20,096.25

**EXHIBIT 1c**

# SLIP LIST BY TIMEKEEPER - FINAL REPORT

Fri, Jul 18, 2008

00/00/00 TO 00/00/00

Page 1

Slip#	Date	Activity/Expense	Matter# & Name	Matter	Hours	Rate	Amount
FOREMAN, TODD							
14194	06/06/07	T Legal Services	86 Intervenor Regs	Review petition for writ of mandate; e-mail to P Pressley re: same; conference with P Pressley re: strategy; research re: related case statutes and pre-emptory challenge of judges; conference with P Pressley re: strategy on intervention; telephone conference with S. Choi re: stipulation to intervention	2.00	325.00	650.00
14239	06/07/07	T Legal Services	86 Intervenor Regs	Telephone conference with S. Choi re: stipulation to intervention; telephone calls to filing clerk supervisor re: case assignment rules; draft letter to S. Choi and S. Hogeboom re: refusal to stipulate to intervention; conference with P Pressley re: strategy on intervention and investigation of case assignment	0.90	325.00	292.50
14252	06/08/07	T Legal Services	86 Intervenor Regs	Telephone call to filing clerk supervisor re: case assignment; begin draft of opposition to notice of related cases; research re: same; research whether appearance is at time of filing petition to intervene or entry of order granting intervention	1.80	325.00	585.00
14298	06/11/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley and A Schwartz re: petition for writ of mandate; further research re: effective "appearance" date if filing a petition to intervene; research effect of relation of cases on ability to file peremptory challenge; review and respond to e-mail from P Pressley re: same	0.90	325.00	292.50
14407	06/18/07	T Legal Services	86 Intervenor Regs	Telephone conference with S. Choi re: stipulation to intervention, TROP/PI, and time for hearing on petition; review ltr from R. Hogeboom re: stipulation, TROP/PI and date for hearing; e-mail to P Pressley re: same.	0.30	325.00	97.50
14950	07/18/07	T Legal Services	86 Intervenor Regs	Review and respond to e-mail from P Pressley re: communications with ACIC counsel	0.10	325.00	32.50
14985	07/20/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: complaint in intervention and research re: propriety of writ	0.60	325.00	195.00
15015	07/23/07	T Legal Services	86 Intervenor Regs	Research re: availability of mandamus to invalidate regulations; telephone call to S. Choi re: ex parte and hearing date; research re: caselaw definitions of "proceeding"	0.60	325.00	195.00
15048	07/24/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: complaint in intervention	0.40	325.00	130.00
15060	07/25/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: case strategy; conference with P Pressley and H Rosenfield re: complaint in intervention and case strategy	0.90	325.00	292.50
15122	07/30/07	T Legal Services	86 Intervenor Regs	Review e-mail from P Pressley re: stipulation re: intervention.	0.10	325.00	32.50
15159	08/01/07	T Legal Services	86 Intervenor Regs	Telephone call to S. Choi re: stipulation on intervention; telephone conference with M. Newman re: same; e-mail to P Pressley re: same	0.30	325.00	97.50
15225	08/06/07	T Legal Services	86 Intervenor Regs	Review revised stipulation; review and respond to email from P Pressley re: same	0.40	325.00	130.00
16276	10/18/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: legal arguments	0.40	325.00	130.00
16292	10/19/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley on "proceeding" issue and legal arguments	0.50	325.00	162.50
16333	10/23/07	T Legal Services	86 Intervenor Regs	Review ACIC opening brief; research re: standard of review and precedence of trial court decisions; conference with P Pressley re: same.	1.60	325.00	520.00
16375	10/26/07	T Legal Services	86 Intervenor Regs	Further review of ACIC opening brief; research re: agency's "reasonable interpretation" of statute	0.70	325.00	227.50
16446	10/30/07	T Legal Services	86 Intervenor Regs	Further review ACIC opening brief and legal research re: same	1.30	325.00	422.50
16529	11/01/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: legal arguments; research	0.90	325.00	292.50
16626	11/14/07	T Legal Services	86 Intervenor Regs	Research re: waiver of argument not addressed in opening brief and propriety of factual declarations in writ proceeding; conference with P Pressley re: same	0.60	325.00	195.00
16820	12/03/07	T Legal Services	86 Intervenor Regs	Review draft opposition to petition for writ of mandate	0.50	325.00	162.50

# SLIP LIST BY TIMEKEEPER - FINAL REPORT

Slip#	Date	Activity/Expense	Matter# & Name	Matter	Hours	Rate	Amount
16828	12/04/07	T Legal Services	86 Intervenor Regs	Review, revise and make comments to opposition to petition for writ of mandate; draft request for judicial notice; conference with P Pressley re: both	4.60	325.00	1,495.00
16834	12/05/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: opposition to petition for writ of mandate; review and revise introduction to opposition; review and revise draft P Pressley declaration in support of same	3.10	325.00	1,007.50
16841	12/06/07	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: opposition brief	0.20	325.00	65.00
16844	12/07/07	T Legal Services	86 Intervenor Regs	Review and revise P Pressley decl in support of opposition to petition for writ of mandate; edit opposition brief	1.70	325.00	552.50
17202	01/23/08	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: objections to P Pressley declaration	0.30	325.00	97.50
17208	01/24/08	T Legal Services	86 Intervenor Regs	Review and revise response to objections to P Pressley declaration; research re: declaration exception to hearsay rule; conference with P Pressley re: same	1.70	325.00	552.50
17708	03/03/08	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: citation to superior court cases; research re: same	0.30	325.00	97.50
17737	03/05/08	T Legal Services	86 Intervenor Regs	Review briefs on writ; conference with P Pressley and H Rosenfield re: hearing on writ	2.00	325.00	650.00
17753	03/07/08	T Legal Services	86 Intervenor Regs	Hearing on petition for writ of mandate; travel to and from same; review tentative ruling; conference with P Pressley and H Rosenfield re: same	3.50	325.00	1,137.50
17822	03/12/08	T Legal Services	86 Intervenor Regs	Review draft judgement; e-mail to P Pressley re: same	0.20	325.00	65.00
17825	03/13/08	T Legal Services	86 Intervenor Regs	Review and respond to e-mail from P Pressley re: proposed judgment	0.10	325.00	32.50
18971	06/02/08	T Legal Services	86 Intervenor Regs	Review and edit timesheets	0.30	325.00	97.50
19028	06/09/08	T Legal Services	86 Intervenor Regs	Review and edit attorneys' fees motion	0.80	325.00	260.00
19407	07/14/08	T Legal Services	86 Intervenor Regs	Review ACIC opposition to FCR motion for attorneys' fees	0.50	325.00	162.50
19477	07/16/08	T Legal Services	86 Intervenor Regs	Conference with P Pressley re: strategy on fee motion reply and declaration from AG	0.10	325.00	32.50
19529	07/17/08	T Legal Services	86 Intervenor Regs	Draft request for judicial notice in support of attorneys' fees reply motion; review and revise reply motion; research re: "personal interest"; conference with P Pressley re: same and motion generally	3.30	325.00	1,072.50
19538	07/18/08	T Legal Services	86 Intervenor Regs	Edit reply in support of attorneys' fee motion; conference with P Pressley re: proceeding "under" the chapter.	1.50	325.00	487.50
Totals for Timekeeper FOREMAN, TODD					40.00		\$ 13,000.00
GRAND TOTALS					40.00		\$ 13,000.00