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2 PAMELA M. PRESSLEY (SBN 180362)  
3 TODD M. FOREMAN (SBN 229536)  
4 THE FOUNDATION FOR TAXPAYER  
5 AND CONSUMER RIGHTS  
6 1750 Ocean Park Boulevard, Suite 200  
7 Santa Monica, California 90405  
8 Tel. (310) 392-0522  
9 Fax (310) 392-8874

10 Attorneys for Intervenor  
11 The Foundation for Taxpayer and Consumer Rights

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

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

20 Insurance Association  
21 Petitioners and Plaintiffs,

22 v.

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

26 Respondents and Defendants,

27 THE FOUNDATION FOR TAXPAYER AND  
28 CONSUMER RIGHTS,

Intervenor.

Case No. BS109154

**THE FOUNDATION FOR TAXPAYER  
AND CONSUMER RIGHTS' REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT OF  
MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND EXPENSES**

Hearing Date: July 25, 2008

Time: 9:30 a.m.

Dept: 85

Judge: Hon. James C. Chalfant

Date Action Filed: May 25, 2007

1 Pursuant to Evidence Code sections 451 and 452, Intervenor, The Foundation for Taxpayer and  
2 Consumer Rights ("FTCR"), hereby requests judicial notice of the following documents, true and  
3 correct copies of which are attached as Exhibits 1-5, in support of its Motion for an Award of  
4 Attorneys' Fees and Expenses:

- 5 1. Notice of Entry of Order Granting Intervenors' Motion for Attorney Fees and Expenses,  
6 *American Insurance Assoc., et al. v. Garamendi and California Farm Bureau*  
7 *Federation v. Garamendi*, Nos. 06 AS 03053 and 06 AS 03036 (consolidated)  
8 (Sacramento Super. Court Sept. 13, 2007) (McMaster, J.);
- 9 2. Statement of Decision, *Minority/Low Income Consumer Coalition v. Garamendi*, No.  
10 942151 (San Francisco Super. Ct. June 19, 1993) (Pollak, J.);
- 11 3. Order Granting Fees under Ins. Code Section 1861.10(b), *Southern Christian*  
12 *Leadership Conference v. Quackenbush*, No. 976629 (San Francisco Super. Ct., July 15,  
13 1996) (Cahill, J.);
- 14 4. Order Granting Petitioners' Attorneys' Fees and Expenses, *Consumers Union v.*  
15 *Quackenbush*, No. 982181 (San Francisco Super. Ct. May 9, 1997) (Cahill, J.);
- 16 5. Order Granting the Petitioner's Motion for Attorneys' Fees and Expenses, *The*  
17 *Proposition 103 Enforcement Project v. Quackenbush*, No. 982646 (San Francisco Sup.  
18 Ct. June 24, 1997) (Cahill, J.).

19 Evidence Code section 451 states, in pertinent part, "judicial notice shall be taken of the  
20 following: (a) [t]he decisional, constitutional, and public statutory law of this state."

21 In addition, Evidence Code section 452 states, in pertinent part:

22 Judicial notice may be taken of the following matters to the extent that they are not  
23 embraced within Section 451:

24 . . . .

25 (c) Official acts of the legislative, executive, and judicial departments of the United  
26 States and of any state of the United States.

27 (d) Records of (1) any court of this state or (2) any court of record of the United States  
28 or of any state of the United States.

1 Exhibits 1 through 5 are orders issued by the Superior Court of the State of California, Counties  
2 of San Francisco and Sacramento. As such, they are "decisional law" of the state, "[o]fficial acts" of the  
3 "judicial department" of California, and California court records. Evidence Code sections 451 and 452  
4 expressly authorize judicial notice of such court records and courts commonly do so. (See, e.g.,  
5 *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 483 [court took judicial notice of trial court's  
6 tentative decision].)

7 As discussed in FTCR's concurrently filed Reply Memorandum in Support of Motion for an  
8 Award of Attorneys' Fees and Expenses, each of these trial court decisions awarded attorneys' fees and  
9 expenses incurred by intervenors either initiating or defending actions related to Proposition 103  
10 pursuant to Insurance Code section 1861.10. As a result, each of the documents is judicially noticeable  
11 and relevant to the instant proceeding, and FTCR respectfully requests that this Court take judicial  
12 notice of the attached documents in support of its Motion for an Award of Attorneys' Fees and  
13 Expenses.

14 Dated: July 18, 2008

15 Respectfully Submitted

16 The Foundation for Taxpayer and Consumer Rights  
17 Harvey Rosenfield  
18 Pamela Pressley  
19 Todd Foreman

20 BY:

  
Pamela Pressley

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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' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

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.

  
\_\_\_\_\_  
Carmen Aguado

1 **SERVICE LIST**

2 **Person Served**

**Method of Service**

3  
4 Mark Richelson        FAX  
Christine Zarifian    X    U.S. MAIL  
5 Deputy Attorneys General        OVERNIGHT MAIL  
6 OFFICE OF THE ATTORNEY GENERAL        HAND DELIVERED  
300 South Spring Street, Suite 1702    X    EMAIL  
7 Los Angeles, CA 90013  
Tel: (213) 897-2478  
8 Fax: (213) 897-5775

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

12 Robert Hogeboom        FAX  
Michael A.S. Newman    X    U.S. MAIL  
13 Suh Choi        OVERNIGHT MAIL  
BARGER & WOLEN LLP        HAND DELIVERED  
14 633 West Fifth Street, 47<sup>th</sup> Floor    X    EMAIL  
15 Los Angeles, CA 90071  
Tel: (213) 680-2800  
16 Fax: (213) 614-7399

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

**EXHIBIT 1**

FILED  
ENDORSED

2007 SEP 13 PM 1:00

SACRAMENTO COURTS  
DEPT. #53 #54

1 MARK SAVAGE, Bar No. 141621  
2 NORMA GARCIA, Bar No. 146156  
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8 CONSUMERS UNION OF UNITED STATES, INC.  
9 NATIONAL COUNCIL OF LA RAZA  
10 SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE  
11 OF GREATER LOS ANGELES  
12 SPANISH SPEAKING CITIZENS' FOUNDATION

13 [Additional counsel on next page]

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 IN AND FOR THE COUNTY OF SACRAMENTO  
16 (Unlimited Jurisdiction)

17 AMERICAN INSURANCE ASSOCIATION;  
18 ASSOCIATION OF CALIFORNIA INSURANCE  
19 COMPANIES; and PERSONAL INSURANCE  
20 FEDERATION OF CALIFORNIA,  
21 Plaintiffs,

22 v.

23 JOHN GARAMENDI, Insurance Commissioner  
24 of the State of California,  
25 Defendant.

Case No. 06 AS 03053  
Consolidated

NOTICE OF ENTRY OF  
ORDER GRANTING  
INTERVENORS' MOTION FOR  
ATTORNEY FEES AND EXPENSES

BY FAX

26 CALIFORNIA FARM BUREAU FEDERATION,  
Plaintiff,

v.

JOHN GARAMENDI, Insurance Commissioner  
of the State of California,  
Defendant.

Case No. 06 AS 03036

Cal. Civ. Proc. Code § 1019.5

CONSUMERS UNION OF UNITED STATES,  
INC.; THE FOUNDATION FOR TAXPAYER  
AND CONSUMER RIGHTS; NATIONAL  
COUNCIL OF LA RAZA; SOUTHERN  
CHRISTIAN LEADERSHIP CONFERENCE OF  
GREATER LOS ANGELES; SPANISH  
SPEAKING CITIZENS' FOUNDATION; CITY  
OF OAKLAND; CITY AND COUNTY OF SAN  
FRANCISCO; and CITY OF LOS ANGELES,  
Intervenor.

Date: Sept. 12, 2007  
Time: 2:00 p.m.  
Dept: 53, Hon. Loren McMaster  
Trial date: None  
File date: July 19, 2006

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Additional counsel:

THE FOUNDATION FOR TAXPAYER AND  
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Attorney for Intervenor  
CITY AND COUNTY OF SAN  
FRANCISCO



1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2  
3 Pursuant to section 1019.5 of the Code of Civil Procedure, notice is hereby given that on  
4 September 12, 2007, the Court, the Honorable Loren E. McMaster presiding, granted in part the  
5 Intervenor's motion for attorney fees and expenses. There being no request for oral argument, the  
6 tentative ruling became the order of the court pursuant to Superior Court of Sacramento County,  
7 Local Rules, rule 2.02(D). A copy of the Court's order is attached.

8  
9 Dated in San Francisco, California, on the 13th day of September, 2007.

10 Respectfully submitted,

11 MARK SAVAGE, Bar No. 141621  
12 NORMA GARCÍA, Bar No. 146156  
13 CONSUMERS UNION OF UNITED STATES, INC.  
14 1535 Mission Street  
15 San Francisco, California 94103-2566

16   
17 \_\_\_\_\_  
18 MARK SAVAGE

19 Attorney for INTERVENORS  
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**NOTICE:**

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

Judge McMaster discloses that attorneys appearing in cases on today's calendar may have donated to the Committee for Judicial Independence which was formed to oppose the attempted recall of Judge McMaster. A list of donors and amounts donated is under the custody of court executive officer Jody Patel and can be reviewed at room 611, sixth floor, courthouse, 720 Ninth Street.

**Department 53  
Superior Court of California  
800 Ninth Street, 3rd Floor  
LOREN E. MCMASTER, Judge  
T. West, Clerk  
D. Calmes V, N. Carroll, CA, Bailiff**

**Wednesday, September 12, 2007, 2:00 PM**

Item 1    02AS06061    **SACRAMENTO CITY UNIFIED SCHOOL DIST VS. FRED B. CURTIS, ETAL**  
Nature of Proceeding: Motion to Contest Application for Determination of Good Faith Settlement  
Filed By: Clarke, Kevin M.

This matter is continued to 9/26/2007 at 02:00PM in this department.

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Item 2    04AS02331    **MICHAEL CLARK VS. STATE OF CALIF. DEPT. OF CORRECTIONS, ETAL**  
Nature of Proceeding: Summary Judgment (New Mexico Defendants)  
Filed By: Rivera, Jesse

Appearance is required by all parties or counsel in this action. The New Mexico Defendants' Motion for Summary Judgment is continued, on the Court's own motion, to a date to be determined at the hearing.

The Court has received Opposition to the New Mexico Defendants Motion from Michael Clark, but has also received a Notice of Non-receipt of Clark's Opposition filed by counsel for the New Mexico defendants on August 17, 2007. The Court notes that this was caused by the action of the Nevada State Prison restricting the number of copies that Plaintiff Clark could make in any one month. Hopefully, this issue has been resolved and that Mr. Clark will be able to make the copies he needs to serve the other parties.

The Court wishes to hear both plaintiff Clark and counsel for the California State Department of Corrections and Rehabilitation address whether Michael Clark has been able to make sufficient photocopies to serve the New Mexico defendants.

The Court wishes to set the continued hearing date for a date sufficient to permit defendants to file reply papers and to permit the parties to appear for oral argument.

The Clerk shall notify the Attorney for the Department of Corrections of this tentative ruling and the continued hearing date of September 12, 2007.

Filed By: Jones, Blake R.

This matter is continued to 10/12/2007 at 02:00PM in this department.

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Item 11 06AS03053 AMERICAN INS. ASSOC., ET AL VS. JOHN GARAMENDI

Nature of Proceeding: Motion for an Award of Attorney Fees and Expenses

Filed By: Savage, Mark

Intervenor's Motion for Attorneys Fees and costs is granted in part. The Court is awarding the lodestar amount requested for all work performed by Intervenor's counsel except for the work performed in conjunction with the motion for summary judgment other than the separate statement in support of the motion. As for the hours incurred on the summary judgment motion other than on the separate statement, the Court is awarding only ½ of the lodestar amount. All requested expenses are being awarded.

The Court will take the matter under submission pending receipt of supplemental briefs setting forth the calculations for the total amount of fees as described above. Intervenor's supplemental brief shall be filed and served on or before September 26, 2007. Plaintiffs' responsive brief, if any, shall be served and filed on or before October 3, 2007. Thereafter the matter will be deemed submitted and the Court will thereafter issue the final ruling on the amount of the award.

Plaintiffs American Insurance Association, Association of California Insurance Companies, and Personal Insurance Federation of California's Request for Judicial Notice is granted. (San Francisco Superior Court orders)

Plaintiff California Farm Bureau's Request for Judicial Notice is granted (Commissioner's Decision awarding compensation to Intervenor's)

Plaintiffs American Insurance Association, Association of California Insurance Companies, and Personal Insurance Federation of California's Supplemental Request for Judicial Notice is denied. The list of payments attached to the Declaration of Rex Frazier is not the proper subject of judicial notice.

The allocation of the fees and expenses shall be split 50-50 between the two consolidated cases. (See Declaration of Kent Keller, June 14, 2007, paragraph 4) Each plaintiff within each action is jointly and severally liable only for the portion of fees and expenses allocated to their separate action.

Intervenor's seek a total award of fees and expenses in the amount of \$696,498.56. This amount includes a requested multiplier of 2.0 for the "merits-only" portion of the work, which represents an additional \$303,223 for 670 hours of work. The "merits" portion does not include the time spent on the appeals of the order granting the preliminary injunction or this attorney fee motion. For reasons explained herein, the Court is not applying a multiplier to the fee award. The fees are awarded under both CCP 1021.5 and Insurance Code 1861.10(b).

A court may award attorneys fees to a private litigant under CCP 1021.5 in any

action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. CCP 1021.5; *City of Sacramento v Charles H. Drew* (1989) 207 Cal.App.3d 1287, 1296. Here, since there is no recovery, the third prong does not apply.

Plaintiffs do not significantly dispute that the first requirement above has been met. However, Plaintiffs contend the second prong is not met, stating that Intervenor merely duplicated the work of and did not contribute anything in addition to the Attorney General's defense of the action. The Declaration of Robert Asperger filed with the Reply papers disputes that Intervenor merely "rode the coattails" of his office. Intervenor contributed significantly to the action especially at the outset of the litigation when counsel for Intervenor provided background information and brought the AG "up to speed" on the background of the administrative regulations at issue. Defendant was required to oppose the preliminary injunction in an extremely compressed time period, at the same time as Intervenor were preparing their motion for intervention. Intervenor alone prepared the Statement of Undisputed Material Facts in support of the motion for summary judgment. The Court's decision on the preliminary injunction was greatly assisted by the Intervenor's contribution. The separate statement in support of the motion for summary judgment was also an important contribution to the Court's ruling. Intervenor's role at oral argument in both law and motion proceedings was also significant. In reviewing the high quality of the work product produced by the Intervenor in the compressed time frame at the outset of the case, as well as the need for the Intervenor to pinpoint the relevant evidence in the voluminous 32 volume Administrative Record that comprised multiple bankers boxes, the Court is persuaded that a significant amount of the work performed by Intervenor was necessary, non-duplicative, and materially contributed to the defendants' success in this action.

The Court also recognizes that the Attorney General's office very capably defended the action, and the points and authorities drafted by the Attorney General and the Intervenor in the two law and motion proceedings are largely parallel. Neither Intervenor nor the Attorney General's office contends that the Attorney General was not capable of defending this action on his own. (cf. *Hewlett v Squaw Valley Ski Corporation* (1997) 54 Cal.App.4<sup>th</sup> 499, where the District Attorney admitted his office did not have the capabilities to pursue the action on its own). Deputy Attorney General Asperger points to specific instances where Intervenor provided valuable assistance, however neither side indicates that the similar legal arguments both parties advanced were the product of Intervenor counsel as opposed to the Attorney General's office. Even if the Attorney General had indicated that Intervenor's counsel performed most of the work, a trial court is not bound to find the legal services of the private party "necessary" solely because they are so characterized by the colitigating public entity. *Committee to Defend Reproductive Rights v A Free Pregnancy Center* (1991) 229 Cal.App.3d 633, 644.

The legal issues and evidence presented in opposing the preliminary injunction motion and in support of the motion for summary judgment heavily overlapped. The contribution of Intervenor in this regard was duplicative both with regard to the parallel legal arguments made by the Attorney General and the overlapping issues in the successive law and motion matters. Therefore, the Court is awarding only one half of the lodestar fees incurred in preparing and arguing the motion for summary judgment,

except for the fees incurred in preparing the separate statement, for which the court is awarding the total lodestar fee.

Where private attorney general fees are sought to be recovered from a private plaintiff whose action has also been successfully defended by the *actual* Attorney General, the Court is required to carefully examine the facts of the case to determine the *particular benefit* conferred by the private party over and above the contribution by the public entity who also defended the action. The Court must determine to what extent the intervenors rendered necessary and significant services of value to the public. Important factors to consider are: (1) whether the intervenors advanced significant factual or legal theories adopted by the court, thereby providing a material non de minimis contribution to its judgment, *which were nonduplicative of those advanced by the governmental entity* (emphasis added) and (2) Did the private party produce substantial evidence significantly contributing to the court's judgment which was not produced by the governmental entity, and which was neither duplicative or nor merely cumulative to the evidence produced by the governmental entity. *Committee to Defend Reproductive Rights v A Free Pregnancy Center* (1991) 229 Cal.App.3d 633, 642-643.

In this case, although intervenors conferred a benefit over and above that contributed by the Attorney General at the outset of the case and in preparing the separate statement for the summary judgment motion, the same cannot be said for the bulk of the work on the summary judgment motion which concerned the same legal arguments made in the opposition to the request for preliminary injunction and which paralleled the Attorney General's points and authorities in support of and in opposition to the motion for summary judgment.

The fee award is made under both CCP 1021.5 and Insurance Code 1861.10 (b). Insurance Code section 1861.10(b) is an independent statutory basis upon which this fee award is made. The Court rejects plaintiffs' argument that the funds must be paid out of the Prop 103 fund. The statute applies both to judicial and administrative proceedings. Plaintiffs' argument that the last sentence of the section excludes them from liability for a fee award is rejected. That sentence, referring to rate applicants, necessarily applies only to rate proceedings. However, section 1861.10(b) explicitly applies to both rate proceedings and court proceedings.

The Court also rejects plaintiffs' argument that CCP 1021.5 does not apply since the Insurance Code is a more specific fee award statute. The two fee statutes, CCP 1021.5 and Insurance Code 1861.10(b), do not conflict with one another and therefore should be given concurrent effect. *Garcia v McCutchen* (1997) 16 Cal.4th 469, 478. The plaintiffs' reliance on the case of *Flannery v California Highway Patrol* (1998) 61 Cal.App.4th 629 is misplaced. In that case, the court held that 1021.5 fees were not available since the plaintiff had not conferred a benefit on the public, but was primarily asserting a private interest. Although the Court denied fees under CCP 1021.5 and awarded fees under FEHA, it did not hold that the FEHA fee provisions precluded any possible recovery under CCP 1021.5. The Court has taken judicial notice of the San Francisco Superior Court orders, but does not agree with the court's reliance on the *Flannery* in its denial of the fee motions under CCP 1021.5.

The Court rejects Farm Bureau's policy argument that no award should be made against it since it is another consumer advocacy group. The fee statutes do not differentiate between consumer advocacy and other types of opposing parties.

The Court finds based on the evidence submitted that the hourly rates of intervenors' attorneys are reasonable. The Court also finds that the work performed by the different attorneys on behalf of intervenor was not duplicative.

The Court is not applying a multiplier to the lodestar amount due to the large numbers of hours spent on the two primary law and motion proceedings which dealt with the same issues and same evidentiary record.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

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Item 12 06AS03263 JOHN STAFFORD, ET AL VS. WASTE MANAGEMENT, INC., ET AL  
Nature of Proceeding: Summary Judgment  
Filed By: Kass, Dennis B.

Defendant USA Waste of California's Motion for Summary Judgment, or in the Alternative for Summary Adjudication of Issues is granted.

Plaintiff's Evidentiary Objections are overruled.

Plaintiff's Complaint alleges three causes of action: the 1<sup>st</sup> for negligence, the 2<sup>nd</sup> for negligent hiring/training/supervision and the 3<sup>rd</sup> for loss of consortium in connection with plaintiff John Stafford's personal injuries incurred as the result of USA Waste allegedly having improperly loaded his garbage truck. Defendant moves for summary adjudication of each cause of action.

The Court finds that the material facts are essentially undisputed. Plaintiff's 22 additional material facts in opposition are also undisputed.

USA Waste signed a Transportation Services Agreement with Tiger Lines, LLC on Dec. 1, 2001, whereby Tiger Lines agreed to transport non-hazardous solid waste generated by USA Waste's operation, to local landfills. Plaintiff was employed as a truck driver by Tiger Lines.

Plaintiff's truck was loaded with green waste. Plaintiff then drove the truck to a designated spot where the truck's contents would be dumped. On Aug 2, 2004, plaintiff sat in his truck while it was loaded by a USA Waste employee. Plaintiff observed that branches were protruding four feet above the top of the truck. Plaintiff gestured to the USA employee to fix it. After plaintiff moved the truck, and the USA employee tried to fix it without success, the USA employee gestured that there was nothing more he could do.

Plaintiff then climbed on the back of the trailer, walked through the green waste to reach the branches and broke them off. Instead of walking back through the green waste, plaintiff walked on the railing to the top of the truck to descend a ladder. In attempting to use the ladder, plaintiff lost his balance and fell 14 feet to the pavement,

**EXHIBIT 2**

San Francisco Superior Court

JUN 21 1993

ALAN M. GASTON, Clerk  
BY: \_\_\_\_\_

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

MINORITY/LOW-INCOME/CONSUMER  
COALITION

Petitioner,

v.

JOHN GARAMENDI, Insurance  
Commissioner of the State of  
California,

Respondent.

No. 942151

STATEMENT OF DECISION

A hearing was held in this action on May 28, 1993. By stipulation, the parties had agreed that the Court could rule on the issues raised by the amended complaint and petition for writ of mandate herein on the basis of the pleadings and the administrative record previously filed in this action.

After reviewing the pleadings and the administrative record and the briefs of the parties, this Court concludes that Insurance Code section 1861.10(b)(2) must be read to incorporate existing law as to the standard for reasonable fees to attorneys. The limitation included in Department of Insurance Regulation 2631.(2)(b) is inconsistent with this standard. No legislative history has been provided which suggests that the term "reasonable" as used in Insurance Code section 1861.10(b)(2) was

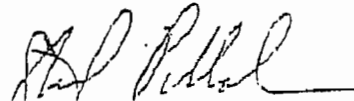


1 intended to refer to anything other than prevailing market rates.  
2 The Regulation's adoption of a ceiling based solely on fees paid  
3 to the Department of Insurance's independent contractors ignores  
4 the fact that private counsel representing regulated parties also  
5 participate in both rate-making and rule-making proceedings and  
6 that the compensation paid to the attorneys representing  
7 consumers undoubtedly was also intended to be reasonable with  
8 relation to the fees paid those private attorneys. The ceiling  
9 also ignores the fact that public interest attorneys bear some  
10 risk of non-recovery of fees under the statute, which risk is  
11 normally a factor in determining a reasonable fee, but is not  
12 borne by independent contractors to the Department.

13           This Court further concludes that plaintiff is entitled  
14 to a fee award for its time incurred in the proceedings below  
15 leading to the adoption of the emergency regulations and in this  
16 action.

17           This Court accordingly will issue a judgment granting a  
18 writ of mandate under Code of Civil Procedure section 1094.5  
19 directing a redetermination of the reasonable attorneys' fees to  
20 which plaintiff is entitled for its participation in the  
21 Commissioner's proceedings known as File Nos. RCD-1 and RH-291,  
22 for its time incurred on the Commissioner's emergency fee  
23 regulations and in this action. Declaratory relief will not be  
24 awarded. The Commissioner shall make a return to the writ within  
25 ninety days.

26 DATED: 6/18/93

27 

HON. STUART R. POLLAK

**EXHIBIT 3**

STEPHEN P. BERZON (SBN 46540)  
SCOTT A. KRONLAND (SBN 171693)  
MARY LYNNE WERLWAS (SBN 177485)  
Altshuler, Berzon, Nussbaum,  
Berzon & Rubin  
177 Post Street, Suite 300  
San Francisco, CA 94108  
(415) 421-7151

Special Counsel for Petitioners

MARK SAVAGE (SBN 141621)  
STEFAN ROSENZWEIG (SBN 043066)  
Public Advocates  
1535 Mission Street  
San Francisco, CA 94103-2500  
(415) 431-7430

Attorneys for Petitioners SOUTHERN CHRISTIAN LEADERSHIP  
CONFERENCE; NATIONAL COUNCIL OF LA RAZA; KOREAN YOUTH AND  
COMMUNITY CENTER and OAKLAND CHINESE COMMUNITY CENTER

HARRY SNYDER (SBN 035209)  
EARL LUI (SBN 124856)  
1535 Mission Street  
San Francisco, CA 94103  
(415) 431-6747

Attorneys for Petitioner CONSUMERS UNION OF U.S., INC.

SUPERIOR COURT OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

SOUTHERN CHRISTIAN LEADERSHIP )  
CONFERENCE OF GREATER LOS ANGELES, )  
INC.; NATIONAL COUNCIL OF LA RAZA, )  
INC.; KOREAN YOUTH AND COMMUNITY )  
CENTER, INC.; OAKLAND CHINESE )  
COMMUNITY COUNCIL, INC.; and CONSUMERS )  
UNION OF U.S., INC., )

Petitioners and Plaintiffs, )

v. )

CHUCK QUACKENBUSH, Insurance )  
Commissioner of the State of )  
California, )

Respondent and Defendant. )

ENDORSED  
FILED  
San Francisco County Superior Court

JUL 16 1996

BY: ALAN CARLSON, Clerk  
GAIL PEERLESS  
Deputy Clerk

Case No. 976629

~~PROPOSED~~ ORDER

GRANTING Fees

under Div. Code E.R. 61.106

DATE: July 11, 1996  
TIME: 9:30 a.m.  
DEPT: 8

Petitioner's Motion for Attorneys' Fees and Expenses

1  
 2 pursuant to C.C.P. § 1021.5 and Cal. Ins. Code § 1861.10(b) came  
 3 on regularly for hearing on July 11, 1996, counsel having been  
 4 heard and good cause appearing. The Court finds that <sup>under code § 1861.10(b)</sup> Petitioners  
 5 are entitled to attorney's fees and expenses. The Court finds  
 6 that the hourly rates requested by Petitioner are reasonable, and  
 7 has reduced the Petitioner's hours where appropriate. The  
 8 lodestar fee for work performed by Public Advocates and  
 9 Consumer's Union is \$65,308.00. The Court finds that a  
 10 multiplier of 1.5 on this sum is appropriate to compensate  
 11 Petitioner's counsel for the risk of loss <sup>and for quality of merit,</sup> for a resulting fee of  
 12 \$98,262.00. The Court further finds reasonable a \$27,720.00  
 13 award for fees incurred litigating this fee request. The Court  
 14 further finds that Petitioners are entitled to payment of their  
 15 expenses. The Court therefore finds that a total award of  
 16 \$128,322.00 is reasonable on account of the results obtained and  
 17 the opposition from the Respondent considering his likelihood of  
 18 prevailing. Therefore, for good cause appearing,

19 IT IS HEREBY ORDERED that Petitioner's Motion for Attorneys'  
20 Fees and Expenses is GRANTED; and,

21 IT IS HEREBY FURTHER ORDERED that Respondent Chuck  
22 Quackenbush shall pay to the Altshuler, Berzon, Nussbaum, Berzon  
23 & Rubin Trust Account the sum of \$128,322.00 plus interest at the  
24 legal rate from the date of this order; and,

25 // These fees are awarded under code § 1861.10(b)

26 // and NOT under CCP § 1021.5,

27 //

28 //

1 IT IS HEREBY FURTHER ORDERED that any additional fees or  
2 costs incurred in order to enforce the Court's Judgment granting  
3 the Writ of Mandate will be the subject of a separate fee  
4 petition.

5 Dated: July 15, 1996.

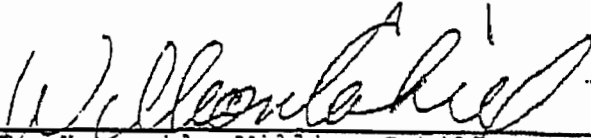
6   
7 The Honorable William Cahill  
8 San Francisco Superior Court Judge  
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EXHIBIT A

REVISED SUMMARY OF ATTORNEY'S FEES AND EXPENSES

Southern Christian Leadership Conference v. Quackenbush,  
Case No. 976629 (S.F. Super. Ct.)

ATTORNEY'S FEES

Public Advocates, Inc.

Mark Savage		
151.40 hours @ \$235 per hour		35,579.00
Stefan Rosenzweig		
23.90 hours @ \$330 per hour		7,887.00
Patricia Nix-Hodes		
31.80 hours @ \$175 per hour		5,565.00
Abigail Trillin		
3.00 hours @ \$135 per hour		405.00
Yvonne Peters (law clerk)		
50.58 hours @ \$100 per hour		5,058.00
Darlene DeGuzman (law clerk)		
26.90 hours @ \$100 per hour		2,690.00

Consumers Union

Earl Lui		
51.1 hours @ \$205 per hour		10,475.50
Al Hernandez		
10.2 hours @ \$100 per hour		1,020.00
Harry Snyder		
2.0 hours @ \$325 per hour		650.00
<u>Subtotal of Attorney's Fees</u>		<u>\$69,329.50</u>
<u>Multiplier</u>		<u>X 1.5</u>
<u>Total for Attorney's Fees</u>		<u>\$103,994.25</u>

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**EXHIBIT 4**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

1  
2 CONSUMERS UNION OF U.S., INC. and )  
3 SOUTHERN CHRISTIAN LEADERSHIP )  
4 CONFERENCE OF GREATER LOS )  
ANGELES, INC., )  
Petitioners and Plaintiffs )  
5  
6 v. )  
7 CHUCK QUACKENBUSH, Insurance )  
Commissioner of the State of )  
California, )  
8 Respondent and Defendant. )

Case No. 982181

ORDER GRANTING PETITIONERS'  
ATTORNEYS' FEES AND EXPENSES

ENDORSED  
FILED  
San Francisco County Superior Court

MAY 9 1997

Date: May 5, 1997

Time: 9:30 a.m.

Court: Department 8 BY: ALAN CARLSON, Clerk  
GAIL PEERLESS  
Deputy Clerk

9  
10 Petitioners' motion for attorneys' fees and expenses pursuant to Cal. Ins. Code §  
11 1861.10(b) and Cal. Civ. Proc. Code § 1021.5 came on regularly for hearing on May 5, 1997,  
12 at 9:30 a.m., in Department 8 of the above-entitled court, The Honorable William Cahill,  
13 Judge, presiding. Petitioners Consumers Union of U.S. and Southern Christian Leadership  
14 Conference appeared by their attorney, Mark Savage of Public Advocates, San Francisco,  
15 California. Respondent Insurance Commissioner appeared by his attorney, Paul Gifford,  
16 Attorney General's Office, San Francisco, California. The Court has considered the papers and  
17 argument.

18 The Court finds that Petitioners are entitled to attorney's fees and expenses under Cal.  
19 Ins. Code § 1861.10(b). The Court finds that the hourly rates requested by Petitioners are  
20 reasonable, and has reduced the Petitioners' hours where appropriate. The lodestar fee for  
21 work performed by Public Advocates and Consumers Union is ~~\$52,357.40~~ <sup>\$45,000.00</sup> <sup>\*</sup>. The Court finds  
22 that a multiplier of 1.5 on the lodestar is appropriate, for a total fee award of ~~\$78,536.10~~ <sup>\$67,500.00</sup>. The  
23 Court further finds that Petitioners are entitled to payment of their expenses, totalling  
24 \$1,021.96. The Court therefore finds that a total award of ~~\$79,558.06~~ <sup>\$68,521.96</sup> is reasonable.

25 Therefore, for good cause appearing,

26 \* This amount includes only 1/2 of the  
fees incurred for Petitioners' unsuccessful  
litigation.

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WJ

TS

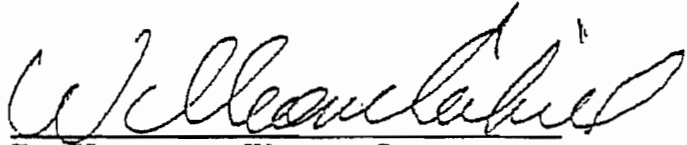


1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Petitioners' motion for  
2 attorneys' fees and expenses is GRANTED; and,

3 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that  
4 Respondent Chuck Quackenbush shall pay to Public Advocates, Inc., the sum of <sup>448,521.96</sup>~~379,558.06~~  
5 ~~plus interest at the legal rate from the date of this order; and,~~


6 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that any  
7 additional fees or costs incurred in order to enforce the Court's judgment granting the writ of  
8 mandate will be the subject of a separate fee petition.

9  
10 Dated: May 9, 1997.


  
11 THE HONORABLE WILLIAM CAHILL  
12 Judge of the Superior Court

13 Respectfully submitted:

14 PUBLIC ADVOCATES, INC.  
15 MARK SAVAGE, Cal. Bar No. 141621  
16 1535 Mission Street  
17 San Francisco, California 94103-2500  
18 (415) 431-7430  
19 (415) 431-1048 (fax)

20 By:   
21 MARK SAVAGE

22 CONSUMERS UNION OF U.S., INC.  
23 EARL LUI, Cal. Bar No. 124856  
24 1535 Mission Street  
25 San Francisco, California 94103  
26 (415) 431-6747  
(415) 431-0906 (fax)

By:   
EARL LUI

Attorneys for PETITIONERS  
CONSUMERS UNION OF U.S., INC.  
SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

**EXHIBIT 5**

1 Cynthia E. Hasday, SBN 115694  
2 Gina M. Calabrese, SBN 157512  
3 THE PROPOSITION 103 ENFORCEMENT PROJECT  
1750 Ocean Park Blvd., Suite 200  
Santa Monica, CA 90405

4 Telephone: (310) 392-0522  
5 Facsimile: (310) 392-8874

6 Attorneys for The Proposition 103 Enforcement Project:

RECEIVED  
JUN 17 1997  
FILED  
San Francisco Superior Court

JUN 24 1997

ALAN CARLSON, Clerk  
GAIL PEERLESS  
Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE  
8 COUNTY OF SAN FRANCISCO

9  
10 THE PROPOSITION 103 ENFORCEMENT  
11 PROJECT,

Case No. 982646

12 Petitioner,

ORDER GRANTING THE  
PROJECT'S MOTION FOR  
ATTORNEYS' FEES AND  
EXPENSES

13 v.

14 CHUCK QUACKENBUSH, in his capacity as  
15 Insurance Commissioner of the State of  
California,

Hearing date: May 29, 1997  
Time: 9:30 a.m.  
Court: Dept. 8  
Judge Hon. William Cahill

16 Respondent.  
17

18  
19 Petitioner's motion for attorneys' fees and expenses came regularly for hearing on May  
20 29, 1997, at 9:30 a.m., in Department 8 of the above-entitled Court, The Honorable William  
21 Cahill, Judge, presiding. Petitioner Proposition 103 Enforcement Project appeared by its  
22 attorney Cynthia E. Hasday of the Proposition 103 Enforcement Project, Santa Monica,  
23 California. Respondent Insurance Commissioner appeared by his attorney, Paul Gifford,  
24 Attorney General's Office, San Francisco, California. The Court having considered the papers  
25 and argument, and good cause appearing,


26 IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED:  
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\$42,861.80 \*

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Petitioner's motion is granted and Petition is entitled to ~~621,500.00~~ for attorneys' fees and \$1,869.79 for expenses.

4/24/97  
Dated: ~~May 29, 1997.~~

  
THE HONORABLE WILLIAM CAHILL  
Judge of the Superior Court

\* 1.25 multiplier was used. This work ~~is~~ was less difficult because of the work performed by the Consumers Union and thus this court finds that the multiplier should be less.