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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rates, Rating Plans, or
Rating Systems of

ALLSTATE INSURANCE
COMPANY AND ALLSTATE
INDEMNITY COMPANY,

Respondents.

) FILE NO.: PA-2007-00011

) THE FOUNDATION FOR TAXPAYER
) AND CONSUMER RIGHTS' PETITION TO
) INTERVENE AND NOTICE OF INTENT
) TO SEEK COMPENSATION

) [Ins. Code §1861.10; Cal. Code Regs, tit. 10,
) §§ 2661.2 and 2661.3]

THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS ("FTCR") hereby
petitions to intervene in the above-referenced proceeding regarding the rate, rating plans, or rating
systems of Respondents Allstate Insurance Company and Allstate Indemnity Company's [collectively,
"Allstate"]. In addition, FTCR hereby gives notice that it intends to seek compensation for its advocacy
and witness fees and expenses. This petition is based on the facts as set forth herein and the
accompanying verification of Todd M. Foreman.

1 I. **PETITIONER**

2 1. Petitioner, The Foundation for Taxpayer and Consumer Rights (FTCR), is a nonprofit,
3 nonpartisan public interest corporation organized to represent the interests of taxpayers and consumers.
4 A core focus of FTCR's advocacy is the representation of the interests of insurance consumers and
5 policyholders, particularly as they relate to the implementation and enforcement of Proposition 103, in
6 matters before the Legislature, the courts, and the CDI.

7 2. FTCR's founder authored Proposition 103 and led the successful campaign for its
8 enactment by California voters in 1988. FTCR's staff and its outside consultants include some of the
9 nation's foremost consumer advocates and experts on insurance ratemaking matters. FTCR's supporters
10 include Allstate policyholders and members of the public throughout the State of California.

11 3. FTCR has served as a public watchdog with regard to insurance rates and rating practices
12 under Proposition 103 by: monitoring rollback settlements and the status of the rollback regulations,
13 reviewing and challenging rate filings made by insurers seeking rate increases, participating in hearings
14 before the CDI, and educating the public concerning industry underwriting and rating practices and their
15 rights under Proposition 103 and other provisions of state law. FTCR has also appeared as amicus
16 curiae in matters involving the interpretation and application of Proposition 103 and the Insurance Code.

17 4. FTCR has intervened in several proceedings before the CDI related to the implementation
18 and enforcement of Proposition 103's reforms, including but not limited to: (i) REB-5184, regarding
19 State Farm's rollback liability; (ii) RH-318 and IH-93-3-REB, regarding regulations to implement
20 Insurance Code section 1861.02's provisions on rating factors for personal automobile insurance; (iii)
21 RH-339 and RH-341, regarding procedural rules for rate hearings and for intervention; (iv) PA-95-0057-
22 00 regarding Safeco's Earthquake Rate Application; (v) Consolidated hearing numbers PA-97-0077-00,
23 PA-97-007800, and PA-97-007900, regarding State Farm's, Allstate's and Farmers' automobile class
24 plans respectively; (vi) PA-97-0072, regarding the California Earthquake Authority's rate application;
25 (vii) RH-346, regarding regulations governing Advisory Organization Manuals; (viii) IH-97-0017-REB,
26 regarding prior approval regulations, and IH-0017-TF, Prior Approval Task Force; (ix) IH-97-0018-
27 REB; (x) File No. PA-98-0099-00, regarding Allstate's Private Passenger Automobile Insurance Rate
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1 Application; (xi) RH-402 (initiated by FTCR), regarding regulations clarifying the optional automobile
2 rating factor of persistency and the conflict of certain rating factors with Ins. Code § 1861.02(c); (xii)
3 RH-01015532, regarding accident verification regulations; (xiii) RH-01018834, regarding auto rating
4 factors weighting methodologies; (xiv) PA-02025379, regarding SCPIE's medical malpractice insurance
5 rate application; (xv) RH-03026431, RH-03026432, and RH-05042665, regarding Low Cost
6 Automobile Insurance Rates and Coverages; (xvi) PA-04036735, regarding the medical malpractice
7 insurance rate application of The Medical Protective Company; (xvii) PA04039736, regarding American
8 Casualty's medical malpractice rate application; (xviii) PA04041210, Safeco's 2004 earthquake rate
9 application; (xix) PA05045074, regarding Medical Protective's 2005 medical malpractice insurance rate
10 application; (xx) NC03029253 regarding the rates, rating plans or rating systems of Farmers Insurance
11 Exchange, et al.; (xxi) PA06093080, PA06093079, PA06093078, and PA06092759, regarding the
12 homeowners rates of Safeco, Allstate, Fire Insurance Exchange, and State Farm; (xxii) PA 2006-00006
13 regarding Allstate's 2006 homeowners' insurance rate application; and (xxiii) 2007-00004 regarding
14 Allstate's 2006 private passenger automobile rate application. In each of these proceedings that have
15 proceeded to a final decision in the last five years (listed as (xi)-(xix)), the Commissioner found that
16 FTCR made a substantial contribution, meaning that its participation was separate and distinct from any
17 other party and that it presented relevant issues, evidence and arguments that resulted in more credible,
18 non-frivolous information being available to the Commissioner in making his final decision.

19 5. In order to defend Proposition 103's protections for consumer policyholders, FTCR and
20 its attorneys have initiated or participated in virtually every lawsuit concerning Proposition 103's
21 constitutionality and scope.¹

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25 ¹ For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*
26 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *Proposition*
27 *103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App. 4th 1473; *Spanish Speaking Citizens'*
28 *Foundation, et al. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Insurance Co.* (2004)
116 Cal.App.4th 968; *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 **II. ELIGIBILITY TO SEEK COMPENSATION**

2 6. Pursuant to California Code of Regulations, title 10 (“10 CCR”) § 2662.2, the
3 Commissioner granted FTCR’s most recent request for eligibility to seek compensation in departmental
4 proceedings on July 14, 2006. Such determinations are valid for two years. This determination
5 succeeded prior determinations to the same effect regarding FTCR and its Proposition 103 Enforcement
6 Project, issued by the Commissioner on July 2, 2004, June 20, 2002, October 1, 1997, September 26,
7 1995, September 27, 1994, and September 13, 1993. Therefore, FTCR is eligible to seek compensation
8 in this matter pursuant to Insurance Code section 1861.10(b).²

9 **III. INTEREST OF PETITIONER**

10 7. FTCR’s interest in the above-captioned proceeding is, first, to ensure that Allstate’s
11 homeowners insurance policyholders are charged rates that comply with section 1861.05(a)’s
12 requirement that “no rate shall . . . remain in effect which is excessive.” For most homeowners, their
13 home is their most valuable asset, and most mortgage lenders require homeowners’ insurance.
14 Consumers who are overcharged by insurers as they attempt to protect their homes are among FTCR’s
15 core constituency.

16 8. Of equally critical interest to FTCR is rebutting Allstate’s position that Proposition 103
17 does not authorize the Commissioner to order refunds. (See e.g., Motion of Allstate Insurance Company
18 and Allstate Indemnity Company for an Order Striking Certain Portions of the Notice of Hearing Issued
19 by the California Department of Insurance, File No. PA-2006-00006, at 2:9-11 [“Section 1861.05 does
20 not authorize an order compelling refunds of any premiums collected under effective rates approved by
21 the Commissioner”].) If it is determined that Allstate’s current rates are excessive, FTCR is prepared to
22 offer evidence and make legal arguments in support of an order by the Commissioner ordering refunds
23 to Allstate’s policyholder.

24 9. As noted in paragraphs 1-5 above, FTCR’s staff and its experts have substantial
25 experience and expertise in insurance rate matters that FTCR believes will aid the CDI in developing the
26 record and assist the Administrative Law Judge and the Commissioner in making their ultimate

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28 ² All references are to the Insurance Code unless otherwise indicated.

1 decisions in this proceeding. If intervention is granted, FTCR plans to submit the testimony of its
2 actuarial expert, Allan Schwartz, and briefing on the issues raised in this proceeding, and participate
3 fully in all aspects of discovery and the evidentiary hearings. As noted in paragraph 4 above, the
4 Commissioner has found that FTCR has made a substantial contribution in all of the rate proceedings in
5 which it has intervened in the last five years.

6 **IV. POSITION OF PETITIONER**

7 10. The Commissioner notified Allstate that he has determined and has good cause to believe
8 that Allstate is in violation of section 1861.05 because the rates for its Homeowners multi-peril
9 insurance lines are excessive and therefore cannot legally remain in effect. (Notice of Noncompliance
10 and Order to Show Cause (the "Notice"), File No. PA-2007-00011, passim.) The Commissioner has
11 also determined and has good cause to believe that Allstate knew or should have known that the rates it
12 is charging are excessive and in violation of the law. (Notice, ¶8.) More specifically, the
13 Commissioner has determined that Allstate's rates should be reduced by 43.88% in order to come into
14 compliance with section 1861.05. (Notice, ¶ 10, Exhibit 1.)

15 11. In support of the relief sought by the Commissioner in this proceeding, it is FTCR's
16 position that Allstate's rate is excessive in violation of 1861.05, and Allstate must be ordered to reduce
17 its rates, refund its current and former policyholders the excessive premiums it has collected, and pay a
18 monetary penalty for violating section 1861.05. FTCR further posits that the Commissioner is
19 authorized to bring this proceeding pursuant to section 1861.05(a). Because this is a Proposition 103
20 rate proceeding,³ pursuant to section 1861.08, Gov't. Code §11500, et seq. and the rate regulations
21 contained in 10 CCR § 2641.1 et seq. are applicable. Accordingly, pursuant to section 1861.05(c) and
22 10 CCR § 2646.5, Allstate shall have the burden of proving that its rates currently in effect are not
23 excessive.

24 12. FTCR reserves the right to address other relevant issues raised in this proceeding as it
25 develops.

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27 ³ 10 CCR § 2661.1 defines "rate proceeding" as "any proceeding conducted pursuant to Insurance Code
28 sections 1861.01 and 1861.05.

1 V. **AUTHORITY FOR PETITION TO INTERVENE**

2 13. The authority for this petition is section 1861.10(a), which grants “any person” the right
3 to “initiate or intervene in any proceeding permitted or established pursuant to [Chapter 9 of Part 2 of
4 Division 1 of the Insurance Code, Ins. Code §§ 1850.4-1861.16] . . . and enforce any provision of
5 [Article 10 of Chapter 9, Ins. Code §§ 1861.01-1861.16].” This proceeding arises under sections 1858.1
6 and 1861.05. Therefore, the proceeding is both “permitted” and “established” by Chapter 9. Moreover,
7 like the CDI, FTCR seeks to “enforce” section 1861.05, enacted by Proposition 103, against Allstate.
8 Finally, this petition is also authorized by 10 CCR § 2661.1 et seq.

9 VI. **PARTICIPATION OF FTCR**

10 14. FTCR verifies that, in accordance with 10 CCR § 2661.4, it will be able to attend and
11 participate in this proceeding without unreasonably delaying this proceeding or any other proceedings
12 before the Insurance Commissioner.

13 VII. **INTENT TO SEEK COMPENSATION**

14 15. The Commissioner has awarded FTCR compensation for its reasonable advocacy and
15 witness fees and expenses in past departmental proceedings. Its intervenor eligibility status is current
16 and effective for two years from the most recent finding of eligibility issued by the Commissioner on
17 July 14, 2006.

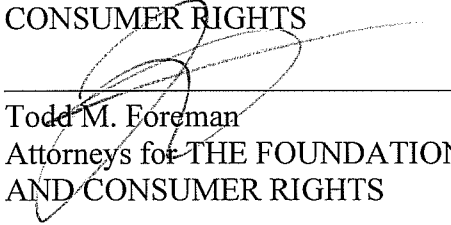
18 16. FTCR’s estimated budget in this proceeding is attached hereto as Exhibit A. FTCR has
19 based its estimated budget on several factors including: (1) the technical and legal expertise needed to
20 address these issues; (2) its current best estimate of the time needed to participate effectively in these
21 proceedings, taking into account the time already expended by FTCR staff and an estimate of time
22 needed to complete remaining tasks; and (3) past experience in similar rate proceedings before the CDI.
23 The estimated budget is reasonable and the staffing level is appropriate, given the expertise that FTCR
24 brings to these proceedings when the issues involved are issues at the very core of its organizational
25 mission and strike at the very heart of Proposition 103 itself. The budget presented in the attached
26 Exhibit is a preliminary estimate, and FTCR reserves the right to amend its proposed budget as its
27 expenses become more certain, or in its request for final compensation. FTCR will give notice of such
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1 modifications as soon as practicable after it discovers the need to revise its estimates, and shall comply
2 with the budget revision requirements in the relevant intervenor regulations. Finally, in the event that
3 intervenor compensation is awarded, Allstate is responsible for the payment of such compensation,
4 pursuant to section 1861.10(b).

5
6 WHEREFORE, FTCR respectfully requests that the Insurance Commissioner allow FTCR to
7 intervene in this proceeding, having all rights and responsibilities accorded any other party to the
8 proceeding.

9 DATED: May 31, 2007

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Todd M. Foreman
THE FOUNDATION FOR TAXPAYER AND
CONSUMER RIGHTS

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13 By: 
14 Todd M. Foreman
15 Attorneys for THE FOUNDATION FOR TAXPAYER
16 AND CONSUMER RIGHTS
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1 **VERIFICATION OF TODD M. FOREMAN IN SUPPORT OF FTCD'S PETITION TO**
2 **INTERVENE AND NOTICE OF INTENT TO SEEK COMPENSATION**

3
4 I, Todd M. Foreman, verify:

5 1. I am an attorney employed by The Foundation for Taxpayer and Consumer Rights. If
6 called as a witness, I could and would testify competently to the facts stated in this verification.

7 2. I personally prepared this pleading titled, "The Foundation for Taxpayer and Consumer
8 Rights' Petition to Intervene and Notice of Intent to Seek Compensation" and filed in this matter. All of
9 the factual matters alleged therein are true of my own personal knowledge, or I believe them to be true
10 after I conducted some inquiry and investigation.

11 3. Pursuant to Cal. Code of Regulations, title 10, § 2661.4, FTCD attaches as Exhibit A its
12 estimated budget in this proceeding.

13
14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct.

16 Executed on May 31, 2007 at Santa Monica, California.

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18 Todd M. Foreman
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EXHIBIT A
PRELIMINARY BUDGET PA-2007-00011

ITEMS

ESTIMATED COST

1. Attorneys

Todd M. Foreman @ \$295 per hour, 200 hours\$59,000

- Draft and edit petition for hearing and petition to intervene; confer with FTICR counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Allstate counsel; brief legal issues; conduct discovery and preparation for evidentiary hearing; participate in evidentiary hearing; prepare request for compensation.

Pamela Pressley @ \$395 per hour, 200 hours\$79,000

- Supervise FTICR counsel; oversee preparation of legal documents; confer with FTICR counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Allstate counsel; assist with discovery and preparation for evidentiary hearing.

Harvey Rosenfield @ \$550 per hour, 50 hours\$27,500

- Supervise FTICR counsel and participate in strategy discussions.

Daniel Y. Zohar @ \$415 per hour, 300 hours\$124,500

- Co-counsel with FTICR staff counsel in all aspects of pre-hearing discovery, motions, preparation and participation in evidentiary hearing, including any examination of witnesses and post-hearing briefing;

FTICR and Zohar Law Firm, P.C. Office Expenses (Photocopies, facsimile, telephone calls, postage, etc.).....\$5,000

FTICR and Zohar Law Firm, P.C. Travel

Ground transportation; airfare to SF hearings, hotel\$5,000

FTICR and Zohar Law Firm, P.C. Subtotal\$300,000

2. Expert Witness- AIS Risk Consultants, Inc.

Allan I. Schwartz, President of AIS Risk Consultants @ \$495 per hour, 200 hours\$99,000

- Lead actuary to review all discovery documents, prepare rate analysis, participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurers' expert witnesses.

Katherine Tollar @ \$240 per hour, 90 hours\$21,600

- Assist Mr. Schwartz in document review, rate level analysis, preparation of testimony

Rick Boer @ \$340 per hour, 5 hours\$1,700

- Assist Mr. Schwartz in document review, rate level analysis, preparation of testimony

Marianne Dwyer @ \$210 per hour, 5 hours\$1,050

- Assist Mr. Schwartz in document review, rate level analysis, preparation of testimony

Travel by Mr. Schwartz

Ground transportation; airfare to SF hearing, hotel.....\$4,000

AIS Risk Consultants Subtotal\$127,350

TOTAL ESTIMATED BUDGET: \$427,350

1 **PROOF OF SERVICE**
2 **[BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,**
3 **EMAIL TRANSMISSION AND/OR PERSONAL SERVICE]**

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

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

9 On May 31, 2007, I caused service of true and correct copies of the document entitled

10 **THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS' PETITION TO**
11 **INTERVENE AND NOTICE OF INTENT TO SEEK COMPENSATION**

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

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

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

26 Executed on May 31, 2007, at Santa Monica, California,

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Mark Reback

SERVICE LIST

Person Served

Method of Service

Elizabeth Mohr	<input type="checkbox"/> FAX
Donald Hilla	<input checked="" type="checkbox"/> U.S. MAIL
Michael Riordan	<input type="checkbox"/> OVERNIGHT MAIL
Dan Goodell	<input type="checkbox"/> HAND DELIVERED
California Department of Insurance Legal Division	<input checked="" type="checkbox"/> EMAIL
Rate Enforcement Bureau 45 Fremont Street, 21st Floor San Francisco, CA 94105 Tel: (415) 538-4117 Fax: (415) 904-5490 mohre@insurance.ca.gov hillad@insurance.ca.gov riordanm@insurance.ca.gov goodelld@insurance.ca.gov	
James R. Woods	<input type="checkbox"/> FAX
Neal L. Wolf	<input checked="" type="checkbox"/> U.S. MAIL
Kathryn H. Baxter	<input type="checkbox"/> OVERNIGHT MAIL
Katherine Sullivan	<input type="checkbox"/> HAND DELIVERED
LeBoeuf, Lamb, Greene & MacRae One Embarcadero Center, 4 th Floor San Francisco, CA 94111 Tel: (415) 951-1114 Fax: (415) 951-1180 jrwoods@llgm.com nwolf@llgm.com kbaxter@llgm.com ksullivan@llgm.com	<input checked="" type="checkbox"/> EMAIL