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RE: OPPOSITION TO CONSUMER WATCHDOG REQUEST FOR  
FINDING OF ELIGIBILITY TO SEEK COMPENSATION

Dear Mr. Phenix, Mr. Wu, and Ms. Warren:

The Personal Insurance Federation of California (PIFC) submits the following opposition to Consumer Watchdog's (CW) Request for Finding of Eligibility to Seek Compensation submitted on June 3<sup>rd</sup>, 2024 (the Application).

PIFC does not believe that CW has satisfied the requirements of 10 CCR 2662.2 for a party to be eligible for compensation as an intervenor under California Insurance Code Section 1861.10. Specifically, CW has failed to satisfy its burden of demonstrating that it represents the interests of consumers.

PIFC requests that the California Department of Insurance (CDI) deny the Application until CW provides sufficient information to justify its eligibility to seek compensation as an "intervenor."

**The Application is long on self-congratulatory rhetoric, but short on substance**

The Application contains general declarations that CW "represents the interests of consumers," but no information that differentiates it from any other, typical law firm that financially benefits from conflict. For instance, on pages 1-2, CW generally states it represents "the interests of insurance policyholders," particularly on public policy matters related to Proposition 103. However, they provide no further information regarding the position they have taken to forge consensus on public policy issues, much less a single instance of productive negotiation.

CW publicly complains that its staff is not included in important legislative negotiations but does not bother to ask itself why they are unwelcome. For instance, in a [press release dated September 7, 2023](#), CW asserts it was “intentionally excluded from backroom negotiations with the insurance industry over an insurer bailout and deregulation plan.” They would have been better served trying to understand why policymakers did not view them as a vital participant. In our experience, they are generally viewed as self-promoting rather than consumer-focused. Representing the “interests” of insurance policyholders takes a backseat to their primary focus on maintaining a system of conflict that provides billable hours while keeping the marketplace impaired.

Where is CW in the current legislative and regulatory negotiations regarding the California property insurance market? The California insurance market is in crisis. The current path is unsustainable. The CDI has acknowledged this<sup>1</sup> as has Governor Newsom when he issued executive order N-13-23 calling on the Insurance Commissioner to stabilize the marketplace. The only “stakeholders” that have consistently failed to recognize that the market is in trouble, and that a destabilized market results in harm to consumers, is CW.

While CW likes to mention its role in passing Proposition 103 on the ballot, they regularly ignore critical parts of that initiative. For instance, under Proposition 103, rates shall be neither “inadequate” nor “excessive.” Yet, CW takes pride in mindlessly pushing for absurdly low rates that degrade the ability of insurers to serve all consumers. After taking credit for pushing rates lower and triggering the inevitable market constriction, they attempt to blame insurers for being unwilling to operate at a loss. They never attempt to be responsible participants in the system. They thrive on conflict and paralysis – all with an eye towards maximizing the billing opportunities.

CW takes pride in their delay tactics, arguments for unsustainably low rates, and denial of the very real growing financial impact of climate change and inflation in California. CW’s role over the past three decades has been to antagonize and delay the process, causing significant harm to consumers by impeding consumer access to admitted market insurers. This has become most pronounced in the past five years, where delays in the rate making process and rate levels insufficient to support business operations in high-risk areas have resulted in a once in a generation market restriction from some of the state’s largest insurers. CW touts the millions of dollars that it has “saved” consumers by intervening in rate filings. In actuality, those millions of dollars have been eating away at the claims paying capacity of companies over the years, resulting in the current market restrictions that consumers currently face.<sup>2</sup>

As recently as March, 2024 State Farm announced nonrenewal for 72,000 policies statewide (mixed residential and business lines) because of diminished claims paying capacity. Farmers Insurance has had to limit the number of new policies that they can write per month based on claims paying capacity restrictions. Consumers who have

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<sup>1</sup> Sustainable Insurance Strategy Press Release, California Department of Insurance, Sept 19, 2023.

<sup>2</sup> [2022 Profitability Report: California, Underwriting Profit as a Percent of Direct Premium Earned](#), National Association of Insurance Commissioners, March 2024, at 357.

lost their policies as a result of these market restrictions do not know where to turn. In a townhall last week, consumers lamented that they would happily pay the appropriate price if it meant access to admitted market insurers.<sup>3</sup> CW appears to be out of touch with the messaging and needs of the California consumer, which raises the question – what consumer are they representing?

**The Requester has not met the standards set forth in 10 CCR section 2662.2 for establishing an intervenor or participant represents the interests of consumers.**

California Code of Regulation Title 10, §2662.2(a)(1) requires that an application for eligibility to seek compensation include “a showing” that the applicant represents the interests of consumers. That should not mean simply holding oneself out as a consumer representative, but a substantiated presentation that their actions have resulted in consumer benefit. If the applicant fails to make such a showing, the Public Advisor must deny the request for eligibility to receive compensation<sup>4</sup>.

- Section 7 of the Application enumerates more than 120 rate applications that CW has intervened in dating back to 2007. Each of these applications faced additional hurdles and delays because of those interventions. Delays prevent insurers from offering new and competitive prices and products, hinder diversity of consumer choice, and increase the demands on CDI time and resources. The only group that directly benefits from the increased delays are intervenors because the longer the process takes, the more billable hours they can charge.<sup>5</sup> Each filing must be viewed independently to determine whether CW’s contribution can be viewed as a net positive for the consumer, or if it simply resulted in unnecessary delay.
- Section 8 of the Application cites CW’s interventions have resulted in \$6 billion in premium savings for consumers since 2002<sup>6</sup>. However, as discussed above, by reducing rates to such an extreme degree, CW has driven the current insurance availability crisis. Ask all those policyholders forced into a much more expensive California FAIR Plan policy for their fire insurance needs - are they benefitting from rates so low that insurers cease offering new products, leaving policyholders to pay much more in FAIR Plan premiums?
- Exhibit E of the Application states that 42.46% of Consumer Watchdog’s income is generated from attorney’s fees and intervenor fees. However, based on the footnote, that percentage is artificially suppressed. CW has removed the portion of attorney’s fees and intervenor fees which they have charged to insurers and paid to outside experts and counsel. Those fees still make up a portion of their operating expenses, and a portion of the recouped fees and expenses, and thus should be adjusted accordingly. With those adjustments, the portion of “individual contribution” also requires adjustment and scrutiny.

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<sup>3</sup> *Angry homeowners in affluent California city demand faster action on insurance crisis*, San Francisco Chronicle, May 30, 2024. <https://www.sfchronicle.com/bayarea/article/california-home-insurance-orinda-19482252.php>

<sup>4</sup> CCR 10 §2662.2(b).

<sup>5</sup> *The Troublesome Legacy of Prop 103*, R St. Policy Study, 2015, at 12. (<https://www.rstreet.org/wp-content/uploads/2018/04/RSTREET43-1.pdf>).

<sup>6</sup> Consumer Watchdog’s Request for Finding of Eligibility to Receive Compensation, ¶ 8.

**Additional information that would aid the Commissioner in determining whether or not Requester represents the interests of consumers**

- What is the total amount earned by CW in intervenor fees since their last application was approved? This should include amounts attributable directly to CW and outside experts and counsel.
- With both the amount attributable directly to CW and the amounts outside experts and counsel included, what is the corrected portion of CW's annual budget made up by attorney's fees/intervenor fees?
- A list of the outside experts and counsel to whom attorney's fees and intervenor fees have been paid.
- CW states that 19.55% of their budget is attributable to individual contributions. How many individuals does that come from? What is the total amount in individual contributions annually?
- What is CW's total operations budget?

Thank you for your consideration of these thoughts and concerns. PIFC remains committed to seeing the California insurance market returned to a healthy and stable place. We appreciate CDI taking a thoughtful approach when considering the appropriate role each of us has in setting things right.

Sincerely,



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Rex Frazier  
President



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Seren Taylor  
Vice President



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Allison Adey  
Legislative Advocate