BEFORE THE
DEPARTMENT OF MANAGED HEALTH CARE
STATE OF CALIFORNIA

In the Matter of the Application for an Award of Advocacy and Witness Fees of: Consumers Union of United States, Inc. Applicant.	**DECISION GRANTING AWARD OF ADVOCACY AND WITNESS FEES TO CONSUMERS UNION OF UNITED STATES, INC., FOR SUBSTANTIAL CONTRIBUTION TO APPROVAL OF MATERIAL MODIFICATIONS NUMBERS 20150295 AND 20150302**

I. SUMMARY

Consumers Union of United States, Inc. ("APPLICANT") submitted an application for an award of advocacy and witness fees for its substantial contribution to the Department of Managed Health Care's ("Department") consideration and approval of Material Modifications numbers 20150295 and 20150302 ("Decision") regarding California Physicians' Service's ("Blue Shield") acquisition of Care 1st Health Plan ("Care 1st"). The Department designated Joy Han as the Hearing Officer. The Department awards APPLICANT $34,488.76 for its contribution to the Decision.

II. BACKGROUND OF CONSUMER PARTICIPATION PROGRAM

The Consumer Participation Program ("CPP") allows for the award of reasonable advocacy and witness fees to any person or organization that (1) demonstrates the person or organization represents the interests of consumers, and (2) has made a substantial contribution on behalf of consumers to the adoption of any regulation or to an order or decision made by the Director of the Department if the order or decision has the potential to impact a significant number of enrollees.[1]

III. REQUIREMENTS FOR AWARDS OF ADVOCACY AND WITNESS FEES

A. Application for Finding of Eligibility to Participate

On June 11, 2015, APPLICANT submitted its Request for Finding of Eligibility to Participate and Seek Compensation in the CPP, giving notice that it represents the interests of consumers and of its intent to claim compensation.

[1] Health and Safety Code section 1348.9.

By letter dated August 7, 2015, the Department notified APPLICANT that the Department approved its Request for Finding of Eligibility to Participate and Seek Compensation.

B. Petition to Participate in the Decision

On June 12, 2016, APPLICANT submitted to the Department its Petition to Participate ("Petition") in the Decision. In its Petition, APPLICANT estimated its fees to be $15,725.00. Applicants can revise fee estimates based on actual services performed.

By letter dated August 7, 2015, the Department notified APPLICANT that the Department approved its Petition to Participate in the Decision.

C. Application for Award of Advocacy and Witness Fees

In January 2015, Blue Shield announced it had reached a $1.2 billion agreement to purchase Care 1st and, following the purchase, Blue Shield would convert Care 1st to a nonprofit corporation. The Department held a public meeting on June 8, 2015, regarding the transaction. On December 8, 2015, the Department issued an order approving Blue Shield's acquisition of Care 1st.

APPLICANT submitted its Application for an Award of Advocacy and Witness Fees in the Decision on December 7, 2015. The total fee requested for work performed by the APPLICANT is $61,901.25.

IV. SUBSTANTIAL CONTRIBUTION

Throughout the Department's consideration of Blue Shield's proposed purchase of Care 1st, APPLICANT raised concerns regarding, among other things, whether Blue Shield held assets subject to a charitable trust and whether the proposed acquisition would harm California health care consumers. Specifically, APPLICANT presented written comments regarding the matter in letters dated April 9, May 29, June 11, July 16, 2015, and by testimony at a public meeting on June 8, 2015.

The April 9, 2015, letter asked the Department to conduct a public hearing, commented on the terms of the Blue Shield/Care 1st transaction, questioned whether there was a public benefit to the transaction, and requested the Department scrutinize the transaction's impact on enrollees. The May 29, 2015, letter asserted that Blue Shield held charitable assets subject to charitable trust obligations and stated the Department had a responsibility to protect charitable assets. The June 11, 2015, letter contains comments regarding Article 11's requirements, nonprofit charitable trust obligations, and the value of Blue Shield's assets. The July 16, 2015, letter asked the Department to ensure the preservation of public assets and protect the best interests of California consumers.

The Hearing Officer finds APPLICANT's participation: (1) significantly assisted the Department in its deliberations by presenting relevant issues, evidence, and arguments the Department investigated and seriously considered, and (2) resulted in more relevant, credible, and non-frivolous information being available to the Department, which helped inform the Department in making the Decision. The Hearing Officer finds APPLICANT made a substantial contribution, pursuant to California Code of Regulations, title 28, section 1010, subdivision (b)(8), to the Decision. The award for advocacy fees is based on APPLICANT's letters and written comments, which substantially contributed to the Decision.

V. REASONABLENESS OF HOURS AND COSTS AND MARKET RATE

A. Fees Requested

APPLICANT billed the following time, hourly rates, and fees for its representatives:

JULIE SILAS
SENIOR STAFF ATTORNEY
TIME: 105.65 hours
RATE: $425/hour
TOTAL: $44,901.25.00

ELIZABETH IMHOLZ
SPECIAL PROJECTS DIRECTOR
TIME: 40 hours
RATE: $425/hour
TOTAL: $17,000

B. Market Rate

APPLICANT is entitled to be compensated for Advocacy Fees and Witness Fees at hourly rates reflecting the market rates for services. The "Market Rate" is "the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas at the time of the Director's decision awarding compensation for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability." (Cal. Code Regs., tit. 28, §1010(b)(3).) Advocacy Fees and Witness Fees cannot exceed the market rate, as defined in the California Code of Regulations, title 28, section 1010, subdivision (b)(3).

To determine the appropriate Market Rate, the Department relies on the market rates used by the California Public Utilities Commission's ("PUC") Intervenor Compensation Program. Reference to the PUC's rates is appropriate because the Intervenor Compensation Program is similar to the

Department's CPP[2] and has an extensive history of awarding intervenor compensation and updating hourly rates used in computing awards of compensation to intervenors. Therefore, the many PUC written decisions granting intervenor compensation provide valuable guidelines for determining reasonableness and market value.

C. Hourly Rates that Reflect the "Market Rate"

The Hearing Officer finds that hourly rates for services provided in a statewide proceeding or proceeding of a state agency having statewide jurisdiction and effect (such as PUC proceedings, see *infra*) are essentially equivalent to hourly rates for "comparable services in the private sector in the Los Angeles and San Francisco Bay Areas," as required by the California Code of Regulations, title 28, section 1010, subdivision (b)(3). The following table shows the PUC's adopted ranges for work intervenor representatives performed in 2015.[3]

Years of Experience	2015 Range
Attorneys	
0 - 2	$165-$220
3 - 4	$215-$250
5 - 7	$300-$320
8 - 12	$320-$375
13+	$320-$570
Experts	
0 - 6	$140-$200
7 - 12	$170-$285
13+	$170-$420

[2] The Legislative history behind the Department's CPP specifically referred to the PUC's program:

> "The Legislature finds and declares that consumer participation programs at the Public Utilities Commission and the Department of Insurance have been a cost-effective and successful means of encouraging consumer protection, expertise, and participation...." Stats 2002 C. 792 §1 (SB 1092).

3 PUC Resolution ALJ-280 (March 30, 2015).

D. DETERMINATION OF THE MARKET VALUE HOURLY RATE FOR APPLICANT

The Hearing Officer finds that the hourly rates claimed by APPLICANT are consistent with the applicable "market rates." Specifically, for work performed by Julie Silas, APPLICANT claims advocacy and witness fees at the hourly rate of $425. APPLICANT justified this rate by reference to Ms. Silas' biographical information and her number of years of experience. Ms. Silas has a B.A. in English from Lewis and Clark College, a J.D. from Northeastern University Law School, and more than 13 years of experience relating to consumer advocacy, legal analysis and research, technical assistance, and other work on healthcare issues. The PUC's adopted hourly rate range for attorneys of 13 or more years of experience is $320-$570. The Hearing Officer finds that the hourly rate of $425.00 is consistent with the "market rate."

For work performed by Betty Imholz, APPLICANT claims advocacy and witness fees at the hourly rate of $425. APPLICANT justified this rate by reference to Ms. Imholz's biographical information and her number of years of experience. Ms. Imholz has a B.A. in Political Science and Urban Studies from Columbia University, a J.D. from Rutgers University School of Law, and more than 13 years of experience with legal research and writing, consumer advocacy, and health policy work. The PUC's adopted hourly rate range for attorneys of 13 or more years of experience is $320-$570. The Hearing Officer finds that the hourly rate of $425.00 is consistent with the "market rate."

VI. AWARD

APPLICANT is awarded Advocacy and Witness Fees based on the comments APPLICANT submitted that significantly assisted the Department in its deliberations. The award to the APPLICANT is as follows:

Staff / Title	Hours	Rates	Fees
Senior Staff Attorney	56.525	$425.00	$24,023.13
Special Projects Director	24.625	$425.00	$10,465.63
TOTAL FEES			**$34,488.76**
TOTAL DIRECT EXPENSES			**$00.00**
TOTAL AWARD			**$34,488.76**

FINDINGS OF FACT

1. APPLICANT satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. APPLICANT made substantial contributions to the approval of Material Modifications numbers 20150295 and 20150302 as described herein.

3. APPLICANT requested hourly rates that are reasonable when compared to market rates for persons with similar training and experience.

4. The total reasonable compensation for APPLICANT is $34,488.76.

CONCLUSIONS OF LAW

1. APPLICANT fulfilled the requirements of Health and Safety Code section 1348.9 and California Code of Regulations, title 28, section 1010, and is entitled to compensation for making substantial contributions regarding the Department's consideration and approval of Material Modifications numbers 20150295 and 20150302.

2. APPLICANT should be awarded $34,488.76 for its contribution.

AWARD ORDER

1. Consumers Union of United States, Inc. is hereby awarded $34,488.76 as compensation for its substantial contribution regarding the Department's consideration and approval of Material Modifications numbers 20150295 and 20150302.

2. Payment shall be made within thirty (30) days of the effective date of this decision.

3. This decision is effective thirty (30) days after posting this decision on the Department's website. (Cal. Code Regs., tit. 28, § 1010(e)(7) and (8).)

Dated: June 28, 2016

Original Signed by:

Joy Han

JOY HAN
Hearing Officer
Department of Managed Health Care