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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF LOS ANGELES**

21 **CONSUMER WATCHDOG, a non-profit**
22 **organization,**

23 **Petitioner/Plaintiff,**

24 **v.**

25 **RICARDO LARA, in his official capacity as**
26 **the Insurance Commissioner of the State of**
27 **California; CALIFORNIA DEPARTMENT**
28 **OF INSURANCE; and DOES 1–50,**

Respondents/Defendants.

Case No. 20STCP00664

*Assigned for all purposes to the Hon. Mitchell
L. Beckloff, Dept. 86*

**PETITIONER’S REPLY BRIEF IN
SUPPORT OF PETITION FOR WRIT OF
MANDATE, INJUNCTION, AND
DECLARATORY RELIEF REGARDING
VIOLATIONS OF THE CALIFORNIA
PUBLIC RECORDS ACT; DECLARATION
OF BENJAMIN POWELL; EXHIBITS 42–45**

*[Filed Concurrently with Reply Declaration of
John Bambenek, Evidentiary Objections,
Responses to Objections to Request for Judicial
Notice, and Responses to Evidentiary Objections]*

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1 **I. INTRODUCTION**

2 Respondents have failed in their duty to search for and produce all responsive, non-exempt
3 records. Consumer Watchdog filed two CPRA Requests¹ seeking communications and meeting records
4 involving 13 named individuals *and* any other individuals “employed by or representing” the insurance
5 companies involved in the scandal.

6 **First**, Respondents conducted a flawed search because, inter alia, Respondents failed to establish
7 reasonable search terms and search protocols sufficient to identify the public records.

8 **Second**, Respondents failed to follow leads uncovered in the course of the search that *reasonably*
9 *may have led to other records*, which they must do. Respondents’ own production of records
10 demonstrates that they were on notice that two individuals—Jamie Sahara and Eric Serna—were
11 reasonably likely to be “employed by or representing” the companies during the time relevant to the
12 CPRA Requests—July 7, 2019–July 23, 2019—and reasonably may have communicated or met with
13 Respondents during that period. Over the course of this lawsuit, it also became clear that Respondents
14 were on notice that at least two other individuals—Fabian Núñez and Rusty Areias—were also
15 reasonably likely to have communicated with staff of the Department during the time period relevant to
16 the CPRA Requests, and that Mr. Núñez reasonably may have met or communicated with Respondent
17 Lara. However, Respondents failed to revise their search terms and protocols, thereby rendering their
18 search inadequate.

19 **Third**, Respondents failed to adequately support their decision to withhold 96 documents and
20 redact six others. (Opening Br., 15–23.) Compounding their error, Respondents’ Opposition Brief relies
21 on the Declarations of Chao Lor and Susan Bernard, which seek to introduce new facts not previously
22 provided in discovery responses. As the Court previously warned Respondents, “the Department can’t
23 come in with additional evidence that they have not provided during discovery that should have been
24 provided in discovery to justify an exemption.” (Ex. 42,² 15:27–16:3.) The Court should exclude
25 Respondents’ new factual support for the withholdings and redactions, as well as any legal argument
26 relying on those facts. (Petitioner’s Evidentiary Objections [“Evid. Objs.”].)
27
28

¹ All defined terms have the same meaning as in Petitioner’s Opening Brief.

² Petitioner’s exhibits 1–41 were submitted in support of the Opening Brief. Exhibits 42–45 are attached. A compendium of Petitioner’s and Respondents’ exhibits was also provided to the Court in electronic form on a thumb drive with Petitioner’s Reply Brief.

1 Respondents' chief argument is that "Petitioner's argument fails as a matter of law because it is
2 seeking a writ of mandate to control how the Department exercises its discretion to develop a list of
3 search terms and conduct a search for records" (Opposition Br., 14:23–25.) Not so. The CPRA
4 dictates that a search must be reasonable and adequate. Respondents' duty to conduct a reasonable search
5 is not "discretionary," as Respondents argue. (Opposition Br., 15:4–5.) Respondents also dismissively
6 conclude that any searches for unnamed individuals "employed by or representing" the insurance
7 companies would have been per se unduly burdensome. (See Lor Decl. ISO Opposition, ¶ 6.) That is not
8 the law. And remarkably, though Special Counsel Bryant Henley personally met with Respondent Lara
9 to run Respondents' search terms, Henley failed to ask whether Lara had records reflecting any other
10 individuals representing the companies. (**Ex. 28**, p. 22:20–27; Bambenek Decl. ISO Reply Br., ¶ 7.)

11 Unable to escape the legal reality, Respondents attempt to deflect Petitioner's arguments with
12 inuendo about "Petitioner's personal agenda." (Opposition Br., 25:25.) To be clear, Consumer
13 Watchdog's agenda is to ensure that Respondents comply with the CPRA. Furthermore, it is disingenuous
14 for Respondents to label Petitioner's CPRA Requests as requiring a "never ending process" (Opposition
15 Br., 19:18), or requesting "future" records. Respondents do not, because they could not, cite any part of
16 Petitioner's briefing requiring the production of records not in existence as of July 23, 2019.

17 Finally, Respondents misconstrue prior discovery rulings of this Court. The Court has made
18 crystal clear that its prior orders sustaining evidentiary objections and its review of evidence were for
19 discovery purposes only and should not be taken to decide those issues on the merits.

20 **II. SCOPE OF THE CPRA REQUESTS**

21 Respondents do not dispute that the final CPRA Requests that are the subject of the Petition
22 sought records regarding 13 named individuals *as well as* records relating to "any individuals employed
23 by or representing . . ." the companies. (**Ex. 7**, p. 2, "Request 1"³ and **Ex. 9**; Opposition Br., 9:25–26.)
24 The Meetings CPRA Request includes "[a]ll appointment schedules, calendars, meeting logs, phone call
25 logs, mobile phone records, and any other records relating to . . . Conferences between Insurance
26 Commissioner Lara and any individuals employed by or representing" the companies. (**Ex. 7**, p. 2,
27 "Request 1.") The Communications CPRA Request includes records of "Communications between
28 Insurance Commissioner Lara *or his representatives, including staff of the Department*, and any

³ Petitioner's Meetings CPRA Request (**Ex. 7**) sought four categories of records, but only Request 1 is at issue in this writ proceeding.

1 individuals employed by or representing” the identified companies. (Ex. 9, emphasis added.)
2 Respondents misconstrue the scope of the Communications CPRA Request, stating none of the 96
3 withheld *communications* “involved the Commissioner as Petitioner claims” (Opposition Br., 11:12–13),
4 even though the request applied to communications involving Respondent Lara *and* Department staff.

5 Though the Meetings CPRA Request named several divisions within the Department to
6 “prioritize[.]” in Respondents’ search for records, it also made clear “this request also includes *any*
7 Department staff involved in *any* decisions or proceedings involving Applied Underwriters, CIC, or IHC,
8 including but not limited to decisions or proceedings at the Administrative Hearing Bureau or pursuant
9 to Insurance Code section 1215.2.” (Ex. 7, p. 2, “Request 1,” emphasis added.) The Communications
10 CPRA Request did not include any parameters regarding how Respondents’ search should be prioritized
11 (Ex. 9); however, in the course of the litigation, Respondents stated they interpreted the request to
12 similarly prioritize certain divisions, and Petitioner acquiesced. (Ex. 30, 21:5–11.) With this modification
13 both CPRA Requests extend to “*any* Department staff involved in *any* decisions or proceedings regarding
14 the companies” Yet, during the course of discovery it became clear that Respondents only searched
15 records of 37 individuals out of the total of 1,400 Department staff. (Ex. 32, Bates 000398–000512;
16 Bambenek Reply Decl., ¶ 22; Powell Decl. ISO Opening Br., ¶ 43.) Although the CPRA Requests
17 specifically directed Respondents to search for records of staff involved in “decisions or proceedings at
18 the Administrative Hearing Bureau [“AHB”]” (Ex. 7, p. 3, “Request 1”), Respondents apparently did not
19 do so. (Lor Decl., ¶ 17; Bambenek Reply Decl., ¶ 11.) Respondents’ failure to search for records at AHB
20 likely resulted in responsive records not being identified, as several proceedings regarding Applied were
21 being conducted at AHB during the time period applicable to the CPRA Requests. (Ex. 20.)

22 **III. LEGAL STANDARD AND PURPOSE OF CPRA**

23 Pursuant to Code of Civil Procedure section 1085, courts review whether an “agency’s action was
24 arbitrary, capricious, entirely without evidentiary support, [and/or that] it *failed to conform to procedures*
25 *required by law*.” (*Manderson-Saleh v. Regents of University of California* (2021) 60 Cal.App.5th 674,
26 692, emphasis added, internal quotation omitted.) Courts do not defer to an agency where “an agency did
27 not apply or properly interpret the governing law” (*Id.* at p. 693.) Similarly, public agencies are
28 given *no deference* by courts in their determination regarding whether public records are exempt from
production. (*Sacramento Cty. Employees’ Ret. Sys. v. Super. Ct.* (2011) 195 Cal.App.4th 440, 466–67.)
“Judicial intervention” is “authorize[d] . . . where the challenged action [is] shown to be unlawful or

1 indisputably contrary to established public policy.” (*Neighbors in Support of Appropriate Land Use v.*
2 *Cty. of Tuolumne* (2007) 157 Cal.App.4th 997, 1004, internal quotations omitted.) Respondents also
3 argue that “[t]he purpose for which Petitioner seeks to use the records is irrelevant.” (Opposition Br.,
4 7:20–21.) Not so. While agencies are precluded from limiting the disclosure of records because of how
5 the requester might use them, disclosure here serves a primary purpose of the CPRA—investigation of
6 allegations of government corruption. (See, e.g., *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651 [“...
7 [I]ndividuals must have access to government files . . . [to] permit checks against the arbitrary exercise
8 of official power and secrecy in the political process.”].)

9 **IV. ARGUMENT**

10 **A. Respondents’ Search Was Inadequate**

11 **1. Respondents Must Search for All Reasonably Described Records**

12 “[U]pon a request for a copy of records *that reasonably describes an identifiable record* or
13 records, [a state agency] shall make the records promptly available . . .” (Gov. Code § 6253, subd. (b),
14 emphasis added; see also *Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1088
15 [requestor must present reasonably focused and specific request so agency will have opportunity to
16 promptly identify responsive records].) The public agency is required “to identify records and
17 information that are responsive to the request or to the *purpose of the request*, if stated.” (Gov. Code
18 § 6253.1.) Because “*“a requester, having no access to agency files, may be unable to precisely identify*
19 *the documents sought . . . writings may be described by their content”*” (*Cnty. Youth Athletic Ctr. v.*
20 *City of Nat’l City* (2013) 220 Cal.App.4th 1385, 1424–1425 (“CYAC”), quoting *Cal. First Amendt.*
21 *Coal. v. Super. Ct.* (1998) 67 Cal.App.4th 159, 165–166 (“CFAC”).) All non-exempt records that can be
22 reasonably located must be produced. (*City of San Jose v. Super. Ct.* (2017) 2 Cal.5th 608, 627.)

23 While agencies “may develop their own internal policies for conducting searches . . . [s]ome
24 general principles have emerged Once an agency receives a CPRA request, it must communicate
25 the scope of the information requested to the custodians of its records, although it need not use the precise
26 language of the request.” (*City of San Jose, supra*, 2 Cal.5th at pp. 627–628.) “[T]he scope of the search
27 is determined by the scope of the request. Because the requestor may not know what documents or
28 information of interest an agency possesses, [they] *may be unable to provide the specificity an agency*
may require.” (*ACLU v. Super. Ct.* (2011) 202 Cal.App.4th 55, 85.) “An agency is thus obliged to search
for records based on criteria set forth in the search request.” (*CFAC, supra*, 67 Cal.App.4th at pp. 165–

166.) Records requests “inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort.” (*Id.* at p. 166.)

Respondents’ argument that Petitioner’s writ should be denied because the CPRA permits discretion in “how and where” an agency conducts a search is unavailing (Opposition Br., 14:25–15:5), as the “ministerial duty” that Petitioner seeks to enforce here is the duty to perform a reasonable, adequate search. (See *Cty. of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653 [“A ministerial duty is one which is required by statute”].) An agency has no discretion as to whether to perform a reasonable, adequate search or to ignore portions of the request. (See, e.g., *City of San Jose, supra*, 2 Cal.5th at pp. 627–28.)

As a threshold matter, Respondents failed to establish sufficient search terms and protocols because Respondents’ email request sent to Department staff identified as custodians of records made ***no attempt to*** alert staff to search for records of other individuals “employed by or representing” the insurance companies. (**Ex. 32**, Bates 000398–00512; see *City of San Jose, supra*, 2 Cal.5th at pp. 627–628; *CYAC, supra*, 220 Cal.App.4th at p. 1425–26, 1429 [city had duty to pass on substance of request to consultant as “custodian” of public record].)

Respondents take the position that searching for records involving any unnamed individuals imposes a per se “unreasonable burden.” (See Lor Decl., ¶ 6; see also Opposition Br., 15:18–21.) This is not the law. (See *State Bd. of Equalization v. Super. Ct.* (1992) 10 Cal.App.4th 1177, 1186 [“The size of the request is not the measure . . . but whether the records can be located with reasonable effort.”].) Moreover, Respondents waived this argument during meet and confer efforts over the CPRA Requests in acknowledging that Petitioner may not know the names of all individuals involved and that Petitioner could alternatively provide the “subject matter of the meeting[]” records sought. (**Ex. 3.**) In response, Petitioner provided a list of companies involved in the meetings and communications and the names of 13 individuals, ***but made clear*** that the CPRA Requests ***also*** sought records involving “any individuals employed or representing” the specified companies. (**Ex. 7**, p. 2, “Request 1”; **Ex. 9**.)⁴ Respondents now reverse course, stating: “it is GLB’s business practice to use the list of names provided by the requester, or some derivative thereof, to create a list of search terms.” (Lor Decl., ¶ 6; see also Opposition Br., 7:11–13 [“The Department relied on the names of the individuals and insurance companies provided by

⁴ This was a significant concession to Respondents, as the initial request sought records regarding “any individuals who are employed by or represent the interests of one or more insurance companies or the insurance industry.” (**Ex. 2**, p. 1, item 1.)

1 Petitioner in its PRA requests’].) In other words, where, as here, the CPRA Requests describe
2 records by their “contents,” Respondents feel justified in ignoring those requests. (*CFAC, supra*, 67
3 Cal.App.4th at pp. 165–166; *CYAC, supra*, 220 Cal.App.4th at pp. 1424–1425.)

4 To be clear, the provision of the CPRA Requests seeking records of communications and
5 meetings with “any individuals employed by or representing” the companies was critical because ***there***
6 ***was no way for Petitioner to know all the individuals or lobbying firms representing*** the companies.
7 Respondents were in the best position to know this information, as it was Respondents who were
8 conducting the meetings and receiving the communications. This reality is why the CPRA requires that
9 records sought need only be “reasonably described” (Gov. Code § 6253, subd. (b)), and has led courts to
10 conclude that requestors may describe the records they seek by their “content.” In other words, because
11 requestors, like Petitioner, cannot know, when filing a CPRA request, the totality of who Respondents
12 may have met with or communicated with, requiring the “specificity” Respondents demand is at odds
13 with the goal of the CPRA and the 2004 amendment to the California Constitution providing broad access
14 to government records. (Cal. Const. art. I, § 3; *ACLU, supra*, 202 Cal.App.4th at p. 85.)

15 **2. Respondents Must Follow Leads Uncovered in the Course of the Search** 16 **That Might Reasonably Lead to Other Responsive Records**

17 Respondents must follow leads uncovered in the course of the search that ***might reasonably lead***
18 ***to other responsive records***. (See *CYAC, supra*, 220 Cal.App.4th at pp. 1425–26, citing *Valencia–*
19 *Lucena v. U.S. Coast Guard* (D.C. Cir. 1999) 180 F.3d 321, 327; *City of San Jose, supra*, 2 Cal.5th at
20 p. 627 [“agencies are obliged to disclose all records they can locate with reasonable effort”]; *Transgender*
21 *Law Center v. Immigration and Customs Enforcement* (9th Cir. 2022) 33 F.4th 1186, 1195 [agency failed
22 to show search was adequate where it “did not appropriately respond to positive indications of overlooked
23 materials . . . and did not hew to [its] duty to follow obvious leads”]. “An agency ‘must revise its
24 assessment of what is ‘reasonable’ in a particular case to account for leads that emerge during its
25 inquiry.’” (*Whitaker v. Cent. Intel. Agency, et al.* (D.D.C. 2014) 31 F.Supp.3d 23, 43, quoting
26 *Campbell v. DOJ* (D.C. Cir. 1998) 164 F.3d 20, 43; see also *Republican Nat’l Comm. v. Dep’t of State*
27 (D.D.C. 2016) 235 F.Supp.3d 235, 242 (“RNC”) [an agency fails to conduct an adequate search when it
28 fails to pursue leads in response to a records request that, if followed, could reasonably lead to further
records]; *Rojas v. Fed. Aviation Admin.* (9th Cir. 2019) 927 F.3d 1046, 1053–54, on reh’g en banc, (9th
Cir. 2021) 989 F.3d 666 [search was inadequate where there was no indication of any search conducted

1 for underlying documents after responsive summaries were located—“summaries by necessity
2 summarize something else”].) “[T]he issue to be resolved is not whether there might exist any other
3 documents possibly responsive to the request, but rather whether the *search* for those documents
4 was *adequate*.” (*Weisberg v. DOJ* (D.C. Cir. 1984) 745 F.2d 1476, 1485, emphasis in original.)

5 As they must, ***Respondents concede that they are obligated to follow up on such leads.***
6 (Opposition Br., 17:21–22, citing *Kowalczyk v. DOJ* (1996) 73 F.3d 386, 389 [“an agency may not ignore
7 what it cannot help [but] know”].) Respondents contend only that, factually, “the Department was not
8 presented with a lead . . . that it had a duty to pursue it.” (Opposition Br., 18:4–5, citing *Whitaker, supra*,
9 31 F.Supp.3d at p. 45.)

10 Here, the evidence uncovered in the course of Respondents’ search was sufficient smoke to
11 compel Respondent to look for fire. Respondents discovered evidence, during their production of
12 documents in response to the CPRA Requests, sufficient to put them on notice of individuals
13 representing, or at least reasonably likely to be representing, the companies beyond the 13 individuals
14 specifically identified in the CPRA Requests. Regardless of whether Respondents were ***certain***, based
15 on the records they produced, that Mr. Serna and Mr. Sahara represented Applied, Respondents were
16 obligated to follow these leads by incorporating Serna and Sahara’s names in the search terms as doing
17 so ***might reasonably*** have led to other responsive records. (*Whitaker, supra*, 31 F.Supp.3d at p. 43 [“[An
18 agency must] pursue leads that raise red flags pointing to the probable existence of responsive agency
19 records.”].) Moreover, the fact that ***Mr. Sahara contacted Respondents about setting up a meeting***
20 between Respondent Lara and Applied’s president Steven Menzies is clear evidence that Mr. Sahara
21 “represented” Applied. (**Ex. 18**, Bates 00039–43.) This should be self-evident. Dictionary.com defines
22 “represent” as “to stand or act in the place of, as a substitute, proxy, or agent does.” It is of no consequence
23 that Sahara’s email address does not identify him as someone representing Applied; his email message
24 does. (Opposition Br., 18:19–21.) Furthermore, Bates 00047 is clear evidence that Mr. Sahara was also
25 representing CIC—one of the identified companies—something Respondents do not dispute, arguing
26 only that 00047 does not link Sahara to Applied. (Opposition Br., 18:23.)

27 Similarly, Eric Serna was identified as the “contact” for a March 12, 2019 fundraising meeting
28 involving Respondent Lara, Applied, and Berkshire Hathaway. (**Ex. 18**, Bates 00030.) Berkshire
Hathaway was Applied’s parent company, as Respondents knew. (*Id.*, Bates 0002.) Respondents
produced a series of emails regarding the March 12, 2019 meeting, many of which reference Serna (see,

e.g., *Id.*, Bates 0004–5, 0008–9, 00013, 00018, 00023, 00026, 00029) and identify Serna as a key figure. (*Id.*, Bates 0004 [“It’s with Eric Serna.”].) Jeff Silver and Steve Menzies are explicitly linked to Applied in a memo about the March 12, 2019 meeting (*Id.*, Bates 00030), both were named in the CPRA Requests, and Respondents admit Silver was representing Menzies in the purchase of CIC. (Powell Decl. ISO Opening Br., ¶ 6; Answer, ¶ 40.)⁵

Given Respondents’ duty to reasonably “identify records and information that are responsive to the request or to the purpose of the request” (Gov. Code § 6253.1), Respondents cannot be allowed to feign ignorance that searching for records using Sahara and Serna’s names could have reasonably resulted in identifying other potentially disclosable records. (*CYAC*, *supra*, 220 Cal.App.4th at p. 1425 [“Courts . . . should construe the request reasonably, in light of its clear purposes: ‘Feigned confusion based on a literal interpretation of the request is not grounds for denial.’”].)

The failure to use Eric Serna’s name as a search term, for example, very likely resulted in unidentified records. Not a single communication (email, letter, or text) “to” or “from” Mr. Serna was produced. This is striking given that (1) numerous records reference Eric Serna by name in the context of representing Applied (**Ex. 18**, Bates 00004–30), (2) the “master calendar” summarized other meetings between Respondent Lara and Serna for which no records were produced, and (3) Respondents admit that Respondent Lara and Mr. Serna met in Santa Fe, New Mexico during the relevant time period, though no records of that meeting were produced. (Answer ¶ 47.) And no communications involving Serna were identified in Respondents’ privilege log either. (**Ex. 29**.) As to Mr. Sahara, emails produced by Respondents raise a “red flag” that Sahara represented Applied and CIC during the applicable time period, but because Sahara’s name was not used as a search term, it is reasonable to conclude that other responsive records may exist that have not been identified by Respondents. (Opening Br., 10:20–11:10; **Ex. 18**, Bates 00039–43, 00047; see also *Whitaker*, *supra*, 31 F.Supp.3d at p. 43.)

Furthermore, Respondents admit that their production of responsive records ended on September 16, 2019 (Opposition Br., 20:9–11), yet prior to that date they were on notice that two other individuals—Mr. Areias and Mr. Núñez—reasonably may have “represented or [been] employed by” the companies during the period January 7, 2019 through July 23, 2019. Two declarations submitted under

⁵ *Whitaker* distinguished *Kowalczyk*, on which Respondents rely, in an analogous fact pattern. While in *Kowalczyk* the “Plaintiff made no reference to the New York field office, here Plaintiff explicitly referenced the [unnamed] co-pilot of the plane about which he sought records in his request.” (*Whitaker*, 31 F.Supp.3d at p. 45.) Just so here—Petitioner explicitly referenced the unnamed representatives of the insurers about which it sought records in its request.

1 penalty of perjury by former legislator-turned-lobbyist Rusty Areias confirm that Mr. Areias
2 communicated with Department Special Counsel Bryant Henley on behalf of Applied. (Ex. 35, Ex. 36.)
3 Though Mr. Areias initially stated he “cannot recall the date of these calls” with Mr. Henley and another
4 Department staffer, Mr. Areias declared under oath that his work on behalf of Applied began
5 “immediately” following June 26, 2019. (Ex. 35, ¶ 4.) In a revised declaration obtained by Respondents,
6 Mr. Areias now states that the first call he had with “them”—referencing Bryant Henley and Department
7 staffer Lazlo Komjathy—“did not occur until at least two weeks after I signed the consulting agreement
8 on July 9, 2019; that is, until after July 23, 2019.” (Ex. 36, ¶ 4.) In other words, the revised declaration
9 placed the first contact Areias had with Henley and Komjathy to just after the July 23, 2019 cut-off date.
10 Yet, this communication and likely others—as Areias admits, he had “multiple calls” with Bryant
11 Henley—occurred well within the period that Respondents were searching for and producing responsive
12 records. (Ex. 35, ¶ 4; Ex. 36, ¶ 4.) Phone calls from Mr. Areias in which Mr. Areias informed Mr. Henley
13 that Areias was “representing CIC and Applied Underwriters” were sufficient to put Mr. Henley on notice
14 that there could have reasonably been *other communications* involving Mr. Areias *and other*
15 *Department staff* prior to July 23, 2019. (Ex. 35, ¶ 5.)⁶ Mr. Henley was significantly involved in
16 Respondents’ efforts to respond to the CPRA Requests and should have been particularly sensitized to
17 the significance of these phone calls. (Ex. 33; Opening Br., 12:28–13:4 [more than one-third of the
18 internal email communications regarding the CPRA Requests that Respondents refused to produce were
19 “to” or “from” Mr. Henley].)

20 Moreover, the “master calendar” is additional evidence of the inadequacy of Respondents’ search
21 for responsive public records because *the “master calendar” confirms that certain meetings occurred,*
22 *despite the fact that no responsive records for those meetings were provided.* (Opening Br., 13:21–
23 14:2.) Even if Respondents were not aware of these records until the “master calendar” was created and
24 produced to Petitioner on September 13, 2019 (Ex. 8), they had an ongoing duty, once they discovered
25 the omissions, to supplement their search for records in response to the CPRA Requests. (*Rojas, supra*,
26 927 F.3d at pp. 1053–1054 [agency failed to search for underlying information corresponding to
27 summaries it had “located”]; *Brady Ctr. to Prevent Gun Violence v. DOJ* (D.D.C. 2019) 410 F.Supp.3d

28 ⁶ Respondents do not contest that they were still “processing the search request” when Mr. Areias and
Mr. Henley spoke. Respondents state that “the Department had completed its record search on August 21,
2019” (Opposition Br., 20:7–8), and “[a]fter that, GLB reviewed the located records, and produced its
responses to the July 23, 2019 and July 19, 2019 PRA requests on August 31, 2019, and September 16,
2019, respectively.” (Opposition Br., 20:5–11.)

225, 235 [where email referenced attached “draft . . . White Paper,” agency should have searched word processing file for missing draft].)

3. Respondents Failed to Satisfy Other Indicia of an Adequate Search

First, Bryant Henley personally met with Respondent Lara to search Lara’s computer and devices using the search terms developed by Respondents, yet during that meeting Henley failed to ask Respondent Lara about records reflecting “any other individuals employed by or representing” the companies. (Ex. 30, p. 22:20–27; compare with Opposition Br., 16:24–27, arguing that consulting Respondent Lara would have constituted an “extraordinary effort[]” that Respondents need not do.) For example, did Respondent Lara communicate with his friend and mentor Fabian Núñez, who Henley and Lara knew “*might be or [was] about to be* representing Applied Underwriters and might reach out to [Lara] in the future in this regard”? (Ex. 35, ¶ 3.) That silence is deafening and ignores a “red flag.”

Second, campaign contributions from the four individuals named in the CPRA Requests (Opening Br., 5:7–14) are public records. (Gov. Code § 81008.) Respondents offer no reason why records reflecting contributions to Respondent Lara’s re-election campaign would not be in Respondent Lara’s possession, especially since he was Treasurer of the campaign. (Ex. 34.) *City of San Jose, supra*, 2 Cal.5th at pp. 622–23, clearly established that the CPRA requires only “constructive possession,” which encompasses both records maintained by individuals on personal accounts, as well as records held by Respondent Lara in his individual capacity. As the Court noted: “To the extent the Commissioner served as Treasurer for his campaign for reelection [a fact Respondents have now confirmed in Ex. 34] . . . would inform on whether the Department has improperly withheld communications” (Ex. 31, p. 7.)

Third, given that the CPRA Request sought records from “*any* Department staff involved in *any* decisions or proceedings” involving the companies, it would have been “reasonable and taken little effort for Department IT staff” to conduct a broader search, as the Microsoft Outlook eDiscovery Tool used by Respondents performs searches automatically. (Bambenek Decl. ISO Opening Br., ¶¶ 14, 21.)

Finally, making speculative references to theoretical “wildcard searches” and other similar claims regarding technical aspects of the search for the first time in the Opposition Brief violates the Civil Discovery Act (Evid. Objs.) and does not change the reality that Respondents’ search was inadequate. (Bambenek Decl. ISO Reply.)

B. Respondents Failed to Justify Withholdings and Redactions

Respondents withheld 96 records in their entirety and redacted six others. Respondents failed to meet their burden to establish that the claimed exemptions apply to these records. (Opening Br., 15:24–22:28.) Apparently recognizing this failure, Respondents’ Opposition Brief relies on *new factual support* for these withholdings not previously provided in discovery responses. Those new factual allegations, and any arguments that rely on them, should be struck. (Evid. Objs.)

Respondents also claim the court “expressly declined” to require Respondents to provide the factual basis supporting its withholding of the 96 records. (Opposition Br., 25:14–16.) The Court did no such thing. (Ex. 26, pp. 6–7.) Moreover, Respondents cannot now introduce evidence that they did not produce in discovery. (*Puritan Ins. Co. v. Sup. Ct.* (1985) 171 Cal.App.3d 877, 884–86; see also Evid. Objs.) Respondents also cite to a discovery response submitted with their deficient privilege log, which provides no further support for withholding the records, and a single paragraph of a declaration submitted *in support of Respondents’ opposition to discovery motions*. (Opposition Br., 25:1–3.) Respondents cannot supplement incomplete discovery responses in this way. (See *Reales v. Johnson* (2020) 55 Cal.App.5th 463, 472.) The declaration only claims that the withheld documents “relate[] to” the Form A Application and the examination of CIC, which is insufficient to justify withholding or redacting.

1. Respondents Failed to Justify Withholding the “Form A” Communications

Respondents posted the Form A document on their website and have therefore waived any claims of confidentiality of communications that repeat or discuss information contained in the Form A. (Opening Br., 17:15–19; see also *People v. Super. Ct. (Jones)* (2021) 12 Cal.5th 348, 362 [discussing waiver of evidentiary protections through conduct].) Respondents argue that the “communications are exempt, not the application. Only CIC can waive disclosure, and it has not.” (Opposition Br., 25:11–13.) Not so. Respondents offer no legal basis for their claim that disclosure of documents pursuant to Section 6254(d) is conditioned on third-party consent. (See *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1262 [CPRA “exemptions . . . are permissive, not mandatory: They . . . do not prohibit disclosure,” absent some other independent legal basis].) Thus, Section 6254(d) does not “absolutely prohibit” the disclosure of records. It exempts them from production, *presuming an agency establishes that it applies to the records*—something Respondents have failed to do. And as *Department of Motor Vehicles v. Super. Ct.* (2002) 100 Cal.App.4th 363, 374–75 (“DMV”) makes clear, case-by-case analysis of records not subject to an absolute prohibition, as is the case here, is appropriate. Finally, given

1 that the Form A is a public document, it is unclear what “interest [would be] protected” by keeping
2 communications about that document confidential. (Cal. Const. art. I, § 3, subd. (b), par. (2).)

3 Respondents then argue that Petitioner “has no basis to assert that any of the withheld Form A
4 [communications] are other than what the Department contends they are.” (Opposition Br., 25:4–7.) But
5 this inverts the burden. It is not for Petitioner to opine what the unseen documents actually are. It is
6 Respondents’ burden to support their claims of exemption. (*ACLU*, *supra*, 202 Cal.App.4th at p. 85.)

7 Respondents also claim that Insurance Code section 12919 (“section 12919”) does not require
8 public interest “balancing,” but this is wrong because the text of section 12919 incorporates Evidence
9 Code sections 1040 and 1041. (Opposition Br., 24:1–6; *People v. Acevedo* (2012) 209 Cal.App.4th 1040,
10 1053 [Evid. Code §§ 1040 and 1041 incorporate public interest balancing test].) As Petitioner points out
11 in its Opening Brief, 23:2–10, Respondents have not and cannot overcome the fact that the public interest
12 balancing test clearly tips in Petitioner’s favor in these circumstances. (*CBS, Inc.*, *supra*, 42 Cal.3d at
13 pp. 655–56.) Respondents also cannot simply claim all documents were received in “confidence”
14 pursuant to section 12919 and are therefore categorically exempt. (See *DMV*, *supra*, 100 Cal.App.4th at
15 p. 375 [if a statute merely “provides for confidentiality,” records are subject to case-by-case
16 analysis].) Such a broad reading would defeat the purpose of both the CPRA and the 2004 Amendment
17 to the California Constitution. (Cal. Const. art. I, § 3; *Sierra Club v. Super. Ct.* (2013) 57 Cal.4th 157,
18 166, 175–76.)

19 **2. Respondents Failed to Justify Withholding the CIC Exam Communications**

20 Regarding the 66 communications Respondents deem “related to” the examination of CIC,
21 Respondents’ clarification regarding the timing of the exam does not change the result. (Opposition Br.,
22 27:13–14.) Despite the new information Respondents submitted with their Opposition, Respondents have
23 failed to establish any exemption applies. Respondents’ privilege log merely states that the withheld
24 communications are “related to” the examination, relying on Insurance Code section 735.5 (**Ex. 29**), but
25 the text of Section 735.5 does not include the “related to” language. (Opening Br., 19:17–28.) Moreover,
26 the “public policy” relied on by Respondents giving rise to Section 735.5 (Opposition Br., 27:26–28:2)
27 is not implicated here because confidential material could be redacted from the communications.

28 Respondents’ reliance on Section 6254(d)(2), which pertains to “examination, operating, or
condition reports,” is misplaced, as Petitioner seeks *communications* between Respondents and
representatives of Applied and the other companies. If, for example, any of the email communications at

1 issue contain attachments or quotes from documents that are in fact “examination, operating, or condition
2 reports,” that material could be redacted from the production (after in camera review if necessary). (*Los*
3 *Angeles Cty. v. Super. Ct.* (2016) 2 Cal.5th 282, 292 [agencies must “use the equivalent of a surgical
4 scalpel to separate those portions of a record subject to disclosure from privileged portions”].)⁷

5 **3. Respondents Failed to Justify Redactions**

6 Respondents failed to include the six redacted records in their privilege log (**Ex. 29**), and
7 otherwise failed to support their decision to redact the records. (Opening Br., 21:15–22:28.) As to the
8 three emails Respondents claim were redacted as “non-responsive” (Opposition Br., 22–23), there is “a
9 particular reason for concern. The need for redaction in such circumstances seems highly questionable,
10 as the information is not claimed to be exempt and therefore does not pose the risks addressed by the
11 statutory exemptions from the rule of disclosure.” (*ACLU, supra*, 202 Cal.App.4th at p. 86.)

12 **C. The Court’s Discovery Rulings Did Not Foreclose Review on the Merits**

13 The Court has made crystal clear that its prior orders sustaining evidentiary objections and its
14 review of evidence regarding Mr. Serna, Mr. Sahara, Mr. Núñez, and Mr. Areias were for discovery
15 purposes only, and should not be construed to foreclose or foreshadow rulings on the merits.

16 Whether or not you can use those documents later I think is relevant for the writ hearing.
17 So if you rely on those documents and there’s an evidentiary objection, then I’ll deal with
18 in a fulsome way the evidentiary objection. So it’s not law of the case. . . . [O]n the last
19 case I think you all heard, there was a thought that because I didn’t allow discovery that I
20 was somehow accepting the exemption justification, which is not true.
(**Ex. 42**, 15:16–26.) “. . . [I]t’s just for purposes of this motion and moving the ball forward in
discovery.” (*Id.* at 16:14–15.)

21 **V. CONCLUSION**

22 Petitioner respectfully requests that the Court order Respondents to (1) conduct a new search for
23 responsive records of meetings and communications with “any individuals employed by or representing”
24 the companies and produce any newly identified responsive documents, and (2) produce the 96
25 previously withheld communications and six redacted communications in an unredacted form.

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⁷ Respondents misapprehend in camera review under the CPRA. That Evidence Code section 915,
subdivision (b) does not explicitly refer to Government Code section 6254 does not mean that no in
camera hearing is permissible. (See, e.g., *Cty. of Los Angeles v. Super. Ct. (Axelrad)* (2000) 82
Cal.App.4th 819, 832 [remanding CPRA case for “in camera review of . . . documents” claimed exempt].)

1 DATE: August 18, 2022

2 **CONSUMER WATCHDOG**

3 By: 

4 Jerry Flanagan

5 **LAW OFFICES OF KELLY AVILES**

6 By: 

7 Kelly Aviles

8 *Attorneys for Petitioner/Plaintiff*

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I, Benjamin Powell, declare and state as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the State of California, and I am a staff attorney for Petitioner CONSUMER WATCHDOG in the above-titled action. The facts stated in this Declaration are true and correct of my own personal knowledge, except for those matters expressly stated on information and belief, which matters I believe to be true. If called as a witness, I could and would competently testify thereto.

2. Attached as **Exhibit 42** is a true and correct excerpt of the transcript of this Court's September 22, 2021 hearing on this matter.

3. Attached as **Exhibit 43** is a true and correct excerpt of Respondents' Objections and Responses to Petitioner's Request for Production, Set One.

4. Attached as **Exhibit 44** is a true and correct copy of Respondents' production of documents in response to Request for Production No. 1, Set One.

5. Attached as **Exhibit 45** is a true and correct copy of Respondents' production of documents in response to Request for Production No. 12, Set One.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on August 18, 2022, at Los Angeles, California.

/s/ Benjamin Powell
BENJAMIN POWELL

EXHIBIT 42

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 86

HON. MITCHELL L. BECKLOFF, JUDGE
(VIA MICROSOFT TEAMS)

CONSUMER WATCHDOG, A NON-PROFIT ORGANIZATION,)

PETITIONER,)

VS.) CASE NO.

RICARDO LARA, IN IHS OFFICIAL CAPACITY AS THE INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA,)

RESPONDENT.)

20STCP00664

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, SEPTEMBER 22, 2021

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CINDY CAMERON, CSR NO. 10315
OFFICIAL COURT REPORTER

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1 1152 PROHIBITS US FROM USING THOSE AS A BASIS FOR
2 LIABILITY. AND SO I DON'T THINK WE CAN USE THOSE TO SAY
3 THEY -- LOOK AT THIS, THEY DIDN'T -- THEY DIDN'T SEARCH;
4 RIGHT?

5 AND SO WE'RE -- THIS IS GOING TO BE AN ONGOING
6 PROBLEM. AND SO I THINK -- I DON'T THINK THOSE WERE EVER
7 ATTORNEY-CLIENT PRIVILEGE AND I THINK IT'S CLEAR THAT THEY
8 WAIVED THE ATTORNEY-CLIENT PRIVILEGE BY DISCLOSING THEM TO
9 US, EVEN A CLAIM THERE WAS A PRIVILEGE.

10 AND SO I THINK AS TO THAT PARTICULAR ISSUE, I'D
11 LIKE TO JUST KIND OF DISCUSS THAT A LITTLE BIT MORE AS TO
12 WHAT IS THE COURT'S BASIS FOR SUSTAINING THAT OBJECTION.

13 THE COURT: SURE.

14 I KNOW YOU FILED RESPONSES. I DROPPED A FOOTNOTE
15 TO ONE OF THE RESPONSES. I THINK THE OBJECTIONS ARE ALL
16 SUSTAINABLE. WHETHER OR NOT YOU CAN USE THOSE DOCUMENTS
17 LATER I THINK IS RELEVANT FOR THE WRIT HEARING. SO IF YOU
18 RELY ON THOSE DOCUMENTS AND THERE'S AN EVIDENTIARY
19 OBJECTION, THEN I'LL DEAL WITH IN A FULSOME WAY THE
20 EVIDENTIARY OBJECTION.

21 SO IT'S NOT LAW OF THE CASE. I'M NOT -- IT IS FOR
22 PURPOSES OF THIS MOTION. THAT'S ALL I'M DOING. AND TO THE
23 EXTENT I WOULD SAY, FOR EXAMPLE -- ON THE LAST CASE I THINK
24 YOU ALL HEARD, THERE WAS A THOUGHT THAT BECAUSE I DIDN'T
25 ALLOW DISCOVERY THAT I WAS SOMEHOW ACCEPTING THE EXEMPTION
26 JUSTIFICATION, WHICH IS NOT TRUE.

27 ULTIMATELY, AS I SAID MAYBE IN THIS CASE BEFORE IN
28 AN INFORMAL DISCOVERY CONFERENCE, THE DEPARTMENT CAN'T COME

1 IN WITH ADDITIONAL EVIDENCE THAT THEY HAVE NOT PROVIDED
2 DURING DISCOVERY THAT SHOULD HAVE BEEN PROVIDED IN
3 DISCOVERY TO JUSTIFY AN EXEMPTION.

4 SO TO THE EXTENT THAT THE DEPARTMENT SAYS, YOU
5 KNOW, WE'RE RELYING ON 6255(A), THE GENERAL CATCH-ALL AND
6 PROVIDES NO BALANCE OR NO FACTUAL JUSTIFICATION, THAT'S NOT
7 GOING TO CARRY THE DAY ULTIMATELY BECAUSE THEY DO HAVE THE
8 BURDEN.

9 SO I DON'T THINK THAT EVIDENTIARY OBJECTIONS TODAY
10 APPLY ON THIS MOTION TO THE EXTENT THAT -- SO THAT'S KIND
11 OF MY POSITION ON THE EVIDENTIARY OBJECTIONS BECAUSE I SAW
12 YOU ALL DID RESPOND TO THE EVIDENTIARY OBJECTIONS AND I DID
13 DROP THAT FOOTNOTE TO LET YOU KNOW I READ YOUR RESPONSES,
14 BUT IT'S JUST FOR PURPOSES OF THIS MOTION AND MOVING THE
15 BALL FORWARD IN DISCOVERY.

16 MS. AVILES: SO I JUST WANT TO MAKE CLEAR THE
17 COURT THOUGHT -- BECAUSE WHEN THERE'S A CLAIM OF PRIVILEGE,
18 IT GETS A LITTLE BIT DICEY AS TO OUR -- AS TO OUR
19 PROFESSIONAL RESPONSIBILITIES AND I JUST WANT TO MAKE SURE
20 THAT THE COURT IS NOT SUSTAINING IT ON THE BASIS OF
21 PRIVILEGE AND THAT WE'RE FREE TO RAISE THESE ISSUES WHEN WE
22 HAVE A HEARING ON THE MERITS.

23 THE COURT: AS FAR AS THE ISSUE OF PRIVILEGE AND
24 ATTORNEY-CLIENT PRIVILEGE AND WE'RE TALKING ABOUT THE
25 SEARCH TERMS; RIGHT?

26 MS. AVILES: WE'RE TALKING ABOUT THE E-MAILS --
27 YES, THE E-MAILS WITH THE SEARCH TERMS THAT WERE PRODUCED.

28 THE COURT: AS I SAID, WITH REGARD TO THE

1 PRIVILEGE LOG, IT'S NOT EVEN CLEAR TO ME THAT TELLING
2 SOMEBODY TO MAKE A SEARCH ON THESE TERMS IS ATTORNEY-CLIENT
3 PRIVILEGE. SO I DON'T THINK THAT THAT -- THAT IS NOT A
4 BASKET I WOULD WANT TO PUT MY EGGS IN, BUT I NEED NOT
5 DECIDE THAT TODAY; OKAY?

6 MS. AVILES: YEAH, UNDERSTOOD. I JUST WANTED TO
7 CLARIFY AND I APPRECIATE THAT.

8 MR. FLANAGAN: YOUR HONOR?

9 THE COURT: YES?

10 MR. FLANAGAN: I'M SORRY, CAN I ADD?

11 I TOTALLY UNDERSTAND WHAT YOU'RE SAYING, BUT THE
12 ONE THING THAT I WOULD -- I NOTE THAT THE COURT HAS
13 SEPARATELY IN THE TENTATIVE ORDERED A PRIVILEGE LOG OF THE
14 WITHHELD RECORDS. AND MY ONLY POINT WOULD BE IT WOULD BE
15 VERY HELPFUL, IF THERE'S A FUTURE MOTION TO COMPEL SOME OF
16 THOSE DOCUMENTS IN THE PRIVILEGE LOG, FOR US TO HAVE THESE
17 SETTLEMENT COMMUNICATIONS AVAILABLE FOR THE COURT'S REVIEW
18 BECAUSE THOSE WITHHELD E-MAILS WERE EXCLUDED CORRESPONDENCE
19 TO CERTAIN CATEGORIES OF WITHHELD RECORDS AND WE THINK
20 ESTABLISHED -- AS I THINK THE COURT HAS, YOU KNOW, RAISED A
21 POTENTIAL ISSUE, SUGGESTS THAT THE PRIVILEGE DOESN'T APPLY
22 AT ALL.

23 SO I CAN IMAGINE -- FOR EXAMPLE, IF WE GET THE
24 PRIVILEGE LOG BACK AND WE TRY TO NARROW THINGS DOWN SO
25 WE'RE ONLY GOING TO COMPEL CERTAIN COMMUNICATIONS REGARDING
26 THE SEARCH TERMS THAT ARE FROM AND TO THESE NON-LAWYERS, IT
27 WOULD BE HELPFUL AT THAT SAME TIME FOR THE COURT TO SEE THE
28 THREE E-MAILS THAT HAVE BEEN PRODUCED AND FOR WHICH

1 THEY MAY VERY WELL BE PRIVILEGED.

2 THE COURT: OKAY. I'M GOING TO THINK ABOUT WHAT
3 YOU SAID. I HAVE A COUPLE OF QUESTIONS FOR MS. AVILES. I
4 THINK THE DEPARTMENT TAKES A DIFFICULT POSITION AND THAT IS
5 THIS IS ALL PRIVILEGED. I'M GOING TO LOOK BACK AT SPECIAL
6 INTERROGATORY NO. 10, BUT I THINK THAT THE DEPARTMENT'S
7 POSITION THAT THE ACTIONS AND DISCUSSIONS AMONG STAFF WHO
8 ARE NOT ATTORNEYS IS JUST A DIFFICULT POSITION TO TAKE AND
9 I CERTAINLY -- YOU KNOW, WE'VE SPENT A LOT OF TIME TOGETHER
10 ON THE PHONE. I NEED TO FIGURE OUT WHAT TO DO WITH THE
11 DISCOVERY.

12 AND I JUST -- IT'S INTERESTING TO ME THAT I HAVE
13 SO MUCH DIFFICULTY WITH DISCOVERY AND THE DEPARTMENT OF
14 INSURANCE. THIS IS MY ONLY AGENCY THAT I HAVE DISCOVERY
15 PROBLEMS WITH. AND I HAVE A WHOLE WHEELBARROW FULL OF
16 PROBLEMS WITH DISCOVERY. BUT I'M LOOKING AT THIS CASE
17 SPECIFICALLY AND I JUST THINK THAT THE DEPARTMENT'S
18 POSITIONS ON SOME OF THESE THINGS ARE DIFFICULT TO
19 MAINTAIN.

20 MS. AVILES, IN THE PRIVILEGE LOG, IF THE
21 DEPARTMENT EXCLUDED FROM IT DOCUMENTS THAT ARE SOLELY
22 BETWEEN COUNSEL, WOULD YOU OBJECT TO THAT?

23 MS. AVILES: I WOULD BECAUSE I THINK PART OF OUR
24 PROBLEM IS THAT THE CONTENT OF THE COMMUNICATION HAS TO
25 RELATE TO LEGAL ADVICE. AND, I MEAN, I THINK WE NEED TO
26 KNOW THEIR POSITION DIRECTLY, ESPECIALLY BECAUSE THERE'S
27 GOING TO BE A QUESTION OF WHAT CAN WE INTRODUCE, BECAUSE
28 WE'VE ALREADY SEEN THIS ISSUE WHERE THEY SAID, OH,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 86

HON. MITCHELL L. BECKLOFF, JUDGE
(VIA MICROSOFT TEAMS)

CONSUMER WATCHDOG, A NON-PROFIT
ORGANIZATION,

PETITIONER,

VS.

RICARDO LARA, IN IHS OFFICIAL
CAPACITY AS THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA,

RESPONDENT.

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) CASE NO.
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I, CINDY CAMERON, OFFICIAL COURT REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY
OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES,
1 THROUGH 40, INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED
MATTER ON SEPTEMBER 22, 2021.

DATED THIS 29TH DAY OF SEPTEMBER, 2021.

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UNBINDING OF THE ORIGINAL TRANSCRIPT OR CERTIFIED COPY WILL
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NULL AND VOID.

Cindy Cameron

CINDY CAMERON, CSR NO. 10315
OFFICIAL COURT REPORTER

EXHIBIT 43

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8 *Ricardo Lara, in his official capacity as Insurance*
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9 *California Department of Insurance*

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13
14 **CONSUMER WATCHDOG, a non-profit**
15 **organization,**

16 Petitioner and Plaintiff,

17 v.

18 **RICARDO LARA, in his official capacity as**
19 **the Insurance Commissioner of the State of**
20 **California; CALIFORNIA DEPARTMENT**
21 **OF INSURANCE; and DOES 1-50,**

22 Respondents and Defendants.

Case No. 20STCP00664

**RESPONDENTS' OBJECTIONS AND
RESPONSES TO PETITIONER'S
REQUEST FOR PRODUCTION, SET
ONE**

*Assigned for all purposes to the Hon.
Mitchell L. Beckloff, Dept. 86*

Action Filed: February 18, 2020
Trial Date: Not set

23 PROPOUNDING PARTY: PETITIONER CONSUMER WATCHDOG

24 RESPONDING PARTY: RESPONDENTS RICARDO LARA, in his official capacity as
25 Insurance Commissioner of the State of California, and the
26 CALIFORNIA DEPARTMENT OF INSURANCE

27 SET NO.: ONE

28 ///

1 **REQUEST FOR PRODUCTION OF DOCUMENTS**

2 **REQUEST FOR PRODUCTION NO. 1:**

3 ALL DOCUMENTS constituting or CONCERNING CDI's practices, policies, protocols,
4 or guidelines for responding to California Public Records Act requests.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

6 The Department incorporates the above General Objections as though fully stated in this
7 response.

8 The Department objects to the definition of the term "DOCUMENT" on the ground that it
9 is overbroad and unduly burdensome and exceeds the scope of discovery authorized by Code of
10 Civil Procedure sections 2017.010 and 2031.010 and Evidence Code sections 250, 255 and 260.
11 The Department objects to this request on the ground that it is unduly burdensome and overbroad
12 as to time. The Department objects to the definition of the term "CONCERNING" on the ground
13 that it is vague and ambiguous and overbroad and unduly burdensome.

14 Without waiving the above objections, the Department responds as follows. The
15 Department interprets this request as seeking documents maintained by the Department from
16 January 7, 2019 to the present. Based on this interpretation, the Department responds that it
17 maintains an internal, privileged, and confidential manual that governs the Department's practices
18 and processes in responding to California Public Record Act Requests. The manual was
19 developed by the Department's Legal Branch and is protected from discovery by the attorney-
20 client privilege, the attorney work product doctrine under Code of Civil Procedure section
21 2018.030, subdivisions (a) and (b), and the official information privilege, and will not be
22 produced. The Department will produce all documents that are responsive to this request as
23 interpreted, are in its possession, custody or control, are located after a reasonable search, and to
24 which no objection is being made.

25 **REQUEST FOR PRODUCTION NO. 2:**

26 ALL DOCUMENTS from June 4, 2019 to the present CONCERNING the PRA
27 REQUESTS.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

2 The Department incorporates the above General Objections as though fully stated in this
3 response.

4 The Department objects to the term "COMMUNICATIONS" on the ground that it exceeds
5 the scope of discovery authorized under Code of Civil Procedure sections 2017.010 and
6 2031.010. The Department objects to the definition of the term "CONCERNING" as vague and
7 ambiguous and overbroad and unduly burdensome. The Department objects to this request on the
8 ground that it is overbroad as to time. The Department objects to this request to the extent it seeks
9 information or documents protected from discovery by the attorney-client privilege, attorney
10 work product doctrine under Code of Civil Procedure section 2018.030, subdivisions (a) and (b),
11 the official information and deliberative process privileges, and the constitutional and statutory
12 privacy rights of third parties. The Department objects to this request on the ground it seeks
13 documents that are not relevant to the subject matter involved in the pending action or reasonably
14 calculated to lead to the discovery of admissible evidence. Specifically, the discovery sought is
15 not necessary to resolve the issue of whether the Department has an obligation to disclose the
16 withheld and/or redacted records that are the subject of this CPRA proceeding, and the request is
17 not justified given the need for expeditious resolution. To the extent this request for
18 "COMMUNICATIONS" seeks discovery of the withheld and/or redacted records involved in this
19 CPRA action, those records are an improper subject of discovery and are privileged or protected
20 under Insurance Code sections 735.5 and 12919, Government Code sections 6254, subdivisions
21 (d) and (k), and 6255, Evidence Code section 1040, subdivision (b), and Civil Code section
22 1798.24.

23 **REQUEST FOR PRODUCTION NO. 12:**

24 ALL DOCUMENTS CONCERNING the job duties of CDI staff members responsible for
25 responding to California Public Records Act requests.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

27 The Department incorporates the above General Objections as though fully stated in this
28 response.

1 The Department objects to the terms “ALL DOCUMENTS CONCERNING the job duties
2 of CDI staff members” as vague and ambiguous and overbroad and unduly burdensome. The
3 Department objects to the definition of the term “DOCUMENTS” on the ground that it exceeds
4 the scope of discovery authorized under Code of Civil Procedure sections 2017.010 and
5 2031.010. The Department objects to this request on the ground that it is overbroad as to time.
6 The Department objects to this request to the extent it seeks information protected from discovery
7 by the constitutional and statutory privacy rights of third parties. The Department objects to this
8 request on the ground it seeks documents that are not relevant to the subject matter involved in
9 the pending action or reasonably calculated to lead to the discovery of admissible evidence.
10 Specifically, the discovery sought is not necessary to resolve the issue of whether the Department
11 has an obligation to disclose the withheld and/or redacted records that are the subject of this
12 CPRA proceeding, and the request is not justified given the need for expeditious resolution.

13 Without waiving the above objections, the Department responds as follows. The
14 Department interprets this request as seeking the duty statements of CDI staff members
15 responsible for responding to CPRA requests between July 2019 and September 2019—the time
16 period in which Department staff responded to the CPRA requests at issue in this proceeding. The
17 Department responds that it will produce all documents that are responsive to this request, are in
18 its possession, custody, or control, located after a reasonable search, and to which no objection is
19 being made.

20 **REQUEST FOR PRODUCTION NO. 13:**

21 ALL DOCUMENTS instructing or advising any employee of CDI to not respond to a
22 request made pursuant to the California Public Records Act from January 7, 2019 to the present.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

24 The Department incorporates the above General Objections as though fully stated in this
25 response.

26 The Department objects to the definition of the term “DOCUMENTS” on the ground that it
27 exceeds the scope of discovery authorized under Code of Civil Procedure sections 2017.010 and
28 2031.010. The Department objects to this request on the ground that it is overbroad as to time.

VERIFICATION

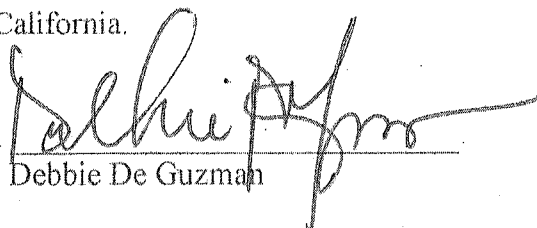
I, Debbie De Guzman, declare as follows:

1. I am a Legal Analyst with the California Department of Insurance, Sacramento Office. I am authorized to make this verification for and on behalf of Respondents.

2. I have read the above Objections and Responses to Petitioner's Request for Production, Set One, and know its contents. I am informed and believe and on that ground allege that the matters stated in the above document are true.

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

Executed on May 15, 2020, at Sacramento, California.


Debbie De Guzman

DECLARATION OF SERVICE BY U.S. MAIL AND ELECTRONIC MAIL

Case Name: **Consumer Watchdog v. Lara, et al.**

Case No.: **20STCP00664**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 15, 2020, I served the attached:

- **RESPONDENTS' OBJECTIONS AND RESPONSES TO PETITIONER'S REQUEST FOR PRODUCTION, SET ONE**
- **CD WITH PRODUCTION OF DOCUMENTS (BY MAIL)**

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

Jerry Flanagan, Esq.
Benjamin Powell, Esq.
CONSUMER WATCHDOG
6330 San Vicente Blvd., Suite 250
Los Angeles, CA 90048
jerry@consumerwatchdog.org
ben@consumerwatchdog.org
Attorneys for Petitioner/Plaintiff

Kelly Aviles, Esq.
LAW OFFICES OF KELLY AVILES
1502 Foothill Blvd., Suite 103-140
La Verne, CA 91750
kaviles@opengovlaw.com
Attorneys for Petitioner/Plaintiff

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 15, 2020, at Sacramento, California.

M. Garcia
Declarant



Signature

EXHIBIT 44

Guidelines for Accessing Public Records



The public has a right under the California Public Records Act and the California Constitution to access governmental agencies' public information. As a governmental agency, the California Department of Insurance (CDI) stores publicly-accessible records. In accordance with Government Code section 6253.4, CDI's written guidelines for the accessibility of records are set forth below.

For more information, please see our [Frequently Asked Questions](#) about accessing CDI's public records.

Direct Your Request to the Custodian of Records.

CDI's Custodian of Records is responsible for facilitating responses to all public records requests. Although we also attempt to process records requests directed to other CDI staff, if you direct your request to the Custodian of Records, it makes it easier for us to track and process your request more promptly. Contact the Custodian of Records by mail, phone or e-mail at:

**California Department of Insurance
Custodian of Records
300 Capitol Mall
Suite 1700
Sacramento, CA 95814
Phone: (916) 492-3657
Email: CustodianOfRecords@insurance.ca.gov**

Identifying Records

A request for inspection or copying of public records should be specific and focused. When records cannot be identified by name, please be as detailed as possible in describing the records, based on their content. When known, the request should also specify the office, division, branch or section of CDI which created and has ownership responsibility for the desired records. Where the request is not specific and focused, CDI staff will assist the requester in identifying the requested information, describing the technology or physical location of records, and providing suggestions for overcoming practical barriers to the disclosure.

Inspection of Public Records

Physical inspection of records shall be permitted within CDI offices, institutions or facilities and under the conditions CDI determines. The operational functions of CDI, its facilities, institutions and offices will not be suspended to permit inspection of records during periods in which CDI staff reasonably require such records for the performance of their duties. Upon either the completion of the inspection or the oral request of CDI staff, the person conducting the inspection shall relinquish physical possession of the records. Persons inspecting CDI records shall not destroy, mutilate, deface, alter or remove any such records from CDI offices. CDI reserves the right to have CDI staff present during the inspection of the records in order to prevent the loss or destruction of the records. If a request requires review of numerous records, CDI and the person requesting review will establish a mutually agreeable time for the inspection of records. Please also note that numerous resources are already available on the CDI website, including [enforcement action information](#), [license status information](#), [identities of agents of service of process](#), [a schedule of fees](#), [property and casualty rate application filing requirements](#), [a homeowners premium survey](#), [videos](#) and [press releases](#).

Processing Requests for Copies of Records

When a person requests a copy of records and CDI cannot immediately determine whether it has disclosable public records that it can immediately produce, CDI will determine within 10 days after receipt of the request whether it has disclosable public records responsive to the request and will inform the requester of its determination and the reasons for the determination. The initial 10-day period to make the determination may be extended for up to an additional 14 days if CDI staff needs to:

- a. **Search for and collect records from separate field offices.**
- b. **Search for, collect and appropriately inspect voluminous records.**
- c. **Consult with other divisions or agencies.**

Whenever possible, CDI staff will provide records at or near the time CDI determines that it has disclosable records. If immediate disclosure is not possible, CDI staff will provide an estimated date when the records will be available, and will endeavor to provide the records within a reasonable period of time.

Copying Fees

CDI may charge the direct cost of duplication when it provides copies of records to the public. Please see our [schedule of fees](#) for current duplication costs. The direct cost of duplication includes the pro rata expense of the duplicating/scanning equipment and the staff (salary/benefits) required to make a copy of records. Direct cost of duplication does not include CDI staff time in researching, retrieving, redacting and mailing records. When CDI staff must compile electronic data, extract information from an electronic record, or undertake computer programming to satisfy a request, CDI may require the requester to bear the full costs, not just the direct cost of duplication. All payments required by the schedule must be presented to CDI in the form of a check made payable to the "California Department of Insurance".

Exemptions

CDI will provide access to all public records upon request unless the California Public Records Act or other state or federal law exempts the record from disclosure. Examples of records which may be exempt from disclosure include: preliminary drafts, records pertaining to pending litigation, personnel records, complaints, investigative records, applications, examination reports, trade secrets and confidential legal advice. If public records contain both disclosable and exempt information, CDI staff may remove or redact exempt information from the records and disclose the remainder of the records.

Identification of Requesters

CDI staff will not require that you provide identification to inspect records, or your reasons for wanting to inspect records. However, if records are to be picked up or mailed to you, relevant identifying information must be provided. Persons wishing to enter CDI offices also must comply with security protocols, including providing identification to security personnel.

Annual or Quarterly Financial Statements of Insurers

These statements can be provided when you complete the required Photocopying / Certification Request Form and mail it to the address located in the upper left corner of the form along with your payment. To obtain the Photocopying / Certification Request Form and further information, please see our [Frequently Asked Questions](#) about accessing CDI's public records.

Statement of Economic Interest

These statements can be provided by contacting the Custodian of Records during CDI regular business hours. For more information, please see our [Frequently Asked Questions](#) about accessing CDI's public records.

Frequently Asked Questions about Accessing Public Records

1. What are Public Records?
 2. How Can I Make a Request for Public Records?
 3. How Long Does it Take to Reply to a Public Records Request?
 4. What Will CDI's Response to a Records Request Include?
 5. When May Public Records Be Inspected?
 6. Is There Any Fee Involved?
 7. What Records are Not Open for Inspection?
 8. What if I Wish to Challenge CDI's Determination Not to Disclose Records?
 9. How Do I Obtain an Annual or Quarterly Statement?
 10. How Do I Obtain a Form 700--Statement of Economic Interest?
 11. How Do I Request Document Certification?
-

1. WHAT ARE PUBLIC RECORDS?

"Public records" include any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by CDI regardless of physical form or characteristics.

"Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

"Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

2. HOW CAN I MAKE A REQUEST FOR PUBLIC RECORDS?

A request for public records can be made either orally or in writing. Although CDI does not require a requester to make a request in writing, to ensure clear communication between CDI and the requester, we recommend that members of the public submit written requests.

To make a written request, send a letter to: California Department of Insurance, Custodian of Records, 300 Capitol Mall, Suite 1700, Sacramento, CA 95814 or e-mail: CustodianOfRecords@insurance.ca.gov. The written request need not be in any particular form, but should describe the requested records with sufficient specificity to enable CDI staff to identify and locate the records requested. The request should specify the office, division, branch or section of CDI which created and has ownership responsibility for the desired records. The request also should include a telephone number where you can be reached to discuss the request if we need additional information to locate records for you.

If you wish to make a public records request in person, please contact our Custodian of Records at (916) 492-3657 or CustodianOfRecords@insurance.ca.gov to schedule a time to meet. Our Custodian of Records is available to take your request during regular CDI business hours.

3. HOW LONG DOES IT TAKE TO REPLY TO A PUBLIC RECORDS REQUEST?

Most simple requests for public records can typically be fulfilled in less than 10 days. Within 10 days from the date the request is received, CDI will determine whether it has disclosable public records responsive to the request and will notify you of its determination. If the determination will not be made within 10 days due to unusual circumstances as defined in Government Code section 6253, CDI will notify you of the reasons for the delay and the date when the determination will be issued. CDI may request additional information if the records request is not specific enough to permit the identification of the requested records. If CDI determines that it has disclosable public records responsive to the request, the records will be made available as promptly as is reasonably practicable. While CDI will disclose identifiable and existing records (unless exempt from disclosure), CDI is not required to synthesize, manufacture, or summarize records, i.e., develop new records in response to a request.

4. WHAT WILL CDI'S RESPONSE TO A RECORDS REQUEST INCLUDE?

In responding to records requests, CDI will advise you, by mail, phone or e-mail as appropriate, of (1) the location, approximate date, and time at which the requested public records will be available; (2) if copies of records are requested, the cost of providing such copies; and, (3) which of the records requested are not subject to disclosure pursuant to applicable law. CDI will determine the form in which any requested computer data will be provided.

5. WHEN MAY PUBLIC RECORDS BE INSPECTED?

Public records are open to inspection during regular CDI business hours. However, the inspection of public records is subject to a rule of reason as to time and duration and must be consistent with the efficient functioning of CDI offices and follow the procedures set forth in the CDI "Guidelines for Accessing Public Records." CDI requests any person who wishes to inspect public records to telephone the Custodian of Records in advance and make an appointment to inspect records. CDI's policy is that records that are not exempt from disclosure will be open for public inspection with the least possible delay and expense to you.

6. IS THERE ANY FEE INVOLVED?

A requester must pay for the direct costs of duplication. Please see our [schedule of fees](#) for current duplication costs. Duplication of information transferred to a compact disc is \$20 per CD. Other external services, such as copying video and audio cassettes, large graphs, or archived board transcripts, will be made at the direct cost to you upon your consent. All payments required by the schedule must be presented to CDI in the form of a check made payable to the "California Department of Insurance".

7. WHAT RECORDS ARE NOT OPEN FOR INSPECTION?

In balancing the public's right to access public records with the recognized individual right of privacy and the need for CDI to be able to competently perform its duties, the Legislature has established certain categories of records which may be exempt from public disclosure.

Pursuant to the California Public Records Act and other state and federal law, categories of records that CDI is not required to produce include, but are not limited to:

- a. Preliminary drafts, notes, or inter-agency or intra-agency memoranda which are not retained by CDI in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure (Gov. Code, § 6254, subd. (a));
- b. Records pertaining to pending litigation to which CDI is a party, or to claims made pursuant to the Government Claims Act until such litigation or claim has been finally adjudicated or otherwise settled (Gov. Code, § 6254, subd. (b));
- c. Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy (Gov. Code, § 6254, subd. (c); Cal. Const., art. 1, §1);
- d. Applications, examination reports and related work papers, appraisals, written opinions, statements and other material (Gov. Code, § 6254, subd. (d)(1), (d)(2), (n); Ins. Code, §§ 735.5, 739.8, 925.3, 933, 1215.4, 1433, 1666.5, 1759.3, 1763, 11754, 12919);
- d. Preliminary drafts, notes or inter-agency or intra-agency memoranda prepared for CDI's use (Gov. Code, § 6254, subd. (d)(3));
- e. Records of complaints to or investigations conducted by CDI for law enforcement or licensing purposes (Gov. Code, §§ 6254, subd. (f), 11507.5, 11507.6; Ins. Code, §§ 1858.02, 1872.3, 1872.83, 1874.3; Evid. Code, §§ 1040, 1041);
- f. Trade secrets involving certain formulas, patterns, compilations, programs, devices, methods, techniques or processes that possess independent economic value and are subject to reasonable efforts to maintain their secrecy (Gov. Code, § 6254, subd. (k); Evid. Code, § 1060 et seq.); and,
- g. Legal memorandum, attorney-client communications and attorney work product, including but not limited to, contracts for legal services, legal opinions written for the Insurance Commissioner, legal advice prepared by staff attorneys for the Insurance Commissioner or other members of the staff, analyses of proposed, pending or enacted legislation prior to approval or disapproval by the Governor's Office (Bus. & Prof. Code, § 6149; Gov. Code, § 6254(k); Ins. Code, §§ 1067.11, 1077.3, 1215.2, 1215.8; Civ. Proc. Code, § 2018.030; Evid. Code, § 950 et seq.).

CDI also has the discretion to claim an exemption from public disclosure for records which do not qualify for a specific exemption but as to which it determines that the public interest served by not making the record public clearly outweighs the public interest served by disclosure, pursuant to Government Code section 6255.

CDI's determination to disclose a record which may otherwise be exempt from disclosure does not constitute a waiver with respect to any other records.

8. WHAT IF I WISH TO CHALLENGE CDI'S DETERMINATION NOT TO DISCLOSE RECORDS?

The California Public Records Act, Government Code section 6258, provides that any person may petition any court of competent jurisdiction to enforce the right to inspect or to receive a copy of any public record.

9. HOW DO I OBTAIN AN ANNUAL OR QUARTERLY STATEMENT?

Unofficial statements are available on the CDI website at:

<https://interactive.web.insurance.ca.gov/companyprofile/companyprofile>. To obtain an official copy, complete the required Photocopying / Certification Request Form which can be obtained online at: <http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/financial-filing-notices-forms/glb/>. Then mail the form to the address located in the upper left corner of the form along with your payment.

10. HOW DO I OBTAIN A FORM 700--STATEMENT OF ECONOMIC INTEREST?

Government Code section 81008(a) provides that the Statements of Economic Interests filed by designated employees are public records. You can inspect these forms during regular CDI business hours, by contacting the Custodian of Records. If you desire copies of these forms, Government Code section 81008(a) authorizes a copying fee of ten cents (\$0.10) per page and provides that the Filing Officer may charge a retrieval fee not to exceed five dollars (\$5) per request for copies of forms that are five or more years old.

11. HOW DO I REQUEST DOCUMENT CERTIFICATION?

A party can request that CDI's Custodian of Records certify a document that was created within CDI's ordinary course of business. The party seeking to authenticate a document should clearly identify any document requiring certification and pay a \$20 processing fee. The Custodian of Records will then locate an original copy of the document and certify that the document is an official CDI business record.

EXHIBIT 45

California Department of Insurance
ESSENTIAL FUNCTION DUTY STATEMENT
HRM-0025 (Revised 7/2016)

Classification Title Senior Legal Analyst	Branch/Division/Bureau Legal Division/Government Law Bureau
Working Title Senior Legal Analyst – Custodian of Records	Office/Unit/Section/Geographic Location Sacramento
Position Number (13 Digit) 413-130-5333-001	Conflict of Interest Position ☒ NO ☐ YES
Employee Name	Effective Date

BASIC FUNCTION:

Under the direction of the Assistant Chief Counsel and task direction of an attorney, the Senior Legal Analyst performs paralegal duties which are generally the most difficult, complex and analytical in nature. The Senior Legal Analyst serves as the Department's Custodian of Records, assists with the handling of Public Records Act requests, subpoenas and service of process and tracks their progress to ensure timely completion; performs more difficult legal analysis and makes recommendations to attorneys regarding assertions of privilege for Public Records Act requests, subpoenas, qui tams and service of process matters; performs legal research, prepares legislative histories, drafts legal briefs, exhibit books, memoranda and responses to public inquiries, prepares privilege logs, reviews files; serves in a lead capacity over other paralegals, prepares paralegal training material and trains other paralegals.

Occasional travel may be required within and/or outside the state of California via private or public transportation (i.e., automobile, airplane, etc.).

ESSENTIAL FUNCTIONS

40% Custodian of Records

Serves as the Custodian of Records for the Department when responding to Public Records Act requests, subpoenas, and service of process; reviews incoming mail to determine the information needed to respond to the requests; utilizes the Department's legal file tracking database and follows up with assigned attorneys to ensure that requests are answered in a timely and complete manner; performs advanced analytic review of files and distinguishes confidential information from public information; prepares privilege logs, copies files; maintains tracking system for reimbursement of fees for copying charged to requestor; drafts and finalizes certifications and declarations and composes final legal correspondence in response to inquiries from the public.

30% Document Collection, Review and Production

Operates in a lead capacity over other paralegals when receiving, processing and responding to requests for information, such as requests under the Public Records Act or subpoenas deuces tecum. While serving in a lead capacity, reviews and analyzes the Department's production of records, develops strategies and proposals to rectify problems with document productions, gathers documentation, reviews declarations, drafts various pleadings on the most complex issues, summarizes and categorizes deposition transcripts, creates systems for gathering and tracking litigation information.

20% Analysis and Recommendations

Reviews and summarizes files and makes recommendations to attorneys and Assistant Chief Counsel regarding public requests for information; prepares and distributes agendas and related materials for meetings; prepares sensitive administrative paperwork; and prepares responses to public inquiries.

MARGINAL FUNCTIONS

5% Legal Research

Assists in drafting legal briefs and memoranda relating to discovery and litigation concerning the Public Records Act, performs complex legal analysis of claims of privilege, completes legal research on procedural and substantive issues, and prepares case histories, legislative histories and other matters under the direction of an attorney.

5% Training

Provides instructional seminars to Department of Insurance paralegals and other Department staff, prepares paralegal training material concerning the duties of the Custodian of Records, and other agency information-related topics.

WORK ENVIRONMENT OR PHYSICAL ABILITIES

Meets multiple deadlines and performs well under pressure.

Travels periodically throughout the state or within the United States.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety Analyst.)

Employee Signature

Date

Printed Name

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Supervisor Signature

Date

Printed Name

California Department of Insurance
ESSENTIAL FUNCTION DUTY STATEMENT
HRM-0025 (Revised 7/2016)

Classification Title Legal Analyst	Branch/Division/Bureau Legal Division/Government Law Bureau
Working Title Legal Analyst – Public Records and Subpoenas	Office/Unit/Section/Geographic Location Sacramento
Position Number (13 Digit) 413-130-5237-002	Conflict of Interest Position ☒ NO ☐ YES
Employee Name	Effective Date

BASIC FUNCTION:

Under the general supervision of the Assistant Chief Counsel and task direction of an attorney, the Legal Analyst performs paralegal duties which are generally more difficult, complex and analytical in nature. The Legal Analyst shares the duties of the Custodian of Records and assists with the handling of Public Records Act requests, subpoenas and service of process. The Legal Analyst also tracks the progress of these matters to ensure timely completion; performs first-level legal analysis and makes recommendations to attorneys regarding assertions of privilege for Public Records Act requests, subpoenas, qui tams and service of process matters. The Legal Analyst assists in performing legal research, prepares legislative histories, drafts legal briefs, exhibit books, memoranda and responses to public inquiries, prepares privilege logs, and reviews files.

Occasional travel may be required within and/or outside the state of California via private or public transportation (i.e., automobile, airplane, etc.).

ESSENTIAL FUNCTIONS

40% Custodian of Records

Serves as the Custodian of Records for the Department when responding to Public Records Act requests, subpoenas, and service of process; provides professional service on behalf of the Department when interacting with the public concerning information requests; performs first-level legal analysis of claims of privilege, reviews incoming mail to determine which information is needed to respond to the requests; utilizes legal file tracking database and follows up with Department staff to ensure that requests are answered in a timely manner; performs first-level analytic review of files and distinguishes personal, confidential or non-public information from information that can be provided; prepares privilege logs, copies files; assists with updating tracking system for reimbursement of fees for copying charged to requestor; and composes final legal correspondence in response to inquiries from the public.

30% Document Collection, Review and Production

Assists other paralegal and attorney staff in receiving, processing and responding to requests for information, such as requests under the Public Records Act or subpoenas deuces tecum. Reviews and analyzes the Department's production of records, develops strategies and proposals to rectify problems with document productions, gathers documentation, redacts personal, confidential or non-public information, reviews declarations, drafts various pleadings on less complex issues, summarizes and categorizes deposition transcripts, creates systems for gathering and tracking litigation information.

20% Document Preparation and Other Office Duties

Prepares and distributes agendas and related materials for meetings; prepares travel expense claims and reimbursement documents; prepares responses to routine procedural inquiries; assists with ordering legal publications and ensures that printed library materials are up to date; requests and assists with payments to vendors for library orders.

10% Legal Research, Analysis and Recommendations

Reviews and summarizes files and makes recommendations to Assistant Chief Counsel regarding relevant laws and public requests for information; conducts legal research on procedural issues, case histories, legislative histories and other matters with the assistance of an attorney; assists in drafting legal briefs and memoranda relating to discovery and litigation concerning the Public Records Act; and performs legal analysis of claims of privilege.

WORK ENVIRONMENT OR PHYSICAL ABILITIES

Meets multiple deadlines and performs well under pressure.

Travels periodically throughout the state or within the United States.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety Analyst.)

Employee Signature

Date

Printed Name

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Supervisor Signature

Date

Printed Name

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On August 18, 2022, I served the foregoing document described as

**PETITIONER’S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE,
INJUNCTION, AND DECLARATORY RELIEF REGARDING VIOLATIONS OF THE
CALIFORNIA PUBLIC RECORDS ACT; DECLARATION OF BENJAMIN POWELL;
EXHIBITS 42–45**

on the interested parties in this action as listed in the attached service list by the following means:

Service List

Debbie Vorous
Daniel Robertson
Deputy Attorney General
Office of the Attorney General
1300 I Street, 10th Floor
Sacramento, CA 95814
Debbie.Vorous@doj.ca.gov
Daniel.Robertson@doj.ca.gov
Attorneys for Respondents/Defendants Ricardo Lara, et al.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 18, 2022 at Los Angeles, California.

Kaitlyn Gentile
Kaitlyn Gentile