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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rate Applications of

State Farm General Insurance
Company,

Applicant.

File Nos.: PA-2024-00011, PA-2024-00012,
PA-2024-00013

**INTERVENOR CONSUMER
WATCHDOG'S RESPONSE TO STATE
FARM'S MOTION TO PROTECT WORK
PRODUCT AND FOR LEAVE TO
IDENTIFY EXPERT WITNESSES**

1 **I. INTRODUCTION**

2 This motion turns on a simple point. The Amended Scheduling Order set August 8, 2025
3 as the date when “witness designations [are] due.” Both Consumer Watchdog and the
4 Department complied with the Amended Scheduling Order. State Farm did not: it withheld two
5 experts it knew of prior to August 8, and that it admits are “likely to testify.” On this record,
6 State Farm’s work-product concerns—whatever their scope—are inapposite and did not
7 authorize noncompliance with the court-ordered designation deadline. On the already
8 compressed schedule, each lost day is prejudicial to Consumer Watchdog, the Department, and
9 the orderly administration of the hearing. Orderly procedure—not tactical surprise or
10 advantage—must govern here. The Court should deny State Farm leave and hold State Farm to
11 the schedule they agreed to and that the Court adopted.

12 State Farm’s request to untimely designate witnesses is not based on a reasonable error or
13 mistake. It reflects a strategic choice to hold back expert identities to purportedly preserve “work
14 product,” then seek leave after the fact. If protecting work product was State Farm’s actual
15 concern, it had clear procedural avenues to protect its alleged work product while still complying
16 with the Court’s scheduling order.

17 State Farm tilts at a position Consumer Watchdog has never taken. State Farm asserts,
18 without citation or specificity, that Consumer Watchdog demanded it “must give up work
19 product protection and designate such witnesses now.” This never happened. But the scope of
20 work product protection is ultimately irrelevant here – State Farm presents no authority that a
21 claim of work product protection suffices to excuse noncompliance with a clear witness
22 designation date stated in a scheduling order.

23 State Farm’s position reduces to this: a self-asserted work-product concern, which it did
24 not bother to timely raise with the Court, somehow permits it to decide that it is unilaterally
25 excused from compliance with a clear designation date. It does not. It is not even clear to
26 Consumer Watchdog that there is a genuine current work-product dispute between the parties;
27 State Farm has never met-and-conferred on the issue with Consumer Watchdog. But if State
28 Farm thought there was a genuine issue that was preventing it from meeting its witness

disclosure obligation, it had obvious avenues—seek relief before August 8; designate names while preserving objections to opinion work product; seek a protective order limited to consultant work, and more—to raise its concerns. It pursued none. Late disclosure should be denied.

II. BACKGROUND

The original June 3 Scheduling Order entered in this proceeding called for a witness designation date of August 1. After meeting and conferring during early summer, the Parties submitted a proposed Amended Scheduling Order on July 15, which was adopted by the Court on August 7. The Amended Scheduling Order set August 8 as the deadline for “witness designations.” Both Consumer Watchdog and the Department complied with that deadline.¹ State Farm provided a partial list of witnesses on August 8, but stated it was withholding the identities of two of its experts. Shortly before submitting its witness list, State Farm submitted a letter to the Court claiming the withholding of identities was “to preserve work product protection for consultation as to settlement possibilities,” and stating that Consumer Watchdog had taken the position that “State Farm General must give up work product protection and designate such witnesses now.” To be clear, Consumer Watchdog did not take this position or make this demand. On August 11, Consumer Watchdog submitted a letter to the Court objecting to State Farm’s failure to designate all its witnesses, while clarifying that it was not seeking to “abrogate legitimate work-product protections.”

The Court ultimately issued an order on August 12, finding that it was “unclear whether the State Farm is presently seeking any form of relief” and ordering State Farm to file “a refined motion requesting specific relief.” (Order Regarding Motion Deadlines and Scheduling of Consolidated Hearing, p. 2.) On August 13, State Farm told the Parties that it was willing to disclose its withheld expert designations if the Parties agreed that work performed by experts as “consultants” would be subject to work product protection. (SFG Motion, Ex. D, pp. 2-3.)

¹ The Department informed the Parties on August 8 that it would be seeking leave to late-file its witness designations, and did so only one business day later, on August 11.

1 Consumer Watchdog objected to State Farm’s attempt to tie its failure to timely designate its
2 witnesses to the separate issue of work product protection. (*Id.*, Ex. D, p. 1.)

3 **III. LEGAL STANDARD**

4 These proceedings are within the Court’s discretion to manage and to ensure that justice
5 is served. (See 10 CCR § 2654.1, subd. (a).) The Court should look to civil expert-disclosure
6 rules for guidance because they reflect well-developed legislative and common-law compromises
7 about fairness, timely disclosure, avoidance of surprise, and efficient case management.

8 Under those civil rules, when a party misses an expert-exchange deadline, relief requires
9 (1) no prejudice and (2) a failure caused by “mistake, inadvertence, surprise, or excusable
10 neglect.” (Code Civ. Proc., §§ 2034.710–.720.) Relief will not be granted where the failure to
11 designate was the result of “gamesmanship.” (*Cottini v. Enloe Medical Center* (2014) 226
12 Cal.App.4th 401, 422.) As stated by the California Supreme Court: “Late disclosure of experts ...
13 frustrates the very purposes of the discovery statutes, and should be permitted, with appropriate
14 safeguards and limits, only when absolutely necessary to avoid a miscarriage of justice.” (*Bonds*
15 *v. Roy* (1999) 20 Cal.4th 140, 147, quotations omitted.) The same fairness concerns should apply
16 here.

17 **IV. ARGUMENT**

18 **A. State Farm Was Not Justified in Withholding the Identities of Its Likely** 19 **Expert Witnesses.**

20 The Scheduling Order states: “witness designations due” on August 8. That is a
21 deadline—not a rolling disclosure obligation. State Farm never proposed otherwise while the
22 Parties conferred or when the Court adopted the Order. It cannot recast a fixed date into a “when
23 we are ready” regime after the fact. Choosing silence in the face of a clear deadline is not a
24 reasonable mistake; it is a tactical decision that the rules do not credit.

25 Nevertheless, State Farm claims that the amended “schedule does not suggest that the
26 August 8 date was intended as a final deadline for identifying witnesses.” (SFG Motion, p. 5.)
27 But the Amended Scheduling Order states in plain English that August 8 is when “witness
28 designations [are] due,” i.e., a deadline. State Farm tries to justify its claim with arguments about
testimony being filed weeks after the witness designation date (SFG Motion, p. 5), but that is a

1 non-sequitur—the schedule has disclosure first, testimony following. Moreover, State Farm’s
2 supposed understanding was never presented to the Parties while meeting and conferring about
3 the Amended Scheduling Order (which included several status conference appearances with the
4 Court). If State Farm did not believe that August 8 made sense as the date for witness
5 designations, it had ample opportunity to raise that issue, whether during the meet and confer
6 process or during the several-week period in between the Parties submitting the proposed
7 amended scheduling order and the Court adopting the order. That State Farm now claims it
8 idiosyncratically interpreted the Amended Scheduling Order to mean something other than what
9 its plain language states is not a basis for excusing its failure to designate all its known witnesses.
10 This was not a reasonable or honest mistake.

11 State Farm’s arguments about not knowing *exactly* who will testify at the hearing are
12 unavailing. No party is ever required to call every witness listed in its witness designations, and
13 its submitted list, like Consumer Watchdog’s and CDI’s, stated it was providing “witnesses who
14 may provide written testimony and who may testify at the hearing on this matter.”

15 State Farm’s motion represents that on August 8 had had not decided whether its
16 “consulting” experts would testify, but the record shows otherwise. State Farm claims it did not
17 disclose the expert consultants’ identities on August 8 because it did not know who it would call.
18 (SFG Motion, pp. 2-3.) But less than two weeks later, State Farm represented that its undisclosed
19 experts are “likely to testify.” (*Id.* at p. 6.)

20 State Farm also tries to somehow link its nondisclosure to settlement. (*Id.* at pp. 1, 3, 5.)
21 But no settlement discussions or developments occurred between August 8 (when witness
22 designations were due) and August 18 (when State Farm confirmed the withheld experts were
23 “likely to testify”), or in the weeks before or after that could have changed its calculus. Indeed,
24 State Farm referred to its choice as “utiliz[ing] the device of continuing to hold the expert as a
25 consultant, rather than previewing that the witness will also be a testifying witness.” (*Id.*, Ex. D,
26 p. 1.) On this record, the fair reading is that, as of August 8, State Farm knew these experts were
27 likely to testify yet withheld their identities anyway. That tactical choice is not a basis to permit
28 late designation.

1 State Farm’s efforts to analogize its positions and conduct with Consumer Watchdog’s
2 are unavailing. (*Id.* at p. 2.) Consumer Watchdog is not arguing that State Farm could not reserve
3 the right to later seek to introduce additional witnesses in response to new factual developments
4 or for rebuttal purposes, as both Consumer Watchdog and CDI did.² But State Farm did not
5 merely reserve the right to introduce additional hypothetical witnesses – it expressly refused to
6 disclose the identities of experts it was engaged with and that it admits are “likely to testify.”
7 Consumer Watchdog’s August 8 filing identifies all currently-known witnesses it intends to call
8 as experts.

9 The facts and Motion make one point clear: at minimum, as of August 8, State Farm
10 knew that it was likely to call its ‘consulting’ experts as testifying witnesses, but it chose to
11 withhold their identities. This choice was not the “result of mistake, inadvertence, surprise, or
12 excusable neglect.” Nor, as further discussed below, do State Farm’s alleged work-product
13 concerns reflect a reasonable mistake of law. Therefore, State Farm should not be permitted to
14 now untimely designate its two withheld expert witnesses.

15 **B. Prejudice Is Substantial and Compounding on a Compressed Schedule.**

16 The purpose of exchanging expert witness information is to enable all Parties to
17 adequately prepare their positions while avoiding unfair surprise. Preparation time is
18 irreplaceable. Expert identity starts the real work, triggering core preparation tasks—scoping
19 cross-examination, retaining rebuttal expertise, preparing targeted subpoenas (if necessary), and
20 aligning direct/rebuttal testimony. Pre-filed direct testimony deadlines are fixed and tight. Any
21 late designation compresses or nullifies the remaining preparation windows. Lost days now
22 cannot be restored – the hearing date remains set for December 2.

23
24
25
26 ² While this language was not ultimately repeated in the Court’s issued scheduling order, the
27 Parties’ May 13 Joint Scheduling Conference Statement specifically recognized the possibility of
28 “supplemental witness designations for rebuttal testimony.” (See also 10 CCR § 2614.12
[noncompliance hearing regulation recognizing right to designate supplemental witnesses “on a
subject to be covered by a witness designated by an adverse party to the exchange, if the party
supplementing a witness list has not previously designated a witness to testify on that subject”].)

1 All other parties met the deadline in reliance on the order.³ Allowing State Farm to now
2 designate witnesses it was already aware were likely to testify on August 8 would only reward
3 noncompliance and penalize diligence, undermining the scheduling order and the hearing itself.
4 That State Farm offered to disclose the identities of its withheld witnesses in the week after
5 witness designations were due does not change the calculus because, as discussed below, State
6 Farm’s offer was conditioned on agreement on an unrelated work product issue.

7 **C. State Farm’s Work Product Argument Is a Red Herring – Not a Basis to**
8 **Excuse a Missed Deadline.**

9 The question is not whether consultant work, prepared at the direction of attorneys in
10 support of legal analysis or litigation may be protected as work product—it often is (by
11 agreement or by order)—but whether that concern excused missing a witness-designation
12 deadline.⁴ It did not. Identity is different from opinion. The Scheduling Order required names; it
13 did not compel disclosure of consultant analyses or mental impressions.

14 Even crediting State Farm’s professed work-product concerns, its Motion ignores the
15 straightforward options that would have preserved those arguments without violating the
16 scheduling order. State Farm could have sought tailored relief from the Court before August 8; it
17 did not. As State Farm acknowledges (SFG Motion, p. 1), the August 8 date was not a surprise –
18 the Parties had agreed to that date back on July 15, and thus State Farm had more than sufficient
19 time to seek some sort of relief from its witness disclosure obligation. It could have disclosed
20 identities while reserving opinion-work-product objections; sought a targeted protective order;
21 or raised any work-product objections in response to Consumer Watchdog’s motions to compel
22 if those issues were truly implicated. None of that required missing the witness designation
23 deadline.

24 ³ As noted *ante*, the Department, with leave of the Court, filed its witness designations on August
25 11.

26 ⁴ While work product is generally protected, not everything is work product. The “work papers”
27 of State Farm actuaries, analysts, accountants, or others do not qualify as “attorney work
28 product” simply because they relate tangentially to State Farm’s financial condition or rate
request. Only attorney opinions are absolute; factual matter is qualified, if protected at all. (Code
Civ. Proc § 2018.030.) Consumer Watchdog’s over-designation concerns are reserved—the
scope question is not before the Court today.

1 Disclosing the witnesses identities on August 8 would not have foreclosed appropriate objections
2 to any cross-examination that ventures into protected ground at the hearing. Even if its concerns
3 were genuine, the course State Farm chose was not..

4 Further, State Farm’s concerns about work product waiver based on its consultants’
5 identities are highly speculative. As State Farm concedes, a non-testifying consultant’s work is
6 ordinarily covered by work product (SFG Motion, pp. 3-4.); contrary to State Farm’s
7 representations, Consumer Watchdog has never claimed the doctrine does not generally apply—
8 only that it would reserve its right to challenge overbroad or improper claims. There is also no
9 basis to believe this Court would find a complete work-product waiver from designation alone,
10 especially where the witness might not testify. That extreme hypothetical speculation cannot
11 support noncompliance with a clear deadline.

12 The *Hernandez* case cited by State Farm supports Consumer Watchdog’s position. That
13 case concerned an appeal from a trial court order requiring one party to disclose its expert
14 witnesses before the other parties. (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285,
15 296.) The appellate court found the trial court’s order improperly deviated from the simultaneous
16 witness exchange requirement, which promotes fairness by “plac[ing] the Parties on roughly
17 equal footing.” (*Id.* at p. 297, quotations omitted.) The salient issue here is not whether the
18 identities of expert consultants are subject to work product protection, but whether State Farm
19 was justified in refusing to provide the names of known likely testifying experts on the witness
20 designation date. *Hernandez* supports finding that such refusal was not justified.

21 **D. Independent Procedural Defect: No Adequate Meet-and-Confer.**

22 As the correspondence attached to State Farm’s Motion shows, State Farm did not raise
23 the work product issue as a reason why it was not disclosing all of its witnesses before filing its
24 witness designation list. (SFG Motion, Ex. A.) This was contrary to the Case Management
25 Order, which requires the Parties to meet and confer about “any preliminary matter that becomes
26 disputed.” (Case Management Order, p. 3.) State Farm was aware on August 6 that Consumer
27 Watchdog disagreed with its intention not to disclose all its witnesses, but rather than seeking to
28 meet and confer or identifying its work product concerns, State Farm simply stated: “CW will

1 take whatever action it believes it must.” (SFG Motion, Ex. A, p. 2.) This failure to adequately
2 confer should alone be sufficient to deny State Farm’s request for relief.

3 State Farm’s post-deadline approach was to link witness-disclosure obligations to work-
4 product protections. It asked asking Consumer Watchdog to overlook the missed deadline and
5 trade a complete witness designation to resolve work-product issues. (See SFG Motion, Ex. D.)
6 But as discussed *ante*, work-product issues—if any—are distinct from the duty to designate
7 witnesses. Consumer Watchdog reasonably declined to trade a makeweight work-product issue
8 for the baseline fairness in the agreed scheduling order—a timely, symmetrical exchange of
9 designations—and said so by email. (SFG Motion, Ex. D, pp. 1–2.).

10 **E. Pattern of Delays and Prejudicial Abuses.**

11 More broadly, this is not first time that State Farm has departed from established
12 procedures in this matter. Consumer Watchdog detailed issues that arose in the context of the
13 April 8 interim rate hearing in its “Objections, Motion to Strike, and Notice of Motion for
14 Sanctions” filed on April 7. Among those issues were State Farm’s failure to provide documents
15 necessary to evaluate its rate applications over the half-year period before it made its interim rate
16 request; substantial late production of documents on Consumer Watchdog only hours before the
17 interim rate hearing; failure to provide supporting declarations with the interim rate Stipulation;
18 and submitting a revised Stipulation only one business day before the start of the hearing.

19 The Court elected not to impose sanctions or other penalties at the interim rate hearing,
20 due at least in part to the exigencies of that hearing. Without revisiting that matter, enforcing the
21 existing witness-designation deadline here by not allowing State Farm to amend its witness list
22 will promote orderly case management and ensure the dates in the Amended Scheduling Order
23 are observed. Process and rules should apply to all parties in this proceeding, including State
24 Farm.

25 Throughout this proceeding, State Farm—at times echoed by the Department—has
26 suggested that such negative effects on the California insurance market would occur if State
27 Farm is not given a higher rate than any and all procedural failings on its part must be excused.
28

1 This “too big to fail” argument is not a legal argument. The Court should hold State Farm to the
2 designation deadline that State Farm itself agreed to, and the Court ordered.

3 **V. CONCLUSION**

4 For the reasons stated above, Consumer Watchdog respectfully requests that the Court
5 reject State Farm’s late proffer of expert witness identities. Consumer Watchdog takes no
6 position on State Farm’s first request for relief, which, as discussed above, to its knowledge, is
7 not an actual matter under dispute here (or if it is, the scope is undefined). State Farm should be
8 held to the schedule it agreed to.

9
10 DATED: August 22, 2025

Respectfully submitted,

11 Harvey Rosenfield
12 Pamela Pressley
13 William Pletcher
14 Benjamin Powell
15 Ryan Mellino
16 CONSUMER WATCHDOG

17 By: /s/ Ryan Mellino
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**PROOF OF SERVICE
BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,
EMAIL TRANSMISSION AND/OR PERSONAL SERVICE**

State of California, City of Los Angeles, County of Los Angeles

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 6330 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On August 22, 2025, I caused service of true and correct copies of the document entitled

**INTERVENOR CONSUMER WATCHDOG'S RESPONSE TO STATE FARM'S MOTION
TO PROTECT WORK PRODUCT AND FOR LEAVE TO IDENTIFY EXPERT
WITNESSES**

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

- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by transmitting via my electronic service address (ryan@consumerwatchdog.org) the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
- ☐ by electronically filing the document(s) with the Clerk of the Court by causing the documents to be sent to One Legal, the Court's Electronic Filing Services Provider for electronic filing and service. Electronic service will be effected by One Legal's case-filing system at the electronic mail addresses indicated on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 22, 2025 at Los Angeles, California.



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