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9 **BEFORE THE INSURANCE COMMISSIONER**  
10 **OF THE STATE OF CALIFORNIA**

11  
12 In the Matter of the Rate Application of  
13 STATE FARM GENERAL INSURANCE  
14 COMPANY,  
15 Applicant.  
16  
17  
18  
19

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

**CDI'S OPPOSITITON TO STATE FARM  
GENERAL INSURANCE COMPANY'S  
MOTION FOR PROTECTIVE ORDER**

Hearing Date: Tuesday, September 16, 2025

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## INTRODUCTION

Applicant State Farm General Insurance Company (“SFG”) moves for a protective order to “protect confidential, proprietary and trade secret information belonging to [SFG].” (SFG Motion for Protective Order (“MPO”) at 1.) Although the California Department of Insurance (“CDI”) does not oppose entry of a protective order in this case, despite meeting and conferring on the issue, the parties have not been able to agree on acceptable terms for a stipulated protective order.

That is because SFG seeks to manipulate the protective order process. In contrast to the requirement under Proposition 103 that “all information provided to the commissioner pursuant to [Insurance Code section 1861 et seq.] [...] be available for public inspection,” SFG seeks a protective order that would permanently seal information, even if ultimately introduced as evidence in the rate hearing and relied on by the administrative law judge (ALJ) and Commissioner in issuing a final rate order.

SFG’s Motion should be denied. Protective orders during discovery are designed to “facilitate discovery and the free exchange of information,” not to permanently seal alleged-confidential documents, sight unseen, in violation of existing law. This is especially true in Proposition 103 rate hearings, where there is an “absolute rule” in favor of public disclosure under California Insurance Code (“CIC”) section 1861.07, and dicta from *State Farm v. Garamendi*<sup>1</sup> does not abrogate this public disclosure mandate. Finally, CDI cannot enter into a stipulated protective order that would limit the Commissioner’s statutory discretion to make examination reports public under CIC section 735.5. (See SFG’s *proposed* protective order, attached as Ex. A to Wade Decl.)

Based on all of the foregoing, SFG’s request that this Court enter its proposed protective order should be denied. CDI remains willing, however, to enter into the same or similar stipulated protective order it previously entered into with SFG and intervenor Consumer Watchdog (“CW”) during the prior rate hearing with SFG in 2015-16, and submits its own proposed stipulated protective order here.

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<sup>1</sup> (2004) 32 Cal 4th 1029 (“*Garamendi*”).

1 **I. FACTUAL BACKGROUND**

2 **A. The Parties Met and Conferred on a Stipulated Protective Order, but**  
3 **Were Unable to Reach Agreement**

4 On June 4, 2025, SFG counsel sent a draft stipulated protective order to the Parties. (*See*  
5 email thread May 29-June 30, 2025, attached as Ex. B to Wade Decl.) Both CDI and CW  
6 objected to the form of stipulated protective order proposed by SFG. On June 30, 2025, CDI  
7 counsel informed SFG that it could not sign SFG’s proposed stipulated protective order because  
8 it, *inter alia*, proposed to improperly limit the Commissioner’s discretion under section 735.5 to  
9 publish exams conducted pursuant to section 730. (*Id.* at Ex. B to Wade Dec.)

10  
11 Instead, CDI’s counsel stated:

12 At this time, we agree with CWD’s position that: “we should proceed as [SFG’s counsel]  
13 previously suggested to take it one step at a time and deal with disputes over specific  
14 document requests and objections through the meet and confer and motion to compel  
15 process. (*Id.*)

16 As this Court is aware, CDI, SFG and CW have previously proceeded to hearing on a  
17 contested rate application. During the last SFG rate hearing before an ALJ, the parties stipulated  
18 to a protective order that conditionally sealed documents. (*See* Stipulated Protective Order  
19 (“SPO”) in *In the Matter of the Rate Application of State Farm General Insurance Company*, File  
20 No. PA-2015-00004 (“PA-2015-00004”), attached as Ex. C to Wade Decl.) CDI proposes a  
21 similar protective order here. (*See* CDI’S PROPOSED PROTECTIVE ORDER attached as  
22 Exhibit E to Wade Decl.) SFG devotes a large part of its motion to explaining why the prior form  
23 of protective order is not sufficient, based in large part on its dissatisfaction with the fact that  
24 certain documents in that proceeding were ultimately determined not to be entitled to  
25 confidentiality and to be subject to disclosure under Proposition 103. But, as set forth herein,  
26 SFG’s dissatisfaction with the ALJ’s ruling in *another* proceeding is not a basis to unlawfully seal  
27 all documents SFG contends here are confidential, and to do so without an opportunity for  
28 meaningful judicial review.

## II. ARGUMENT

### A. The Protective Order SFG Seeks Is Contrary to Proposition 103's Transparency Requirements and Impermissibly Seeks To Seal Documents In Perpetuity Without Judicial Review

SFG “asks this Court to issue a protective order stating that State Farm General’s confidential and statutorily privileged documents will remain under seal, *regardless of whether these documents are submitted as evidence in this rate hearing proceeding.*” (SFG Motion, at p. 7:12-7:15, emphasis added.) As a threshold issue, there is no authority to support SFG’s request to permanently seal documents based solely upon its assertion of confidentiality, before any party or even the Court have first reviewed the alleged-confidential documents to determine whether they are in fact entitled to protection. Additionally, the parties in a Proposition 103 rate proceeding are subject to a public transparency mandate. CIC section 1861.07 requires that “[a]ll information *provided to the commissioner* pursuant to this article *shall be available for public inspection.*” (Emphasis added.) Documents and information admitted into evidence as part of a full rate hearing on SFG’s applications will necessarily be “provided to the commissioner” for his review of any proposed decision by the ALJ and issuance of a final rate order. Accordingly, SFG’s motion should be denied.

### B. SFG’s reliance on Regulation 2655.1(e) is misplaced.

Title 10 of the California Code of Regulations (“Regulation”) section 2655.1, contained within the regulations related to the “Rules and Practice of Procedure for Rate Proceedings,” governs discovery procedures in rate hearings. Regulation 2655.1(e) permits the ALJ “in appropriate circumstances,” to “order[] in camera inspection of documents *or enter[] a protective order for documents not subject to California Insurance Code section 1861.07.*” (Emphasis added.) Here, SFG cites Regulation 2655.1 as authority for a protective order that would seal documents in perpetuity. But Regulation 2655.1 clearly states that a protective order may only be issued for documents that are not subject to section 1861.07. Thus, Regulation 2655.1(e) provides authority for a protective order that provides conditional confidentiality for documents produced in discovery, but leaves open the possibility that such documents must be made public if admitted into evidence and “provided to the commissioner” following a full rate hearing. In

1 short, Regulation 2655.1 on its face does not provide authority for a protective order that  
2 contravenes CIC section 1861.07.

3 **C. SFG Asks This Court to Ignore Well-Settled Law That Protective Orders**  
4 **Are Designed to Facilitate Discovery, Not Seal Documents in Perpetuity.**

5 As a general matter, protective orders should be purpose-built and narrowly tailored to  
6 facilitate discovery, not to effect changes in applicable law or permanently seal documents. In  
7 *Mercury Interactive Corp. v. Klein*, the Court of Appeal explained:

8 Parties to civil litigation, recognizing the broad policies favoring discovery, often  
9 choose to avoid costly and time-consuming motion practice by entering into  
10 stipulations for protective orders that permit production but limit disclosure and  
11 use of discovered information deemed by the producing party to contain  
12 confidential, proprietary, and/or private information. They thereby defer or obviate  
13 the need for specific court determination as to the propriety of designating  
14 materials confidential unless and until that designation is challenged.<sup>2</sup>

15 This makes practical sense; a protective order should be used to avoid unnecessary  
16 discovery battles and excessive motion practice while a case proceeds to trial. But a protective  
17 order should not be used to make final determinations about the confidentiality of documents  
18 before those documents have even been produced in discovery or reviewed by the court, let alone  
19 before the parties have determined whether those documents are relevant and should be  
20 introduced into evidence at hearing.

21 **D. Section 1861.07 Applies in 1861.08 Rate Hearings, And *Garamendi* Does**  
22 **Not Hold Otherwise**

23 The California Supreme Court affirmed an “absolute rule” in favor of public disclosure,  
24 holding that section 1861.07 applies to *all* information provided to the Commissioner as part of  
25 Proposition 103 rate proceedings, and that trade secret protections did not apply.<sup>3</sup> CDI interprets  
26 this to mean that CIC section 1861.07 requires that documents which become part of the  
27 administrative record in a Proposition 103 rate hearing must be made public because they are  
28 necessarily *provided to the Commissioner* when the proposed decision is transmitted from the  
ALJ to the Commissioner.

<sup>2</sup> 158 Cal.App.4th 60, 98-99 (citations omitted); *see also* Ex. D to Wade Decl., *infra*.

<sup>3</sup> *Garamendi*, 32 Cal.4th at 1042-1043, 1047.

1 While acknowledging neither the Commissioner nor Courts have ruled on the issue (see  
2 MPO, p. 14, fn. 11), SFG argues documents protected by trade secret or other specific statutes are  
3 not subject to section 1861.07's transparency requirements when introduced in a section 1861.08  
4 rate hearing. To support this theory, SFG relies on dicta from *Garamendi*:

5 Finally, the fact that insurers may invoke the trade secret privilege in the public hearing  
6 process established by Proposition 103, pursuant to Insurance Code section 1861.08, does  
7 not dictate a different result. There is nothing anomalous about precluding insurers from  
8 invoking the trade secret privilege after they have already submitted trade secret  
9 information to the Commissioner pursuant to a regulation validly enacted under article 10  
10 (citations omitted), while permitting them to invoke the privilege in response to a request  
11 for information in a public rate hearing. Insurance Code section 1861.07 merely requires  
12 public disclosure of "information provided to the commissioner pursuant to" article 10.<sup>4</sup>

13 But, this language is not a holding, and the *Garamendi* case did not arise from a rate  
14 proceeding. Rather, *Garamendi* arose out of a regulation (2646.6) requiring insurers to report  
15 certain data to the Commissioner, outside of any rate application.

16 Regardless, any discussion over whether section 1861.07 applies is premature here. No  
17 alleged-confidential documents have yet been produced, and the parties are arguing over  
18 hypotheticals. CDI is willing to enter into a stipulated protective order that provides conditional  
19 confidentiality of alleged-privileged documents produced in discovery, but any protective order  
20 should leave open the rights of CDI and other parties to argue an "absolute rule" in favor of  
21 disclosure applies to unseal any such documents should they ultimately be introduced into  
22 evidence in the rate hearing and thus "provided to the commissioner" under section 1861.07.

23 **E. The Prior Rate Hearing Demonstrates the Importance of Judicial Review**  
24 **Before Parties Agree to Permanently Seal Documents.**

25 Even if insurers may invoke the trade secret privilege in the public hearing process over the  
26 provisions of CIC section 1861.07, this still does not mean that documents, sight unseen, may be  
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28 <sup>4</sup> *Garamendi*, 32 Cal.4th at 1039.

1 sealed in perpetuity based solely upon the producing party's claim of confidentiality. In fact, in  
2 the writ proceeding following the confidentiality dispute in PA-2015-00004, the alleged-  
3 confidential documents were ultimately determined to be properly unsealed not based upon CIC  
4 section 1861.07 but because both the ALJ and the trial court in the writ proceeding determined, in  
5 relevant part, that the documents were not entitled to any trade secret protection. As the Court of  
6 Appeal noted:  
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8       The parties had entered a stipulated protective order to 'facilitate discovery and the free  
9 exchange of information ....' The order permitted the parties to designate documents as  
10 confidential and required them to move to seal those materials permanently. SFG  
11 subsequently filed a motion to seal... The ALJ denied SFG's motion to seal. The ALJ found  
12 in part that even if trade secret protection applied to rate hearings under Proposition 103,  
13 SFG had not "met its burden in demonstrating the elements required for trade secret  
14 protection" including because it did "not identify the nature of the harm threatened by  
15 public disclosure of most documents." It further found public interest would justify  
16 disclosure regardless.<sup>5</sup>

17       In other words, the stipulated protective order in the prior 2015-16 SFG rate hearing  
18 worked as it was intended. SFG produced thousands of alleged-confidential documents in  
19 discovery. The vast majority of such documents were not found to be relevant, were not admitted  
20 as evidence in the rate hearing, and were ultimately destroyed by the parties without ever being  
21 made public. Only a handful of alleged-confidential documents admitted into evidence were  
22 unsealed. As to those documents, the ALJ found, "Even if trade secret privileges applied to rate  
23 hearings, the ALJ does not find that Applicant met its burden in demonstrating the elements  
24 required for trade secret protection,"<sup>6</sup> and this finding was upheld on writ review. There is no  
25 reason a similar protective order procedure should not be followed in this matter.<sup>7</sup>

26       <sup>5</sup>*State Farm General Insurance Company v. Lara* (2021) 71 Cal.App.5th 197, 204-205.  
27 This was an appeal arising out of the trial court's award of fees under CIC section 1861.10 to  
28 intervenor CW because it made a substantial contribution in the writ proceeding on the  
confidentiality issue.

<sup>6</sup> Final Rulings on Motion to Seal, Admission of Exhibits, Closing Evidentiary Hearing,  
and Briefing, p. 9, issued March 3, 2016, in PA-2015-00004.

<sup>7</sup> SFG states in its MPO that it is "...willing to propose a draft protective order, in

(continued...)

1           **F.     SFG’s Proposed Protective Order Would Improperly Limit the**  
2           **Commissioner’s Authority to Make Exam Reports Public Under CIC**  
3           **section 735.5.**

4           As discussed above, the Parties met-and-conferred regarding a proposed stipulated  
5           protective order. (*See* Ex. B to Wade Decl.) SFG circulated to the Parties a draft stipulation on  
6           June 4, 2025. (*Id.*, *see also* Ex. A to Wade Decl. at p. 2, ¶ e., lines 11-16.) CDI declined to sign  
7           SFG’s draft stipulated protective order because:

8           “The draft PO prohibits the Commissioner from making public certain documents that the  
9           Commissioner is expressly allowed by code to use and make public. For example, the draft  
10          PO lists Ins. Code section 735.5 as Code Protected. 735.5 expressly provides that:

11                       Nothing contained in this article shall be construed to limit the Commissioner’s  
12                       authority to use and, if appropriate, to make public any final or preliminary  
13                       examination report or company workpapers or other documents....

14          Yet, SFG’s draft PO, provides: “The Parties agree that they shall not argue in this  
15          Proceeding or in any ancillary proceeding (e.g., actions in Superior Court arising from this  
16          Proceeding) that Code Protected Material designated pursuant to this Protective Order is subject  
17          to public disclosure, including under Cal. Ins. Code § 1861.07 or otherwise.” Thus, SFG’s draft  
18          PO appears to take away the Commissioner’s statutory right to make exam results and related  
19          documents public.”

20          While CDI does not plan at this time to make any particular exam reports public, CDI  
21          cannot enter into a stipulated protective order that seeks to improperly limit the Commissioner’s  
22          statutory discretion under his exam authority.

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26          \_\_\_\_\_  
27          consultation with the other parties.” (SFG MPO at p. 33, lines 14-15.) CDI remains willing to  
28          enter into a stipulated protective order that is the same or substantially similar to the stipulated  
        protective order entered in PA-2015-00004.

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**CONCLUSION**

For the foregoing reasons, SFG’s Motion should be denied, and this Court should enter a Protective Order in the form proposed by CDI.

Dated: September 5, 2025

*Daniel Wade*  
\_\_\_\_\_  
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