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12  
13 **BEFORE THE INSURANCE COMMISSIONER**  
14 **OF THE STATE OF CALIFORNIA**

15 In the Matter of the Rate Applications of  
16 STATE FARM GENERAL INSURANCE  
17 COMPANY,  
18 Applicant.

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

21 **THE CALIFORNIA DEPARTMENT OF  
22 INSURANCE'S OPPOSITION TO  
23 CONSUMER WATCHDOG'S MOTION  
24 TO COMPEL**

25 Hearing Date: 9/16/2025  
26 Hearing Time: 1:00 p.m.

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1       **I. INTRODUCTION**

2       The California Department of Insurance (“CDI” or “Department”) opposes the motion to  
3       compel by intervenor Consumer Watchdog (“CW”) because it seeks documents that are either  
4       irrelevant, privileged, protected by the deliberative process and/or statutorily required to be kept  
5       confidential. Instead of seeking to make its own contribution to this matter by having its actuaries  
6       analyze State Farm General’s (“SFG”) publicly filed rate applications and relevant data it obtains  
7       from SFG through discovery, CW instead wants to look at the Department’s internal  
8       communications regarding this matter. But based on important public policy considerations,  
9       codified in statute by the legislature, CDI’s internal communications and deliberations are  
10      protected from disclosure. Importantly, in its meet and confer letter filed the same day it filed this  
11      motion to compel, CW seems to admit that its overly broad discovery into CDI’s internal  
12      communications is intended not to determine information relevant to disputed facts and issues in  
13      this rate hearing, but rather to look for the theoretical existence of improper *ex parte*  
14      communications. However, there is no evidence that such communications exist. Given that, it is  
15      not appropriate to require CDI to undertake extensive investigation, document review,  
16      production, and privilege logging to “prove a negative” that has nothing to do with the factual  
17      matters at issue in this administrative rate hearing. Based upon all of the foregoing, CW’s motion  
18      to compel should be denied in its entirety.

19       **II. STATEMENT OF FACTS**

20       CW served its document production requests to the Department on June 30, 2025.<sup>1</sup> CDI  
21       served its responses and objections on July 30, 2025; provided amended responses and objections  
22       and produced responsive, nonprivileged documents on August 5, 2025<sup>2</sup>; and produced a privilege  
23       log on August 14, 2025.<sup>3</sup>

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24  
25       <sup>1</sup> See Declaration of Nikki McKenna in Support of Opposition to Consumer Watchdog’s Motion to Compel  
Further Discovery from the Department (McKennedy Declaration), filed concurrently herewith, at ¶ 2.

26       <sup>2</sup> See ¶ 3 of McKenna Declaration.

27       <sup>3</sup> See ¶ 8 of McKenna Declaration.

## A. CW's Deficient Meet and Confer

The relief CW seeks in its motion to compel is unclear, and it has not met and conferred either in good faith or in a timely fashion.

1. Following the parties' initial meet-and-confer efforts, CDI understood the only remaining dispute concerned Request No. 20.

Per the Court’s Amended Scheduling Order issued on August 7, 2025, the last day for the parties to timely meet and confer regarding the discovery responses was August 13, 2025.<sup>4</sup> On August 12, 2025, CW sent its first meet-and-confer letter raising issues regarding CDI’s responses to its Requests No. 4, 10, 11, 15, 20, 21, 24, 26, and 27.<sup>5</sup> Based upon CW’s instant motion, CDI now understands CW may be moving to compel further responses to Requests No. 4, 5, 10, 11, 15, 20, 21, and 23. CW has *never met and conferred* with CDI *at all* regarding Requests Nos. 5 and 23<sup>6</sup>, and CDI therefore objects to this motion to compel further responses to those particular requests as premature and in bad faith.

Accordingly, CDI addresses those requests which it understands to be properly at issue here and regarding which it has met and conferred with CW. These requests may be loosely grouped into three categories:

- Requests No. 4<sup>7</sup> and 15<sup>8</sup> seek CDI's internal "analysis" of various legal and ratemaking issues (the "Analysis Requests");

<sup>4</sup> See ¶ 9 of McKenna Declaration.

See ¶ 5 of McKenna Declaration.

<sup>6</sup> CDI will meet and confer regarding these requests if directed to do so by the Court, but notes that the deadline to meet and confer was August 13, 2025.

<sup>7</sup> Request No. 4 states: Provide all DOCUMENTS and COMMUNICATIONS RELATED TO CDI analysis, interpretation, or implementation of 10 CCR § 2644.27(f)(6) and the meaning of the language contained therein, including the phrases “protect the insurer’s solvency,” “plan to restore the financial condition,” “insurer’s condition is restored,” and “compensate consumers for excessive charges.”

<sup>8</sup> Request No. 15 states: Provide all DOCUMENTS and COMMUNICATIONS, other than DOCUMENTS and COMMUNICATIONS already produced by CDI or made available to the public via SERFF, RELATED TO CDI analysis of the possible impact of the interim and final rate determinations in this matter on STATE FARM's financial condition over the course of the next five years.

1           • Requests No. 10<sup>9</sup>, 11<sup>10</sup>, and 21<sup>11</sup> seek documents CDI may have concerning SFG’s  
2 financial condition, including confidential communications CDI may have had  
3 with the Illinois Department of Insurance (“IDOI”), SFG’s home-state regulator  
4 (the “Illinois Requests”); and  
5           • Request No. 20<sup>12</sup> seeks CDI’s internal communications between unidentified “CDI  
6 staff” and the Commissioner and/or multiple members of his executive team  
7 regarding this matter (the “Internal Communications Request”).

8           Counsel for the parties met and conferred virtually on August 13, 2025, regarding CDI’s  
9 responses to these discovery requests.<sup>13</sup> As to the Analysis Requests, CDI’s counsel explained  
10 that requests seeking CDI’s non-public “analysis” of the various issues in this rate hearing were  
11 improper, as they call for a myriad of documents indisputably protected by the privileges afforded  
12 attorney-client communications, attorney work product, and internal deliberations, and that it  
13 would be unduly burdensome to identify the potentially responsive but privileged documents on a  
14 privilege log.

15           As to the Illinois Requests, CDI’s counsel explained that the Financial Surveillance  
16 Branch within the Department had responsive documents, but that these documents were all  
17 privileged and CDI was statutorily prohibited from producing them. CDI’s counsel agreed to

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19           <sup>9</sup> Request No. 10 states: Provide all COMMUNICATIONS between STATE FARM and CDI, other than  
20 COMMUNICATIONS already produced by CDI or made available to the public via SERFF, RELATED TO STATE  
FARM’s financial condition dated on or after June 1, 2024.

21           <sup>10</sup> Request No. 11 states: Provide all DOCUMENTS RELATED TO STATE FARM’s financial condition, other than  
DOCUMENTS already produced by CDI or made available to the public via SERFF, dated on or after June 1, 2024.

22           <sup>11</sup> Request No. 21 states: Provide all COMMUNICATIONS between CDI or the Insurance Commissioner and any  
rating agency (e.g., Illinois Department of Insurance) RELATED TO STATE FARM and/or THIS PROCEEDING.

23           <sup>12</sup> Request No. 20 states: “Provide all COMMUNICATIONS between CDI staff and the Insurance Commissioner or  
executive office personnel RELATED TO THIS PROCEEDING.” “RELATED TO” was defined to mean,  
“constitutes, contains, embodies, comprises, reflects, identifies, states, deals with, comments on, responds to,  
describes, analyzes, was made by, was used to determine, was consulted by YOU or any witness YOU intend to call  
at the hearing on this matter, or is in any way pertinent to the subject matter described in the request.” “THIS  
PROCEEDING” was defined to mean “the above referenced applications: PA-2024-00011, PA-2024-00012, PA-  
2024-00013.”

27           <sup>13</sup> See ¶ 6 of McKenna Declaration.

1 provide a privilege log. As an alternative to producing these highly confidential documents,  
2 CDI's counsel proposed the possibility of the parties entering into a stipulation regarding  
3 undisputed facts concerning SFG's financial condition, based upon publicly available data in the  
4 company's annual statements. CW's counsel did not agree to stipulate.

5       Regarding the Internal Communications Request, CDI explained that the terms "CDI  
6 staff" and "executive office personnel" were unclear and that the request was overly broad, given  
7 that there are approximately 1,400 employees at the Department. In responding to the request,  
8 CDI had therefore interpreted the term "CDI staff" to mean the prosecutorial staff litigating this  
9 rate hearing and "executive office personnel" to mean the Commissioner, and had determined  
10 there were no responsive documents.

11       Following the August 13 meet-and-confer, CW sent a second meet-and-confer letter that  
12 same day,<sup>14</sup> in which it followed up *only* on Request No. 20. CDI provided its privilege log on  
13 August 14, 2025, and CDI's counsel responded to CW's second letter in writing on August 15,  
14 2025.<sup>15</sup>

15       Because CW's second meet-and-confer letter did not raise any additional issues or  
16 respond to CDI's objections regarding any of CW's requests discussed in the parties' virtual  
17 meet-and-confer on August 13, 2025, other than Request No. 20, CDI understood CW's concerns  
18 regarding the other requests were resolved.

19       **2. CW's third meet-and-confer letter was untimely and in bad faith.**

20       On August 20, 2025, the same day it served and filed the instant motion to compel, CW  
21 sent a third, belated meet-and-confer letter.<sup>16</sup> In that untimely meet-and-confer letter, CW again  
22 raised concerns regarding what it described as the "financial condition documents" (Requests No.  
23 4, 10, 11, and 15) ("Financial Condition Requests"), asserting that CDI is required to produce  
24 "responsive, non-privileged documents" and to state any "specific privileges that apply to such

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25       <sup>14</sup> See ¶ 7 of McKenna Declaration.

26       <sup>15</sup> See ¶ 9 of McKenna Declaration.

27       <sup>16</sup> See ¶¶ 10 and 12 of McKenna Declaration.

1 documents.”

2 This assertion completely ignored CDI’s actual discovery responses. They state CDI has  
3 **no** responsive, nonprivileged documents (see responses, “... the Department is currently unaware  
4 of any non-privileged documents that may be relevant and responsive to this request”). It also  
5 completely ignored CDI’s privilege log, which, as CW requested, states “any specific privileges  
6 that apply.” CDI’s privilege log lists 21 documents responsive to the Financial Condition  
7 Requests and specifically identifies applicable privileges that prevent their disclosure.

8 At no time did CW ever seek to meet and confer with CDI regarding its responses to  
9 Requests No. 5 and 23, but CW’s instant motion to compel now apparently seeks to require CDI  
10 to respond further to these requests. CDI strenuously objects to CW’s bad faith meet-and-confer  
11 machinations.

### 12 **III. ARGUMENT**

13 CW’s motion to compel discovery should be denied. Despite meeting and conferring,  
14 CW’s Internal Communications Request remains overly broad, vague, and ambiguous, and seeks  
15 information irrelevant to this rate proceeding. CW’s Financial Condition Requests, as counsel  
16 explained to CW during the meet-and-confer process and as detailed in CDI’s objections and  
17 privilege log, seek privileged, statutorily protected information that CDI is not permitted to  
18 disclose. CW offers no compelling reason to violate the statutory protections afforded to these  
19 documents. Otherwise, and despite diligent investigation, CDI is currently unaware of any  
20 responsive, non-privileged documents.

#### 21 **A. Relevant Law Relating to Discovery in Administrative Proceedings**

22 Under the Administrative Procedure Act (“APA”), discovery in administrative  
23 proceedings is, by design, limited in scope as reflected in both its statutory history and the  
24 language of the statute itself.

25 During the overhaul of the APA in 1995, the California Law Revision  
26 Commission noted that the 1945 APA provided for limited discovery in  
27 administrative adjudications, and that the “extensive discovery available  
in civil proceedings was inappropriate for administrative adjudications,”

which should be "simple, quick, and inexpensive." For that reason, the Commission stated that the proposed revised APA continued the "limited discovery approach" of existing law. (25 Cal.L.Rev.Comm. Reports 55, 116 (1995).)

Discovery under the APA is governed by Section 11507.6 of the Government Code. The broadest category of discovery authorized by this section is subsection (e), which provides that, upon written request, a party is entitled to inspect and make a copy of “[a]ny other writing or thing which is relevant and which would be admissible in evidence” that is in the other party’s possession, custody, or control. This is intentionally narrower than the scope of allowable discovery in civil proceedings. Under the Civil Discovery Act, any party may obtain discovery regarding “any matter, not privileged, that is relevant to the subject matter involved in the pending action” if it is either “admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (Code Civ. Proc., § 2017.010.) Thus, the APA applies the narrower “admissible in evidence” standard, and does not use the Code of Civil Procedure’s broader standard allowing discovery of any document that is, “reasonably calculated to lead to the discovery of admissible evidence.”

In *RLI Ins. Co. Group v. Superior Court* (1996) 51 Cal.App.4th 415, 433–434, the court recognized the “statutory mandate” in Proposition 103 rate hearings that “discovery shall be liberally construed,” as set forth in Insurance Code section 1861.08, subdivision (e).<sup>17</sup> But despite this mandate, the court in *RLI Insurance* found that the trial court properly declined to compel discovery of certain documents that would not “prove anything of relevance” at an insurer’s rate rollback hearing. (*Id.* at 436.)

Relevance as the threshold requirement for discoverability is further illustrated in *Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93. In *Pomona*, the

<sup>17</sup> Although 1861.08 (e) says that discovery in administrative rate hearings shall be liberally construed, it goes on to say "as provided in Gov't. Code section 11507.7". Gov't Code section 11507.7 limits discovery to "relevant and admissible evidence". Thus, the Insurance Code's requirement that discovery be liberally construed is limited by 11507.7 which requires the discovery to be admissible. As discussed above, this is a narrower standard than the civil code standard which allows discovery of anything that "is reasonably calculated to lead to the discovery of admissible evidence".

1 California Court of Appeal barred discovery of suspected agency misconduct because it was not  
2 relevant to the matter at issue in the administrative hearing. (*Id.* at 105.) The court noted that  
3 discovery in the writ context — which, like discovery in administrative proceedings, is more  
4 limited than general civil discovery and turns on relevance — “cannot be used to go on a fishing  
5 expedition looking for unknown facts to support speculative theories … Until the moving party  
6 identifies what evidence he or she seeks to discover, no determination can be made as to whether  
7 the evidence is relevant.” (*Id.* at 102.)

8                   **B. CW’s motion to compel Internal Communications should be denied because  
9                   the request remains overbroad, seeks irrelevant information, and seeks  
10                  documents protected by attorney work product, attorney client  
11                  communications and deliberative process privileges.**

12                   **1. CW’s Internal Communications Request is impermissibly overbroad.**

13                  Courts have enforced the APA’s reasonable limitations on discovery by precluding  
14                  discovery requests in administrative proceedings that are vague, ambiguous, and overbroad. In  
15                  *Romero v. California State Labor Commissioner* (1969) 276 Cal.App.2d 787, the California  
16                  Court of Appeal determined that the requesting party was not entitled to responses to an  
17                  interrogatory that required the responding party to provide the “identity ‘of all persons … having  
18                  knowledge of relevant facts,’” as they were “‘shotgun’ requests ‘as broad as space.’” (*Id.* at 794.)

19                  CW’s Internal Communications Request, No. 20, is also a “shotgun” request as it seeks to  
20                  require CDI to search the communications of the entire Department and is so overbroad as to  
21                  render the request unanswerable. It seeks “all COMMUNICATIONS between CDI staff and the  
22                  Insurance Commissioner or executive office personnel RELATED TO THIS PROCEEDING.”

23                  Such a request is ridiculously unlimited. As this Court is well aware, this is a highly  
24                  public proceeding that frequently appears in news reports. CW itself has been in regular contact  
25                  with the press, and the Court has been diligent in protecting the public’s right of access to these  
26                  proceedings. There are approximately 1,400 Department employees, and most, if not all, of these  
27                  employees are likely to be aware of this proceeding because they work at the Department of  
28                  Insurance, and this is a very publicized insurance rate matter. Department employees may be

1 communicating with their coworkers, colleagues, and even supervisors about it. As worded,  
2 CW's request apparently seeks any communications, as simple as "I saw a news article about the  
3 rate hearing" – without any suggestion, let alone assurances, that this overly broad and  
4 burdensome request seeks *admissible* evidence.

5 And because CW failed to define "CDI Staff" or "executive office personnel," the request  
6 essentially implicates the entirety of the Department of Insurance, including the ALJ and his staff,  
7 as well as his supervisor, the Deputy Commissioner of Administration and Licensing Services,  
8 and the approximately 1,400 Department employees. In a good faith effort to respond to the  
9 request, as CDI explained in the meet and confer, CDI interpreted "executive office personnel" to  
10 mean the Commissioner and "CDI staff" to mean the CDI staff actively involved in this rate  
11 hearing; however, this has been insufficient for CW. Instead, as CW met and conferred with  
12 CDI, CW's definition of "executive office personnel" has been ever-changing. At the same time,  
13 it has never attempted to narrow its definition of "CDI staff" from the 1,400 Department  
14 employees to a subset of staff that are involved in this proceeding.

15 In its second meet and confer letter dated August 13, 2025, CW provided a broad list of 12  
16 executive staff. CDI responded in writing that this list was too broad. At the last minute before  
17 filing and serving its motion to compel, CW removed a mere three people from its list of  
18 executives. While CDI appreciates CW's attempt to cure the overbroad nature of the request, CW  
19 still lists nine executives with no showing of why they are on the list. In fact, CW listed CDI  
20 executives who are clearly not substantively involved in the proceeding. For example, CW  
21 demanded that CDI search the records of the Deputy Commissioner of Enforcement. A cursory  
22 review of CDI's Enforcement Branch on CDI's website indicates this Deputy Commissioner  
23 oversees criminal fraud investigations of insurers, brokers, agents and others (Cal. Department of  
24 Insurance/About Us/About the Department/Enforcement Branch:  
25 <https://www.insurance.ca.gov/0500-about-us/02-department/035-eb/index.cfm> (last visited  
26 August 27, 2025).) None of that is at issue in this matter.

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2. CW is conducting an impermissible fishing expedition for ex parte communications without indicating any reason to believe they exist.

CW has not explained why the communications it seeks to discover are relevant to the subject matter of this proceeding. Rather than addressing how the communications by and between each person listed would be relevant and admissible in this proceeding, CW's motion attempts to justify its overbroad Internal Communications Request (No. 20) by claiming it is necessary to ferret out (nonexistent) improper ex parte communications. However, although discovery is to be liberally construed in Proposition 103 rate proceedings, CW's purpose in seeking to compel the Department to conduct a scorched earth search of its numerous internal employee records, looking for the proverbial "needle in a haystack" that CDI has no reason to believe exists, does not meet the standard for compelling further response here.

CW states that it “assumes there have been no such [ex-part] communications with the ALJ from any person, because if there were, the ALJ would have been required to notify Consumer Watchdog and provide Consumer Watchdog an opportunity to respond.” (CW motion to compel, 11:21 -23.) CDI agrees with CW’s assumption that there have been no ex parte communications with the ALJ. The same assumption, of course, applies to the Commissioner and illustrates the egregious nature of CW’s fishing expedition thinly disguised as discovery. As CW points out, if there is an improper ex parte communication with the Commissioner, the Commissioner is required to notify all parties and give them an opportunity to respond. To be clear, once again, CDI is not aware of any such improper ex parte communications.

3. CW's demand for internal communications should be denied because the only relevant documents it seeks are substantive internal communications but they are protected from disclosure by attorney work product, attorney client communication and deliberative process privileges.

Ex parte communications aside, CW's request No. 20 calls for all internal CDI communications related to "THIS PROCEEDING." Again, there is ambiguity here as CW defines "THIS PROCEEDING" as the rate applications. The broadest interpretation would include any

1 communications, substantive<sup>18</sup> or non-substantive.<sup>19</sup> If CW is seeking substantive  
2 communications, privileges are implicated. If CW is demanding non-substantive  
3 communications, relevance is implicated. With respect to substantive communications, the APA  
4 states explicitly that a party is not entitled to any discovery that is privileged from disclosure by  
5 law or otherwise made confidential or protected as the attorney's work product. (Gov. Code, §  
6 11507.6.)

7 Two categories of privileges must be considered when determining admissibility. The  
8 first is the Attorney-Client Privilege/Attorney Work Product. A client has the privilege to refuse  
9 to disclose, and to prevent others from disclosing, confidential communications between the  
10 client and their lawyer. This privilege can be claimed by the client, an authorized representative,  
11 or the attorney, provided the client has not waived the privilege (Evid. Code section 954). The  
12 definition of a protected "confidential communication" includes "a legal opinion formed." (Evid.  
13 Code section 952.)

14 Corporate clients and public entities can claim the privilege. [citation] Attorney  
15 communications with agents and employees of such entities may be covered by the  
16 privilege. [citation] '[T]o determine whether a communication is privileged, the focus of  
17 the inquiry is the dominant purpose of the relationship between the parties to the  
communication.' (*Johnson v. Department of Transportation* (2025) 109 Cal.App.5th 917,  
936, as modified on denial of reh'g (Apr. 1, 2025), order vacated (Apr. 4, 2025), as  
modified on denial of reh'g (Apr. 4, 2025), review denied (June 25, 2025).)

18 The second privilege that must be considered is the Official Information/Deliberative  
19 Process privilege.

20 The official information privilege and the related deliberative process privilege apply  
21 specifically to confidential information maintained by the government. Under  
22 longstanding common law and statutory principles, information obtained through a  
23 promise of confidentiality is not subject to the right of public access when the public  
interest would be furthered by maintaining confidentiality. [Citations.] This principle is  
currently reflected in Evidence Code section 1040, which provides a privilege to a public  
entity to refuse to disclose information acquired in confidence if 'there is a necessity for

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25 <sup>18</sup> Substantive communications include those involving the mental processes by which a given decision was reached,  
as well as the substance of conversations, discussions, debates, deliberations, and similar materials that reflect advice,  
opinions, and recommendations used in the formulation of government policy.

26  
27 <sup>19</sup> Non-substantive communications include ministerial communications, such as a question regarding the date of a  
hearing in this matter.

1 preserving the confidentiality of the information that outweighs the necessity for  
2 disclosure.' (*Sander v. State Bar of California* (2013) 58 Cal.4th 300, 325, 165  
Cal.Rptr.3d 250, 314 P.3d 488.)

3 Under the deliberative process privilege, senior officials of all three branches of  
4 government enjoy a qualified, limited privilege not to disclose or to be examined  
5 concerning not only the mental processes by which a given decision was reached, but the  
6 substance of conversations, discussions, debates, deliberations and like materials  
7 reflecting advice, opinions, and recommendations by which government policy is  
8 processed and formulated. [Citation.] The privilege rests on the policy of protecting the  
9 decision making processes of government agencies. [Citation.] The key question in every  
10 case is whether the disclosure of materials would expose an agency's decision making  
11 process in such a way as to discourage candid discussion within the agency and thereby  
12 undermine the agency's ability to perform its functions. (*Board of Registered Nursing v.*  
*Superior Court* (2021) 59 Cal.App.5th 1011, 1040. [internal quotations omitted].)

1 CW has demanded production of all communications related to this proceeding between  
2 CDI staff on the one hand and the Insurance Commissioner or executive office personnel on the  
3 other hand. As of the eve of filing its motion, CW defined "executive office personnel" to  
4 include:

- 13 • Ricardo Lara, Insurance Commissioner
- 14 • Michael Martinez, Chief Deputy Commissioner
- 15 • Ken Allen, Deputy Commissioner, Rate Regulation
- 16 • Tony Cignarale, Deputy Commissioner, Consumer Services and Market Conduct
- 17 • Teresa Campbell, General Counsel and Deputy Commissioner
- 18 • Michael Soller, Deputy Commissioner, Communications and Press Relations
- 19 • Lucy Wang, Special Counsel and Deputy Commissioner
- 20 • Eric Charlick, Deputy Commissioner, Enforcement
- 21 • Laurie Menchaca, Deputy Commissioner, Administration and Licensing Services

22 CW is not entitled to all substantive communications within CDI regarding this matter.

23 The attorney client privilege, protections afforded to attorney work product, and deliberative  
24 process privilege protects most of the substantive communications from disclosure. And many  
25 such communications simply are not relevant to the rate determination in this matter. CDI staff  
26 and executives may have personal opinions regarding the approval of SFG's rates, but if they are  
27 not actually involved in this litigation as either prosecutorial staff or decisionmakers, such

1 personal opinions are not relevant. The analysis of CDI's rate regulation staff, including any  
2 relevant actuarial opinions formed, will be offered to the ALJ during the hearing and the ALJ will  
3 make recommendations as to the rate based on the evidence presented.<sup>20</sup> CDI is not on trial here.  
4 It is SFG's burden to prove to the ALJ that the interim rate should be approved. To require CDI to  
5 produce all substantive internal communications would severely hamper its ability to freely  
6 exchange ideas and information, and make good policy decisions regarding its position on this or  
7 any matter pending before it. Accordingly, substantive communications should be protected  
8 under the deliberative process privilege. Further, requiring production of nonsubstantive  
9 communications would be unduly burdensome, and they also have no relevance to this matter.

10 CW stated on the eve of filing this motion that what it is actually seeking is any improper  
11 ex parte communications with the Commissioner. CDI understands this to include the  
12 Commissioner's attorney, the Special Counsel. Again, CDI has already informed CW that it is  
13 unaware of any nonprivileged, responsive communications between the CDI staff involved on the  
14 prosecutorial side of this proceeding and the Commissioner; CDI now broadens its prior response  
15 to make clear that it is similarly unaware of any nonprivileged, responsive communications  
16 between the CDI prosecutorial staff and the Commissioner's Special Counsel. However, given  
17 the lateness of CW's disclosure regarding what it is actually seeking with this discovery request,  
18 CDI has been unable to clarify this issue further, and the breadth of CW's list of additional  
19 executive office personnel whose communications it demands be searched suggests that CW is  
20 seeking more than ex parte communications.

21 Moreover, CW's Request No. 20 as clarified by CW does not seek relevant evidence.

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23 <sup>20</sup> CW's opening brief dwells on ex parte communications and FSB internal communications as well as FSB  
24 generated or collected documents that may reveal SFG's financial condition. To the extent that CW may add to their  
25 argument that they are entitled to review documents reflecting CDI's "working law" as provided in *RLI Ins. Co. v.*  
26 *Superior Court* (1996) 51 Cal.App.4<sup>th</sup> 415, 433-439, the case is inapposite. In *RLI*, the Court reasoned that an  
27 insurer was entitled to documents reflecting any "working law" CDI had developed because it would reveal "any rule  
or practice applied to analogous situations in the rollback context." Here there are no analogous situations for CDI to  
rely on in analyzing, interpreting, or implementing 10 CCR §2644.27(f)(6). This is a case of first impression for CDI  
and the privileges relied upon are necessary "for protecting agency deliberations in order to encourage candor" so  
that CDI may take positions that support good public policy. There is no competing interest in discovering "working  
law" as no working law exists.

1 There is no adjudicative decision presently before the Commissioner. Currently, this adjudicative  
2 proceeding is before the ALJ. If and when the ALJ sends a proposed decision to the  
3 Commissioner for adoption, rejection, or mitigation, CDI assumes the Commissioner will then  
4 disclose any improper substantive ex parte communications he – or any decisional advisors who  
5 may ultimately assist him in making an adjudicative decision - may have received while the  
6 proceeding is pending. (Gov. Code, §§ 11430.40, 11430.50.)

7 The same is true for the ALJ, his supervising Deputy Commissioner, and his staff. This  
8 adjudicative proceeding is presently pending before the ALJ. Like CW, CDI assumes that the  
9 ALJ will disclose any improper substantive ex parte communications he or his staff may receive  
10 while this proceeding is pending. (Gov. Code, §§ 11430.40, 11430.50.) Otherwise, all substantive  
11 communications related to this matter between CDI staff that are not part of the prosecution team  
12 and the Commissioner will be privileged, either as attorney-client communications or part of the  
13 deliberative process. If CW seeks such substantive communications, they are unavailable as a  
14 matter of law. If CW seeks nonsubstantive communications, they are not relevant and the request  
15 is overly burdensome. Either way, there is no basis to compel and CW’s motion should be denied.

16 CW also seeks communications between CDI staff and CDI’s General Counsel and Chief  
17 Deputy Commissioner. CDI’s General Counsel and Chief Deputy Commissioner are supervising  
18 the prosecutorial team in this matter. Thus, any substantive communications between CDI staff  
19 and these two positions regarding this matter would fall under the attorney-client/attorney work  
20 product and deliberative process privileges. Any demand for nonsubstantive communications  
21 would be irrelevant and unduly burdensome.

22 Substantive communications regarding this matter between CDI staff and the other non-  
23 attorney Deputy Commissioners, including the Deputy Commissioner of Rate Regulation, also  
24 fall under the attorney-client/attorney work product and deliberative process privileges, thus  
25 prohibiting disclosure of those communications. And again, CW’s demand for nonsubstantive  
26 communications between these groups should be considered irrelevant and denied.

27 Ultimately, requiring CDI to search for communications between any CDI staff and any

1 executives listed by CW, for all communications concerning “THIS PROCEEDING” would be  
2 unduly burdensome. CW fails to explain why it believes the Deputy Commissioners of  
3 Consumer Services and Market Conduct, Communications and Press Relations, Enforcement, and  
4 Administration and Licensing Services would have any relevant communications with CDI staff  
5 regarding this matter. Does CDI have an obligation to search the emails of every employee at  
6 CDI who may have mentioned this matter? Staff includes employees of the Administrative and  
7 Licensing Branch, who have questions about budgets or coding expenses for this matter. Staff  
8 have been involved in security, travel arrangements, and courtroom setup for this proceeding.  
9 CDI should not be required to search all communications to determine whether they are improper  
10 substantive ex parte communications or protected by privilege without some showing by CW of  
11 how those communications would be relevant.

12 In short, CW is conducting an impermissible fishing expedition with Request No. 20. CW  
13 is essentially asking this court to rule that any time CDI staff mentions or discusses a litigation  
14 matter with any executive, that communication should be discoverable in the litigation. Such a  
15 ruling would cripple the CDI from an operational standpoint.

16 **C. Financial Documents - Relevant law relating to the Commissioner’s  
17 examination authority and confidential information held by insurance  
18 regulators**

19 **1. The Commissioner’s Examination Duties**

20 Included within the duties of the Insurance Commissioner is the duty to examine the  
21 business affairs and financial condition of insurers doing business in the state.<sup>21</sup> The  
22 Commissioner’s exam duties are broad, including, without limitation, he is afforded “free access”  
23 to “all the books and papers of the company,” and the ability to “thoroughly inspect and examine  
24 all [the companies’] affairs.”<sup>22</sup>

25 Within CDI, these duties are carried out through the Department’s Financial Surveillance

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27 <sup>21</sup> See Ins. Code section 730 (a), (b).

<sup>22</sup> See Ins. Code section 733 (a), (b).

1 Branch (FSB). FSB's mission is to assure that all insurers licensed to do business in California (as  
2 well as those insurers operating on a non-admitted or surplus lines basis) maintain the financial  
3 stability and viability necessary to provide the benefits and protection they have promised their  
4 California policyholders.<sup>23</sup>

5 **2. California Statutory Protections for Confidential Insurer Information**

6 In recognition of the necessity for the Commissioner, as regulator, to obtain accurate  
7 information as part of his exam duties, and to promote the efficient exchange of information as  
8 part of a robust and fair insurance marketplace, the legislature has codified multiple protections  
9 for information discovered, disclosed or developed by the Commissioner regarding licensees.  
10 Failure to uphold these privileges will "undermine the legislative scheme that encourages the flow  
11 of that information to those in government who are responsible for overseeing the whole of the  
12 insurance industry for benefit of the public."<sup>24</sup> Indeed, the California Evidence Code recognizes  
13 that such "official information" received in confidence by a public employee in the course of his  
14 or her job duties is subject to an absolute privilege when disclosure is forbidden by a state statute.

15 Specifically, section 735.5, subdivision (c) provides "[a]ll working papers, recorded  
16 information, documents, and copies thereof produced by, obtained by, or disclosed to the  
17 commissioner or any other person in the course of an examination . . . shall be given confidential  
18 treatment and are not subject to subpoena and shall not be made public by the commissioner or  
19 any other person," except as provided by statute. The narrow exceptions authorize information to  
20 be disclosed in the commissioner's discretion, when he deems it appropriate "in the furtherance of  
21 any legal or regulatory action"; to federal and state law enforcement officials and other state or  
22 country departments of insurance; and to the NAIC. Under section 1215.8, information obtained  
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<sup>23</sup> See Cal. Dept of Insurance/About Us/About the Department/Financial Surveillance Branch:  
<https://www.insurance.ca.gov/0500-about-us/02-department/040-fsb/index.cfm>. (last visited August 27, 2025).)

<sup>24</sup> *Gallimore v. State Farm Fire & Casualty Ins. Co.* (2003) 102 Cal.App.4th 1388, 1395 n.6 [trial court's dismissal pursuant to Ins. C. § 735.5(a) in case arising from confidential materials submitted to the department in connection with an exam].

1 and disclosed in the course of an exam or investigation and certain information mandated to be  
2 reported related to insurance holding companies is further recognized as being proprietary and  
3 containing trade secrets, and it shall be kept confidential, are not subject to disclosure “except to  
4 insurance departments of other states” without the insurer’s consent or unless the commissioner  
5 determines to do so would be in the public interest.

6 Domestic insurers are required to provide to the commissioner and file with the NAIC  
7 their Risk Based Capital (RBC) Reports (§§ 739, subd. (l); 739.2) and section 739.8 expressly  
8 recognizes that all RBC Reports, “to the extent the information within those reports is not  
9 required to be set forth in a publicly available annual statement schedule,” and RBC Plans,  
10 “including the results or report of any examination or analysis of an insurer performed pursuant to  
11 those plans, and any Corrective Order issued by the commissioner,” shall be kept confidential  
12 because they “constitute information that might be damaging to the insurer if made available to its  
13 competitors.” Other statutes, while protecting the confidentiality of certain insurer information,  
14 further require or authorize such information to be provided to other regulators and the NAIC.

15 In addition, Section 12919 provides broad protections for communications to the  
16 commissioner and CDI “in respect to any fact concerning the holder of, or applicant for, any  
17 certificate or license issued, and provides such communications are “in official confidence within  
18 the meaning of Sections 1040 and 1041 of the Evidence Code.”

19 **3. Illinois Statutory Protections for Confidential Insurer Information**

20 Applicant, SFG, is domesticated in Illinois and licensed to transact business in California.  
21 Per section 730, “the Commissioner, whenever he or she deems necessary, …shall examine the  
22 business and affairs of the insurer.” Similar to the California Insurance Commissioner’s powers,  
23 the Illinois Director of Insurance (Director) is empowered to conduct investigations,  
24 examinations, investigations and hearings necessary to enforce the insurance laws of that state.<sup>25</sup>  
25 Under Illinois law, “records or documents containing or disclosing any analysis, opinion,

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27 <sup>25</sup> See., e.g., 215 ILCS 5/401.

1 calculation, ratio, recommendation, advice, viewpoint, or estimation by any Department staff  
2 regarding the financial or market condition of an insurer not otherwise made part of the public  
3 record by the Director" are exempt from Illinois disclosure requirements, except as the Director  
4 shall determine for good reason.<sup>26</sup> Similar to the California statutes, Illinois statutes empower the  
5 Director to share such information with law enforcement, other insurance regulators and the  
6 NAIC.<sup>27</sup>

7 **4. The National Association of Insurance Commissioners' Master  
8 Information Sharing and Confidentiality Agreement**

9 Here, in furtherance of its regulatory objectives, and pursuant to statutory authority, CDI  
10 has executed a NAIC Master Information Sharing and Confidentiality Agreement between CDI  
11 and other participating United States insurance regulators. ("NAIC Information Sharing  
12 Agreement").<sup>28</sup> This form of agreement is part of the NAIC's Financial Regulation Standard and  
13 Accreditation Program, and it allows for participating regulators to receive otherwise confidential  
14 information from other state regulatory officials, providing that those officials are required, under  
15 their law, to maintain its confidentiality. The information at issue in this Motion was provided by  
16 the IDOI to CDI pursuant to the terms of this NAIC Information Sharing Agreement.

17 **D. CW's motion to compel should be denied because the documents it seeks  
18 related to FSB are privileged and not discoverable as a matter of law**

19 Relevant provisions of the Evidence Code, Government Code, and California Code of  
20 Regulations provide that information that is protected by law or privileged shall not be  
21 discovered. Here, CDI has provided a privilege log specifying the 21 documents, some with  
22 attachments, it is withholding pursuant to multiple codified privileges, including those set forth in  
23 California Insurance Code sections 735.5, 739.8, and 12919; California Evidence Code sections  
24

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25 <sup>26</sup> 215 ILCS 5/401, subd. (a).

26 <sup>27</sup> See, e.g., 215 ILCS 5/401, subd. (b); see also 215 ILCS 5/129.8 (c)(1) [ORSA-related information]; 5/131.22  
[examinations and investigations], 5/136(6)(b) and (d) [workpapers in support of Statement of Actuarial Opinion].

27 <sup>28</sup> See ¶ 8, McKenna Declaration.

1 1040 and 1041; and 215 Illinois Code section 5/404.<sup>29</sup> The privilege log further cites the NAIC  
2 Information Sharing Agreement as an additional basis to protect the documents identified. There  
3 can be no legitimate dispute that these documents are not discoverable, and on that basis alone,  
4 CW's motion should be denied.

5 CW nevertheless argues CDI's privilege log "has not provided enough information in its  
6 privilege log to determine whether these documents are being appropriately withheld." (See Motion,  
7 p. 7.) Not so.<sup>30</sup> Section 730 provides for examination of the "business affairs" of insurers, including  
8 their financial condition, and under section 735.5 these documents are absolutely privileged. Such  
9 financial examinations within CDI are conducted by its FSB. The documents identified on CDI's  
10 privilege log are maintained by CDI's FSB and the log clearly indicates they originated from the IDOI  
11 or are communications between CDI's FSB and the IDOI and are further subject to protection under  
12 Illinois law and the NAIC Information Sharing Agreement.<sup>31</sup> In its privilege log, CDI provided  
13 detailed document descriptions, which, in some instances, show on their face that the documents  
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15 \_\_\_\_\_  
16 <sup>29</sup> On its face, SFG's Request recognizes documents protected by section 739.8 are not discoverable and excludes  
17 these documents from the Request. (See Request No. 1 [". . . This request does not include DOCUMENTS identified  
18 in California Insurance Code sections 739.8(a).].) Documents 1, 1A, 2, 3, 4, 5, 5A, 6, 6A, 7, 2[sic], 21, 21A and 22  
19 are all protected under 739.8, subdivision (a) (related to RBC Reports) (See Montgomery Decl., ¶ 3, Ex. A [privilege  
20 log]) and the Motion should be denied as to those documents on that basis alone.

21 <sup>30</sup> By way of example only, CDI describes one entry in detail. The log for Document 22 shows that the document is a  
22 memorandum, dated March 4, 2025, from IL DOI to "All Licensed States regarding State Farm General Insurance  
23 (NAIC matter #25151)." The log also identifies that the document is responsive to SFG's first document request, and  
24 the log lists various California code sections providing privilege and protections for the communication, including  
25 section 735.5. The requirements for listing withheld documents provides that "[w]hen a party withholds information  
26 otherwise discoverable by claiming it is privileged, that party shall make the claim expressly and shall describe the  
27 nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing  
28 information itself privileged or protected, will enable other parties to assess the applicability of the specifically  
asserted privilege or protection." Regulation 2655.1(b). Here, CDI provided a detailed privilege log which complies  
with Regulation 2655.1. In particular, CDI has described the nature of the document: a memo from the Illinois  
Department of Insurance to all other licensed states. Other documents are similarly described in accordance with the  
applicable Regulation.

29 <sup>31</sup> As shown on the Privilege Log, many documents originate from or are exchanged with FSB employees including  
30 Laura Clements, FSB's Field Examinations Division Chief; Michelle Lo, FSB's Financial Analysis Division Chief;  
Regina Inouye, Senior Insurance Examiner (Specialist); Victoria Zarata, Senior Insurance Examiner (Supervisor);  
Sandy Yang, Supervising Insurance Examiner.

1 relate to the protected RBC Reports.<sup>32</sup>

2 CW further argues, “these documents do not appear to be generated ‘in the course of an  
3 examination,’ but are relevant to SFG’s financial condition and are subject to disclosure regardless  
4 of where in the Department they are located.<sup>33</sup> But that only shows why these documents *must be*  
5 unconditionally protected. The California legislature and the Illinois legislature have enacted  
6 numerous confidentiality protections, and the NAIC has instituted practices to facilitate the secure and  
7 efficient exchange of information between regulators; there is no basis for this Court to disrupt the  
8 numerous laws protecting this information.

9 **E. The Documents CW seeks are not relevant and must remain protected under  
10 a balancing test**

11 As set forth above, documents protected by sections 735.5, 739.8 and 1215.8 and 215  
12 Illinois Code section 5/401 are subject to absolute protection and cannot be ordered disclosed.<sup>34</sup>  
13 Accordingly, those documents must be protected regardless of their relevance, or lack thereof.

14 However, in the alternative, even if no statutory protection applies, the documents must  
15 remain confidential under a balancing test, because the public interest in preserving  
16 confidentiality outweighs the necessity for disclosure.<sup>35</sup> Absent a statutory prohibition on  
17 disclosure, application of the official information privilege involves the Court weighing the  
18 competing interests of confidentiality versus disclosure,<sup>36</sup> and a court should preclude disclosure  
19 as against the public interest where “there is a necessity for preserving the confidentiality of the  
20 information that outweighs the necessity for disclosure in the interest of justice . . . .”<sup>37</sup> The Court  
21 retains wide discretion to protect against the disclosure of information that might unduly violate a

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23 <sup>32</sup> See, ¶ 8, McKenna Declaration, Ex. 6 attaching CDI’s privilege log. See Docs. 5A, 6A, 21A; *see also* § 739.8.

24 <sup>33</sup> See Motion at p.P. 7, 10.

25 <sup>34</sup> See also Evid. Code, § 1040, subd. (a).

26 <sup>35</sup> See Evid. Code, § 1040, subd. (b)(2); *see also* § 12919.

27 <sup>36</sup> See *County of Orange v. Superior Court of Orange County* (2000) 79 Cal.App.4th 759, 763.

<sup>37</sup> *Id.*; *see also*, Evid. Code, § 1040, subd. (b)(2).

1 legitimate governmental interest.<sup>38</sup>

2           **1. The important public interest in maintaining the confidentiality of**  
3           **regulator-only documents outweighs any interest in disclosure**

4           Here, the Illinois Department of Insurance has sought leave to enter a special appearance  
5 to oppose efforts to compel its confidential information from CDI. As discussed herein, the  
6 ability for regulators to engage in candid examination and to freely exchange information among  
7 other regulators without jeopardizing the confidentiality of that information is essential to  
8 regulation of the insurance marketplace. Insurance is regulated by the states, but oversight  
9 depends heavily on the ability of individual state regulators to share sensitive financial and  
10 supervisory information across jurisdictions without fear of later disclosure. If the Court were to  
11 compel production here, that could have a chilling effect on the ability of regulators to share  
12 information. There is no stretch of the imagination required to understand how an insurer could  
13 gain advantage by prematurely learning confidential information derived from the exam process  
14 or a regulator's observations or conclusions. However, the balancing of interests under section  
15 1040 "does not license fishing trips," and there is no basis for CW to obtain the information  
16 sought.

17           **2. The documents have limited probative value**

18           In addition, CW cannot establish the documents have sufficient relevance here. While  
19 SFG's financial condition is relevant, that is not the end of the inquiry, and SFG has not shown  
20 reasons for the disclosure of these documents that outweigh the important public interest in  
21 maintaining confidentiality.

22           SFG has placed its financial condition at issue in this hearing by requesting "Variance 6"  
23 – an increase from the maximum permitted earned premium under regular ratemaking formulas.  
24 Under Variance 6, an insurer may seek an increase over the maximum earned premium allowable  
25 under the ratemaking formulas if its "financial condition is such" that the premium should be  
26 increased to "protect the insurer's solvency." When seeking an increase under Variance 6, the

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27           <sup>38</sup> *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305.

1 insurer's application "shall" include, among other requirements, a showing of the insurer's  
2 financial condition "based on generally accepted standards such as the [NAIC] Regulatory  
3 Information System" and a plan to restore the applicant's financial condition. Applicant SFG  
4 bears the burden of proof to establish the rates it seeks are justified and lawful pursuant to the  
5 provisions of Proposition 103.

6       While CDI does not dispute that Illinois, as SFG's home-state regulator, has authority to  
7 regulate the solvency of the company, a solvency determination is not the same as the  
8 Commissioner's authority to determine whether an applicant has made the requisite showing for a  
9 rate application. Indeed, Proposition 103, adopted by the voters in 1988 not only set forth the  
10 prior approval process for rate applications in California under section 1861.05, but also made the  
11 Commissioner an elected position. To suggest Illinois's determination is dispositive of a  
12 California ratemaking determination runs contrary to the voters' intent to guard against unfairly  
13 discriminatory and excessive rates and to vest power with an elected official. Allowing an out-of-  
14 state regulator's determination as to a company's financial condition to dictate whether an insurer  
15 qualifies for Variance 6 would undermine California's statutory framework and strip the  
16 Commissioner of the authority vested exclusively in the office by the voters and Legislature.

17       Moreover, information relating to SFG's financial condition is clearly within SFG's  
18 possession, custody and control and SFG cannot shirk its burden to establish its entitlement to  
19 Variance 6 by relying on confidential regulator-only documents. Because SFG's financial  
20 condition is based on its own records, there is no justification for breaching CDI's (and IDOI's)  
21 statutory and evidentiary privileges. Indeed, SFG has numerous alternative avenues to  
22 demonstrate its financial condition without intruding into protected regulator-to-regulator  
23 communications. SFG itself holds the most direct and complete evidence of its financial health.  
24 Its statutory financial statements and annual and quarterly filings all provide ample data from  
25 which its solvency can be assessed. These documents are prepared and certified by SFG and are  
26 available for regulatory review and hearing purposes without any need to compel privileged  
27 material. SFG's financial condition is also documented in its public filings, including financial

1 statements submitted to the NAIC, public-facing disclosures, and actuarial memoranda supporting  
2 its filings. These sources supply the very evidence CW seeks from CDI and are accessible  
3 without intruding upon privileged communications. SFG may also retain and present expert  
4 testimony regarding its financial condition.

5 **IV. CONCLUSION**

6 For the foregoing reasons, CW's motion to compel should be denied.

7 Dated: September 5, 2025

8 CALIFORNIA DEPARTMENT OF INSURANCE



9  
10 By

11 

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Lisbeth Landsman-Smith  
12 *Attorneys for the California Department of  
Insurance*

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OPPOSITION TO CW'S MOTION FOR PROTECTIVE ORDER (PA-2024-00011, PA-2024-00012, PA-2024-00013)