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## Intervenor

BEFORE THE INSURANCE COMMISSIONER OF  
THE STATE OF CALIFORNIA

Intervenor Merritt David Farren (“Farren”) respectfully submits this supplemental response to the request of the California Department of Insurance’s (“Department”) that this Court certify to the Commissioner of Insurance (“Commissioner”), pursuant to 10 CCR § 2646.2, the question of whether claims handling practices may be considered in the above-referenced proceeding (“Proceeding”).

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2       Farren acknowledges that submitting a supplemental response after an initial response  
3 has already been filed is unusual. However, in light of the importance of the question and in  
4 light of the recent reference to certification in an email communication to this Court from State  
5 Farm General (“State Farm”) (email from attorney Vanessa Wells, Hogan Lovells LLP, dated  
6 October 17, 2025 at 12:19 PM), Farren believes that a fuller statement of Farren’s position on  
7 the law relevant to the question is appropriate.  
8

9       Accordingly, Farren respectfully requests that the Court consider this supplemental  
10 response.  
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12       I. INTRODUCTION  
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15       The Department seeks extraordinary relief by asking this Court to certify an  
16 interlocutory question to the Commissioner under 10 CCR § 2646.2. Certification is an  
17 exceptional mechanism intended to resolve threshold questions that an administrative law  
18 judge (“ALJ”) cannot otherwise address without risking wasted proceedings. It is not a tool to  
19 avoid ordinary evidentiary or discovery rulings. The Department’s request is premature,  
20 unsupported, and inconsistent with both the text and purpose of § 2646.2.  
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23       II. SECTION 2646.2 MUST BE CONSTRUED NARROWLY  
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26       Section 2646.2 was designed to address “fundamental” and “substantially in doubt”  
27 matters that risk paralyzing the hearing process. It was not intended to allow an agency party  
28

to refer to itself discovery and evidentiary issues that are properly to be considered and determined by the ALJ.

The California Administrative Procedure Act (“APA”) vests the ALJ with authority to rule on admissibility, discovery, and development of the record (Gov. Code §§ 11425.10, 11507.6). CDI’s expansive reading of Section 2646.2 would undermine the ALJ’s statutory function.

III. THE CRITERIA FOR CERTIFICATION UNDER SECTION 2646.2 THAT THE  
DEPARTMENT ASSERTS ARE MET ARE, IN FACT, NOT MET

The Department asserts that certification of the question for which it requests certification is appropriate because both of the two initial criteria for certification that serve to provide ALJs the discretion to certify a question, if an ALJ chooses to do so, are met in the current circumstance. In fact, neither of the criteria are met. The first of the two criteria, that the matter apply to numerous pending hearings, is not met. There is, to Farren's knowledge, no other pending hearing in which the Department or an Intervenor has requested that an applicant requesting a rate approval provide information regarding its claims handling procedures. The second criteria, that the matter be one that is "substantially in doubt and ... so fundamental to the instant proceeding that absent certification there is a substantial risk that hearing time would be wasted" is also not met. There is, in fact, no issue "in doubt" here. The Court has already acknowledged the potential relevance of claims handling practices to the rate approval analysis to be conducted in the Proceedings and the fact that claims handling

1 practices can affect the financial situation of an insurer asking for a rate increase is not a “novel  
2 idea” but a simple fact. Claims handling practices directly affect loss costs and thus are  
3 relevant to whether rates are justified. Admitting evidence related to a matter of relevance to  
4 the Proceedings, or even potential relevance, is not wasteful. There is no real risk of “wasted”  
5 hearing time. It is far better to create a full factual record now. By contrast, if discovery and  
6 evidence are cut off now, the Proceedings will lack the benefit of a complete record, it will  
7 make the Commissioner’s consideration of the findings of the ALJ at the end of the  
8 Proceedings more difficult, and will additionally complicate any subsequent legal review of the  
9 Commissioner’s ultimate decision on State Farm’s rate increase request. Facts can be admitted  
10 now and set aside later, if appropriate. Facts cannot be easily added to the record later.  
11  
12 Prudent practice focused on avoidance of wastefulness suggests inclusion of evidence that may  
13 be useful, not exclusion.

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16 **IV. CERTIFICATION WOULD WASTE RESOURCES, NOT SAVE RESOURCES**  
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19 Were certification to be granted, the Proceedings would be delayed by interlocutory  
20 appeals before a factual record is even built. That is inefficient and would waste resources, not  
21 create efficiency.

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23 **V. THE DEPARTMENT MISAPPLIES GOVERNMENT CODE § 11415.20**  
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1                   The Department effectively argues that Section 2646.2 “prevails” over the APA under  
2 Gov. Code § 11415.20. That provision simply recognizes that agency-specific regulations  
3 govern when in direct conflict with APA defaults. But there is no conflict here. The APA  
4 authorizes the ALJ to manage discovery and evidence (Gov. Code §§ 11425.10, 11507.6), and  
5 nothing in § 2646.2 displaces that authority. Reading § 2646.2 as the Department proposes  
6 would nullify the APA’s adjudicatory framework and improperly deny the Court its proper  
7 role.

9

10                   VI. CONSISTENCY WITH PROPOSITION 103

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13                   Proposition 103 was enacted to ensure maximum transparency and consumer  
14 participation in ratemaking. Courts have emphasized that Prop 103 must be interpreted  
15 broadly to further these goals (*20th Century Ins. v. Garamendi*, 8 Cal.4th 216 (1994); *Calfarm*  
16 *Ins. v. Deukmejian*, 48 Cal.3d 805 (1989)).

17                   Denying discovery into claims practices at the outset, or certifying away the issue,  
18 would undermine transparency and consumer participation by shielding evidence provided by  
19 insurers in support of rate increase requests from proper scrutiny. What’s more, as noted in  
20 *Fireman’s Fund Ins. Cos. v. Quackenbush*, 52 Cal.App.4th 599 (1997):

21                   *Proposition 103 expressly states that only ALJ’s will conduct hearings, the converse of*  
22 *which is that the Commissioner will not. If the conduct of hearings is limited to ALJ’s,*  
23 *evidentiary rulings are necessarily limited to ALJ’s. Furthermore, Proposition 103*  
24 *restricts the Commissioner to making his final decision "solely on the basis of the record."*

*(Ins. Code, § 1861.08.) The record is developed at the hearing, which the Commissioner does not conduct. (Ins. Code, § 1861.08.) Were the Commissioner to rule on interim evidentiary rulings, he would in effect be participating in the conduct of the hearing and also conducting an unauthorized interim review.*

## VII. CONCLUSION

Certification under § 2646.2 is neither necessary nor appropriate. The ALJ is fully empowered to rule on discovery and evidentiary issues, and the Commissioner retains authority to review such rulings after the ALJ has issued the ALJ's determination on State Farm's rate increase request at the end of the Proceedings. The Department's request should therefore be denied, and the Proceedings should continue with development of a full factual record, including claims-handling discovery.

Dated October 27, 2025

Respectfully submitted,



Merritt David Farren

## Intervenor

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2 **PROOF OF SERVICE**

3 **[BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,**

4 **EMAIL TRANSMISSION AND/OR PERSONAL SERVICE]**

5 State of California, City and County of Los Angeles

6

7 I am employed in the City and County of Los Angeles, State of California. I am over the age of 18

8 years. My business address 26565 West Agoura Rd, Suite 200, Calabasas, CA 91302, and I am

9 employed in the city and county where this service is occurring. On October 27, 2025, I caused

10 service of true and correct copies of the document entitled: INTERVENOR MERRITT DAVID

11 FARREN'S SUPPLEMENTAL RESPONSE TO CDI'S STATEMENT IN OPPOSITION TO

12 INTERVENOR'S MOTION TO COMPEL DISCOVERY FROM STATE FARM GENERAL

13 INSURANCE COMPANY in the Matter of the Rate Application of State Farm General Insurance

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

15

16 1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number

17 stated to the person(s) named.

18

19 2. If marked EMAIL, by electronic mail transmission this date to the email address

20 stated.

21

22 3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, by placing this date for

23 collection for regular or overnight mailing true copies of the within document in sealed envelopes,

24 addressed to each of the persons so listed. I am readily familiar with the regular practice of

25 collection and processing of correspondence for mailing of U.S. Mail and for sending of Overnight

26 mail. If mailed by U.S. Mail, these envelopes would be deposited this day in the ordinary course of

1 business with the U.S. Postal Service. If mailed Overnight, these envelopes would be  
2 deposited this day in a box or other facility regularly maintained by the express  
3 service carrier or delivered this day to an authorized courier or driver authorized by  
4 the express service carrier to receive documents, in the ordinary course of business,  
5 fully prepaid.  
6  
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8 I declare under penalty of perjury that the foregoing is true and correct.  
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11 Executed on October 27, 2025, at Los Angeles, California.  
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14 Merritt David Farren  
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