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 7  
 8 UNITED STATES DISTRICT COURT  
 9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 **WILLIAM TONG**, et al,  
 11  
 12 Plaintiffs,

13 v.

14 **STATE FARM GENERAL**  
**INSURANCE COMPANY**, an  
 15 Illinois corporation, and **DOES 1**  
**through 10**,

16 Defendants.

Case No. 2:24-cv-02219-DSF-MAR

**DISCOVERY MATTER**

17 **JOINT STIPULATION PURSUANT**  
**TO LOCAL RULE 37-2.1**  
**REGARDING PLAINTIFFS’**  
**MOTION FOR ENFORCEMENT**  
**OF THE COURT’S ORDER**  
**COMPELLING DISCOVERY**  
**RESPONSES AND PRODUCTION**  
**AND FOR SANCTIONS**  
**PURSUANT TO FEDERAL RULE**  
**OF CIVIL PROCEDURE 37(b)(2)**

18 **Motion Date:** March 26, 2025  
**Motion Time:** 11:00 a.m.  
**Courtroom:** 255 E. Temple St., Los  
 Angeles, Courtroom 790, 7th Floor

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 20  
 21 Discovery Cutoff: 5/12/25<sup>1</sup>  
 Pre-Trial Conference: 9/8/25  
 Trial: 10/7/25

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 26  
 27 <sup>1</sup> Pursuant to Local Rule 37-2.1, the Court’s scheduling order is attached as Exhibit  
 A to the accompanying Declaration of Dylan Schaffer in Support of Plaintiffs’  
 28 Motion to Compel Production of Documents.

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1 **I. Tongs’ Introductory Statement.**

2 It is not clear what it will take to convince State Farm that it must comply  
3 with its discovery obligations in this case. The Court’s December 20, 2024, order  
4 compelling production was not enough. The *threat* of sanctions is not enough.  
5 State Farm’s refusal to heed the Court’s order, now ten weeks old, should lead to  
6 meaningful issue sanctions. Given State Farm’s unexcused and unapologetic  
7 intransigence, and a May 12, 2025, fact cutoff, State Farm’s long and ongoing  
8 obstruction requires not only a follow-up order of enforcement, but a stay to permit  
9 Plaintiffs to obtain the materials they require to litigate this case. The Court should  
10 grant this motion and issue orders as requested.  
11  
12  
13

14 \*\*\*

15 On December 20, 2024, the Court ordered State Farm to produce documents  
16 responsive to thirty-four document requests. (Dkt.48, pp.8-19). In the ten weeks  
17 since, Defendant has thumbed its nose at the Court’s order. That assertion is not  
18 subject to dispute; Defendant’s recent representations to the Court in an email on  
19 the subject are an effective admission—ten weeks after the fact, the best State  
20 Farm can manage is that it is “has been actively searching and obtaining  
21 documents for production.”<sup>2</sup>  
22  
23  
24

25 Indeed, State Farm has done worse than violating the Court’s order; it seems

26 \_\_\_\_\_  
27 <sup>2</sup> Dylan Schaffer Declaration in Support of Motion for Enforcement (Schaffer  
28 Decl.), ¶33, Exhibit I.

1 to have tried to *look* like it is complying, without doing so. At the time this Joint  
2 Statement was served on State Farm, it has yet to serve a single further discovery  
3 response despite having promised repeatedly over ten weeks that its amended  
4 responses and responsive productions were around the corner. Likewise, instead of  
5 searching for and producing documents responsive to the categories identified by  
6 the Court in its order, a month after the order State Farm produced multiple  
7 versions of twenty-nine “Operations Guides” which have no relevance in this case,  
8 and which are likewise non-responsive to any order of the Court.  
9

11 Specifically, in a dispute that turns on State Farm’s coverage denial of a  
12 water loss resulting from a failed supply inside a foundation, State Farm can have  
13 had no reason to send multiple versions of Operations Guides relating, for  
14 example, to wind and hail claims, or multiple Operations Guides relating to its  
15 preferred vendor programs, other than to provide cover for the same obstructive  
16 conduct ongoing since this case began.  
17

19 State Farm is, and has been since August 2024, playing a delay game. For  
20 example, having concluded after reading Plaintiffs’ discovery requests in July 2024  
21 that some responsive documents were confidential or proprietary, State Farm had  
22 the obligation to obtain a stipulation to, or move for, a protective order *by the time*  
23  
24  
25  
26  
27  
28

1 of its responses,<sup>3</sup> which were due in August 2024. But the carrier waited months,  
2 moving for the protective order only until after the Tongs submitted their motion to  
3 compel.

4  
5 Now, having failed to comply with the Court’s order for months, read this  
6 Joint Statement in advance of its filing (pursuant to the Local Rules), and gathered  
7 that its obstruction might result in meaningful issue sanctions, State Farm will of  
8 course immediately spring into action. The Court can be sure that in the weeks  
9 between service of the Tongs’ portion of this Joint Statement on State Farm  
10 (February 17, 2025), and the final briefing in this proceeding, State Farm will find  
11 thousands of pages of responsive documents and perhaps send further responses to  
12 the thirty-three requests for production at issue.  
13  
14

15 But whatever State Farm produces or serves after reading this Joint  
16 Statement, the many weeks of indefensible non-compliance is proven, the harm has  
17 been done, and the strategic advantage to the Defendant of ten more weeks of  
18 delay has been achieved. The Court should not stand for it. Such conduct not only  
19 violates the rules, it flies in the face of the Court’s power to control proceedings  
20 before it, and imposes an unnecessary burden on the Court and its staff. A  
21 sophisticated litigant like State Farm should not be permitted to take advantage of  
22  
23  
24

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25 <sup>3</sup> See, e.g., *Gilbert v. Rashid*, 2022 WL 4135102, at \*3 (E.D.Cal., 2022); *Clare v.*  
26 *Clare*, 2021 WL 6206977, at \*4 (E.D.Wash., 2021); *Henry v. Ocwen Loan*  
27 *Servicing, LLC*, No. 3:17-cv-688-JM-NLS, 2018 WL 1638255 at \*3 (S.D. Cal.  
28 2018) *Brittain v. Stroh Brewery Co.*, 136 F.R.D. 408, 413 (M.D.N.C. 1991).

1 the delays and time limits inherent in the Court's process to achieve an unabashed  
2 plain strategic purpose. The Court should grant the motion and order the requested  
3 relief.

4  
5 **II. State Farm's Introductory Statement.**

6 Plaintiffs base their Motion on a manufactured dispute brought in disregard  
7 of this Court's rules to obtain an overbroad and unjustified sanction designed for  
8 their counsel to exploit in this and *other* litigation. Their Motion should be denied,  
9 and their counsel's gamesmanship should not be countenanced. If the Court issues  
10 sanctions against anyone, it should be Plaintiffs' counsel for pursuing this frivolous  
11 Motion.  
12  
13

14 Contrary to Plaintiffs' counsel's claim, State Farm has not violated this  
15 Court's December 20, 2024 Order. That Order included no deadline to provide  
16 amended responses or documents. State Farm timely moved for review of the  
17 Order pursuant to the Court's Local Rules, and Judge Fischer took the motion for  
18 review under submission.  
19  
20

21 While the parties await Judge Fischer's guidance on the challenged portions  
22 of the Order, State Farm has been gathering other documents related to non-  
23 challenged portions of the Order and producing them to Plaintiffs, even after  
24 Plaintiffs had initially suggested that State Farm wait to produce anything until it  
25 had everything because they demanded fully amended responses identifying all  
26 responsive documents. Not meeting Plaintiffs' counsel's self-determined deadline  
27  
28



1 after their own about-face on timing does *not* constitute a violation of the Court's  
2 Order.

3 In addition to failing on its merits, Plaintiffs brought this Motion without  
4 meeting and conferring in compliance with this Court's rules. Plaintiffs' counsel  
5 never even asked for a phone call with State Farm's counsel to discuss this Motion,  
6 and no pre-filing conference with the Court occurred. State Farm only learned that  
7 Plaintiffs intended to file this Motion seeking draconian, unwarranted and  
8 inappropriate issue sanctions when their counsel presented State Farm with their  
9 portions of this Joint Statement.  
10  
11

12 Notwithstanding Plaintiffs' counsel's tactics, since issuance of the Order,  
13 State Farm has provided amended responses to each document request not subject  
14 to the Motion for Review before the District Court and produced approximately  
15 4000 pages of documents, including:  
16  
17

- 18 • State Farm's Operation Guides
- 19 • Jurisdictional References
- 20 • Standard Claim Processes
- 21 • The training transcripts for the Claim Specialist and Team Manager –  
22 the only two individuals involved in the claim  
23  
24  
25  
26  
27  
28

- 1 • The actual training materials related to the handling of water claims  
2 for these individuals as identified on their training transcripts (as  
3 agreed to by the parties and memorialized by this Court)  
4
- 5 • The personnel files containing information about the Claim  
6 Specialist’s and Team Manager’s employment at State Farm  
7
- 8 • The formal performance reviews for the Claim Specialist and Team  
9 Manager

10 State Farm acknowledges that the process of identifying, preparing, and  
11 producing documents is ongoing. However, importantly, rather than making more  
12 frequent, iterative productions, before the filing of this Motion, State Farm had  
13 halted such productions because Plaintiffs indicated they would not accept  
14 documents as they became available without fully amended responses, even though  
15 State Farm explained that fully amended responses would occur once it had  
16 identified all the documents it would be producing (Batezel Decl., Exhibit 1).  
17 Providing fully amended responses required resolution of State Farm’s Motion for  
18 Review of portions of the Order, which remains pending.  
19  
20  
21

22 Finally, the Motion should be denied because it seeks inappropriate and  
23 unwarranted relief. The issue sanctions Plaintiffs seek are not meant to address  
24 any purported violation of the Order (which has not occurred). Rather, they are  
25 designed to tip the scales in this and other litigation, where Plaintiffs have also  
26 received extensive discovery of State Farm but no evidence of a purported  
27  
28

1 wrongful scheme to deny covered claims. Despite their scorched earth discovery  
2 tactics in this and other litigation, Plaintiffs cannot prove their theory that State  
3 Farm engaged in a “Water Initiative” to deny covered water loss claims. That is  
4 because no “Water Initiative” as Plaintiffs’ counsel contends exists, or has ever  
5 existed (please see the declaration of Kyle Rice in support of State Farm’s Reply to  
6 the Opposition to Motion for Review (Doc #53). Unable to meet their evidentiary  
7 burden, Plaintiffs now seek an end-run around it by asking this Court to make  
8 findings which would be factually and demonstrably false.  
9

10  
11 Specifically, Plaintiffs seek issue sanctions declaring their unproven  
12 assertions related to a purported strategy to improperly deny covered water losses  
13 resulting from the failure of plumbing lines and/or the application of its “below the  
14 surface of the ground” exclusion, without offering a scintilla of evidence to support  
15 such findings. But Plaintiffs do not stop there. They also ask this Court to declare  
16 expansive findings relating to purported misrepresentations or concealments from  
17 the Department of Insurance and allegations of pattern and practice behavior as to  
18 unproven issues far broader than the narrow issues involved in this water loss case,  
19 which are inappropriate on their face. The Court should not entertain such abusive  
20 gamesmanship.  
21

22  
23  
24  
25 No sanctions are warranted here against State Farm, much less the draconian  
26 factual issue sanctions untethered to *any* evidence. The Motion, and the sanctions  
27 it seeks against State Farm, should be denied, and this Court should instead  
28

1 consider sanctions against Plaintiffs and their counsel for their frivolous and  
2 inappropriate motion in the form of the costs expended by State Farm in opposing  
3 this Motion.

4  
5 **FACTUAL STATEMENTS**

6 **I. Tongs' Statement.**

7 **A. The Claim and Coverage Dispute.**

8  
9 As the Court has previously reviewed the Tongs' detailed description of the  
10 dispute and key evidence, they will not repeat that briefing here. The Tongs refer  
11 the Court to their comprehensive statement of the underlying facts in the Joint  
12 Statement filed in support of the previously litigated motion to compel, Docket 40-  
13 2, pp.19:11-29:1, which statement is incorporated here by reference. Likewise, the  
14 Court's related order contains a detailed statement of the claim and case. *See*  
15 Docket 48, pp.1-2.  
16  
17

18 **B. Facts Relating to State Farm's Conduct Following Issuance of the**  
19 **Court's Order of December 20, 2024.**

20  
21 On December 20, 2024, the Court entered its order (Dkt. 48) granting in part  
22 and denying in part Plaintiffs' Motion to Compel Production of Documents and for  
23 Further Responses to Requests for Production of Documents. The same day the  
24 Court entered a protective order in this case. (Dkt. 49.)  
25

26 The Court will recall that with narrow exceptions and modifications to  
27 requests, it either granted Plaintiffs' motion, or concluded the motion was moot as  
28

1 to various categories *because State Farm had agreed to produce the documents*  
2 *upon entry of the protective order.*

3 On December 20, 2024, and again on December 21, shortly after the filing  
4 of the Court’s order, the Tongs’ lawyer wrote to State Farm’s counsel to set forth  
5 in detail the documents the Court had ordered to be produced, or which the Court  
6 found State Farm had *agreed* to produce upon entry of a protective order.<sup>4</sup>

7  
8 In those emails Plaintiffs’ counsel provided a detailed description of State  
9 Farm’s production and amendment obligations, as follows:

11 **Template** [RFP 44, Joint Statement ISO Motion to  
12 Compel (Dkt. 40-2), p.36:17-23]

13 The court indicated the documents should be produced:

- 14 (a) the template Acosta relied on  
15 (b) “any other water loss claim denial templates available  
16 to Acosta in the ‘forms and correspondence section’ of  
17 Plaintiffs’ claim file.

18 The Court modified the request as follows:

19 DOCUMENTS containing any water loss claim denial  
20 letter template that existed in March 2024, whether stored  
21 in hard or digital form, and were available for use by  
22 Gerald Acosta in California to draft the Tongs’ water loss  
23 claim denial on the basis of any policy exclusion.

24 [DOCUMENT is defined to mean the same as “writing”  
25 as defined in Section 250 of the California Evidence  
26

27 <sup>4</sup> Schaffer Decl., ¶6, Exhibit B.

code.]

**RFPs, Set One, 25-28, 39-42**

The court granted our motion to compel responses and production.

**RFP, Set One, Nos. 15, 17, 19, 21, 23, 29, 31, 33, 35, 37**

The court denied the motion as moot in light of State Farm’s agreement to produce upon entry of a PO. That order is in place so there is no obstacle to production.

**RFP, Set One, Nos. 18, 20, 22, 24, 32, 34, 36, 38 and**

**RFP, Set Four, Nos. 92–94, 126, 145–46**

**A. Guidelines and Training:**

The court denied the motion as moot, given State Farm’s agreement to produce upon entry of a PO. The request are limited to “materials applicable to California claims” in the period January 1, 2023, to present.

**B. Water Initiative – Nos. 92-94, 126, 145-146.**

The Court granted the motion as to all responsive documents created after January 1, 2016. The Court denied the motion as moot as to whatever documents State Farm agreed to produce upon entry of a PO. That order has now been entered. I am not aware of any such representation on behalf of State Farm, but the full set of responsive documents is now due....

**Requests for Inspection - Nos. 80-81**

The court granted these requests. Please select some dates/times in the first two weeks of January for a conferral. I will come to that conferral with a concrete

1 proposal for terms of the inspections. I expect to  
2 undertake the inspections in the first half of February so  
3 we can conclude those before pursuing further  
4 depositions including Rule 30b6 depositions.[<sup>5</sup>]

5  
6 The Tongs’ lawyer is counsel in *Pachall v. State Farm General Insurance*  
7 *Company*, San Diego Superior Court No. 37-2022-00044176.<sup>6</sup> In that case  
8 plaintiffs sued State Farm after the insurer denied their water loss on the identical  
9 grounds at issue here: (a) the “below the surface of the ground” exclusion and (b)  
10 the “continuous and repeated seepage and leakage” exclusion.<sup>7</sup>

11  
12 In *Pachall*, as here, Plaintiffs sought training and guidelines materials, as  
13 well as personnel records relating to the handling of water losses. In *Pachall*, as  
14 here, State Farm refused to produce the personnel file materials, agreed to produce  
15 generic Operations Guides, Standard Claim Processes, and Jurisdictional  
16 Resources, but failed to search for and produce all responsive training and  
17  
18  
19 guidelines materials relating to investigation of coverage as relates to water losses.<sup>8</sup>

20 In *Pachall*, as here, plaintiffs moved to compel production of many of the  
21 same categories of documents at issue here – personnel records, and  
22  
23

24  
25 <sup>5</sup> Schaffer Decl., ¶7, Exhibit B.

26 <sup>6</sup> Schaffer Decl., ¶8.

27 <sup>7</sup> Schaffer Decl., ¶9.

28 <sup>8</sup> Schaffer Decl., ¶¶10-11.

1 guidelines/training relating to the investigation and coverage of water losses at  
2 State Farm, including documents relating to the State Farm “Water Initiative.”<sup>9</sup>

3 On October 11, 2024, the *Pachall* court granted Plaintiffs’ motion in part  
4 and ordered State Farm to search for and produce the requested documents and  
5 awarded \$4,520 in sanctions.<sup>10</sup>

7 Thereafter, State Farm produced some documents pursuant to the court’s  
8 order compelling production. But counsel for the *Pachall* plaintiffs concluded the  
9 productions were incomplete in various respects, necessitating an enforcement  
10 motion like this one, which is ongoing.<sup>11</sup>

13 To try to avoid the enforcement proceeding here, in his correspondence on  
14 December 20 and 21, the Tongs’ lawyer made the following additional requests,  
15 specifically motivated by his experience in the *Pachall* matter:

17 [a] As relates to all requests that were granted, and those  
18 as to which the Court denied the motion as moot because  
19 State Farm has agreed to produce the documents, please  
20 provide a timeline for service of amended responses and  
21 production. Given the relatively short period of time  
22 remaining for fact discovery in this case, and the long  
23 delay due to your client’s conduct, I ask that you provide  
24 a reasonable deadline for production.

25 \_\_\_\_\_  
26 <sup>9</sup> Schaffer Decl., ¶12.

27 <sup>10</sup> Schaffer Decl., ¶13, Exhibit H.

28 <sup>11</sup> Schaffer Decl., ¶14.



1 [b] Given the large quantity of materials, and varying  
2 categories as to which the Court has compelled  
3 production and/or State Farm has agreed to production,  
4 and short time left in our fact discovery period. please  
5 produce in a manner that “corresponds to the categories  
6 in the requests.” [FRCP 34(b)(2)(E)(i); *see SEC v.*  
7 *Collins & Aikman Corp.* (SD NY 2009) 256 FRD 403,  
8 409-410] Likewise, our request is that your amended  
9 responses identify Bates ranges that are being produced  
10 pursuant to each request.

11 [c] Many of the “documents” the Court has ordered to be  
12 produce are ESI that take the form of various media –  
13 videos, presentations, interactive modules, virtual reality  
14 applications, and so forth. The videos, in particularly  
15 exist in “series” that address a general topic like “Water  
16 Coverage” or “Plumbing” and then address various sub-  
17 topics in each video. Also, many of the other forms of  
18 media have internal audio/video/photographic links that  
19 viewer is directed to “scroll over” or “click” to reveal  
20 additional information.

21 Given these circumstances, and to avoid any  
22 further delay:

- 23 • Please do not produce “media placeholders”  
24 without producing the actual media;
- 25 • Please produce *all* videos and other media in any  
26 given series that is responsive to our requests;
- 27 • Please do not produce only pdfs of responsive  
28

1 media like presentations, interactive modules, and  
2 virtual reality applications – we have no objection  
3 to receiving pdfs of these, but we are entitled to the  
4 original ESI in a form that allows us to use the  
5 media – that is especially because they have  
6 internal links as described above.

- 7 • As to ESI, please produce with meta-data intact;  
8 all items the Court has ordered to be produce were  
9 requested to be produced with such meta-data. As  
10 you know, the law requires electronic documents  
11 must be produced in the fashion maintained in the  
12 ordinary course of business, with “metadata intact,  
13 unless the court orders otherwise. [*Williams v.*  
14 *Sprint/United Mgmt. Co.*, 230 FRD 640, 652 (D  
15 KS 2005) —improper to deliver files with  
16 “metadata” scrubbed; *Nova Measuring Instruments*  
17 *Ltd. v. Nanometrics, Inc.*, 417 F.Supp.2d 1121,  
18 1122(ND CA 2006).]<sup>12</sup>

19  
20 On December 23, 2024, State Farm’s counsel responded as follows: “I will  
21 be working on these this week and early next week to produce responsive  
22 documents *in the near future*”; that was State Farm’s full response to my emails of  
23 December 20 and 21.<sup>13</sup>

24  
25  
26 \_\_\_\_\_  
27 <sup>12</sup> Schaffer Decl., ¶15, Exhibit B.

28 <sup>13</sup> Schaffer Decl., ¶16, Exhibit C.

1 In the same email on December 23, State Farm’s lawyer also said the carrier  
2 would be filing a motion for review of this Court’s order, and perhaps a writ, but  
3 not as to the “entirety of the court’s order.”<sup>14</sup>  
4

5 State Farm did seek review, which was set to be heard on February 3, 2025,  
6 but was taken off calendar and is now pending. (Dkt. 50-53.) The motion seeks  
7 narrow relief: (a) a limit to the time period as to some document requests and (b)  
8 the Court’s order overruling this Court’s order for inspections of State Farm’s  
9 intranet and enterprise claims system. (Dkt. 50-1.)  
10

11 State Farm has never sought a stay of this Court’s December 20, 2025, order  
12 from any court, and as such the order has been in full effect since its entry in  
13 December, notwithstanding State Farm’s motion for review. LR 72-2.2.<sup>15</sup>  
14

15 On January 4, 2025, fifteen days after the Court’s order, and twelve days  
16 after State Farm’s lawyer promised to produce documents “in the near future,” the  
17 Tongs’ lawyer wrote to request production in compliance with the Court’s order  
18 along with amended responses to ensure a diligent search and production of all  
19 responsive materials; State Farm’s lawyers did not respond.<sup>16</sup>  
20  
21

22 On January 8, 2025, nineteen days after the Court’s order, the Tongs’ lawyer  
23  
24

25 \_\_\_\_\_  
26 <sup>14</sup> Schaffer Decl., ¶17, Exhibit C.

27 <sup>15</sup> Schaffer Decl., ¶19.

28 <sup>16</sup> Schaffer Decl., ¶¶20-21, Exhibit D.

1 wrote again, for the same purpose.<sup>17</sup>

2 On January 10, 2025, a Friday, now three weeks after the Court’s order,  
3 State Farm’s lawyer wrote to report “I expect it to be a somewhat rolling  
4 production, but we should get the first batch to you *early next week*. Likewise, we  
5 intend to have amended responses to you *early/mid next week*.”<sup>18</sup>

7 In response to that message, the same day, the Tongs’ lawyer wrote to  
8 remind counsel of its obligations to ensure production in compliance with Federal  
9 Rule of Civil Procedure 34(b)(2)(E)(i), which response was, again, motivated by  
10 State Farm’s failure to comply with that rule in the *Pachall* case: “Given your  
11 indication that the productions will be ‘rolling’ it is particularly important that you  
12 connect the production/Bates range to the requests.”<sup>19</sup>

15 On January 14, 2025, the parties met and conferred as to these and other  
16 discovery issues. State Farm again promised to produce responsive documents and  
17 send amended responses to the discovery requests at issue in the previously-  
18 litigated motion.<sup>20</sup>

21 Although State Farm’s lawyer—in December, and repeatedly in January—  
22 had promised to comply with the Court’s order, the opposite occurred. Instead, as  
23

24 \_\_\_\_\_  
25 <sup>17</sup> Schaffer Decl., ¶22, Exhibit E.

26 <sup>18</sup> Schaffer Decl., ¶23, Exhibit F (emphases added).

27 <sup>19</sup> Schaffer Decl., ¶24, Exhibit G.

28 <sup>20</sup> Schaffer Decl., ¶25.

1 of the preparation of this Joint Statement, 60 days after the Court’s order of  
2 December 20, 2025 (which Joint Statement was prepared and served a week before  
3 its filing due to application of Local Rule 37-2.1-2.2), State Farm has not served a  
4 single amended response in compliance with the Court’s order.<sup>21</sup>  
5

6 State Farm’s only production in response to the Court’s order was on  
7 January 16, 2025, about four weeks after the Court’s order.<sup>22</sup> The January 16,  
8 2025, production falls far short of compliance with the Court’s order of December  
9 20, 2024.  
10

11 First, the January 16, 2025, production was not accompanied by any  
12 amended discovery responses.<sup>23</sup>  
13

14 Second, the production was accompanied by no pleading or other effort to  
15 comply with Federal Rule of Civil Procedure 34(b)(2)(E)(i); Plaintiffs received the  
16 bare production without explanation.<sup>24</sup>  
17

18 Third, the January 16, 2025, production was restricted to categories of  
19 documents State Farm had agreed to produce upon entry of a protective order, *i.e.*,  
20 training transcripts for the two claims staff involved in the claim (which were  
21 responsive to Plaintiffs’ requests, Set One, number 15 and 29 (Dkt.40-2, pp.59:17-  
22  
23

24 \_\_\_\_\_  
25 <sup>21</sup> Schaffer Decl., ¶26.

26 <sup>22</sup> Schaffer Decl., ¶27.

27 <sup>23</sup> Schaffer Decl., ¶28.

28 <sup>24</sup> Schaffer Decl., ¶29.

1 23, 66:14-16)), and Operations Guides; other than the training transcripts, the  
2 production was almost entirely non-responsive to Plaintiffs’ requests.<sup>25</sup>

3 Among multiple versions of twenty-nine Operations Guides, the January 16,  
4 2025, production included two versions of a State Farm “Operations Guide”  
5 relating to Water Damage, which State Farm produces in every water loss case  
6 Plaintiffs’ counsel has litigated with the carrier: OG 75-20.<sup>26</sup>

7 That Operations Guide contains just *one sentence* relating to either of the  
8 two exclusions at issue in this lawsuit (“below the surface of the ground”); OG 75-  
9 20 omits any reference whatsoever to the other exclusion at issue here (“repeated  
10 seepage or leakage”).<sup>27</sup>

11 Consistent with its obstructive conduct in this litigation, State Farm also  
12 produced multiple versions of twenty-eight other Operations Guides, amounting to  
13 several hundred pages; none of those Operations Guides is responsive to any  
14 request made by Plaintiffs, which were narrowly tailored to address the issue in  
15 this lawsuit, namely, how State Farm trains and guides its adjusters to investigate  
16 and determine coverage in water loss claims.<sup>28</sup>

17 Except for the training transcripts, and OG 75-20, which is all but irrelevant

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24 \_\_\_\_\_  
25 <sup>25</sup> Schaffer Decl., ¶30.

26 <sup>26</sup> Schaffer Decl., ¶31.

27 <sup>27</sup> Schaffer Decl., ¶32.

28 <sup>28</sup> Schaffer Decl., ¶33.

1 here, all other documents produced by State Farm on January 16, 2025, are *entirely*  
2 irrelevant to any cause of action, allegation, or defense in this case. The documents  
3 are non-responsive to the more than thirty document requests as to which the Court  
4 either ordered production or found that State Farm had promised production.<sup>29</sup>  
5

6 For example, the Operations Guides produced address the following  
7 subjects, often in essentially identical versions of the same Guide with various  
8 print dates:  
9

- 10 a. depreciation,
- 11 b. personal property,
- 12 c. roofing,
- 13 d. loss of use benefits,
- 14 e. fungus and mold,
- 15 f. flooring claims,
- 16 g. wind and hail claims,
- 17 h. State Farm’s preferred vendor mitigation program,
- 18 i. State Farm’s preferred vendor program contractor program,
- 19 j. State Farm’s use of engineers in claims, and
- 20 k. State Farm’s use of other types of experts in claims.<sup>30</sup>

21  
22 Plaintiffs assert no claim or argument in this case which turns on any of  
23  
24  
25

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26 <sup>29</sup> Schaffer Decl., ¶34.

27 <sup>30</sup> Schaffer Decl., ¶35.

1 those subjects.<sup>31</sup>

2 As of the preparation of this Declaration, 60 days after the Court’s order of  
3 December 20, 2025 (which Declaration was prepared a week before its filing due  
4 to application of Local Rule 37-2.1-2.2), State Farm had not produced any other  
5 documents in response to Court’s order.<sup>32</sup>

6  
7 On February 11, 2025, Plaintiff submitted a request for an informal  
8 telephone conference to address the issues raised in this motion. In that  
9 correspondence, State Farm made the following representation to the Court, nearly  
10 ten weeks after its order of December 20, 2024: “State Farm has been actively  
11 searching and obtaining documents for production in response to the Court’s  
12 order.”<sup>33</sup>

13  
14  
15 At no point in the ten weeks between the Court’s order in December 2024,  
16 and service of this Joint Statement, has counsel for State Farm pointed to any  
17 reason for the delay, or failure to amend a single discovery response, or failure to  
18 produce more than a few pages of responsive documents, including but not limited  
19 to any unavailability of the necessary personnel at State Farm, the burden involved,  
20 the cost involved, unavoidable delay due to circumstances beyond State Farm’s or  
21 counsel’s control, or intervening events including but not limited to the wildfires in  
22  
23  
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25 \_\_\_\_\_  
26 <sup>31</sup> Schaffer Decl., ¶36.

27 <sup>32</sup> Schaffer Decl., ¶37.

28 <sup>33</sup> Schaffer Decl., ¶38, Exhibit I.



1 Los Angeles and any impact on State Farm’s ability to search for and produce  
2 responsive documents.<sup>34</sup>

3 Finally, at no point in the ten weeks between the Court’s order in December  
4 2024, and service of this Joint Statement, has counsel for State Farm initiated any  
5 discussion with the Tongs’ counsel regarding the productions or discovery  
6 responses that are the subject of the accompanying motion. In each instance from  
7 December 2024 to the present where the lawyers have exchanged correspondence  
8 or spoken directly, the discussion was initiated by the Tongs’ counsel.<sup>35</sup>

9  
10  
11 **II. State Farm’s Statement.**

12  
13 **A. State Farm Has Produced and Continues to Produce Documents**  
14 **Pursuant to the Court’s Order and in Communications with**  
15 **Counsel**

16  
17 The Court’s December 20, 2024 Order approved the protective order  
18 proposed by State Farm, which modified the Court’s model order to prevent  
19 Plaintiffs’ counsel from attempting to obtain documents subject to protective  
20 orders in other cases or to disseminate protected documents obtained in this case.  
21 [Doc. 48. (the “Order”).] In the Order, the Court also denied the bulk of the  
22 Plaintiffs’ motion to compel as moot, because in its original responses to the  
23  
24

25  
26 \_\_\_\_\_  
27 <sup>34</sup> Schaffer Decl., ¶39.

28 <sup>35</sup> Schaffer Decl., ¶40.

1 document requests at issue State Farm stated it would produce protected  
2 documents upon entry of an appropriate protective order, and notably, Plaintiffs’  
3 counsel did not contest the proposed scope of production. [*Id.*] On January 3,  
4 2025, State Farm filed its Motion for Review of portions of the Order, which is  
5 pending. [Doc. 50.]

7         Since the entry of the Order, State Farm has proceeded to identify, segregate,  
8 and produce the confidential documents it had agreed to produce, as stated in its  
9 written responses to Plaintiffs’ requests for production, and/or as directed by the  
10 Order. As recounted in the Plaintiffs’ portion of this joint statement, State Farm  
11 responded to Plaintiffs’ communications and kept Plaintiffs apprised of the status  
12 of its efforts. Plaintiffs’ suggestions that State Farm’s responses were somehow  
13 deficient or improper are specious.

16         For example, on December 20<sup>th</sup> and 21<sup>st</sup>, Plaintiffs’ counsel made numerous  
17 “requests” (based on counsel’s purported “experience” in an unrelated case,  
18 *Pachall*, discussed further below) about how and when State Farm should produce  
19 documents, including a request that State Farm provide a “timeframe” by which it  
20 would produce documents and amended responses. Plaintiffs acknowledge that  
21 State Farm replied to these communications two days later, on December 23<sup>rd</sup>, and  
22 indicated it was working on the production “this week and early next week” and  
23 intended to produce responsive documents “in the near future.” In other words,  
24 State Farm provided the requested “timeframe.” Plaintiffs apparently now  
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1 complain that State Farm’s December 23<sup>rd</sup> communication did not separately  
2 address every other request in Plaintiffs’ e-mails. Nothing in the Order or the  
3 Rules require this.

4  
5 Likewise, Plaintiffs make much of the fact that on January 10, 2025, counsel  
6 for State Farm indicated that State Farm expected to provide a “rolling  
7 production,” *i.e.*, it would produce batches of responsive documents as each was  
8 completed and prepared for production. State Farm acknowledges that the  
9 identification, preparation and production of certain documents has taken longer  
10 than anticipated, but once again, delays in this process are a making of Plaintiffs’  
11 counsel. When Plaintiffs indicated they would not accept rolling productions of  
12 documents as they became available and demanded full production alongside fully-  
13 amended discovery responses (Batezel Decl., Exhibit 1), State Farm halted its  
14 iterative productions until the filing of this motion,  
15  
16  
17

18 State Farm has now produced approximately 4000 pages in response to the  
19 majority of categories not under review along with amended responses to all  
20 Requests not under review. Collection efforts are ongoing, and State Farm may  
21 produce some supplemental responsive materials, along with additional materials  
22 responsive to Requests 26-28 and 40-42 (regarding job descriptions) and Request  
23 44 (regarding form letters). (Batezel Decl., ¶3).  
24  
25

26 The 4000 pages produced include responsive portions of State Farm’s  
27 Operation Guides, Jurisdictional References, Standard Claim Processes, the  
28

1 training transcripts for only two individuals involved in the claim, the training  
2 materials reflecting the actual training taken by these individuals related to water  
3 losses as identified on their training transcripts, and the two individuals' personnel  
4 files containing information about their employment at State Farm and their formal  
5 performance reviews. (Batezel Decl., ¶3).

7 In addition, Plaintiffs have continued to serve document requests on State  
8 Farm. In the last number of months, State Farm has responded to Requests to  
9 Produce, Sets 5, 6 and 7 which had increased the total document request to 316  
10 individual documents request (consider sets 1 through 7). In fact, Request 6 alone  
11 numbered 152 individual requests. (Batezel Decl., ¶4).

14 Plaintiffs complain that State Farm has produced versions of an "Operations  
15 Guide" that "[it] produces in every water loss case Plaintiffs' counsel has litigated  
16 with the carrier." [Schaffer Decl., ¶ 31.] This is confusing; certainly, Plaintiffs'  
17 counsel does not intend to suggest that the fact that State Farm has produced these  
18 documents in other cases means they should not be produced here. Plaintiffs  
19 acknowledge that State Farm produced "multiple versions of twenty-eight other  
20 Operations Guides, amounting to several hundred pages[.]" However, Plaintiffs'  
21 counsel contends that "none is responsive to any request made by Plaintiffs."  
22 [Schaffer Decl, ¶ 33.] This is a favorite tactic of Plaintiffs' counsel: Should State  
23 Farm take a narrow approach to the production of tailored information, Plaintiffs'  
24 counsel complains that State Farm is withholding information, and when State  
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1 Farm takes a broader approach, Plaintiffs’ counsel responds with a self-serving  
2 contention regarding the overbreadth of the production with the intention that the  
3 Court will simply accept such statements as fact, and improperly conclude that  
4 State Farm is the party engaged in gamesmanship. State Farm maintains that it has  
5 produced documents that it believes are responsive to the Plaintiffs’ overbroad  
6 requests issued by Plaintiffs in this case, consistent with its discovery responses  
7 and consistent with the Court’s Order. Overbroad requests necessarily generate  
8 overbroad responses. Furthermore, in light of the fact the aforementioned  
9 documents are confidential and produced in this manner in other cases, Plaintiffs’  
10 counsel has apparently inadvertently disclosed an apparent violation of at least one  
11 other protective order if he was able to compare even one prior production to the  
12 production made in this case. State Farm intends to seek redress on these issues in  
13 other appropriate courts as necessary.

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18 **B. The Discussion of *Pachall* is Misleading and Specious**

19 As in their motion to compel, Plaintiffs’ argument relies on their attorney’s  
20 involvement in and general characterization of an unrelated California state court  
21 case, *Pachall v. State Farm General Insurance Company*, San Diego Superior  
22 Court No. 37-2022-00044176 (“*Pachall*”). This reliance is misplaced, and the  
23 Plaintiffs’ discussion of *Pachall* is extremely misleading.  
24

25  
26 As an initial matter, Plaintiffs’ counsel associated as counsel in *Pachall* on  
27 December 12, 2024, *i.e.*, *after* the motion to compel in that case had been filed and  
28

1 a few weeks before the order issued. [Purviance Decl., ¶3.] Plaintiffs’ counsel’s  
2 argument based on his “experience” in *Pachall* is disingenuous at best.  
3 Incidentally, although not directly relevant to this Motion, Plaintiffs’ counsel  
4 became a signatory to the *Pachall* protective order on December 3, 2024, just one  
5 day after a large production was made by State Farm in that case, just a few days  
6 before serving requests in this case (Request to Produce No. 6) on December 6,  
7 that specifically referenced by document content confidential documents that had  
8 just been produced in *Pachall*. This strongly reveals a sharing of information  
9 violative of the protective order in *Pachall*. Plaintiffs’ counsel associated in  
10 *Pachall* after that discovery was served (again, on December 12). This timing  
11 reveals a sharing of information violative of the protective order in *Pachall*, a  
12 suggestion confirmed with Request to Produce No. 7, which expressly seeks  
13 documents by bates numbers from the *Pachall* case – all of which State Farm  
14 intends to address in the appropriate forum.  
15  
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19 Although not expressly stated, Plaintiffs’ clear insinuation is that the order in  
20 *Pachall* somehow constitutes evidence that supports granting the instant motion.  
21 This is purely specious, of course, because *Pachall* necessarily involves different  
22 facts and issues, different individuals, different timeframes, different policy  
23 language and different discovery requests and responses than the instant case.  
24 Indeed, contrary to Plaintiffs’ suggestion, *Pachall* did not involve the water below  
25 the surface of the ground exclusion. [Purviance Decl., ¶2.] Similarly, contrary to  
26  
27  
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1 Plaintiffs’ suggestion, the instant case did not involve a coverage denial based on  
2 the exclusion for continuous repeated seepage or leakage. In other words, the  
3 reasons for the coverage denial in *Pachall* was entirely different than the reason for  
4 the coverage denial in the instant case.  
5

6 Further, *Pachall* is a state course case and involves completely different  
7 discovery rules. It should go without saying that a ruling in *Pachall* has no bearing  
8 on the instant motion. Further, reference to *Pachall* evidences Plaintiffs’ counsel’s  
9 intent to subvert the court’s authority in *Pachall* by litigating that issue here.  
10 Certainly, both this Court and the court in *Pachall* are fully capable of deciding on  
11 discovery issues without reference to the rulings in each other’s courtrooms.  
12  
13

14 Simply put, Plaintiffs’ counsel’s statements regarding the discovery sought  
15 in *Pachall* and State Farm’s responses are just that – Plaintiffs’ counsel’s  
16 statements. Not surprisingly, those statements are crafted to suggest that the only  
17 difference between *Pachall* and this case is the name of the plaintiff. Plaintiffs  
18 paint both cases with the same broad brush by describing the general categories of  
19 materials the *Pachall* plaintiffs sought, *i.e.*, “training and guideline materials,” and  
20 “personnel records,” as though documents that fit these categories in *Pachall*  
21 necessarily would be identical in this case. In any event, in *Pachall*, like here,  
22 State Farm stated appropriate objections but generally agreed to produce  
23 responsive non-confidential information and responsive confidential information  
24  
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1 upon entry of a protective order. [Purvience Decl., ¶4.] In *Pachall*, like here, this  
2 was entirely proper.

3 The fact that the *Pachall* plaintiffs’ motion to compel was granted – in part –  
4 does not mean anything more than State Farm and the plaintiffs had a generic  
5 discovery dispute about whether and to what extent State Farm was required to  
6 produce certain categories of documents and could not come to an agreement.  
7 Likewise, the fact that “*counsel for the Pachall plaintiffs concluded the*  
8 *productions were incomplete*” (emphasis added) does not mean the productions  
9 actually *were* incomplete - as Plaintiffs are forced to acknowledge, the motion to  
10 enforce in *Pachall* is “ongoing.” [Schaffer Decl., ¶ 14.]. What Plaintiffs do not  
11 reveal is that in that motion, the plaintiff in *Pachall* seeks documents that were  
12 never requested in discovery nor ordered to be produced by the court in that case,  
13 and that the actual disputed scope of documents in issue subject to that order is  
14 quite narrow.  
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19 Plaintiffs’ characterization of the *Pachall* order itself and their comparison  
20 of that order to the Order in this case is disingenuous at best. Plaintiffs suggest that  
21 their counsel’s December 20<sup>th</sup> and 21<sup>st</sup> correspondence to State Farm’s counsel in  
22 this case was prompted by his “experience” and the order issued in *Pachall* (even  
23 though he had just entered his appearance in that case that very month) and thus  
24 asked State Farm to produce responsive videos and media, without “media  
25 placeholders,” and to produce meta-data. The order in *Pachall* does not mention  
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1 either of these. Likewise, although in their portion of this joint statement Plaintiffs  
2 claim that in *Pachall* State Farm failed to comply with F.R.C.P. 34(b)(2)(E)(i), the  
3 *Pachall* order does not say anything of the kind (nor could it, because it is venued  
4 in state court). Once again, Plaintiffs’ counsel asserts his “conclusion” that State  
5 Farm violated the rules in *Pachall*, to bootstrap a conclusion that State Farm has  
6 somehow violated the Order here. It should be noted Plaintiffs did not seek in their  
7 motion to compel in this case the production of documents in any particular form,  
8 and that under Fed. R. Civ. P. 34(b)(2)(E)(ii), State Farm may produce  
9 discoverable ESI in reasonably usable formats, which is what State Farm has done  
10 in both cases. Finally, the implication that State Farm is hiding documents –  
11 whether it be in *Pachall* or any other case -- is disingenuous at best, if not  
12 purposefully misleading.

13  
14  
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16  
17 Importantly, careful consideration of Plaintiffs’ counsel’s representations  
18 regarding the purported significance of the “Water Initiative” documents and his  
19 experience in other cases against State Farm actually *undermines* Plaintiffs’  
20 contentions. In their motion to compel, Plaintiffs emphasized other cases in which  
21 – *they* allege – State Farm initially refused to produce “Water Initiative”  
22 documents but subsequently produced them, and these representations strongly  
23 informed the Court’s Order. [Doc. 48, pp. 16-17.] However, because the  
24 documents State Farm produced do *not* provide evidence of a “Water Initiative” as  
25 Plaintiffs’ counsel conceives it, Plaintiffs’ counsel seeks the sanction power of this

1 Court to establish something that is fictional.

2 As set forth in the declaration of Kyle Rice (Doc #53), State Farm has a  
3 commitment to its policyholders, which encompasses all of its policyholders. For  
4 those making claims, State Farm is committed to paying what it owes promptly,  
5 courteously, and efficiently. For those not making claims, State Farm is committed  
6 to keeping premiums affordable by paying only what it owes. Quality claim  
7 handling ensures that State Farm meets those commitments.  
8  
9

10 Over the years, State Farm has used various approaches to promote quality  
11 claim handling on water loss claims in California. As noted in the declaration of  
12 Mr. Rice, in his thirty-eight year tenure with State Farm, he has *never* been  
13 instructed to increase denials of claims *nor has he instructed any person that he*  
14 *managed to do so.* State Farm’s position has consistently been, “we pay what we  
15 owe.”  
16  
17

18 State Farm has focused on efforts to promote quality claim handling which  
19 have centered on State Farm’s “Commitment to Our Policyholders.” The goal of  
20 quality claim handling is to ensure that State Farm is determining whether a loss is  
21 covered under the policy and, if it is covered, to determine how much is owed for  
22 the loss consistent with the terms of the policy.  
23  
24

25 This is what the documents produced to Plaintiffs in this case and in other  
26 cases show. When presented with a variety of documents in a variety of matters  
27 that reinforce what State Farm has been saying throughout the briefing of these  
28

1 issues in this case, Plaintiffs’ counsel’s asserts – without basis – that State Farm is  
2 concealing documents. There is no merit to that contention. But such is the way  
3 of conspiracy thinking: Absence of evidence is simply more proof of the  
4 conspiracy. The Court should reject this faulty and speculative thinking.  
5

6 Just as they did in their motion to compel, here the Plaintiffs essentially  
7 contend that their self-serving characterization of a thoroughly ordinary discovery  
8 dispute in another case somehow establishes that State Farm is engaged in a  
9 widespread pattern of discovery abuse. It does not. Unfortunately, the Court did  
10 not reject these contentions when it granted the Plaintiffs’ motion to compel, but it  
11 should reject them here.  
12  
13

14 **RULE 37-1 STATEMENT**

15 **I. Tongs’ Statement.**

16 As the accompanying Declaration of Dylan Schaffer sets forth in detail,<sup>36</sup>  
17 quite literally from the day this Court issued its order granting the motion to  
18 compel in part, Plaintiffs have done everything in their power to assist State Farm  
19 in complying with the Court’s order, to urge compliance, to demand compliance,  
20 and eventually to seek Court oversight short of this motion.  
21  
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23 Plaintiffs have given State Farm every reasonable opportunity to comply,  
24 while repeatedly pointing out not only that the carrier has been violating the  
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<sup>36</sup> Schaffer Decl., ¶¶6-7, 15-24, 39-40.  
28

1 Court's order for weeks, but also that its motion for review did not relieve the  
2 carrier of its production obligations or duty to serve updated discovery responses.

3 Plaintiffs and State Farm exchanged multiple emails on the subject and met  
4 over Zoom on January 14 to discuss these issues. The Tongs thereafter sought  
5 production of responsive documents and service of amended responses, which  
6 never occurred. Plaintiffs and State Farm have satisfied their conferral obligation  
7 pursuant to this Court's rules.  
8  
9

10 **II. State Farms' Statement.**

11 As explained above, since the Order was entered on December 20, 2024,  
12 State Farm has been actively engaged in efforts to comply with the Order and  
13 produce documents as quickly as possible. State Farm has provided the Plaintiffs  
14 with a timeframe for production and have otherwise communicated the status of  
15 production, including offering to make rolling productions as documents were  
16 finalized and provide amended responses to correspond with these productions  
17 (which Plaintiffs refused).  
18  
19

20 State Farm maintains that the Plaintiffs never specifically indicated they  
21 intended to bring the instant motion to enforce, and at no time suggested they  
22 would be seeking the draconian – and completely insupportable – issue sanctions  
23 sought in the motion.  
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**ARGUMENT**

**I. Plaintiffs’ Argument.**

**A. The Law**

Pursuant to Federal Rule of Civil Procedure 32(b)(2)(A), in the event a party “fails to obey an order to provide or permit discovery,” this Court has broad power to issue “just orders,” including the orders sought here: “(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action ... [and] (iv) staying further proceedings until the order is obeyed.” “Issue” sanctions are “just” where the requested order relates directly to the substantive claims that were the foundation of the discovery order. (*Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 708 (1982); *Alexsam, Inc. v. IDT Corp.*, 715 F.3d 1336, 1345 (Fed. Cir. 2013). The Court is likewise empowered to make a costs award, including attorneys’ fees, where appropriate. F.R.C.P. 32(b)(a)(C).

**B. State Farm Has for Months Violated the Court’s December 20, 2024, Order, Which Violations are Ongoing, and are Consistent with State Farm’s Delay Strategy Since August 2024.**

Last November, Plaintiffs filed, and this Court decided, an extensive motion to compel production of documents and for further responses to requests for production. (Dkt. 40 et seq.) The Court considered hundreds of pages of briefing and documents and issued its 25-page, single-spaced order granting the motion in

1 part, and denying the motion in part, on December 20, 2024. (Dkt. 48.)

2           Importantly here, the Court will recall that its decision to deny the motion in  
3 part, which allowed State Farm to avoid a fees award, was not because it  
4 concluded any of the document requests were objectionable. Instead, the Court  
5 denied parts of the motion as *moot* because *State Farm had agreed months earlier,*  
6 *in its responses to some document requests, to search for and produce responsive*  
7 *documents upon entry of a protective order.* (Dkt. 48, pp.9, 10.)  
8  
9

10           The Court entered State Farm’s proposed protective order the same day.  
11 (Dkt. 49.) State Farm thus had no basis after December 20, 2024, to fail to  
12 produce, at a minimum, and immediately, the documents it had already searched  
13 for, found, and promised months earlier to produce upon entry of such an order.  
14 But the only documents produced by State Farm which were the subject of the  
15 Court’s order denying the motion to compel as moot are the training transcripts for  
16 the adjuster and supervisor involved in the claim—State Farm waited a month to  
17 produce those, and did so only after multiple attempts by Plaintiffs to obtain the  
18 documents, and after a long conferral.  
19  
20  
21

22           The Court will recall, too, Plaintiffs’ argument, and its finding, that the  
23 documents at issue—ranging from State Farm water denial letter templates, to  
24 personnel files of the claims staff who handled the Tongs’ water loss, to training  
25 and guidelines documents across multiple media relating to State Farm’s  
26 investigation and handling of water loss claims, to both internal and external  
27  
28

1 consulting reports relating to water loss coverage, to materials relating to State  
2 Farm’s “Water Initiative”—are relevant and discoverable *because they bear on the*  
3 *central dispute in the case.* (Dkt. 48, pp.8-19.)  
4

5 That dispute is easily articulated: at trial State Farm’s witnesses will admit  
6 its claim investigation of the Tongs’ water loss violated the requirements of  
7 California law, that it fell short of the industry standard, that its denial of the  
8 Tongs’ claim was baseless, and that it ought to have withdrawn the March 2024  
9 denial and paid the claim months earlier than it eventually did. But in its inevitable  
10 dispositive motion, and at trial, State Farm will seek to avoid a large judgment by  
11 arguing that no managing agent of State Farm was involved or approved the  
12 conduct, that the conduct was not part of any institutional practice or pattern, and  
13 that the facts therefore do not warrant imposition of a large punitive damages  
14 award.  
15  
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18 The defense is as baseless as the denial. That is true because State Farm’s  
19 management understood the many problems with the March 8, 2024, denial just  
20 three days later, but never shared that conclusion with the Tongs, leaving them for  
21 months in an uninhabitable home, with no loss of use benefits, and the impression  
22 they would be left holding the bag for hundreds of thousands of dollars in repair  
23 costs.  
24  
25

26 But more importantly here, the documents at issue in the previously litigated  
27 motion to compel bear directly on the core dispute described above—again, was  
28

1 this a rare, mismanaged claim, or was it part of a pattern of conduct at State Farm  
2 which, immensely profitable as the conduct is, will continue without a large, high  
3 profile punitives award.

4  
5 The Court agreed with Plaintiffs as to every category of requested  
6 documents, overruled all of State Farm’s objections and, except for narrowing  
7 some dates, either compelled production and further responses, or denied the  
8 motion as moot given State Farm’s agreement to produce the requested documents  
9 upon entry of the protective order, which occurred the same day the Court filed its  
10 order granting the motion to compel in part, December 20, 2024.

11  
12  
13 As set forth, since that time, in unapologetic violation of the Court’s order  
14 compelling State Farm to produce documents and amend its discovery responses,  
15 State Farm has stone-walled.

16  
17 Indeed, even as late as the parties’ February 11, 2025, email to the Court,  
18 *fifty-three days after Court’s order*, with no stay in place, after multiple attempts  
19 by Plaintiffs to assist and then demand compliance, State Farm did not explain the  
20 delay, or provide any justification for the delay, or dispute that it had not complied  
21 with any portion of the Court’s order. It simply informed the Court that for the  
22 intervening eight weeks it “has been actively searching and obtaining documents  
23 for production in response to the Court’s order.”<sup>37</sup>

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<sup>37</sup> Schaffer Decl., Exhibit I.



1 Further, after its contemptuous conduct was detailed for the Court in the  
2 email, the carrier promised that it would produce “additional documents consisting  
3 of additional claim handling guidelines and training materials” and that  
4 “production will include the training included in the training transcripts previously  
5 produced. In addition, State Farm will be providing further responses consistent  
6 with the Court’s order with this next production of documents.”<sup>38</sup>  
7  
8

9 Notably, State Farm repeatedly used the word “additional” in its email to the  
10 Court, suggesting its compliance has been ongoing. The opposite is true, as set  
11 forth. With the exception of the training transcripts, State Farm produced hundreds  
12 of pages that have nothing to do with this lawsuit, making no serious attempt to  
13 satisfy this Court’s order. Also, and tellingly, having promised the Court on  
14 February 11, 2025, that it was moving forward and would act soon, as of the time  
15 this Joint Statement was served on State Farm, none of that had occurred—it has  
16 not produced one document, nor served its first discovery response amended to  
17 comply with the rules or satisfy the Court’s order.  
18  
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21 State Farm’s statement in the February 11, 2025, email, if nothing else,  
22 should lay bare its delay strategy as relates to the vast array of documents Plaintiffs  
23 first sought in July 2024, as to which they were forced to move to compel, and as  
24 to which this Court ordered production in December 2024. State Farm’s plan is  
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27 <sup>38</sup> Schaffer Decl., Exhibit I.  
28

1 that before the Tongs have a chance to obtain those potentially thousands of pages  
2 documents and media of myriad varieties, review them, make follow up document  
3 requests, litigate the inevitable motions State Farm will necessitate by its further  
4 refusal to produce *those* responsive documents, and take the key depositions  
5 necessitated by the documents, the clock will run out on fact discovery.  
6

7 That is why State Farm did not pursue its motion for a protective order  
8 within the time allowed by the law. That is why we are now ten weeks post-order  
9 compelling production, and State Farm has produced the training transcripts of the  
10 two employees involved in the claim, *but not the training documents themselves*,  
11 together with a slew of Operations Guides that have nothing to do with this case.  
12 Can there be any mistaking the motivations of a sophisticated insurer which, when  
13 asked and then compelled to produce training and guidelines relating to the  
14 application of exclusions relating to domestic water losses, responds by waiting  
15 four weeks, and then producing several versions of Operations Guides relating to  
16 wind and hail claims, or several versions of Operations Guide relating to State  
17 Farm's use of engineers in claims investigation? Has either side, in any brief or  
18 report to the Court, ever referenced a wind or hail claim, or suggested there was  
19 reliance by State Farm at any time in this claim on an engineer?  
20  
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24

25 State Farm has time on its side. That is true of any litigant who has control  
26 over the key evidence and can use the clock as a shield. If courts do not enforce  
27 their orders in the manner requested here, it is hard to know why all litigants  
28

1 should not avail themselves of such a strategy.

2 From the drafting, service and responses to written discovery, to the  
3 conferral process, to the motion to compel including the Joint Statement process,  
4 filing and decision of the motion, the process has inevitably been slow. The Court  
5 limited fact discovery in this case was limited to ten months. But eight months in,  
6 notwithstanding their indisputable diligence, Plaintiffs have nothing.  
7

8 That is not due to any flaw in the Court’s process. It is due, simply, to State  
9 Farm’s baseless objections (August 2024), its months delay in seeking the  
10 protective order from this Court after the parties could not agree on terms  
11 (September 2024), and most relevant here, its months of failure to comply with the  
12 unambiguous terms of the Court’s December 20, 2024, order, which compelled or  
13 constructively compelled production and further responses as to *thirty-four*  
14 *document requests bearing on the foundational dispute in this lawsuit.*  
15  
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17

18 The Court should no longer tolerate the delay game. It should issue its order  
19 enforcing its prior order in the manner requested by Plaintiffs.  
20

21 **C. The Remedy Proposed is Appropriate.**

22 In the ten weeks between the Court’s December 20, 2024, order, and service  
23 of this Joint Statement on State Farm, the carrier has had every opportunity to  
24 comply with the order, or to work with Plaintiffs in the event compliance is  
25 somehow impossible or delayed. But as set forth, State Farm has never suggested  
26 any reason or excuse for its intransigence. Indeed, until recently, State Farm has  
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28

1 simply promised Plaintiffs that compliance was around the corner, but done  
2 nothing. Uniformly, it has been *Plaintiffs* who have initiated discussions relating to  
3 State Farm’s compliance. State Farm has made many promises, including its tardy  
4 promises to this Court on February 11, 2025.  
5

6 But State Farm has broken all of its promises since the Court’s order, and  
7 violated that order without apology or excuse, *because the potentially thousands of*  
8 *documents at issue are necessary to Plaintiffs’ argument that their claim was*  
9 *denied as part of a pattern of conduct at State Farm ongoing for nearly a decade.*  
10 State Farm wants to avoid a potentially large liability at trial.  
11

12 Its strategy for doing so is as plain as it is offensive: use the relatively short  
13 period for fact discovery, and the inevitable delays associated with enforcement by  
14 litigants of their right to discovery under the federal rules, to avoid revelation of  
15 documents and follow-up depositions that may undermine its defense. Given that  
16 strategy, the specific orders sought by Plaintiffs here are not only appropriate; they  
17 are necessary under the circumstances.  
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21 First, Plaintiffs seek the Court’s orders specifically enforcing the prior order,  
22 requiring State Farm to produce all documents and further responses to the  
23 discovery request at issue forthwith. State Farm has treated the prior order with  
24 open contempt, and the Court should take decisive action to enforce that order.  
25 Given Plaintiff’s specific and repeated requests that the carrier comply with  
26 Federal Rule of Civil Procedure 34(b)(2)(E)(i) in making its further productions,  
27  
28

1 and State Farm’s failure to follow the rule, the Court should likewise order  
2 compliance in that regard.

3 Second, consistent with the authorities set forth above, Plaintiffs seek issue  
4 sanctions closely related to the purpose of the discovery, a purpose acknowledged  
5 by the Court in its order of December 20, 2024. Having contemptuously avoided  
6 production of documents proving its pattern and practice, Defendant should be  
7 required to accept for the purpose of this litigation that the Tongs’ assertions are  
8 correct.  
9

10  
11 Third, Plaintiffs seek a stay, authorized under the rules, of this case except  
12 for discovery proceedings. That will permit a reasonable period for the Tongs to  
13 obtain and review all the documents at issue, litigate further motions as necessary,  
14 and propound follow-up discovery and take further depositions as necessary.  
15

16  
17 Finally, while the Court fairly declined to impose a costs award in the prior  
18 motion because of its split decision, it will be justified in imposing such an award  
19 here, including for attorneys’ fees.  
20

21 Under all the circumstances, given the long history of this dispute, and in  
22 light of State Farm’s now proven strategy of delay and obstruction, the remedies  
23 requested are reasonable. The Court should grant the motion and impose the order  
24 requested.  
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1 **II. State Farm’s Argument.**

2 **A. Plaintiffs’ Motion is Frivolous**

3 Discovery sanctions are appropriate only when a party violates a discovery  
4 order. *See* Fed.R.Civ.P. 37(b)(2)(A); *Wanderer v. Johnston*, 910 F.2d 652, 657  
5 (9th Cir.1990). State Farm has not violated the Order.

6  
7 Nor has State Farm flouted the Court’s Order. To the contrary; since the  
8 Court issued the Order, State Farm has been working diligently to collect and  
9 produce documents responsive to the Court’s Order. These efforts continue. But  
10 events following entry of the Order cannot be considered in a vacuum, and the  
11 timeline of events in this case reveals that Plaintiffs’ counsel’s own conduct has  
12 caused delay.  
13  
14

15 In response to the Plaintiffs’ requests for production, State Farm made valid  
16 objections, and pursuant to those objections quickly produced responsive, non-  
17 protected documents. State Farm agreed to produce responsive confidential and  
18 proprietary information when an appropriate protective order was in place. State  
19 Farm proposed modifications to the court’s model protective order that were  
20 designed to prevent Plaintiffs’ counsel from subverting protective orders in other  
21 cases and from disseminating protected documents produced in this action. Not  
22 surprisingly, for months the Plaintiffs rejected all of State Farm’s proposed  
23 modifications.  
24  
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27 Plaintiffs then filed their motion to compel, which State Farm opposed on  
28

1 multiple grounds, including that the requests sought discovery that was  
2 disproportionate to the claims and defenses in this action (a 2024 claim handled by  
3 a claim specialist hired in 2023 and managed by a team manager that commenced  
4 work in this role in 2023), was overbroad because it was not limited to the time in  
5 which State Farm employees who adjusted the Plaintiffs’ claim actually were  
6 handling water loss claims, and because it sought vague categories of documents  
7 related to the “Water Initiative,” – which State Farm explained to be a phrase used  
8 between 2017 and 2019 to describe some ongoing efforts to help ensure quality  
9 claim handling efforts. Plaintiffs’ counsel characterized the phrase “Water  
10 Initiative” very differently but offered only his own self-serving declaration to  
11 support that characterization.  
12  
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14

15 On December 20, 2024, the Court entered State Farm’s proposed, rigorous  
16 protective order, granted the Plaintiffs’ motion in part and denied it in part, and  
17 directed State Farm to produce the confidential documents it had agreed to  
18 produce. State Farm subsequently moved for review of portions of the Order  
19 granting the motion to compel and began to produce documents pursuant to the  
20 Order.  
21  
22

23 As of the date of this submission, State Farm has now produced  
24 approximately 4000 pages in response to the majority of categories not under  
25 review along with amended responses to all Requests not under review. In  
26 addition, collection efforts are ongoing, and State Farm may be producing some  
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1 additional supplemental materials, along with responsive materials regarding job  
2 descriptions (Requests 26-28 and 40-42) and form letters (Request 44).

3 The 4000 pages produced include State Farm’s Operation Guides,  
4 Jurisdictional References, Standard Claim Processes, the training transcripts for  
5 only two individuals involved in the claim, the training materials reflecting the  
6 actual training taken by these individuals related to water losses as identified on  
7 their training transcripts, the two individuals’ personnel file containing information  
8 about their employment at State Farm and their formal written reviews.  
9

10  
11 None of this is unusual, inappropriate, or sanctionable.

12  
13 As noted above, discovery sanctions are appropriate only when a party  
14 violates a discovery order. State Farm has not violated the Order. Furthermore,  
15 because of the lack of a production date ordered by the Court, there was no need to  
16 ask for a stay from the Court’s Order while the Order is under review by the  
17 District Court. In other words, the framing of the Order permitted State Farm to  
18 seek review without simultaneously seeking a stay of the Order.  
19

20  
21 In their portion of this joint statement Plaintiffs contend that State Farm has  
22 failed to comply with the Order because “State Farm had agreed months earlier, in  
23 its responses to some document requests, to search for and produce responsive  
24 documents *upon entry of a protective order.*” [Citing Doc. 48, pp.9, 10, italics  
25 omitted and added.] With this statement, Plaintiffs make State Farm’s point for it.  
26 State Farm agreed to search for and produce documents upon entry of a protective  
27  
28



1 order. The protective order in this case was entered December 20, 2024, and State  
2 Farm has proceeded to search for and produce the documents it said it would.  
3 State Farm acknowledges and regrets that production of certain documents has  
4 taken longer than it expected but notes that the Order does not contain a deadline  
5 for State Farm to complete production or serve amended responses, and as  
6 previously discussed, Plaintiffs’ counsel refused iterative, rolling productions of  
7 documents as they became available. By demanding that documents not be  
8 produced unless the documents are accompanied by amended responses. State  
9 Farm’s efforts continue, and State Farm will supplement as reasonably practicable.  
10  
11

12  
13 Plaintiffs’ other grounds for suggesting State Farm has failed to comply with  
14 the Order ring hollow. For example, Plaintiffs argue that State Farm has failed to  
15 comply with the Order because - they contend - many of the documents State Farm  
16 has produced are not responsive to the requests. State Farm believes that the  
17 documents it has produced are responsive to the Plaintiffs’ overbroad requests, but  
18 if Plaintiffs disagree, this complaint amounts to “they gave us more than we asked  
19 for.” It does not constitute a violation of the Order.  
20  
21

22 Likewise, State Farm has served amended responses regarding these  
23 documents, including identifying documents by categories in the request in  
24 compliance with F.R.C.P. 34(b)(2)(E)(i). Any delay in serving amended responses  
25 is a function of the Plaintiffs’ “all or nothing” approach, insisting that full and  
26 complete amended responses be provided, without acknowledging that full and  
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1 complete responses are dependent on State Farm’s efforts to identify, collect and  
2 produce responsive documents.

3 **B. Sanctions Against State Farm are not Warranted**

4 **1. The Issue Sanctions Sought by Plaintiffs, which**  
5 **Effectively would be Case-Dispositive, are Unreasonable and**  
6 **Unjustified**

7  
8 Plaintiffs seek an order that, *inter alia*, establishes as *fact* the existence of  
9 the elaborate scheme to allegedly “inadequately investigate and improperly deny  
10 water losses resulting from the failure of plumbing lines in the foundations of its  
11 California insureds,” and then to allegedly “broaden the application of the ‘below  
12 the surface of the ground exclusion’ while failing to alert its customers or the  
13 California Department of Insurance” – a scheme which was *conceived* by  
14 Plaintiffs’ counsel. And to be clear, this conception is based on exactly two things:  
15 (1) A witness in a deposition years ago used the phrase “water initiative” in  
16 passing, in reference to lower-level claims employees’ settlement authority on  
17 covered claims above a certain dollar threshold; and (2) Plaintiffs’ counsel’s  
18 purported “experience” during discovery disputes in other cases against State  
19 Farm, none of which established the existence of the purported “Water Initiative”  
20 to deny covered water loss claims, even *after* State Farm produced “Water  
21 Initiative” documents in those cases. The reason for the disconnect in the narrative  
22 advanced by Plaintiffs and what State Farm has maintained throughout this and  
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1 other proceedings is clear – as reflected in the documents produced in other  
2 matters, the occasional use of the phrase “water initiative” years ago in was  
3 connection with efforts to ensure quality claim handling on *covered* water loss  
4 claims, including use of tools related to mitigation and scope and cost of repair  
5 estimates. State Farm’s evidence has shown, and will prove here, that no  
6 purported “water initiative” to deny covered water loss claims existed. (Please see  
7 the declaration of Kyle Rice, Doc #53). To land with such a broad and factually  
8 inaccurate issue sanction – which will undoubtedly be used Plaintiffs’ counsel  
9 against State Farm for years to come -- would be inappropriate based on the  
10 speculative and uninformed opinion of Plaintiffs’ counsel here.

14 To that end, any issue sanction must be “just,” and the sanction must be  
15 “specifically related to the ‘claim’ which was at issue in the order to provide  
16 discovery.” *Guifu Li v. A Perfect Day Franchise, Inc.* 281 F.R.D. 373, 393 (N.D.  
17 Cal. 2012). Plaintiffs argue that draconian issue sanctions are “just” by suggesting  
18 that the “Water Initiative” documents were the primary issue toward which the  
19 Plaintiffs’ initial discovery was directed, were the primary subject of the Plaintiffs’  
20 motion to compel and were the primary focus of the Court’s Order granting the  
21 motion.

25 The Order demonstrates this is not so. Plaintiffs moved to compel on 34  
26 requests. Request No. 5 sought an updated and complete claim file, which State  
27 Farm produced on November 11, 2024. [Doc. 48, pp. 8-9.] Request No. 44 sought

1 “templates” or “forms” used by State Farm adjusters in drafting water loss claim  
2 denials, and the Court granted the motion after modifying the request. [*Id.*, pp. 9-  
3 12.] Request Nos. 25-28 and 39-42 sought the personnel files of the State Farm  
4 adjusters and State Farm’s performance metrics, goals, and evaluations, and the  
5 Court granted the motion regarding these requests and order their production. [*Id.*,  
6 pp. 12-14.] Numerous requests sought State Farm’s claims handling policies,  
7 manuals, training, and guidelines, which State Farm had previously agreed to  
8 produce upon entry of a protective order. [*Id.*, pp. 14-16.] Of the thirty-four  
9 requests on which the Plaintiffs moved, the Court identified six as pertaining to the  
10 “Water Initiative,” numbers 92, 93, 94, 126, 145, and 146. [*Id.*, p. 19.] The court  
11 noted that, once again, State Farm had agreed to produce these documents upon  
12 entry of a protective order and denied the motion as moot as pertained to these  
13 documents. [*Id.*]

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18 Importantly, the Order as to these requests are part of the Motion for Review  
19 before the District Court, so State Farm has yet to even produce any documents  
20 responsive to those requests. To make the drastic Issue Sanctions sought with  
21 regard to State Farm’s practices relating to the handling of water claims for years  
22 before the individuals associated with the claim were State Farm employees or  
23 were working in the Claims Department – and more than seven years prior to  
24 Plaintiffs claims -- before a single document has even been produced relating to  
25 that timeframe and before the District Court has had an opportunity to weigh in on

1 the proportionality of the Order with regard to these very issues – is not an  
2 appropriate remedy.

3         Once again, State Farm has produced in this matter more than 4000 pages of  
4 documents and multiple pieces of media. State Farm has also provided amended  
5 responses to each request not subject to the Motion for Review before the District  
6 Court. State Farm has produced responsive documents to all categories in the  
7 Court’s Order that are not under review by the District Court with the exception of  
8 six requests that relate solely to job descriptions, goals and metrics (Requests 26-  
9 28 and 40-42) and form letters (Request 44). State Farm is continuing to identify  
10 and collect these documents and will produce responsive documents that it locates,  
11 alongside further amended responses.  
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15         Plaintiffs’ Motion exposes the gamesmanship at play and reveals the real  
16 reason for the Motion. Despite professed confidence in the merits of Plaintiffs’  
17 claim, and statements based on the receipt and review of thousands of pages of  
18 documents in this case and others and despite deposing and/or obtaining deposition  
19 transcripts of State Farm employees in other cases, Plaintiffs’ counsel has not been  
20 able to establish the actual existence of the scheme he invented that State Farm  
21 purportedly instituted a plan to broadly deny water claims – precisely because, as  
22 Kyle Rice’s declaration (Doc #53) demonstrates, no such scheme exists. Plaintiffs’  
23 motion requests the Court use its power to “prove,” by the sanction process  
24 something that Plaintiffs cannot prove. Plaintiffs want this Court to create “facts,”  
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1 where they do not exist, and presumably to spread these “findings” far and wide.  
2 The Court should recognize this tactic for what it is and reject it. If any sanctions  
3 are owed in this matter, they should be found against *Plaintiffs’ counsel* for  
4 seeking broad and extreme sanctions requested here while the discovery  
5 underpinning them is under review by the District Court—and based solely on a  
6 speculative *theory* of Plaintiffs’ counsel. State Farm requests the Court award a  
7 monetary sanction against Plaintiffs’ counsel necessary to compensate State Farm  
8 for the cost in responding to this frivolous motion.  
9  
10

11 Finally, as to the request for a stay, State Farm is not necessarily opposed.  
12 Plaintiffs’ counsel inquired whether State Farm would stipulate to a trial  
13 continuance due to the lengthy discovery procedures that have occurred in this  
14 litigation. State Farm agreed. Plaintiffs’ counsel indicated he would work on a  
15 stipulation, but instead of proceeding with that stipulation, Plaintiffs proceeded  
16 with this inappropriate motion.  
17  
18

19 **C. CONCLUSION**  
20

21 The Court should deny Plaintiffs’ Motion in its entirety. There is absolutely  
22 no foundation supporting the broad and draconian issue sanctions that Plaintiffs are  
23 seeking here. No violation of the Court’s December 20, 2024, Order has occurred.  
24 State Farm has provided amended responses and produced more than 4000 pages  
25 of documents; and Plaintiffs did not meaningfully meet and confer or comply with  
26 this Court’s rules before bringing this Motion.  
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Date: February 24, 2025

Kerley Schaffer LLP

/s/Dylan Schaffer  
Dylan Schaffer  
Counsel for Plaintiffs

Date: February 24, 2025

/s/Matt Batezel  
Matt Batezel  
Counsel for State Farm

**ATTESTATION**

Pursuant to Local Rule 5-4.3.4(a)(2)(i), the undersigned hereby attests that all signatories listed above, and on whose behalf this filing is submitted, have authorized the filing.

Date: February 25, 2025

/s/Dylan Schaffer  
Dylan Schaffer  
Counsel for Plaintiffs

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