IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

ERIE INSURANCE EXCHANGE, *et al.*	*	
	*	
Plaintiffs	*	
v.		Case No.
	*	
THE MARYLAND INSURANCE ADMINISTRATION, *et al.*	*	
	*	
Defendants	*	

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PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING
ORDER OR IN THE ALTERNATIVE PRELIMINARY INJUNCTION

Plaintiffs Erie Insurance Exchange, Erie Insurance Company, Erie Insurance Property & Casualty Company, Erie Family Life Insurance Company, Erie Insurance Company of New York and Flagship City Insurance Company (collectively, "Erie" or "Plaintiffs"), by and through undersigned counsel, pursuant to Federal Rule of Civil Procedure ("FRCP") 65 and the applicable Local Rules of this Court, hereby file this Motion For Temporary Restraining Order Or In The Alternative For Preliminary Injunction ("Motion") in their favor and against Defendants the Maryland Insurance Administration (the "MIA" or the "Administration") and Commissioner Kathleen A. Birrane ("Commissioner") (collectively, "MIA," "Administration" or "Defendants," each individually a "Defendant"), and state as follows:

INTRODUCTION

This Motion is not about the substance of the four administrative complaints that were filed against Erie with the MIA. This Motion concerns the Administration's unlawful decisions: (1) to

arbitrarily and capriciously cut short its administrative investigation of Erie; and to then (2) "fill the gaps" in the MIA's incomplete investigation by including confidential, privileged and protected materials in the Administration's public orders against Erie, in direct violation of § 2-209 of the Maryland Insurance Article ("Article" or "Ins."), in violation of the MIA's long standing practice and procedure, and in violation of Erie's rights in its attorney-client privileged and work product protected communications.

The Administration's unlawful decisions violate Erie's federal and state due process rights and have destroyed Erie's ability to obtain an administrative remedy on the illegal orders. Erie has demanded that the Administration withdraw the unlawful orders, but the MIA has refused. To the contrary, the Administration has now scheduled hearings on Erie's appeals of the orders – but those hearings will not provide Erie with a lawful or legitimate administrative remedy.

The Administration's public findings are based ***on confidential and privileged materials that the MIA was statutorily prohibited from including in the orders***. The MIA's entire administrative appeal case will consist of the orders, which improperly quote extensively from the confidential and privileged materials, and the underlying confidential and privileged documents themselves. The Administration was required to materially rely on the confidential and privileged materials, because the MIA never completed its investigation – notwithstanding that the Administration misrepresented to Erie that the investigation would be completed.

The complainants who filed the underlying administrative complaints may seek to intervene in the administrative hearings the Administration has scheduled – and will thus immediately gain access to Erie's confidential and privileged materials that will be unlawfully disclosed in the hearing record. Even revealing the confidential and privileged materials to the hearing officer, which is required for hearings of this type, is illegal under the circumstances, and

will further exacerbate the harm to Erie. For all these reasons, Erie has no legitimate administrative remedy on these unlawful orders.

Only a temporary restraining order and injunctive relief will stop the Administration and Commissioner's continuing, ongoing flouting of Erie's confidentiality, privilege and due process rights. By this Motion, Erie seeks a temporary restraining order and preliminary injunction ordering the Administration to cease disseminating the illegal orders, and the underlying confidential, privileged and protected source documents – to the Hearing Officer, to complainants, and to any other third parties. Erie will then seek a mandatory, permanent injunction requiring the Administration and Commissioner to do what they should have done in the first place – withdraw the illegal orders.

FACTS

A. The Administration Opens Two Separate Investigations In Response To Discrimination Complaints Against Erie.

In 2021, four Maryland insurance agencies filed administrative complaints with the MIA – Baltimore Insurance Network, LLC ("BIN"), Ross Insurance Agency, Inc. ("Ross"), Welsch Insurance Group, LLC ("Welsch"), and Burley Insurance & Financial Services, Inc. ("Burley"). The four complaints ("Administrative Complaints") allege that ERIE was unlawfully engaged in racial and geographic discrimination in the sale of insurance in Maryland.

The Administration exercised its statutory authority to open ***two separate* administrative investigations** of the Administrative Complaint allegations. First, the Administration opened a broad market conduct examination ("Market Conduct Examination") into Erie's conduct in the Maryland insurance market. The Market Conduct Examination was referenced as the "Phase I" examination.

Second and separately, the MIA opened a more specific licensing investigation ("Licensing Investigation") of the specific allegations that Ross, BIN, Welsch, and Burley made in their respective Administrative Complaints. The Licensing Investigation was "Phase II."

B. The MIA Misrepresented To Erie, For More Than Two Years, That The Administration Would First Conduct And Complete The Phase I Market Conduct Examination Before Then Turning Its Attention To The Phase II Licensing Investigation.

The Administration exclusively pursued the Phase I Market Conduct Examination in 2021. Examiners from the Market Conduct Examination Division of the MIA (the "Market Conduct Division") requested documents and interviews with Erie. At the same time, the Administration misrepresented that the Phase II Licensing Investigation would be placed in a *de facto* stay, and would remain "stayed" until the Phase I Market Conduct Examination was complete. The MIA repeated this misrepresentation in 2021, in 2022, and again in 2023.

The sole exception to this came in 2022, when the Administration's Property and Casualty Division (the "P&C Division") – the Division charged with conducting the Phase II Licensing Exam – requested that ERIE provide written responses to five areas of inquiry regarding the BIN, Ross, and Welsch Complaints, as well as a written response, and then a follow-up, to a single area of inquiry regarding the Burley Complaint.

Erie provided written responses to the P&C Division inquiries. Those preliminary responses ***expressly*** contemplate further discussions and interviews with the Administration once the MIA had lifted the *de facto* stay that the Administration on the Phase II Licensing Investigation.

Unbeknownst to Erie, these preliminary responses and document productions were ***the first and last time*** Erie ever interacted with the P&C Division concerning ***any*** of the four Administrative Complaints. Erie ***never*** received any response or follow-up from the Administration concerning

its 2022 responses to the P&C Division's written questions. Nor did Erie participate in any interviews with the P&C Division.

C. Two Complainants, Ross And Welsch, File Civil Lawsuits Against Erie.

On October 4, 2022, Defendant Commissioner Birrane sent a response to a request that the "MIA return to the investigation of the [Administrative] Complaints." A true and correct copy of Commissioner's Birrane's October 4, 2022 letter is attached hereto as **Exhibit 1**. The Commissioner appropriately denied the request and refused to lift the Licensing Examination "stay." Instead, the Commissioner stated that a "thorough" investigation was required of the complex discrimination allegations at issue here. *Id.* The Commissioner suggested that the complainants may consider civil litigation against Erie. *Id.*

In November 2022, Ross filed a lawsuit in this Court against several of the Erie Plaintiffs.[1] *Zerita L. Holly-Ross, et al. v. Erie Insurance Exchange, et al.*, Case No. 1:22-cv-02868-JRR. The same month, Welsch filed a lawsuit in the Circuit Court for Baltimore City against Erie. *Welsch Insurance Group, LLC, et al. v. Erie Insurance Exchange, et al.*, Case No. 24-C-22-004937.

Erie successfully moved for dismissal of both lawsuits. *See* No. 1:22-cv-02868-JRR (Docket No. 37) (*Ross*); No. 24-C-22-004937 (Doc. No. 13/0) (*Welsch*).

D. In March 2023, The Administration Rejects A Request For Information Relating To The Phase I Market Conduct Examination *Based On The Very Same Confidentiality Protections Erie Now Asserts In This Motion*.

The Administration sent a March 9, 2023 letter rejecting a request for Erie's Market Conduct Examination materials, explaining that "[p]ursuant to § 2-209 of the Insurance Article

[1] Ross asserted its complaint against Erie Insurance Exchange, Erie Insurance Company, Erie Insurance Property & Casualty Company, Erie Family Life Insurance Company and Flagship City Insurance Company. Ross' complaint also included an Erie employee, Mr. Kristopher Marrion (a non-party to this Lawsuit), in his own personal capacity.

["Article" or "Ins."], Annotated Code of Maryland, ***while a market conduct examination is ongoing, it is confidential***." A true and correct copy of the MIA's March 9, 2023 letter is attached hereto as **Exhibit 2** (emphasis added).

The Administration correctly explained that the scope of § 2-209 statutory confidentiality "applies not just to the MIA's [market conduct] findings ***but to all of the materials provided to the MIA during the course of the [market conduct] examination***. . . . While this process [i.e., the Market Conduct Examination] is ongoing, the MIA ***has an obligation to comply with the statutory process***." (Emphasis added).

Just two months later, the Administration directly and knowingly violated these precise statutory confidentiality protections by revealing confidential, privileged and protected materials that Erie produced to the MIA in the Market Conduct Examination in public orders, thus leading to the above-captioned lawsuit and Motion.

E. The Administration Arbitrarily And Capriciously Reverses Its Decision To Implement The Phase I/Phase II Framework, And Issues Public Determinations In The Incomplete Licensing Investigation.

On May 24, 2023, the P&C Division and Commissioner suddenly, arbitrarily, capriciously surprised Erie by issuing the four public determination letters ("Determination Letters") in the purportedly stayed Licensing "Investigation" without having first completed the Licensing Investigation.

The P&C Division never contacted Erie to obtain additional documents or information related to the Licensing Examination. Nor did the P&C Division answer, or even respond, to Erie's clarifying questions concerning the initial document productions. Nor did the P&C conduct a ***single interview*** with a ***single*** representative of Erie, as the MIA had previously indicated it would.

F. The MIA Exacerbates The Harm By Improperly Including Confidential, Protected, And Privileged Information From The Market Conduct Examination In The Public Licensing Investigation Determinations.

In its rush to issue the Determination Letters on an incomplete Licensing Investigation, the Administration violated § 2-209 of the Article by relying on confidential, privileged and protected information from the Market Conduct Examination in each of the four Determination Letters. The MIA had not completed its Licensing Investigation, so the Administration illegally pulled information from the confidential Market Conduct Examination to "support" its Determination Letter findings. The only documents quoted in the Determination Letters are Erie documents the MIA obtained in the Market Conduct Examination.

The Administration admits its statutory violations in the ***very first paragraph*** of each Determination Letter, where the MIA concedes that its findings are based on "documents obtained by the Insurance Administration ***during the Market Regulation Division's concurrent investigation of certain of Erie's business practices***." Determination Letters,[2] at 1 (Emphasis added).

As the MIA and Commissioner know, the MIA was ***prohibited*** from revealing the information from documents and information obtained in the Market Conduct Examination (collectively the "Market Conduct Materials") in the Licensing Investigation Determination Letters because the Administration has not yet completed its Phase I Market Conduct Examination. *See* **Exhibit 2**, at 1; Ins. § 2-209(g) ("A document, material, or information" obtained during a market conduct examination that is not part of "an adopted examination report" is "confidential and privileged").

[2] Erie has not appended the Determination Letters to the Complaint or this Motion, as to not further disseminate the illegally issued, and now public, Determination Letters. Erie will provide copies of each Determination Letter for *in camera* review by this Court at the hearing.

G. The Determination Letters Also Improperly Quote And Publicly Reveal Erie's Attorney-Client Privileged And Work Product Protected Information.

The Administration also improperly, and publicly, revealed attorney-client privileged and work product protected communications between Erie management and its attorneys ***seeking legal advice concerning the very issues under investigation*** in the Determination Letters. *See* Letter Determinations at 6.[3]

H. The MIA Arbitrarily And Capriciously Bases Findings Of Violations On Erie's Non-Existent "Failure" To Provide Documents And Information To The Administration.

The Determination Letters in the Ross, BIN and Welsch cases misstate that Erie failed to "provide[]" or otherwise "offer[]" the Administration certain "objective" explanations for Erie's alleged violations of the Maryland Insurance Article. Ross, BIN, Welsch Determination Letters, at 6.

By way of example, Erie's response to the P&C Division concerning one question concluded with the statement that "the situations [the MIA inquired about] could be ***numerous***, many of which may be ***unique***, it would be very difficult to list or even identify every possible situation. After you have had the opportunity to review the included Agency Agreement (Exhibit A), if there is a specific provision you would like additional information on, ***please let [Erie] know and we can prepare a more specific response to your Inquiry 4***."[4] (emphasis added).

The Administration ***never*** followed up with Erie to discuss any of the "numerous" or "unique" situations Erie referenced in its responses. The MIA never "let [Erie] know" which

[3] "Jim T" and "Steve T" are in-house Erie attorneys. The MIA omitted additional quotes from outside counsel that was also present at this meeting, further evidencing its knowledge that this confidential and privileged information should ***not*** be produced.

[4] The MIA sent this same written question to Erie in connection with the Ross, BIN and Welsch Administrative Complaints. Erie's response was the same to all four questions. The Administration sent fewer, but similar questions to Erie concerning Burley in two tranches. The MIA never followed up on the preliminary Burley responses either.

provision of the agency agreements was at issue. The Administration never discussed the issue with Erie, nor did the P&C Division interview anyone from Erie concerning this issue.

Instead, the P&C Division issued four Determination Letters which contain the patently false statement that "[w]ith the exception of measuring the frequency of customer complaints, ***Erie provides no*** objective standard for any of the other factors it considers during its agency reviews; and importantly, ***Erie offers no*** objective connection between any of these metrics and profitability or performance." (emphasis added).

I. The MIA Has Not, And Cannot, Identify Any Legitimate Or Reasoned Legal Principle To Support Its Arbitrary And Capricious Actions.

The Administration has not, and cannot, provide any explanation of any legitimate or reasoned purpose (because there is none) for the MIA's: (1) abandonment of its Phase I/Phase II framework; (2) failure to conduct the promised interviews and communications; (3) failure to engage Erie or otherwise respond to Erie's requests for clarification of questions; (4) misrepresentation in three Determination Letters that Erie had failed to offer information that Erie had specifically offered to the Administration; nor its (5) illicit use of the Market Conduct Materials in the Determination Letters.

J. The Administration Issues The Determination Letters To BIN, Ross, Welsch, Burley, And Their Respective Counsel, And The Letters Are Then Publicized In Several Media Outlets.

On June 1, 2023, the Determination Letters were publicized in at least two Maryland-based newspapers, The Baltimore Banner and The Daily Record. On Tuesday, June 6, a similar article was published in the Baltimore Sun.[5] Erie has already suffered immense reputational harm because of the illegal Determination Letters.

[5] Similar to the Determination Letters, Erie has not appended the June 1 Baltimore Banner and Daily Record articles, nor the June 6 Baltimore Sun article to this Motion to avoid further

In a particularly disturbing instance, The Daily Record Article references the "notes and other documents obtained from Erie" during the Market Conduct Examination and contains a ***direct quote*** to a document shielded from disclosure under Ins. § 2-209, the attorney-client privilege, and the attorney work product doctrine. Daily Record Article at 2.

K. The MIA Has Previously Relied On § 2-209 Of The Insurance Article In Maryland's State Courts, As Well As This Court, To Prevent The Disclosure Of Confidential Documents And Information Obtained During Market Conduct Examinations.

When the MIA referenced the Administration's "***obligation*** to comply with the [§ 2-209] statutory" confidentiality protections in its March 2023 letter,[6] the Administration was referencing the MIA's own "long standing . . . practice to protect the confidential[ity] of all preliminary examination reports and the documents generated during an examination." *Chinwuba v. Larsen*, 142 Md. App. 327, 364 (2002), *rev'd. in part on other grounds*, *Larsen v. Chinwuba*, 377 Md. 92 (2003) (internal quotation marks omitted).

In *Chinwuba*, Maryland's intermediate appellate court reaffirmed that there "are important reasons for requiring confidentiality until the MIA completes its [market conduct] investigation and ***affords aggrieved parties the opportunity to challenge*** the charges and findings reflected in the MIA's proposed [market conduct] examination report." *Chinwuba*, 142 Md. App. at 363 (emphasis added). The Administration violated § 2-209(g)(2) by quoting the Market Conduct Examination materials in the public Licensing Investigation Determination Letters in the "period before the [market conduct] report becomes final." *Id.*, at 362, citing § 2-209(g)(2).

As former Maryland Insurance Commissioner Steven Larsen represented when convincing this Court to quash a subpoena for market conduct materials in a different case, the MIA is

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dissemination of the illegally published and disseminated Determination Letters. Erie is providing copies of all three articles for *in camera* review by this Court.

[6] **Exhibit 2**, at 1 (emphasis added).

"***prohibited*** by state law from disclosing information concerning ***any matters*** involving preparation of a market conduct report[.]" *Nagy v. Baltimore Life Ins. Co.*, 49 F.Supp.2d 822, 825 (D.Md.1999), *aff'd in part and vacated in part on other grounds,* 2000 WL 718391, 2000 U.S.App. LEXIS 12307 (4th Cir. June 5, 2000)) (emphasis added).

In *Nagy*, an MIA examiner averred in an affidavit ***to this Court*** that Commissioner Larsen had authorized him to assert the "privilege" created by § 2-209(g). *Id*. In reliance on *Nagy*, the *Chinwuba* court "g[a]ve due weight to the Commissioner's interpretation of subsection 2-209(g) as imposing on [the Commissioner] a ***duty of confidentiality*** in order to ***preserve the right of aggrieved persons to speak freely to the MIA*** during its [market conduct] investigation and the period before the report becomes final, so that they might challenge and correct the MIA's findings ***before the MIA makes public any injurious charges***." *Chinwuba*, 142 Md. App. at 363, citing *Nagy*, at 825 (emphasis added).

In this case, the Administration has violated its own self-described "duty of confidentiality" and privilege by publishing "injurious charges" against Erie based on confidential, privileged and protected documents and information obtained during the Market Conduct Examination.

L. The MIA Is Unwilling To Ameliorate The Harm Of Its Violations.

On May 31, 2023 – prior to the publication of the June 1 Baltimore Banner and The Daily Record articles and June 6 Baltimore Sun article – Erie sent a letter to the Administration demanding that the MIA withdraw the Determination Letters. A true and correct copy of the May 31, 2023 letter is attached hereto as **Exhibit 3**. The MIA ***refused***.

M. The Administration Has Stated Its Intent To Further Disseminate All Of The Market Conduct Materials Improperly Referenced In The Determination Letters.

Erie timely requested an administrative hearing on all four Determination Letters. The Determination Letters, and the P&C Division's investigation file, are routinely made a part of the

administrative hearing record in these cases. Here, the Determination Letters contain extensive quotations of Erie's confidential, privileged and protected Market Conduct Materials, and the P&C Division's file improperly contains copies of the source Market Conduct Material documents. Absent an order of this Court, the MIA will add those Determination Letters and Market Conduct Materials to the hearing files.

In its letters granting Erie's requests for hearings on the Determination Letters, the MIA confirmed that ***all*** "[d]ocuments given to [the MIA] by [Erie] . . . that were considered as part of the [Phase II Licensing Examination] process" – including the Market Conduct Material source documents - "***will be submitted to the hearing officer to become part of the evidentiary file***." Four June 5, 2023 Notices of Request for Hearing and Final Determination, attached hereto as **Exhibit 4** (emphasis added).

N. The Administration's Addition Of Market Conduct Materials To The Hearing File Will Cause Erie Additional Material Irreparable Harm.

The MIA's unlawful addition of the Market Conduct Materials to the hearing files will cause Erie additional material irreparable harm in multiple different respects.

First, the Hearing Officer would see the Market Conduct Materials. The Hearing Officer can then not "unsee" the confidential, privileged and protected materials that should never have been part of the Licensing Investigation or the Determination Letters in the first instance.

Second, the complainants may file motions to intervene, which the MIA will have no choice but to grant, because the Commissioner's orders will "directly and immediately affect[]" their "financial interests[.]" Ins. § 2-213(c). The complainants would then have access to the Market Conduct Materials in the Hearing Officer's files. Notably, although the complainants have seen the extensive quotations of the Market Conduct Materials improperly included in the Determination Letters, the complainants do not currently have access to the confidential, privileged

and protected Market Conduct Materials themselves. That will change if the Market Conduct Materials are added to the Hearing Officer's file.

Third, the Hearing Officer's file is not protected by the stringent confidentiality protections that are applicable to market conduct materials. Ins. § 2-209. The public may be able to gain access to the source Market Conduct Material documents through Public Information Act requests submitted for the Hearing Officer's file.

O. The Administration's Inclusion Of Market Conduct Materials In The Determination Letters Deprives Erie Of Its Right To An Administrative Hearing.

The operative document in the administrative appeal hearings of the four Determination Letters is the Determination Letters themselves. Erie cannot present a defense to the charges in the Determination Letters, which are based on extensive quotations to Market Conduct Materials, without waiving the confidentiality, privilege and other protections that would otherwise attach to the Market Conduct Materials.

Defendants have knowingly and unlawfully placed Erie in the untenable and inequitable position of having to choose to waive all of the statutory and other confidentiality privileges and protections applicable to the Market Conduct Materials in order to present a defense in the administrative hearings on the Determination Letters. *See e.g., Frost v. Railroad Commission*, 287 U.S. 583, 593-94 (1926)(the State "***may not impose conditions which require the relinquishment of constitutional rights***. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. ***It is inconceivable that guaranties embedded in the Constitution of the United States may be thus manipulated out of existence***")(emphasis added).

Erie requests that this Court grant a temporary restraining order to prevent further dissemination of the Determination Letters and source Market Conduct Material documents until

a hearing for a preliminary injunction can occur. Alternatively, as the MIA and its counsel have advance notice[7] of this Lawsuit and Motion and has agreed to appear, Erie requests that this Court grant a preliminary injunction to preserve the *status quo* to prevent further dissemination of the Determination Letters and confidential Market Conduct Materials until a trial on the merits for a permanent mandatory injunction compelling the MIA to withdraw the Determination Letters.

STANDARD OF REVIEW

I. Standard For Granting A Temporary Restraining Order.

Erie is entitled to a temporary restraining order[8] ("TRO") to stop further dissemination of the Determination Letters and confidential Market Conduct Materials because Erie: (1) is "likely to succeed on the merits," (2) is "likely to suffer irreparable harm in the absence of preliminary relief," (3) the "balance of equities" tips in Erie's favor, and (4) an injunction is "in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

A TRO will preserve the *status quo* "only until a preliminary injunction hearing can be held[.]" *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999) (citing *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

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[7] Erie notified the MIA that it planned to seek injunctive relief consistent with this Motion via letter on May 31, 2023 and requested Principal Counsel's availability for a hearing. **Exhibit 3** at 2. After discussion, and as a courtesy to Defendants, the counsel for the parties stipulated that Erie would file its Complaint and this Motion today, June 8, 2023, and appear for an emergency hearing. Accordingly, this Court may, in its discretion, hold a hearing on Erie's request for a preliminary injunction.

[8] To the extent an affidavit is required, an affidavit executed by an authorized representative of Defendants showing that immediate and irreparable injury will result before Plaintiffs can be heard in opposition is attached hereto as **Exhibit 5**. *See* FRCP 65(b)(1). Additionally, to the extent required, a written certification from undersigned counsel certifying the efforts made to give notice to counsel for Defendants is attached hereto as **Exhibit 6**. Counsel for Defendants has advance notice of Erie's intent to seek the relief requested in the Motion. *See* Footnote 5, *supra*. However, in an abundance of caution, Erie provides **Exhibits 5** and **6** for this Court's consideration.

II. Standard For Granting A Preliminary Injunction.

The standard for granting a preliminary injunction is identical to a TRO. *See Maages Auditorium v. Prince George's Cnty., Md.*, 4 F. Supp. 3d 752, 760, 2014 WL 884009 (D. Md. 2014) (subsequent procedural history omitted). The only difference between a TRO and a preliminary injunction is the notice to the opposing party. *See Hoechst*, 174 F.3d at 422 (citing FRCP 65(a)(1); *Granny Goose*, 415 U.S. at 433 n.7)); *Paradyme Mgmt., Inc. v. Curto*, No. CV PWG-17-3687, 2017 WL 11458384, at *1 (D. Md. Dec. 14, 2017) (J. Grimm) (the only difference between a TRO and preliminary injunction is "notice to the nonmoving party and [] the duration of the injunction" (citation omitted)).

As undersigned counsel has provided advance notice of the Lawsuit and its intent to seek preliminary injunctive relief (*see* **Exhibit 3**; **Exhibit 6**), this Court may grant Erie's Motion and issue a preliminary injunction to preserve the *status quo* to prevent the further release of the Market Conduct Materials until a trial can be held on the merits of Erie's motion for a mandatory injunction compelling the MIA to withdraw the Determination Letters. Accordingly, a preliminary injunction is also appropriate in this case.

ARGUMENT

I. Erie Has Satisfied All Four TRO/Preliminary Injunction Factors.

A. Erie Satisfied The First TRO/Preliminary Injunction Factor On Three Separate And Independent Grounds: Erie Is Likely To Succeed On The Merits Of Each Of Its Three Constitutional Claims.

Erie has presented a *prima facie* case of the Administration's clear, knowing and intentional violation of § 2-209(g) of the Insurance Article, as well as Erie's rights in attorney-client privileged and work product protected information. The MIA's violations of applicable law have unlawfully deprived Erie of its substantive and procedural due process rights under the Fourteenth

Amendment to the United States' Constitution, as well as Article 24 of the Maryland Declaration of Rights. *See Coastal Laboratories, Inc. v. Jolly*, No. CV RDB-20-2227, 2021 WL 1599224, at *8 (D. Md. Apr. 23, 2021) (requiring presentation of a *prima facie* case for injunctive relief to issue); *Nagy*, 49 F.Supp.2d at 825; *Chinwuba*, 142 Md. App. at 363.

The Administration's arbitrary and capricious refusal to complete the Licensing Investigation and the MIA's unlawful disclosures of Erie's confidential, privileged and protected information and documents confirms Erie's "probable" likelihood of success in demonstrating violations of: (1) Erie's federal substantive due process rights; (2) Erie's federal procedural due process rights; and (3) Erie's State constitutional rights. *Jolly*, 2021 WL 1599224, at *8 (citation and internal quotation marks omitted).

1. Erie Is Likely To Succeed On The Merits Of Its Federal Substantive Due Process Claim.

Erie has satisfied each of the three elements of its federal substantive due process ("Substantive Due Process") claim under the Fourteenth Amendment: (1) the Erie Plaintiffs maintain a cognizable property interest afforded and protected by State law; (2) Defendants deprived Erie of this property interest; and (3) no-post deprivation process can cure the deficiency caused by the deprivation. *E.g. Sylvia Dev. Corp. v. Calvert Cnty., Md.*, 48 F.3d 810, 827 (4th Cir. 1995).

a. The First Substantive Due Process Element Is Satisfied Because The Erie Plaintiff Insurers Maintain Property Interests In Their Maryland Insurance Licenses.

The first of the three substantive due process elements is satisfied because each of the Plaintiff Erie insurance companies (and the exchange) has and maintains a cognizable property interest in their respective licenses and ability to sell insurance in Maryland. *See Richardson v. Town of Eastover*, 922 F.2d 1152, 1156 (4th Cir. 1991) ("A license issued by the state which can

be suspended or revoked only upon a showing of cause creates a property interest protected by the Fourteenth Amendment.").

The Administration – with the Commissioner as its operative head – is the State regulatory body authorized to issue licenses to insurance companies, conduct investigations of licenses, perform market conduct examinations of licensed insurance companies, and interpret and enforce the Maryland Insurance Article. *See* Ins. § 2-101, *et seq.*

The Erie entities have a cognizable property interest in their respective insurance licenses for purposes of this Substantive Due Process claim.

b. The Second Substantive Due Process Element Is Satisfied Because The Administration's Failure To Complete The Licensing Investigation, And The MIA's Publication Of Confidential, Privileged And Protected Market Conduct Materials, Deprived Erie Of Its Substantive Due Process Rights.

The § 2-209(g) confidentiality protections and privilege for the Market Conduct Materials are ***so robust*** that Courts are statutorily prohibited from ordering the Administration to produce market conduct materials in civil litigation. Ins. § 2-209(g)(2). *See also Nagy*, 49 F.Supp.2d at 825-26. The Administration is not permitted to produce market conduct materials to ***anyone*** other than (1) "other State, federal, or international regulatory agencies;" (2) "the National Association of Insurance Commissioners or its affiliates or subsidiaries; or" (3) "State, federal, or international law enforcement authorities." Ins. § 2-209(h)(1).

Neither BIN, Ross, Welsch, their respective counsel, nor Burley satisfy any of these statutory exceptions. Yet, all four complainants and their counsel will have the opportunity to intervene in the administrative hearings on Erie's appeals of the Determination Letter issued on their respective complaint. Once complainants intervene, they are entitled to the supporting

documents cited in the Determination Letters, as well as other Market Conduct Materials that complainants do not presently have access to.

The MIA's publication of the Market Conduct Materials in the Determination Letters not only unlawfully quoted the confidential and privileged materials - the publication also improperly facilitated complainants' unlawful access to the Market Conduct Materials in the underlying administrative proceedings. *SAGAM Securite Senegal v. United States*, 156 Fed. Cl. 319, 323-24 (2021) (injunction was proper state improperly released confidential materials); *Rogers v. Radio Shack*, 271 Md. 126, 129 (1974) ("[a]dministrative agencies[] . . . 'must observe the basic rules of fairness as to parties appearing before them'"; reliance on a report concerning the reason for the challenged action "with no opportunity for cross-examination or rebuttal" would violate rules of fundamental fairness).

Commissioner Larsen obtained an order ***from this Court*** blocking the production of market conduct materials by representing that § 2-209 of the Article "***prohibit[s]*** [the Administration] from disclosing information concerning ***any matters*** involving preparation of a market conduct report[.]" *Nagy*, 49 F.Supp.2d at 825 (emphasis added). The Administration would later double-down on the strength of this protection, adding that the "MIA construes subsection 2-209(g) [of the Article] as imposing a duty of confidentiality with respect to ***any information***, findings, charges and charges ***that have not been 'tested'*** via the administrative procedures established under 2-209(c)." *Chinwuba*, 142 Md. App. at 363 (emphasis added).

Defendants confirmed this statutory obligation of confidentiality in a letter ***just three (3) months ago***. **Exhibit 2**. Specifically, the Administration stated in March 2023 that the MIA "has an obligation to comply with [Ins. § 2-209]" and that Ins. § 2-209's scope of confidentiality "applies not just to the MIA's findings ***but to all of the materials provided to the MIA during the***

course of the examination" – ***including every single document cited in the Administration's public Determination Letters***. *Id*. (emphasis added).

The MIA's publication of the Market Conduct Materials in the Determination Letters, and failure to complete the Licensing Investigation that the Administration itself deemed was required, satisfies the second Substantive Due Process factor by illegally and irrevocably depriving Erie of its due process rights and property interest in its insurance licenses. *See Mt. Airy Business Center, Inc. v. City of Kannapolis, N.C.*, 2014 WL 229564, *5 (M.D. N.C. 2014); *SAGAM Securite Senegal*, 156 Fed. Cl. at 323-24; *Rogers*, 271 Md. at 129.

c. The Third Substantive Due Process Element Is Satisfied Because No Post-Deprivation Of Rights Process Can Cure The Deficiency.

If this Court does not issue a TRO and preliminary injunction, the illegal Determination Letters, as well as the Market Conduct Materials themselves, "will be submitted to the hearing officer to become part of the evidentiary file." **Exhibit 4**. Once the Market Conduct Materials are "submitted to the hearing officer[,]" the Market Conduct Materials will become public and discoverable.

The TRO and preliminary injunction that Erie seeks would stop the MIA from providing the Determination Letters, and the underlying Market Conduct Materials quoted in the Determination Letters, to the Hearing Officer and to any third parties who may request them. Complainants and their counsel do not presently have access to the actual documents unlawfully quoted in the Determination Letters. The requested TRO and preliminary injunction would stop the Administration from providing those underlying documents to the Hearing Officer – where the complainants could simply intervene and copy those documents from the Hearing Officer's file.

Moreover, the requested TRO and preliminary injunction would prevent the MIA's Hearing Officer from improperly receiving and reviewing the Market Conduct Materials that never should have been a part of the Licensing Investigation file in the first instance.

The complainants and their counsel cannot unsee the quotes of the Market Conduct Materials that have been published in the Determination Letters, and then in the Baltimore Sun, Baltimore Banner and Daily Record. In the short term, however, this Court can ameliorate the Administration's unlawful dissemination of the Market Conduct Materials by issuing a TRO and preliminary injunction halting further distribution of the Determination Letters to the Hearing Officer, complainants, counsel and third parties. *See Stuart Circle Par. v. Bd. of Zoning Appeals of City of Richmond, Va.*, 946 F. Supp. 1225, 1229 (E.D. Va. 1996) (the lack of an "adequate opportunity for the plaintiffs to raise their" claims was sufficient to justify issuance of temporary restraining order).

Moreover, even if Erie could sufficiently raise its constitutional claims before the MIA Hearing Officer after the fact (it cannot), the MIA's knowing issuance of public Determination Letters containing confidential, privileged and protected material is so "egregious" and "outrageous" as to constitute an actionable substantive due process violation on its own. *Dean for & on behalf of Harkness v. McKinney*, 976 F.3d 407, 420-21 (4th Cir. 2020) (citation and internal quotation marks omitted); *Dean for & on behalf of Harkness v. McKinney*, 976 F.3d 407, 420–21 (4th Cir. 2020) (quoting *Temkin v. Frederick County Com'rs*, 945 F.2d 716, 720 (1991) (citing *Daniels v. Williams*, 474 U.S. 327, 338 (1986) (Stevens, J. concurring))) ("[S]ome abuses of governmental power may be so egregious or outrageous that no state post-deprivation remedy can adequately serve to preserve a person's constitutional guarantees of freedom from such conduct. Thus, conduct that 'shocks the conscience' ... violates substantive guarantees of the Due Process

Clause ***independent of the absence or presence of post-deprivation remedies available*** through state tort law")(emphasis added).

The Administration is charged with enforcing the law, not knowingly violating it. *Id.*

2. Erie Is Likely To Succeed On The Merits Of Its Federal Procedural Due Process Claim.

Two of the three elements to Erie's Procedural Due Process claim are identical to the elements applicable to the Substantive Due Process claim discussed above: (1) a cognizable property interest; and (2) a deprivation of that interest. Both of these elements are satisfied for the reasons described in the previous section of this Memorandum.

The third procedural due process ("Procedural Due Process") element is satisfied as well, because the Administration employed procedures that "were constitutionally inadequate[.]" *Todman v. Mayor & City Council of Baltimore*, No. CV DLB-19-3296, 2022 WL 4548640, at *9-10 (D. Md. Sept. 29, 2022). The Administration's procedures were constitutionally inadequate because the procedures failed to afford Erie of "notice of the impending state action" and provide "an opportunity to be heard" – for ***three*** separate and independent reasons.

a. First, The Third Procedural Due Process Element Is Satisfied, And The Administration's Procedures Were "Constitutionally Inadequate," Because The MIA Misrepresented Its Intentions To Implement The Phase I/Phase II Framework And To Complete The Licensing Investigation.

The Administration never notified Erie that it intended to depart from its Phase I/Phase II framework. The MIA misrepresented to Erie that the Phase II Licensing Examination was on hold, and that it would remain "stayed" until the Phase I Market Conduct Examination was concluded. The MIA misled Erie into believing that Erie would receive a full and complete investigation, only to arbitrarily, capriciously, and with an improper political motive deny Erie the procedural due process rights that it was repeatedly told it was entitled. *Todman*, 2022 WL 4548640, at *9-10

(holding that procedural due process rights had been violated based on government agency misrepresentations).

Erie reasonably relied on the Administration's misrepresentations of procedural fairness, to its detriment – which creates a procedural due process violation. *See Jones v. Bd. of Governors of Univ. of N. Carolina*, 704 F.2d 713, 717 (4th Cir. 1983) ("detrimental reliance may, if sufficiently unfair and prejudicial, constitute procedural due process violations"). The MIA's misrepresentations violated Erie's Procedural Due Process rights. *Id*.

b. Second, The Third Procedural Due Process Element Is Also Satisfied, And The Administration's Procedures Were Also Constitutionally Inadequate, Because The MIA Failed To Provide Notice That The Administration Would Improperly And Illegally Incorporate The Market Conduct Materials Into The Published Licensing Examination Determination Letters.

The MIA never notified Erie that it planned to transfer confidential Market Conduct Materials from the Market Conduct Division to the P&C Division. The MIA admits in the Determination Letters, the Administration did not conduct the "stayed" Phase II Licensing Examination, as it repeatedly said it would. Determination Letters, at 1. Instead, the MIA merely imported "certain documents obtained by the Insurance Administration ***during the Market Conduct Regulation Division's concurrent investigation of certain of Erie's business practices***" as a stand-in for an investigation that never occurred. *Id*. (emphasis added).

The Administration published the Determination Letters, which contain voluminous quotes of Market Conduct Materials, without any prior notice to Erie that: (1) the Market Conduct Materials had been transferred to the P&C Division; (2) the P&C Division had re-opened the Licensing Investigation and intended to issue the Determination Letters; or that (3) the Determination Letters would contain voluminous quotes to Market Conduct Materials.

c. Third, The Third Procedural Due Process Element Is Also Separately And Independently Satisfied Because The MIA Misrepresented That The Administration Would Safeguard The Market Conduct Materials From Public Disclosure.

The MIA never notified Erie that the Administration planned to publish the Market Conduct Materials, as expressly prohibited by Ins. § 2-209 and the MIA's own "long standing . . . practice to protect the confidential[ity] of all preliminary examination reports and the documents generated during an examination." *Chinwuba v. Larsen*, 142 Md. App. 364. In fact, the MIA agreed that these protections still applied as recently as ***less than three (3) months ago***. **Exhibit 2**. The MIA's sudden, unexplained, and entirely unprecedented departure from these confidentiality and privilege protections is such an "'extreme'" "'[re-]interpretation [of applicable law] . . . ***as to be a violation of due process***[.]'" *Jones*, 704 F.2d at 717 (quoting *Bd. of Educ. of Rogers, Ark. v. McCluskey*, 458 U.S. 966, 970 (1982)) (emphasis added).

Had Erie been afforded notice of any of these planned violations of its Procedural Due Process rights, Erie would have objected. The Administration unlawfully deprived Erie of an opportunity to be heard prior to publishing the Market Conduct Materials.

Erie cannot now present a defense case in the administrative appeals of the Determination Letters without waiving the very confidentiality, privilege and other protections provisions the Administration previously upheld for more than two decades. *See Nagy*, 49 F.Supp.2d at 825; *Chinwuba*, 142 Md. App. at 363. The only opportunity Erie will have to object is ***after*** the last of the confidentiality protections under Ins. § 2-209 are removed, and the Market Conduct Materials are "submitted to the hearing officer" and subjected to open discovery and wider dissemination. **Exhibit 4**.

Accordingly, the procedures the MIA afforded to Erie are constitutionally inadequate, and Erie is likely to prevail on its Procedural Due Process claim.

3. Erie Is Likely To Succeed On The Merits Of Its Maryland Declaration Of Rights Due Process Violation Claim.

Article 24 of the Maryland Declaration of Rights guarantees the substantive and procedural due process rights afforded under the 14th Amendment to the United States Constitution. *See Reese v. Dep't of Health & Mental Hygiene*, 177 Md. App. 102, 149 (2007) (noting that Article 24 of the Maryland Declaration of Rights and the 14th Amendment to the United States Constitution are interpreted *in pari materia*). Accordingly, Erie is likely to prevail on its Due Process Claim under the Maryland Declaration of Rights for the reasons described in §§ IA.1-2, *supra*.

B. Erie Satisfies The Second TRO/Preliminary Injunction Factor Because Erie Is Likely To Suffer Irreparable Harm In The Absence Of A TRO And Preliminary Injunctive Relief.

1. Erie Has Suffered Irreparable Harm, And Is Likely To Continue To Suffer Irreparable Harm, Because Of The MIA's Unlawful Dissemination Of The Confidential, Privileged And Protected Market Conduct Materials.

The MIA's inclusion of the confidential Market Conduct Materials in the Determination Letters is "'*on* [*its*] *face plainly invalid*[.]'" *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 367 (1989) (citation omitted) (emphasis maintained). The Administration is fully and acutely aware of the illegality of its inclusion of the Market Conduct Materials in the Determination Letters just two months ago. *See* **Exhibit 2** (MIA explaining that Ins. § 2-209's "confidential[ity]" "applies not just to the MIA's findings but to all of the materials provided to the MIA during the course of the examination").

The MIA's further plan to submit ***all*** the Market Conduct Materials "to the hearing officer to become part of the evidentiary file" in direct violation of Maryland law and the MIA's "long standing" interpretation of Ins. § 2-209 will further unquestionably exacerbate this harm. **Exhibit 4**. *See also Nagy*, 49 F.Supp.2d at 825; *Chinwuba*, 142 Md. App. at 363.

Accordingly, unless the MIA's actions are enjoined as requested, Erie will suffer irreparable harm that can only be remedied by preliminary injunctive relief.

2. Only A TRO And Preliminary Injunctive Relief Can Prevent Further Irreparable Harm To Erie.

The MIA's imminent release of the Market Conduct Materials to the Hearing Officer, which will unfairly, illegally, and irrevocably release Erie's protected and privileged business documents, constitutes irreparable harm that only preliminary injunctive relief can remedy. *See Paradyme Mgmt.*, No. CV PWG-17-3687, 2017 WL 11458384, at *2 (granting temporary restraining order, noting that the potential release of confidential materials presented an "imminent danger of . . . irreparable harm" to the requesting party's operations and reputation).

The resulting damage to Erie's "'reputations[] and good will'" are "'irreparable' in nature" such that the Administration may properly be enjoined. *Innovative Value Corp. v. Bluestone Fin., LLC*, No. CIVA DKC 2009-0111, 2009 WL 3348231, at *3 (D. Md. Oct. 15, 2009). Indeed, once the Determination Letters and supporting documentation are disclosed to the MIA Hearing Officer, and to the complainants if they join the cases as parties, and potentially any member of the public that files a request for them, those disclosures cannot be undone. Accordingly, Erie faces imminent, irreparable and catastrophic harm if the MIA's actions are not preliminarily enjoined.

3. Erie Will Be Irreparably Harmed Absent A TRO And Injunctive Relief Because Erie Will Not Have An Adequate Opportunity To Raise Its Constitutional Claims In The Administrative Hearings Before The MIA.

Erie will not be afforded "an adequate opportunity . . . to raise federal constitutional claims" before the MIA. *Stuart Circle*, 946 F.Supp. at 1229. The Administration has illegally and inequitably forced Erie to waive its entitlement to confidentiality, privilege and protections of the Market Conduct Materials to preserve them. *See* Argument at § I.A.1.c, I.A.2.c.

This Motion is Erie's first and last opportunity to prevent irreparable harm ***before*** the unlawful and illegal dissemination of the Market Conduct Materials occurs. *See United States v. Booz Allen Hamilton Inc.*, No. CV CCB-22-1603, 2022 WL 16553230, at *3 (D. Md. Oct. 31, 2022) (denying injunctive relief in context of prior consummated transaction and denying requesting party's "proverbial attempt to 'unscramble the eggs'") (citation omitted).

C. Erie Satisfies The Third TRO/Preliminary Injunction Factor Because The Balance Of Equities Supports Granting Erie The TRO And Preliminary Injunctive Relief Requested.[9]

1. The Balance Of Equities Strongly Supports The Grant Of Erie's Motion Because The Imminent Harm Erie Has Suffered And Continues To Suffer Substantially Outweighs The (Non-Existent) Harm To The Administration That Would Arise From Being Ordered To Simply Follow The Law.

Erie will suffer immediate and irreparable harm if the MIA is permitted to further disseminate the Market Conduct Materials in violation of Ins. § 2-209 and applicable privileges and protections. *See* Argument § I.B, *supra*. Alternatively, if the requested TRO and injunctive relief are issued, the Administration will only be prohibited from doing what Maryland law and the MIA's "long standing" practices ***already*** prohibit the Administration from doing. Ins. § 2-209(g); *Nagy*, 49 F.Supp.2d at 825; *Chinwuba*, 142 Md. App. at 363. *See also Ctr. for Soc. Change, Inc. v. Morgan Prop. Mgmt. Co., LLC*, No. CV JKB-19-0734, 2019 WL 1118066, at *2

[9] In the District of Maryland, when the "'Government is the opposing party[,]'" the Court considers the third and fourth factors of *Winter* – (3) the balance of the equities and (4) the public interest – "in tandem[.]" *Ass'n of Am. Publishers, Inc. v. Frosh*, 586 F. Supp. 3d 379, 397 (D. Md. 2022) (citation omitted). This is because "'the government's interest *is* the public interest[.]'" *Ass'n of Cmty. Cancer Centers v. Azar*, 509 F. Supp. 3d 482, 501 (D. Md. 2020) (citation omitted) (emphasis maintained). To aid in this Court's analysis, however, Plaintiffs have separated these factors.

(D. Md. Mar. 11, 2019) (***granting TRO as opposing party would not be harmed by following law*** (the Fair Housing Act) applicable to it)(emphasis added).

Moreover, the MIA's admitted possession and threatened (illegal) release of the confidential Market Conduct Materials heavily weighs in favor of granting Erie's request for preliminary injunctive relief. *E.g.*, *Paradyme Mgmt.*, 2017 WL 11458384, at *2 (granting TRO to prevent release of confidential business information to other entities); *Orderup LLC v. MizzMenus, LLC*, No. CV JKB-14-620, 2014 WL 12908269, at *3 (D. Md. Mar. 7, 2014) (restricting unauthorized use and dissemination of confidential customer data).

2. The Balance Of Equities Strongly Supports The Grant Of Erie's Motion Because A TRO And Preliminary Injunctive Relief Will Safeguard The Confidentiality, Privilege And Other Protections To Which Erie Is Already Entitled.

A TRO and preliminary injunctive relief Erie seeks is entirely consistent with the confidentiality provisions already afforded to it under Maryland law, as well as those that the MIA has already pledged to protect. *See* Ins. § 2-209(g); *Nagy*, 49 F.Supp.2d at 825; *Chinwuba*, 142 Md. App. at 363; *Ctr. for Soc. Change, Inc., LLC*, 2019 WL 1118066, at *2; **Exhibit 2**.

Permitting the MIA to further disseminate Erie's confidential Market Conduct Materials would unlawfully flip "the burdens of inertia and litigation delay" to Erie – the very party that "the statute was intended to protect, despite [Erie's] obvious diligence in seeking an adjudication of their rights[.]" *Lucas v. Townsend*, 486 U.S. 1301, 1305 (1988). *See also Bernstein v. Sims*, No. 5:22-CV-277-BO, 2022 WL 17365233, at *6 (E.D.N.C. Dec. 1, 2022) (granting injunctive relief to protect First Amendment constitutional guarantees).

Accordingly, for the foregoing reasons, the balance of the equities significantly tilts in favor of granting Erie the preliminary injunctive relief requested.

D. Erie Satisfies The Fourth TRO/Preliminary Injunction Factor Because The Public Interest Is Served By Granting Erie The Preliminary Injunctive Relief Requested.

The MIA's arbitrary, capricious, and unprecedented violation of the confidentiality requirements to which it is admittedly "obligat[ed]" to uphold (**Exhibit 2**) will have disastrous public consequences and should be preliminarily enjoined. *See Ass'n of Am. Publishers, Inc. v. Frosh*, 586 F. Supp. 3d 379, 397 (D. Md. 2022) (holding that when considering the public interest, courts "'should pay particular regard for the public consequences'" at stake (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, (1982) (additional citation and quotation marks omitted); *Ass'n of Cmty. Cancer Centers v. Azar*, 509 F. Supp. 3d 482, 501 (D. Md. 2020) ("[T]he government's interest *is* the public interest[.]" (emphasis maintained) (citation and internal quotation marks omitted)).

Indeed, the failure to grant the requested injunctive relief will destroy the strict § 2-209 confidentiality protections and privileges due not just to Erie, but to all Maryland licensees subject to the MIA's jurisdiction. "If anything, the system is ***improved*** by such an injunction." *Id. Ass'n of American Publishers*, 586 F.Supp.3d at 397 (citation and internal quotation marks omitted)(emphasis added).

If this Court does not protect against the Administration's unlawful disclosure of "untested" information and findings, ***no licensee*** can have confidence that the MIA will properly protect its communications. *Chinwuba*, 142 Md. App. at 363 (the "MIA construes subsection 2-209(g) [of the Article] as imposing a duty of confidentiality with respect to ***any information***, findings, charges and charges ***that have not been 'tested'*** via the administrative procedures established under 2-209(c)") (emphasis added). The quality of licensee disclosures, communications – and the findings based on those communications - will be degraded as a result.

II. The Imposition Of A Nominal Injunction Bond Is Appropriate.

In setting an appropriate injunction bond, "the amount of the bond[] . . . ordinarily depends on the gravity of the potential harm to the enjoined party[.]" *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 n.3 (4th Cir. 1999). Here, the risk of harm to the Administration is remote, and obligates the MIA to afford Erie the confidentiality protections to which it is unquestionably entitled. *See* Ins. § 2-209(g); *Nagy*, 49 F.Supp.2d at 825; *Chinwuba*, 142 Md. App. at 363; *Ctr. for Soc. Change, Inc., LLC*, 2019 WL 1118066, at *2; **Exhibit 2**.

The Administration will continue to be free to follow the law. Accordingly, a nominal bond (or no bond, *i.e.* zero dollars ($0.00) will suffice. *See Hassay v. Mayor*, 955 F.Supp.2d 505, 527 (D. Md. 2013) (setting bond at $1.00 in context of challenge to noise restriction by musician where the city would "retain authority to prohibit 'unreasonably loud noises'").

CONCLUSION

For the foregoing reasons, Plaintiffs are entitled to a TRO and preliminary injunction to preserve the *status quo* and enjoin Defendants from any further dissemination of the unlawful Determination Letters and the confidential Market Conduct Materials, which should remain in place until a trial on the merits of Erie's forthcoming motion for a permanent, mandatory

injunction to compel the MIA to withdraw the Determination Letters can be held.

Dated: June 8, 2023

Respectfully submitted,

/s/Alex J. Brown

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June, 2023, I hand filed the foregoing Plaintiffs' Memorandum Of Law In Support Of Motion For Temporary Restraining Order and Preliminary Injunction, and Exhibits attached thereto, Request for Hearing, and proposed Orders via CM/ECF.

I FURTHER HEREBY CERTIFY that I sent the foregoing materials to counsel for Defendants via electronic mail, at the following address:

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I FURTHER HEREBY CERTIFY that pursuant to Local Rule 105.1(a), a courtesy copy of the documents listed above is being delivered to the Clerk's Office for the United States District Court for the District of Maryland, located at 101 W. Lombard Street, Fourth Floor, Baltimore, Maryland 21201.

/s/Alex J. Brown
Alex J. Brown (Bar No. 26612)