

**FILED**  
Superior Court Of California,  
Sacramento  
04/25/2016  
skhomf  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2013-80001667**

By Fax

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SACRAMENTO

11 DAVID GENTRY, JAMES PARKER, )  
12 MARK MIDLAM, JAMES BASS, and )  
13 CALGUNS SHOOTING SPORTS )  
14 ASSOCIATION, )  
15 Plaintiffs and Petitioners, )  
16 vs. )  
17 KAMALA HARRIS, in Her Official )  
18 Capacity as Attorney General for the State )  
19 of California; STEPHEN LINDLEY, in His )  
20 Official Capacity as Acting Chief for the )  
21 California Department of Justice, BETTY )  
22 YEE, in Her Official Capacity as State )  
23 Controller for the State of California, and )  
24 DOES 1-10. )

20 Defendants and Respondents.

CASE NO. 34-2013-80001667

**DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY**

Date: 10/28/16  
Time: 9:00 a.m.  
Dept.: 31  
Action filed: 10/16/2013

1 **DECLARATION OF SCOTT M. FRANKLIN**

2 I, Scott M. Franklin, declare:

3 1. I am an attorney at law admitted to practice before all courts of the state of  
4 California. I have personal knowledge of each matter and the facts stated herein as a result of my  
5 employment with Michel & Associates, P.C., attorneys for Plaintiffs/Petitioners (“Plaintiffs”), and  
6 if called upon and sworn as a witness, I could and would testify competently thereto.

7 2. My office served a third set of Requests for Production (“RFPs”) on Defendants on  
8 September 4, 2015.

9 3. Defendants provided responses to the abovementioned discovery on October 19,  
10 2015, based on a courtesy extension I provided.

11 4. When I evaluated the responses provided on October 19, 2015, I determined them  
12 to be insufficient. Accordingly, I sent a letter to Defendants’ counsel on December 14, 2015,  
13 explaining in detail how the responses provided were insufficient. Exhibit 1 to this Declaration is  
14 a true and correct copy of my letter dated December 14, 2015.

15 5. On December 16, 2015, I had a phone call with opposing counsel Anthony Hakl,  
16 and during that call he agreed that his clients would consider amending the responses they  
17 provided on October 19, 2015.

18 6. On January 6 and 19, 2016, Defendants provided additional documents in response  
19 to the relevant discovery.

20 7. Even after the two productions mentioned in the previous paragraph, I still  
21 believed Defendants’ responses and production were insufficient. Accordingly, I sent a letter to  
22 Defendants’ counsel on February 19, 2016, explaining in detail how certain responses provided  
23 were insufficient. Exhibit 2 to this Declaration is a true and correct copy of my letter dated  
24 February 19, 2016.

25 8. On March 10, 2016, Defendants provided further responsive documents and an  
26 amended privilege log (the “Privilege Log”); unlike its predecessor, the Privilege Log specified  
27 which requests were relevant to each specific item on the Privilege Log that was purportedly  
28 subject to a privilege. The Privilege Log did not include any information on the baseline budgets,

1 which I expected because opposing counsel and I had previously discussed the issue and it was  
2 clear to me Defendants were claiming the baseline budgets were privileged. Exhibit 3 to this  
3 Declaration is a true and correct copy of the Privilege Log.

4 9. After I received the documents provided on March 10, 2016, I determined three  
5 responses therein were still deficient. Thereafter, I communicated with opposing counsel and we  
6 determined that we were at an impasse as to seven responses.

7 10. Throughout the lengthy meet and confer process described above, I obtained  
8 extensions of the deadline for filing a motion to compel on this matter, most recently getting an  
9 extension so that the deadline for filing is April 25, 2016.

10 11. Exhibit 4 to this Declaration is a true and correct copy of excerpts of Defendants'  
11 Amended Response to Requests for Production (Set Three) served in this Action.

12 12. Exhibit 5 to this Declaration is a true and correct copy of the Department of  
13 Finance's ("DOF") Glossary of Budget Terms's definition of "baseline budget[,]" which was  
14 obtained at [http://www.dof.ca.gov/html/bud\\_docs/glossary.pdf](http://www.dof.ca.gov/html/bud_docs/glossary.pdf) in April 2016.

15 13. Exhibit 6 to this Declaration is true and correct excerpts of statements in DOF's  
16 Finance Glossary of Accounting. DOF's Finance Glossary of Accounting was obtained at  
17 <http://www.dof.ca.gov/fisa/bag/documents/FinanceGlossary.pdf> in April 2016.

18  
19 I declare under penalty of perjury under the laws of California that the foregoing is true  
20 and correct, and that this declaration was executed on April 25, 2015, at Long Beach, California.

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28

  
\_\_\_\_\_  
Scott M. Franklin

# **EXHIBIT “1”**

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December 14, 2015

**VIA EMAIL & U.S. MAIL**

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[Anthony.Hakl@doj.ca.gov](mailto:Anthony.Hakl@doj.ca.gov)

**Re: *Follow-up Regarding Impact of Motion for Leave Being Granted and Meet-and-Confer Concerning Disputed Discovery Responses in Gentry v. Harris***

Mr. Hakl:

I write to discuss the impact of the Court's recent ruling granting Plaintiffs' motion for leave to amend, and to meet and confer about Defendants' responses to Special Interrogatories (Set Two) and Requests for Admissions (Set Two) that you emailed to me on October 19, 2015.

**Issues Re: Motion for Leave to Amend Being Granted**

First, my assistant sent you a copy of the proposed order we would like to file, pursuant to California Rules of Court, Rule 3.1312(a). Please let me know if it meets with your approval, and thereafter we will file it as soon as possible.

Second, I have attached hereto a draft of the Amended Complaint we intend to file. It has been modified to reflect the specific requirements set out in the Court's tentative ruling of December 10, 2015. Though I don't think there will be any dispute as to whether the Amended Complaint has been properly revised to meet the Court's expectations, I want to give you a copy before it is filed to iron out any problems that can be resolved without dispute.

Third, because Amended Complaint includes new arguments grounded on the allegation that the DROS Fee is being use as an illegal tax, the discovery requests previously ruled moot by the Court on August 31, 2015 (as a result of Defendant's Motion for Judgment on the Pleadings being granted), are no longer moot. Thus, we request that Defendants produce substantive responses to the "unmooted"

Mr. Anthony Haki  
December 14, 2015  
Page 2 of 6

form interrogatories and requests for Admissions<sup>1</sup> 60 days after the Amended Complaint is filed and served.

If Defendants are not willing to comply with the request stated above, there are a few ways we can deal with this situation. Plaintiffs could propound the relevant discovery as “new” requests and go through another motion to compel, but I think that would only waste the parties’—and the court’s—time: this issue has been fully briefed for the Court. Accordingly, I think that it would be proper, and much, much more efficient,<sup>2</sup> to make a renewal motion under Code of Civil Procedure Section 1008(b); the new illegal tax claims in the Amended Complaint constitute new facts that justify the renewal of Plaintiffs’ Motions to Compel. Civ. Proc. Code § 1008(b). Indeed, because the Court does not need a second round of briefing on this issue, my preference is to make a motion under Section 1008(b) with a stipulation that the Court consider the issue on the previously filed briefs and issue a ruling without further argument. Please let me know if Defendants will produce substantive additional responses, and if not, whether Defendants are willing to enter into the type of stipulation mentioned above.

**Request for Production of Documents (“RFP”)**

***RFP No. 63***

This request seeks baseline budgets submitted by the California Department of Justice (the “Department”) to the California Department of Finance. The boiler plate objections provided are without merit. Specifically, Defendants provide no explanation as to why these documents would be protected under the attorney-client privilege, the work product doctrine, or the executive and deliberative process privileges. Indeed, these claims ring hollow. The budget documents sought are day-to-day budget documents, they have nothing to do with legal services being provided. Similarly, the response provided does not explain how a deliberative or executive process privilege could have been maintained here, as the documents requested are specifically ones that were, without exception,

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<sup>1</sup> I.e., Request for Admissions Nos. 83-86, 88, and 89, and Form Interrogatory 17.1(b) as to Requests for Admissions Nos. 18-22, 83-86, 88, and 89.

<sup>2</sup>For comparison, I note that the core of Defendants’ recent Opposition brief—i.e., the claim that the Order After Hearing precluded Plaintiffs from adding newly identified illegal tax arguments to their complaint—was an issue that Plaintiffs attempted to resolve by proposing an clarification amendment to Defendants’ first draft of the proposed Order After Hearing. (See Letter to Anthony Haki dated June 30, 2015, at 2). As you recall, Defendants refused that proposed change, and then Defendants later opposed Plaintiffs’ motion for leave based on an argument that should have been disposed of when the Order After Hearing was issued. Adding a clarification that two causes of action were being dismissed for the reasons “stated in Defendants’ Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings at 5:20-7.11” would have worked no unfair prejudice to Defendants, and it would have resolved the issue that resulted in three unnecessary briefs (i.e., the recent motion for leave briefing) and court order. Here, I am similarly trying to streamline things, and I don’t think going through an entire new round of discovery and motion practice makes sense, as the issue has already been fully briefed.

Mr. Anthony Hakl  
December 14, 2015  
Page 3 of 6

circulated beyond a “control” or “executive” group, meaning there is no apparent justification for these objections. And in any event, as we have previously discussed, these type of claims are always going to be subject to a balancing test, and I see no reason why the Department will prevail in this instance. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

***RFP No. 68***

In response to this request, Defendants proposed the parties confer regarding the possibility of narrowing the scope of thereof. Defendants also state that the information sought is equally available to the requesting party. Accordingly, if Defendants can provide an explanation as to how Plaintiffs can obtain the information sought as easily as having it produced by Defendants in discovery, then we will look into obtaining it through that route.

Otherwise, the statement that this request seeks “*potentially* hundreds” of documents does not, in and of itself, convince us that a limitation of this request is warranted. Nonetheless, we are open to an explanation as to why this request is overburdensome, and how it might be tailored to meet our needs without any loss of substance.

***RFP No. 72***

First, I note that Defendants’ characterization of this request as “oppressive and burdensome” is based on a false premise. That is, Defendants claim “compliance would be unreasonably difficult and expensive because it purports to seek ‘each and every’ such document within the entire Department of Justice[.]” But on some level, *every* document production request seeks analysis of the entirety the Department’s records for each responsive record, and this request is limited such that Defendants’ characterization does not make sense. Here, we have added multiple limiting attributes that, based on information available to us, should lead to a manageable production. If Defendants can offer a legitimate justification as to why we should amend this request, which hinges on (1) a mention of the DROS Special Account and (2) the use of the phrase “government law[.]” we are open to changing the request. But without that, a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The information sought is more akin to budgetary data, and that is plainly not going to be privileged; I think the Court’s previous discovery ruling indicates as much. (Order of June 1, 2015, at 4). Similarly, the deliberative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

***RFP No. 73***

First, I note that Defendants’ characterization of this request as “oppressive and burdensome” is based on a false premise. That is, Defendants claim “compliance would be unreasonably difficult and expensive because it purports to seek ‘each and every’ such document within the entire Department of Justice[.]” But on some level, *every* document production request seeks analysis of the entirety the

Mr. Anthony Hakl  
December 14, 2015  
Page 4 of 6

Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we are asking for training or guidance documents including or referring to a particular policy statement: the limitations provided should lead to a manageable production. If Defendants can offer a legitimate justification as to why we should amend this request, we are open to changing the request. But without that, a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought are used by employees when learning to track employee time, and that type of document has nothing to do with attorney work nor privileged communications. Similarly, the deliberative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

#### ***RFP No. 89***

First, I note that Defendants' characterization of this request as "oppressive and burdensome" is based on a false premise. That is, Defendants claim "compliance would be unreasonably difficult and expensive because it purports to seek 'each and every' such document within the entire Department of Justice[.]" But on some level, *every* document production request seeks analysis of the entirety the Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we are asking for documents related to the Department's process of converting an employment position from being funded from one specific source to another specific source. Unless and until the Department is prepared to show that it has already spent a substantial amount of time, and located a substantial amount of responsive documents, Defendants' oppression objection is without impact, and a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought refer to staffing and budgetary decisions, and those type of documents have nothing to do with attorney work nor privileged communications. Similarly, the deliberative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

#### **Special Interrogatories ("SI")**

##### ***SI No. 19***

This request contains a clerical error; the term "department of legal services" should have read "Government Law Section of the Division of Civil Law[.]" With this information, Defendants should be able to respond to this interrogatory.

Defendants claim the following passage, from the instant request, is vague and ambiguous: "obtains funding to cover the cost of providing lawyers when it provides lawyers to defend employees of Bureau of Firearms." Though Plaintiffs believe the interrogatory is clear with the above-noted

correction, Plaintiffs will illuminate their inquiry. Defendant want to know how the Division of Civil Law obtains funding to pay the salaries of attorneys who represent Bureau of Firearms employees (e.g., Chief Lindley), which presumably has happened pursuant to Government Code section 11040. If, however, it is the case that the Division of Civil Law has never represented a Bureau employee, that information would also be part of an appropriate response to this interrogatory.

*SI No. 25*

This interrogatory asks for the basis of Defendants' response to SI No. 24, which is that "Defendants are unable to answer this interrogatory." Defendants' response to SI No. 25, however, does not explain Defendants' claimed inability to response to SI No. 24. Rather, it refers to why the Department can't repeat the calculation it did in 2002, which is not a pre-requisite for providing the calculation asked for. That is, SI No. 25 did not ask the Department to repeat a previous calculation, meaning Defendants' response to SI No. 25 is evasive. Defendants have already said they cannot "State the total amount of expenditures attributed to tasks referred to in Penal Code Section 28225 for the fiscal year 2013-2014;[,]" and now they must explain why. Failure to do so will evince a lack of good faith and justification for, at the least, a motion to compel being granted. A further response should be provided.

*SI Nos. 27 & 28*

Defendants claim the term "accounting designation" is vague and ambiguous, apparently as a basis for not providing a substantive response to SI Nos. 27 and 28. Though Plaintiffs disagree, Plaintiffs further explain that the term "accounting designation" was meant to refer to any line-item title, like "Firearms Database Audits[,]" that was used to identify a program that was funded by a certain source (here, the DROS Special Account).

SI No. 27 seeks an "accounting designation," e.g., title, for any program that was funded from the DROS Fund during the relevant time frame *but* excepting any class of program that turned on the "possession" of a firearm. "Possession" as used herein has the same meaning as the Department gives that word when interpreting Penal Code section 28225. Plaintiffs assume that "DROS Enforcement Activities" would *not* be a responsive "accounting designation" as to SI No. 27, though it *would* be responsive to SI No. 28, which seeks *only* accounting designations related to programs that turn on the possession of a firearm. With the foregoing information, Plaintiffs believe Defendants are capable of providing substantive responses to SI Nos. 27 and 28.

*SI Nos. 29 & 30*

The Department claims the two incidents at issue are "APPS cases[,]" but the facts provided suggest otherwise. As you know, one of our clients' concerns is that DROS Fees are being used to fund general law enforcement activities via the APPS program. Based on these "APPS cases[,]" however, it appears the name APPS is being applied to law enforcement activities that are not even derived from APPS-based data. If that is the case, one of my clients' primary arguments (i.e., that the DROS Fee is no longer a fee, but a general law enforcement tax being foisted upon legal gun purchasers) becomes much stronger. Thus, Defendants are plainly wrong in claiming the information sought is "irrelevant."

Mr. Anthony Hakl  
December 14, 2015  
Page 6 of 6

As to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought refer to staffing and budgetary decisions, and those type of documents have nothing to do with attorney work nor privileged communications. Similarly, the executive privilege and official information objections seems inapplicable (who is the executive claiming the privilege?), but even if one of them is theoretically applicable, I do not see how the balance tips in the favor of nondisclosure when information sought will confirm or refute whether the Department is improperly characterizing general law enforcement work as APPS work. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

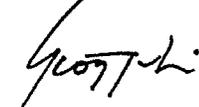
Finally, I am hesitant to believe that the law enforcement privilege claim (really just an official information claim raised in the guise of police records) will succeed. First, if the investigation of either case is over, then the weight in favor of non-disclosure is very light. *See, e.g., Cnty. of Orange v. Super. Ct.*, 79 Cal. App. 4th 759, 768 (2000) (noting that the qualified privilege that applies to police records disappears at some point). Further, Defendants have already publically touted the cases at issue as “APPS cases,” meaning they will have a hard time convincing the Court that the Department is actively trying to keep facts related to those cases “under wraps.” Second, because this is a question of balancing, I believe my clients have a strong argument: Defendants should not be able to publically claim certain cases are “APPS cases” and then deny requests for confirmation. Such a result runs contrary to the California Constitution. Cal. Const. art. 1, § 3(b) (“The people have the right of access to information concerning the conduct of the people’s business[.]”).

Defendants do not seek any person information or strategic information, they just want to know how it is that the Department can claim the two matters at issue are “APPS cases” when, based on the facts provided, they are not. Defendants knowingly put these two cases up to public scrutiny when the Department chose to use them as exemplars of APPS success stories, and the Department cannot reasonably take the position that the public has no ability to verify the Departments’ claims.

Please do not hesitate to contact me if you have any questions regarding the foregoing, and I look forward to speaking with you on Wednesday.

Sincerely,

**Michel & Associates, P.C.**



Scott M. Franklin

Enclosure: (Revised Draft First Amended Complaint)

# **EXHIBIT “2”**

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February 19, 2016

**VIA EMAIL & U.S. MAIL**

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**Re: Status of Pending Discovery and Litigation Issues (*Gentry v. Harris*, Case No. 34-2013-80001667)**

Dear Mr. Hakl:

I write to follow up on a few disputed responses Defendants provided in response to Plaintiffs' third set of Special Interrogatories and third set of Requests for Production of Documents. I believe we are at an impasse in the meet-and-confer process as to the responses at issue, but I am sending this letter to memorialize my clients' position and confirm whether further informal discussions are justified. As we have previously discussed by e-mail, I have scheduled time on February 29, 2016, at 2:00 p.m., for a teleconference on this matter. If we are indeed at an impasse, I believe we can use the abovementioned call to discuss the possibility of seeking expedited review of this dispute as we have in the past. And to the extent Plaintiffs request further information hereby, Plaintiffs also request any further responses or additional information be produced to me by close of business on February 28, 2016.

Finally, before getting to the meat of this letter, there are a few "housekeeping" matters to attend to. First, I request that Defendants provide "cleaner" copies of the documents Bates-stamped AGRFP000640 and AGRFP000644. The text on these documents is very small and difficult to decipher in a low-resolution format. Second, Plaintiffs request that Defendants supplement the January 13, 2016, privilege log so that Plaintiffs can determine which request(s) are applicable to each withheld document that is described on the log.

## **Requests for Production**

### ***Request for Production No. 55-56***

Defendants still claim they cannot produce even exemplars of the documents that are responsive to these requests. The documents seem to fall within a very small class (documents that are specifically in the records of the Department's Administrative Services Division, Budget Office, that also refer to the DROS FEE), so it is hard for Plaintiffs to understand why Defendants have yet to comply with this request. Unless Defendants are willing to confirm that they believe responding to these requests will result in the production of more than 1,000 pages of documents (along with an explanation of the basis for that belief), Plaintiffs plan to seek judicial relief regarding this issue. If, however, Defendants provide a reasonable explanation for why they expect the production would be over 1,000 pages, then Plaintiffs are open to selecting particular date ranges to help expedite the production of at least some of the responsive documents that should be produced in response to Request for Production Nos. 55-56.

Alternatively, to the extent Defendants intend to rely on the objections provided in response to Request for Production Nos. 55-56, Plaintiffs incorporate herein their response to Defendants' objections to Request for Production No. 63, stated below.

### ***Request for Production No. 63***

Defendants have never produced any information to support their bare objections. Regardless, Plaintiffs will attempt to explain why Defendants' objections are without merit. Defendants' relevance objection is patently unreasonable; this case is primarily about how the Department of Justice (the "Department") spends income that is specifically related to firearms, e.g., DROS fees. Baseline budgets submitted to the Department of Finance appear likely to provide information that is relevant. The Court's order of June 1, 2015, is on point. "Respondents' budget and expenditure decisions related to the setting and continuation of the DROS fee. The public clearly has an interest in disclosure of documents which identify the budgetary analyses performed by Respondents to support the amount of the DROS fee." (Order of June 1, 2015 [the "Order"], at 4:1-4.)

Defendants' claim that the request is burdensome because it covers a period of twelve years is without merit. The number of years at issue is irrelevant if the number of documents, and the amount of hours required to locate them, are minimal. Unless Defendants provide actual evidence of the supposed burden at issue, this objection will fail. Defendants are requested to either comply with this request as written, or quickly produce evidence to support their undue burden objection.

Defendants claim that these documents are covered by the attorney-client privilege and the attorney work product doctrine. As the documents at issue are clearly budgetary documents (they are referred to as "baseline budgets[,] after all), Defendants have shown no attorney interaction that could potentially justify the documents being withheld. Further, Defendants know that the proper course of action to support an attorney-client privilege claim is to provide "sufficient factual information[,] e.g., a privilege log, to allow Plaintiffs to evaluate Defendants' privilege claims. Civ. Proc. Code

§ 2031.240(c)(1). Defendants have done this for other responses, but not for their response to Request for Production No. 63, indicating the attorney-based objections used here are unfounded boilerplate. Similarly, to the extent attorney work product is shown to be at issue regarding this request, the nature of the documents sought, which are not the type of material attorneys generally produce (and are unlikely to include completely privileged “brain work”), strongly suggest that the objection will fail when subjected to the relevant standard. Civ. Proc. Code § 2018.030.

Finally, Defendants claim the executive process and deliberative process doctrines (both which fall within the “government information” privilege found at Evidence Code section 1040) apply, but without explanation. Given the Court’s analysis and ruling in the Order, and the applicable balancing test (see, e.g., *Cal. First. Am. Coal. v. Super. Ct.*, 67 Cal. App. 4th 159, 172 (1998)), this objection appears to be without merit.

#### ***Request for Production No. 64***

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production No. 63 as stated above. The documents at issue, as described, appear to be either operational documents that will indicate how DROS fee funds are used or are related to budgetary work that is relevant to this action. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 64 will withstand a motion to compel, please immediately provide an explanation for that claim.

Further, to the extent Defendants claim the documents at issue are contain “confidential law enforcement information protected by the official information, law enforcement, and executive privileges[.]” Plaintiffs contend that such unexplained objections are insufficient to tip the balance in favor of non-disclosure. Unless Defendants provide an actual explanation for these objections in the near future, Plaintiffs intend to seek judicial relief.

Finally, it is worth noting that, as written, Defendants’ burden-based objection is patently unreasonable. Defendants claim an unfair burden will result because the request seeks “each and every” document within a particular description. Counsel is surely aware that the use of the phrase “each and every” is common in requests for production, and that the total production of “each and every” document can be zero or any other number, meaning the usage of the phrase has literally no relevance to whether a request is unduly burdensome or not. If Defendants do not now provide a cogent explanation, including an non-evasive response, as to the specifics of why they should not be required to comply with this relevant request, Plaintiff is confident the Court will overrule this objection and order the withheld documents produced.

#### ***Request for Production No. 65***

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to indicate how DROS fee funds are used—an issue at the center of Plaintiffs’ case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 65 will withstand a motion to compel, please immediately provide an explanation for that claim.

***Request for Production No. 66***

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to concern the DROS account and budget activities related thereto, an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 66 will withstand a motion to compel, please immediately provide an explanation for that claim.

***Request for Production No. 68***

Pursuant to our previous discussion, Plaintiffs seek responsive documents that refer to the following funds: General Fund, Dealers' Record of Sale Fund, Firearms Safety & Enforcement Fund, and the Legal Services Revolving Fund.

***Request for Production No. 72***

Your letter of January 13, 2016, states your "understanding is that there are no outstanding issues to address in light of defendants' production of the relevant invoices on January 6, 2016." I do not think that statement is correct. The invoices at issue do not appear to be responsive to this request, which seeks documents that use the phrase "government law[.]" and the invoices at issue do not mention the phrase "government law[.]" If your letter included an error regarding this matter, please advise us of your intended response as soon as possible.

Otherwise, Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to indicate how DROS fee funds are used— an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 72 will withstand a motion to compel, please immediately provide an explanation for that claim.

***Request for Production Nos. 74-75***

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to concern how the Department's budgeting and accounting divisions were discussing the use of DROS fee funds, an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production Nos. 74-75 will withstand a motion to compel, please immediately provide an explanation for that claim.

## Special Interrogatories

### *Special Interrogatory Nos. 24 and 25*

Defendants originally claimed that they could not provide a response to Special Interrogatory No. 24, which asks Defendants to “[s]tate the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014.” But, in their most recent response to this question, Defendants responded, “[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014 was \$29,144,382. Because this interrogatory did not ask what “[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014 was[,]” the response appears non-responsive. It is possible, however, that the “total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014” is the same as the “[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014[:.]” \$29,144,382. If Defendants confirm this is correct, then no further response will be sought. If Defendants state the foregoing is not correct, then Defendants need to either stand on their original response to Special Interrogatory No. 24, or provide a different response regarding “the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014.”

And as to Defendants’ response to Special Interrogatory No. 25, confirmation that \$29,144,382 is “the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014” will prevent the need for a further response to Special Interrogatory No. 25. Otherwise, Defendants’ response to that interrogatory needs to be revised to address the issue in the preceding paragraph.

### *Special Interrogatory Nos. 29 and 30*

Defendants blithely claim that these interrogatories seek information that is irrelevant, which is not true. Both of these interrogatories seek information about specific matters that the Department has used in publicizing the APPS program and successes supposedly resulting therefrom, but the matters appear to be general law enforcement cases not connected to APPS in any causal way. Inasmuch as Plaintiffs contend that Defendants are improperly using DROS funds to not only fund APPS, but to fund general law enforcement activities beyond APPS, the information sought is plainly relevant.

The boilerplate objections provided to these interrogatories are completely unexplained. Thus, Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above.

Plaintiffs do believe the “law enforcement” privilege, which is really just the governmental information privilege, *could* potentially be applicable—and justify Defendants’ reliance thereon— *if* the two cases at issue are *incomplete* criminal investigations. Ongoing criminal investigations provide the only conceivable reason why the law enforcement privilege might actually justify the withholding of the information sought. *See Cnty. of Orange v. Super. Ct.*, 79 Cal. App. 4th 759, 768-69 (2000). Plaintiff suspect these two cases are not ongoing investigations because: (1) they both concern seizures occurring more than two years ago, and (2) the Department chose to use these cases as exemplars in the

2013-2014 Biennial Report, and Plaintiffs presume the Department would not have made that choice if the Department believed doing so would harm an ongoing investigation.

Nonetheless, if Defendants are willing to state that the two matters at issue are ongoing criminal investigations that were used in the Department's last biennial report, then Plaintiffs will not seek judicial assistance regarding these two interrogatories. If no such statement is timely made, Plaintiffs plan to move to compel the production of this information pursuant to relevant balancing standard. *Id.*

### **Privilege Log**

Without knowing the specific request(s) at issue for each item listed on the privilege log, it is somewhat difficult to respond to the unexplained objections stated therein. Nonetheless, please consider the following.

#### ***Document Nos. 15-16***

The Department states the documents being withheld are titled "DOJ Finance Letter Concepts" with unknown authors and recipients. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. Finance Letters appear to be "follow up" documents submitted to the Department of Finance with the intent of amending a particular year's proposed budget. Thus, "Finance Letter Concepts" appear to be directly related to the creation of budgets, and to the extent the documents mention APPS or DROS (which they presumably do, though Plaintiffs cannot know for sure until Defendants identify which request[s] the withheld documents are relevant to), the balance plainly tips in the favor of disclosure. (*See Order at 3:22-4:4.*)

#### ***Document No. 17***

The title of the document here expressly shows that the withheld document concerns the Department of Finance's questions regarding a "BCP" (Budget Change Proposal) that the Department appears to have submitted. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

#### ***Document No. 18***

The title of the document here expressly shows that the withheld document concerns a BCP specifically related to APPS. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

***Document No. 19***

The title of the document here expressly shows that the withheld document concerns a BCP specifically related to APPS. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

***Document No. 20***

Presumably, if Defendants know which interlineations were made by an attorney and intended as a client communication, such interlineations are unavailable to Plaintiffs. Thus, if Defendants can identify the actual attorney or attorneys making interlineations or supposedly intended recipient attorneys, Plaintiffs will not challenge the attorney-client privilege claim as applied to those interlineations. If Defendants cannot identify which statements were made in the course of an attorney-client relationship, then that strongly suggests no attorney-client privilege or attorney work product-based objection can succeed. Because the interlineations presumably have to do with the funding of the APPS program, the balance tips in the favor of disclosing interlineations that are not privileged attorney-client communications.

And as to the agenda itself, it is unclear if it was actually authored by Gill Cedillo or if he was simply the Chair of the committee for which the agenda was created.<sup>1</sup> Assuming it is a document that is available online, Plaintiffs do not seek the production of the agenda itself.

***Document No. 21***

The title of this document does not provide sufficient factual information for Plaintiff to fully respond to the three privileges claimed here (which are all, in effect, variations of an Official Information privilege claim). Nonetheless, considering the fact that the Division of Law enforcement had a \$71 million budget cut in 2010-2011 (as stated in the relevant biennial report), it appears the "DLE restoration" being referred to may relate to costs being shifted from the general fund to the DROS and other special funds. Documents showing the contours of that process would clearly be relevant to Plaintiffs' case. Because the balance tips in the favor of Plaintiffs, Defendants should provide the withheld document. (*See Order at 3:22-4:4.*)

***Document No. 22***

The title of the document here expressly shows that the withheld document concerns a BCP, and the fact that Defendants have identified it on a privilege log suggests it is relevant, e.g., that it concerns the potential or actual use of DROS fees for a purpose Plaintiffs claim is inappropriate. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears

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<sup>1</sup> Plaintiffs assume the agenda at issue, save interlineations, is the one available at <http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/April%2025%20PUBLIC%20Agenda.pdf>.

Mr. Anthony Hakl  
February 19, 2016  
Page 8 of 8

this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

***Document No. 23***

Defendants have not provided sufficient factual information for Plaintiff to fully respond to the three privileges claimed here (which are all, in effect, variations of an Official Information privilege claim). Nonetheless, considering the fact that the Division of Law enforcement had a \$71 million budget cut in 2010-2011 (as stated in the relevant biennial report), that the supposed parties to this document are the Department's legislative, budget, and/or office staff, and that money was being shifted from the general fund to the DROS and other special funds to cover the budget cut, it seems reasonable to believe the document sought is relevant. Documents showing the contours of that process would clearly be relevant to Plaintiffs' case. Because the balance tips in the favor of Plaintiffs, Defendants should provide the withheld document. (*See Order at 3:22-4:4.*)

***Document No. 24***

Defendants have not provided sufficient factual information for Plaintiff to fully respond to the five privileges claimed here. Sufficed to say, however, that if the document is a summary report that concerns all of the Department, Plaintiffs have no interest in the report except as it relates to use of the DROS Special Account, the funding of law enforcement activities performed by the Bureau of Firearms (e.g., APPS), and the Departments' involvement in any legislation bearing on those two issues. If Defendants are willing to produce the sections of the Transition Report that pertain to the areas described above, then there is nothing further to dispute regarding this document.

If, however, Defendants claim that the selected portions of the Transition Report are privileged, Plaintiffs request Defendants explain, with specificity, the titles and authors of the relevant sections. Additionally, Plaintiffs request clarification as to what is meant by "DOJ Executive Office," i.e., is it a report intended for just the Attorney General and her immediate staff, an entire department, etc.

As always, please do not hesitate to contact me if you have questions regarding the foregoing.

Sincerely,

**Michel & Associates, P.C.**



Scott M. Franklin

# **EXHIBIT “3”**

*Gentry, David, et al. v. Kamala Harris, et al.*  
 Superior Court of California, County of Sacramento, Case No. 34-2013-80001667

**Defendants' Amended Privilege Log – March 10, 2016**

<b>Document description</b>	<b>Author</b>	<b>Recipient</b>	<b>Document Date</b>	<b>Applicable Privileges</b>
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15. 5-page document titled "DOJ Finance Letter Concepts"  (Potentially responsive to RFP Nos. 53 & 66.)	Unknown, but most likely Budget Office staff	Unknown, if any	Approx. 2007-2008	Executive Privilege.  Official Information Privilege.  Deliberative Process Privilege.
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16. 6-page document titled "DOJ Finance Letter Concepts"  (Potentially responsive to RFP Nos. 53 & 66.)	Unknown, but most likely Budget Office staff	Unknown, if any	Approx. 2007-2008	Executive Privilege.  Official Information Privilege.  Deliberative Process Privilege.
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<p>17. 4-page document titled "Division of Law Enforcement, Bureau of Firearms, September 2007" and subtitled "Automated Firearms System Redesign BCP – Responses to Questions from the Department of Finance"</p> <p>(Potentially responsive to RFP Nos. 53 &amp; 66.)</p>	<p>Unknown, but likely jointly authored by Department of Finance staff and DOJ Budget Office Staff.</p>	<p>Unknown, but likely Department of Finance staff and DOJ Budget Office Staff.</p>	<p>September 2007</p>	<p>Executive Privilege.</p> <p>Official Information Privilege.</p> <p>Deliberative Process Privilege.</p>
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<p>18. 2-page document captioned "BCP Concept Paper – APPS, Response to Anson's Questions."</p> <p>(Potentially responsive to RFP Nos. 64 &amp; 65.)</p>	<p>Unknown, but likely "Anson" (a Budget Office analyst) and Bureau of Firearms staff</p>	<p>Unknown, but likely "Anson" (a Budget Office analyst) and Bureau of Firearms staff</p>	<p>May 8, 2011</p>	<p>Executive Privilege.</p> <p>Official Information Privilege.</p> <p>Deliberative Process Privilege.</p>
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<p>19. 2-page document captioned "BCP Concept Paper – APPS, Response to Anson's Questions."</p> <p>(Potentially responsive to RFP Nos. 64 &amp; 65.)</p>	<p>Unknown, but likely "Anson" (a Budget Office analyst) and Bureau of Firearms staff</p>	<p>Unknown, but likely "Anson" (a Budget Office analyst) and Bureau of Firearms staff</p>	<p>May 8, 2011</p>	<p>Executive Privilege.</p> <p>Official Information Privilege.</p> <p>Deliberative Process Privilege.</p>
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<p>20. 15-page Agenda of Assembly Budget Subcommittee No. 5 on Public Safety, with interlineated notes</p> <p>(Potentially responsive to RFP Nos. 74 &amp; 75.)</p>	<p>Assemblymember Gil Cedillo, with interlineated notes by DOJ Budget Office staff and DOJ attorneys</p>	<p>The interlineated notes were intended for the Executive Office, including attorneys</p>	<p>Agenda date: April 25, 2012</p>	<p>Attorney-Client Privilege.</p> <p>Attorney Work Product.</p> <p>Executive Privilege.</p> <p>Official Information Privilege.</p> <p>Deliberative Process Privilege.</p>
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<p>21. 4-pages of notes in the form of questions and answers titled "DLE Restoration"</p> <p>(Potentially responsive to RFP Nos. 74 &amp; 75.)</p>	<p>Unknown, but likely the Legislative Analyst's Office, or legislative budget staff, and DOJ Budget Office staff</p>	<p>Unknown, but likely the Legislative Analyst's Office, or legislative budget staff, and DOJ Budget Office staff</p>	<p>Approx. 2010-2011</p>	<p>Executive Privilege.</p> <p>Official Information Privilege.</p> <p>Deliberative Process Privilege.</p>
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<p>22. 4-page document titled "Analysis of Problem" and concerning a Budget Change Proposal (BCP)</p> <p>(Potentially responsive to RFP Nos. 74 &amp; 75.)</p>	<p>Unknown, but likely Budget Office Staff</p>	<p>Unknown</p>	<p>Approx. 2011</p>	<p>Executive Privilege.</p> <p>Official Information Privilege.</p> <p>Deliberative Process Privilege.</p>
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<p>23. 4-page document of notes in the form of questions and answers</p> <p>(Potentially responsive to RFP Nos. 74 &amp; 75.)</p>	<p>Unknown, but likely the Legislative Analyst's Office, or legislative budget staff, and DOJ Budget Office staff</p>	<p>Unknown, but likely the Legislative Analyst's Office, or legislative budget staff, and DOJ Budget Office staff</p>	<p>Approx. 2009-2010</p>	<p>Executive Privilege.</p> <p>Official Information Privilege.</p> <p>Deliberative Process Privilege.</p>
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<p>24. 101-page document titled "Transition Report"</p> <p>(Potentially responsive to RFP Nos. 74 &amp; 75.)</p>	<p>Various Department of Justice staff, including attorneys</p>	<p>DOJ Executive Office</p>	<p>December 2010</p>	<p>Attorney-Client Privilege.</p> <p>Attorney Work Product.</p> <p>Executive Privilege.</p> <p>Official Information Privilege.</p> <p>Deliberative Process Privilege.</p>
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# **EXHIBIT “4”**

1 KAMALA D. HARRIS  
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7 *Attorneys for Defendants and Respondents*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO  
11

12 **DAVID GENTRY, JAMES PARKER,**  
13 **MARK MID LAM, JAMES BASS, and**  
14 **CALGUNS SHOOTING SPORTS**  
**ASSOCIATION,**  
15  
16 Plaintiffs and Petitioners,  
  
17 v.  
  
18 **KAMALA HARRIS, in Her Official**  
19 **Capacity as Attorney General for the State**  
20 **of California; STEPHEN LINDLEY, in His**  
21 **Official Capacity as Acting Chief for the**  
22 **California Department of Justice, JOHN**  
**CHIANG, in his official capacity as State**  
23 **Controller, and DOES 1-10,**  
24  
25 Defendants and Respondents.

Case No. 34-2013-80001667

**DEFENDANTS ATTORNEY GENERAL**  
**KAMALA HARRIS AND BUREAU OF**  
**FIREARMS CHIEF STEPHEN**  
**LINDLEY'S AMENDED RESPONSES**  
**TO REQUESTS FOR ADMISSIONS**  
**(SET ONE)**

23 **PROPOUNDING PARTY: PLAINTIFFS**  
24 **RESPONDING PARTY: DEFENDANTS ATTORNEY GENERAL KAMALA**  
25 **HARRIS AND BUREAU OF FIREARMS CHIEF**  
**STEPHEN LINDLEY**  
26 **SET NUMBER: ONE**  
27  
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

2 Admitted.

3 **REQUEST FOR ADMISSION NO. 4:**

4 Admit that prior to Fiscal Year 2012-2013, money from the DROS SPECIAL ACCOUNT  
5 (as used herein, "DROS SPECIAL ACCOUNT" refers to the portion of the state's General Fund  
6 wherein DROS FEE FUNDS are deposited) was used to fund some aspect of APPS.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

8 Admitted. ]

9 **REQUEST FOR ADMISSION NO. 5:**

10 Admit that a General Fund special account other than the DROS SPECIAL ACCOUNT  
11 was the source of some funds used by APPS between 2005 and 2014 (inclusive).

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

13 Admitted.

14 **REQUEST FOR ADMISSION NO. 6:**

15 Admit that APPS has been funded by no source other than: 1) the GENERAL FUND (as  
16 used herein, the term "GENERAL FUND" refers to the General Fund for the state of California,  
17 excluding any special accounts that are normally considered to be within the General Fund) and  
18 2) the DROS SPECIAL ACCOUNT.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

20 Denied.

21 **REQUEST FOR ADMISSION NO. 7:**

22 Admit that when deposited into the DROS SPECIAL ACCOUNT, money collected as  
23 DROS FEES (as used herein, "DROS FEE(S)" refers to the charge collected pursuant to  
24 SECTION 28225) is not segregated in any way from funds obtained from non-DROS FEE  
25 sources.

26

27

28

# **EXHIBIT “5”**

# Glossary of Budget Terms

The following budgetary terms are used frequently throughout the Governor's Budget, the Governor's Budget Summary and the annual Budget (Appropriations) Bill. Definitions are provided for terminology which is common to all publications. For definitions of terms unique to a specific program area, please refer to the individual budget presentation of interest.

## **Administration Program:**

The general program name used by departments for an accounting of central management costs such as the Director's Office, Legal Office, Personnel Office, Accounting and Business Services functions that generally serve the whole department, i.e., indirect or overhead costs.

"Administration-distributed" is the general program name for the distribution of indirect costs to the direct program activities of a department. In most departments, all administrative costs are distributed to other programs.

## **Allocation:**

A distribution of funds, or an expenditure limit established for an organizational unit or function.

## **Appropriation:**

An authorization from a specific fund to a specific agency or program to make expenditures/incur obligations for a specified purpose and period of time. The Budget Act contains many appropriations, or items. These appropriation items are limited to one year, unless otherwise specified. Appropriations are made by the Legislature in the annual Budget Act and in other legislation. Continuous appropriations (see definition below) can be provided for by legislation or the California Constitution.

## **Augmentation:**

An increase to an appropriation as provided by various control sections, Budget Bill language, or legislation.

## **Authorized Positions:**

Those ongoing positions approved in the final budget of the preceding year less positions abolished because of continued, extended vacancy. The detail of authorized positions by classification is published in the Salaries and Wages Supplement for state organizations. Changes in authorized positions are listed following each department's bud-

get presentation in the Governor's Budget. (See Proposed New Positions.)

## **Balance Available:**

Generally, the portion of a fund balance which is available for appropriation. It is the excess of assets of a fund over its liabilities and reserves; or commonly called amount available for appropriation. It is also the unobligated balance of an appropriation.

## **Baseline Budget:**

A baseline budget reflects the anticipated costs of carrying out the current level of service or activities as authorized by the Legislature. It may include an adjustment for cost increases, but does not include changes in level of service over that authorized by the Legislature.

## **Budget, Program/Traditional:**

A plan of operation for a specific period of time expressed in financial terms. A *program budget* expresses the operating plan in terms of the costs of activities to be undertaken to achieve specific goals and objectives. A *traditional budget* expresses the plan in terms of the costs of the goods or services to be used to perform specific functions.

The Governor's Budget is primarily a program budget. However, a summary of proposed expenditures for goods and services (Summary by Object) is included for State Operations.

## **Budget Bill/Act:**

The initial Budget Bill is prepared by the Department of Finance and is submitted to the Legislature in January accompanying the Governor's Budget. It is the Governor's proposal for spending authorization for the subsequent fiscal year. The Constitution requires the Legislature to pass the Budget Bill and forward it by June 15 to the Governor for signature. After signature by the Governor, the Budget Bill becomes the Budget Act. The Budget Act is the main legal authority to spend or obligate funds.

## **Budget Change Proposal (BCP):**

A BCP is a proposal to change the level of service or funding sources for activities authorized by the Legislature, or to propose new program activities not currently authorized.

# **EXHIBIT “6”**

# Finance Glossary of Accounting and Budgeting Terms

The following terms are used frequently throughout the Governor's Budget, the Governor's Budget Summary, the annual Budget (Appropriations) Bill, and other documents. Definitions are provided for terms that are common to many of these publications. For definitions of terms unique to a specific program area, please refer to the individual budget presentation. Certain terms may be interpreted or used differently depending on the context, the audience, or the purpose.

## **Abatement**

A reduction to an expenditure that has already been made. In state accounting, only specific types of receipts are accounted for as abatements, including refund of overpayment of salaries, rebates from vendors or third parties for defective or returned merchandise, jury duty and witness fees, and property damage or loss recoveries. (See *SAM 10220* for more detail.)

## **Abolishment of Fund**

The closure of a fund pursuant to the operation of law. Funds may also be administratively abolished by the Department of Finance with the concurrence of the State Controller's Office. When a special fund is abolished, all of its assets and liabilities are transferred by the State Controller's Office to successor fund, or if no successor fund is specified, then to the General Fund. (*GC 13306, 16346.*)

## **Accruals**

Revenues or expenditures that have been recognized for that fiscal year but not received or disbursed until a subsequent fiscal year. Annually, accruals are included in the revenue and expenditure amounts reported in departments' budget documents and year-end financial statements. For budgetary purposes, departments' expenditure accruals also include payables and outstanding encumbrances at the end of the fiscal year for obligations attributable to that fiscal year.

## **Accrual Basis of Accounting**

The basis of accounting in which transactions are recognized in the fiscal year when they occur, regardless of when cash is received or disbursed. Revenue is recognized in the fiscal year when earned, and expenditures are recognized in the fiscal year when obligations are created (generally when goods/services are ordered or when contracts are signed). Also referred to as the full accrual basis of accounting.

## **Administration**

Refers to the Governor's Office and those individuals, departments, and offices reporting to it (e.g., the Department of Finance).

## **Administration Program Costs**

The indirect cost of a program, typically a share of the costs of the administrative units serving the entire department (e.g., the Director's Office, Legal, Personnel, Accounting, and Business Services). "Distributed Administration" costs represent the distribution of the indirect costs to the various program activities of a department. In most departments, all administrative costs are distributed. (See also "Indirect Costs" and "Statewide Cost Allocation Plan.")

## **Administratively Established Positions**

Positions authorized by the Department of Finance during a fiscal year that were not included in the Budget and are necessary for workload or administrative reasons. Such positions terminate at the end of the fiscal year, or in order to continue, must meet certain criteria under Budget Act Control Section 31.00. (*SAM 6406, CS 31.00.*)

## **Agency**

A legal or official reference to a government organization at any level in the state organizational hierarchy. (See the *UCM* for the hierarchy of State Government Organizations.)

**Assembly**

California's lower house of the Legislature composed of 80 members. As a result of Proposition 140 (passed in 1990) and Proposition 28 (passed in 2012), members elected in or after 2012 may serve 12 years in the Legislature in any combination of four-year state Senate or two-year state Assembly terms. Prior to Proposition 28, Assembly members could serve two-year terms and a maximum of three terms. (*Article IV, § 2 (a).*)

**Audit**

Typically a review of financial statements or performance activity (such as of an agency or program) to determine conformity or compliance with applicable laws, regulations, and/or standards. The state has three central organizations that perform audits of state agencies: the State Controller's Office, the Department of Finance, and the California State Auditor's Office. Many state departments also have internal audit units to review their internal functions and program activities. (*SAM 20000, etc.*)

**Augmentation**

An increase to a previously authorized appropriation or allotment. This increase can be authorized by Budget Act provisional language, control sections, or other legislation. Usually a Budget Revision or an Executive Order is processed to implement the increase.

**Authorized**

Given the force of law (e.g., by statute). For some action or quantity to be authorized, it must be possible to identify the enabling source and date of authorization.

**Authorized Positions**

As reflected in the Governor's Budget (Expenditures by Category and Changes in Authorized Positions), corresponds with the "Total, Authorized Positions" shown in the Salaries and Wages Supplement (Schedule 7A).

In these documents, for past year, authorized positions represent the number of actual positions filled for that year. For current year, authorized positions include all regular ongoing positions approved in the Budget Act for that year, less positions abolished by the State Controller per Government Code section 12439, adjustments to limited term positions, and positions authorized in enacted legislation. For budget year, the number of authorized positions is the same as current year except for adjustments to remove expiring positions. (*GC 19818; SAM 6406.*)

**Availability Period**

The time period during which an appropriation may be encumbered (i.e., committed for expenditure), usually specified by the law creating the appropriation. If no specific time is provided in legislation, the period of availability is three years. Unless otherwise provided, Budget Act appropriations are available for one year. However, based on project phase, capital outlay projects may have up to three years to encumber. An appropriation with the term "without regard to fiscal year" has an unlimited period of availability and may be encumbered at any time until the funding is exhausted. (See also "Encumbrances.")

**Balance Available**

In regards to a fund, it is the excess of resources over uses. For budgeting purposes, the balance available in a fund condition is the carry-in balance, net of any prior year adjustments, plus revenues and transfers, less expenditures. For accounting purposes, the balance available in a fund is the net of assets over liabilities and reserves that are available for expenditure.

For appropriations, it is the unobligated, or unencumbered, balance still available.

**Baseline Adjustment**

Also referred as Workload Budget Adjustment. (See "Workload Budget Adjustment.")

**Baseline Budget**

Also referred as Workload Budget. (See "Workload Budget.")

**Unscheduled Reimbursements**

Reimbursements collected by an agency that were not budgeted and are accounted for by a separate reimbursement category of an appropriation. To expend unscheduled reimbursements, a budget revision must be approved by the Department of Finance, subject to any applicable legislative reporting requirements (e.g., CS 28.50).

**Urgency Statute/Legislation**

A measure that contains an "urgency clause" requiring it to take effect immediately upon the signing of the measure by the Governor and the filing of the signed bill with the Secretary of State. Urgency statutes are generally those considered necessary for immediate preservation of the public peace, health or safety, and such measures require approval by a two-thirds vote of the Legislature, rather than a majority. (*Article IV, § 8 (d)*). However, the Budget Bill and other bills providing for appropriations related to the Budget Bill may be passed by a majority vote to take effect immediately upon being signed by the Governor or upon a date specified in the legislation. (*Article IV § 12 (e) (1)*.)

**Veto**

The Governor's Constitutional authority to reduce or eliminate one or more items of appropriation while approving other portions of a bill. (*Article IV, §10 (e)*; *SAM 6345*.)

**Victim Compensation and Government Claims Board, California**

An administrative body in state government exercising quasi-judicial powers (power to make rules and regulations) to establish an orderly procedure by which the Legislature will be advised of claims against the state when no provision has been made for payment. This board was known as the Board of Control prior to January 2001. The rules and regulations adopted by the former Board of Control are in the California Code of Regulations, Title 2, Division 2, Chapter 1.

**Warrant**

An order drawn by the State Controller directing the State Treasurer to pay a specified amount, from a specified fund, to the person or entity named. A warrant generally corresponds to a bank check but is not necessarily payable on demand and may not be negotiable. (*SAM 8400 et seq.*)

**Without Regard To Fiscal Year (WRTFY)**

Where an appropriation has no period of limitation on its availability.

**Working Capital and Revolving Fund**

For legal basis accounting purposes, fund classification for funds used to account for the transactions of self-supporting enterprises that render goods or services for a direct charge to the user, which is usually another state department/entity. Self-supporting enterprises that render goods or services for a direct charge to the public account for their transactions in a Public Service Enterprise Fund.

**Workload**

The measurement of increases and decreases of inputs or demands for work, and a common basis for projecting related budget needs for both established and new programs. This approach to BCPs is often viewed as an alternative to outcome or performance based budgeting where resources are allocated based on pledges of measurable performance.

**Workload Budget**

Workload Budget means the budget year cost of currently authorized services, adjusted for changes in enrollment, caseload, population, statutory cost-of-living adjustments, chaptered legislation, one-time expenditures, full-year costs of partial-year programs, costs incurred pursuant to Constitutional requirements, federal mandates, court-ordered mandates, state employee merit salary adjustments, and state agency operating expense and equipment cost adjustments to reflect inflation. The compacts with Higher Education and the Courts are commitments by this Administration and therefore are included in the workload budget and considered workload adjustments. A workload budget is also referred to as a baseline budget. (*GC 13308.05*.)

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

4 I, Laura Quesada, am employed in the City of Long Beach, Los Angeles County,  
5 California. I am over the age eighteen (18) years and am not a party to the within action. My  
6 business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

7 On April 25, 2016, the foregoing document(s) described as

8 **DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL  
9 FURTHER RESPONSES TO REQUEST FOR PRODUCTION, SET THREE,  
10 PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY**

11 on the interested parties in this action by placing

12 [ ] the original  
13 [X] a true and correct copy

14 thereof enclosed in sealed envelope(s) addressed as follows:

15 Kamala D. Harris, Attorney General of California  
16 Office of the Attorney General  
17 Anthony Hakl, Deputy Attorney General  
18 1300 I Street, Suite 1101  
19 Sacramento, CA 95814

20        (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and  
21 processing correspondence for mailing. Under the practice it would be deposited with the  
22 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,  
23 California, in the ordinary course of business. I am aware that on motion of the party  
24 served, service is presumed invalid if postal cancellation date is more than one day after  
25 date of deposit for mailing an affidavit.

26 Executed on April 25, 2016, at Long Beach, California.

27   X   (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice  
28 of collection and processing correspondence for overnight delivery by UPS/FED-EX.  
29 Under the practice it would be deposited with a facility regularly maintained by UPS/FED-  
30 EX for receipt on the same day in the ordinary course of business. Such envelope was  
31 sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or  
32 provided for in accordance with ordinary business practices.

33 Executed on April 25, 2016, at Long Beach, California.

34        (PERSONAL SERVICE) I caused said document(s) to be personally delivered by a  
35 courier to each addressee.

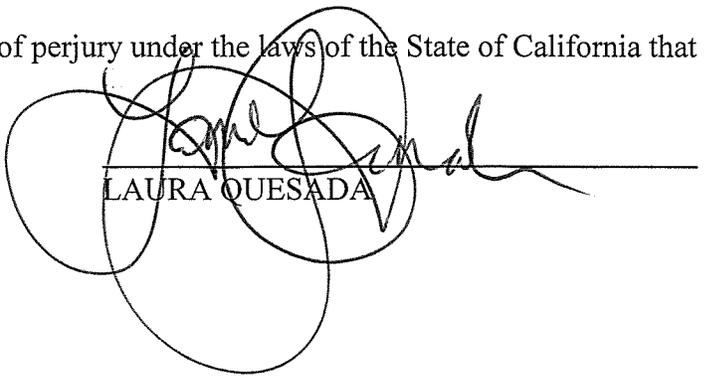
36 Executed on April 25, 2016, at Long Beach, California.

37   X   (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic  
38 transmission. Said transmission was reported and completed without error.

39 Executed on April 25, 2016, at Long Beach, California.

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X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



LAURA QUESADA