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By _____, Deputy
Case Number:
34-2013-80001667

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO

13 DAVID GENTRY, JAMES PARKER,
14 MARK MIDLAM, JAMES BASS, and
15 CALGUNS SHOOTING SPORTS
16 ASSOCIATION,

17 Plaintiffs and Petitioners,

18 vs.

19 KAMALA HARRIS, in Her Official
20 Capacity as Attorney General for the State
21 of California; STEPHEN LINDLEY, in His
22 Official Capacity as Acting Chief for the
23 California Department of Justice, BETTY
24 YEE, in Her Official Capacity as State
25 Controller for the State of California, and
26 DOES 1-10.

27 Defendants and Respondents.

CASE NO. 34-2013-80001667

**NOTICE OF MOTION AND MOTION TO
COMPEL FURTHER RESPONSES TO
REQUESTS FOR PRODUCTION, SET
THREE, PROPOUNDED ON
DEFENDANTS KAMALA HARRIS AND
STEPHEN LINDLEY; MEMORANDUM IN
SUPPORT THEREOF**

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

28 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 28, 2016, at 9:00 a.m. or as soon thereafter as the matter may be heard, in Department 31 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and Calguns Shooting Sports Association (collectively "Plaintiffs") will and hereby do move this Court for an order compelling Defendants/Respondents Kamala Harris and

By FGA

1 Stephen Lindley (collectively “Defendants”) to produce further responses to Plaintiffs’ Requests
2 for Production of Documents (Set Three) propounded on Defendants on September 4, 2015.

3 This Motion is brought pursuant to Code of Civil Procedure section 2031.310,
4 subdivisions (a)(1) and (a)(3) on the grounds that Defendants have provided responses that
5 include unfounded objections and statements that are evasive and incomplete. A declaration in
6 conformance with Code of Civil Procedure section 2016.040 is provided herewith.

7 This Motion is based upon this notice, the attached memorandum of points and
8 authorities, the supporting Declaration of Scott M. Franklin, the separate statement of disputed
9 issues concurrently served and filed with this Motion, all papers and pleadings currently on file
10 with the Court, and such oral and documentary evidence as may be presented to the Court at the
11 time of the hearing.

12 Please take further notice that pursuant to Local Rule 1.06(A), the Court will make a
13 tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The
14 complete text of the tentative rulings for the department may be downloaded off the Court’s
15 website. If the party does not have online access, they may call the dedicated phone number for
16 the department referenced in the local telephone directory between the hours of 2:00 p.m. and
17 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call
18 the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be
19 held.

20 Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.



Scott M. Franklin, Attorney for Plaintiffs

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1 **I. INTRODUCTION**

2 This Motion concerns Defendants’ responses to Plaintiffs’ Requests for Production of
3 Documents (“RFPs”) Nos. 53, 63, 64, 65, 66, 74, and 75. Because Defendants’ responses are
4 improperly evasive and their boilerplate objections are without merit, this Motion should be
5 granted.

6 **II. STATEMENT OF FACTS**

7 **A. Factual Background of this Case**

8 This case concerns the California Department of Justice’s (the “Department”) use of
9 money collected under the guise of the Dealers’ Record of Sale (“DROS”) fee and placed in the
10 DROS Special Account. (Compl. ¶ 1.) The Department uses money from the DROS Special
11 Account to fund law enforcement activities based on data produced by the Armed and Prohibited
12 Person System (“APPS”¹), e.g., special agents traveling to a residence to seize firearms from a
13 person identified by way of APPS. (*Id.* ¶¶ 6-7.) And yet, it appears the Defendants are using
14 DROS fee money to fund general law enforcement activities that are, at most, tangentially related
15 to APPS.² Plaintiffs claim, among other things, that the Department has failed to properly set the
16 amount of the DROS fee and that the Department is illegally imposing a tax via the DROS fee.
17 (*Id.* ¶¶ 96,110.)

18 **B. History of the Current Discovery Dispute**

19 Plaintiffs served a third set of RFPs on Defendants on September 4, 2015. (Declaration of
20 Scott M. Franklin in Support of Motion to Compel Further Responses to Special Interrogatories,
21 Set Three, Propounded on Defendants Kamala Harris and Stephen Lindley [the “Franklin Decl.”]
22 ¶ 2.) Pursuant to a courtesy extension granted by Plaintiffs, Defendants provided responses on
23 October 19, 2015. (*Id.* ¶ 3.) Soon thereafter, Plaintiffs counsel evaluated the responses and
24 determined them to be insufficient, and accordingly, sent a letter on December 14, 2015,
25 explaining in detail how the responses provided were insufficient. (*Id.* ¶ 4.) Counsel for the

26 _____
27 ¹ The APPS database is derived by cross-checking certain governmental records
28 with the intent of identifying people who obtained a firearm legally but then kept the
firearm after becoming legally ineligible to do so. (Compl. ¶ 66.)

² See *supra* Section III.B.

1 parties telephonically discussed the sufficiency of Defendants’ responses on December 16, 2016,
2 and Defendants’ counsel ultimately agreed to consider providing amended responses. (*Id.* ¶ 5.)

3 On January 6, 2016, and again on January 13, 2016, Defendants provided additional
4 documents in response to Plaintiffs’ RFPs. (*Id.* ¶ 6.) Nonetheless, Plaintiffs thereafter still
5 believed Defendants had not properly responded to several RFPs, so Plaintiffs’ counsel sent a
6 second meet-and-confer letter to Defendants counsel on February 19, 2016. (*Id.* ¶ 7.) Defendants
7 provided an amended privilege log (“Privilege Log”) on March 10, 2016, that, unlike its
8 predecessor, specified which requests were relevant to each specific item on the Privilege Log that
9 was purportedly subject to a privilege. (*Id.* ¶ 8.) The Privilege Log did not, however, include any
10 update as to the baseline budgets requested in RFP No. 63; Plaintiffs’ counsel understood that
11 such update would be provided as the result of a meet-and-confer teleconference that occurred on
12 March 1, 2016. (*Ibid.*)

13 As a result of the parties good faith meet-and-confer efforts, all of Defendants’ disputed
14 responses have been resolved except the seven responses that are the basis for this Motion. (*Id.*
15 ¶ 9.) The parties have agreed in writing to a filing deadline of April 25, 2016, so this Motion is
16 timely under Code of Civil Procedure section 2030.300, subdivision (c). (*Id.* ¶ 10.)

17 III. ARGUMENT

18 A. Standard for Compelling Further Responses to RFPs

19 On receipt of a response to a demand for inspection, copying, testing, or sampling,
20 the demanding party may move for an order compelling further response to the
demand if the demanding party deems that any of the following apply:

- 21 (1) A statement of compliance with the demand is incomplete.
- 22 (2) A representation of inability to comply is inadequate, incomplete, or evasive.
- 23 (3) An objection in the response is without merit or too general.

24 (Code Civ. Proc., § 2031.310, subd. (a)(1)-(3).)³ A party responding to an RFP may object to an
25 entire RFP, or just a portion of a particular RFP. (§§ 2031.210, subd. (a)(3), 2031.240.)

26 B. Background Law Applicable to Repeatedly Raised Boilerplate Objections

27 1. Relevance

28

³ All statutory cites are to the Code of Civil Procedure, except as expressly stated.

1 [A]ny party may obtain discovery regarding any matter, not privileged, that is
2 relevant to the subject matter involved in the pending action or to the
3 determination of any motion made in that action, if the matter either is itself
admissible in evidence or appears reasonably calculated to lead to the discovery of
admissible evidence

4 (Code of Civ. Proc., § 2017.010.) “For discovery purposes, information is relevant if it ‘might
5 reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement[.]’”
6 (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.) “Any doubts regarding
7 relevance are generally resolved in favor of allowing the discovery.” (*Mercury Interactive Corp.*
8 *v. Klein* (2007) 158 Cal.App.4th 60, 98.)

9 **2. Attorney Work Product Doctrine**

10 Code of Civil Procedure section 2018.030 states

11 A writing that reflects an attorney’s impressions, conclusions, opinions, or legal
12 research or theories is not discoverable under any circumstances[, and t]he work
13 product of an attorney, other than a writing described [above], is not discoverable
14 unless the court determines that denial of discovery will unfairly prejudice the
party seeking discovery in preparing that party’s claim or defense or will result in
an injustice.

15 The attorney work product doctrine only potentially applies to information derived from an
16 attorney’s work; i.e., it does not protect against the production of non-derivative information. (*See*
17 *Southern Pac. Co. v. Superior Court*, (1969) 3 Cal.App.3d 195, 198-199 [“The facts sought, those
18 presently relied upon by plaintiffs to prove their case, are discoverable no matter how they came
19 into the attorney’s possession.”].) When determining whether non-disclosure of attorney work
20 product “will unfairly prejudice the party seeking discovery in preparing that party’s claim or
21 defense or will result in an injustice[.]” “the court should determine whether a substantial need for
22 the discovery exists (e.g., the information is relevant and cannot be obtained from any other
23 source)[.]” (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1620.)

24 **3. Lawyer-client Privilege**

25 California Evidence Code section 954 states that a client may refuse to disclose (1)
26 confidential communications (2) between the client and the attorney. (Evid. Code, § 954.) Section
27 954 only applies to communications; the attorney-client privilege does not apply to facts, even if
28 the facts are mentioned in, or relevant to, an attorney-client communication. (*See Bengel v.*

1 *Superior Court* (1982) 131 Cal.App.3d 336, 349.) Furthermore, the privilege does not apply to
2 communications between an attorney and a client regarding business advice, i.e., advice outside
3 the normal scope of legal services provided by an attorney. (See *Costco Wholesale Corp. v.*
4 *Superior Court* (2009) 47 Cal.4th 725, 735). “The party claiming the privilege has the burden of
5 establishing the preliminary facts necessary to support its exercise, i.e., a communication made in
6 the course of an attorney-client relationship.” (*Id.* at 733.)

7 **4. Official Information Privilege**

8 Defendants’ law enforcement, official information, deliberative process, and executive
9 privilege claims are all subject to the same standard of review, which is found in Evidence Code
10 section 1040. (See *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1126-1127 [using
11 the standard set forth in Evidence Code section 1040 to evaluate claims made under the common
12 law privilege known as the executive or deliberative process privilege and stating that Evidence
13 Code section 1040 “represents the exclusive means by which a public entity may assert a . . .
14 privilege based on the necessity for secrecy”].)

15 Evidence Code section 1040 states, in pertinent part, that

17 [a] public entity has a privilege to refuse to disclose official information [if
18 d]isclosure of the information is against the public interest because there is a
19 necessity for preserving the confidentiality of the information that outweighs the
20 necessity for disclosure in the interest of justice. . . . In determining whether
disclosure of the information is against the public interest, the interest of the public
entity as a party in the outcome of the proceeding may not be considered.

21 (See also *Cal. First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172
22 [“Only if the public interest in nondisclosure clearly outweighs the public interest in disclosure
23 does the deliberative process privilege spring into existence.”].) The burden is on the Defendants
24 to prove the official this privilege applies. (See *Marylander, supra*, 81 Cal.App.4th at 1128.)

26 **C. Defendants Ignore the Import of this Court’s Order of June 1, 2015, in** **Failing to Produce the Documents Sought via RFP No. 53**

27 RFP No. 53 seeks the production of documents evidence communications between the
28 Department and the Department of Finance (“DOF”) regarding how a surplus in the DROS

1 Special Account could be reduced. None of Defendants’ objections to RFP No. 53 withstand
2 scrutiny.

3 **1. Relevance**

4 Defendants claim RFP No. 53 “seeks information not relevant to the subject matter or
5 likely to lead to discovery of admissible evidence.” (Sep. Statement at p. 2.) In reality, the class of
6 documents sought clearly meet the relevancy standard discussed *supra* in Section III.B.1. The
7 Order of June 1, 2015 (the “Production Order”), is on point. As to Defendants’ “budget and
8 expenditure decisions related to the setting and continuation of the DROS fee[; this Court held
9 t]he public clearly has an interest in disclosure of documents which identify the budgetary
10 analyses performed by Respondents to support the amount of the DROS fee.” (Production Order,
11 at 4:1-4.) This Action is a manifestation of the public interest identified by the Court.

12 Accordingly, any documents referring to the potential reduction of the DROS Special Account
13 are relevant in light of the fact that this lawsuit specifically concerns the way in which the DROS
14 Special Account surplus was ultimately reduced. Thus, Defendants’ relevancy objection should be
15 ignored.

16 **2. Lawyer-client Privilege**

17 Defendants have provided no evidence that the relevant documents should be considered
18 protected by the lawyer-client privilege explained *supra* in Section III.B.3. The documents sought
19 are plainly budgetary documents; Defendants have provided no reason to believe that budget
20 documents, presumably created by a budget analyst—and not a lawyer—would constitute or even
21 include lawyer-client communications. (*See Evid. Code, § 952;*⁴ *Costco, supra*, 47 Cal.4th at 735;

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26 ⁴ Evidence Code section 952 states that, as to the lawyer-client privilege,

27 ‘confidential communication between client and lawyer’ means
28 information transmitted between a client and his or her lawyer in the
course of that relationship and in confidence by a means which, so far as
the client is aware, discloses the information to no third persons other than

1 *Chicago Title Ins. Co. v. Superior Court* (1985) 174 Cal.App.3d 1142, 1151.) Further, even if an
2 attorney somehow is involved with the documents sought, communications between the
3 Department and the DOF on budgetary matters are not attorney-client communications between
4 the Department and the DOF. I.e., the Department certainly employs attorneys, but even if a
5 Department attorney was involved in the creation of a baseline budget, the DOF is certainly not
6 acting as an attorney’s client when it receives and analyzes budgetary documents. (Evid. Code, §
7 951 [stating that, for purpose of lawyer-client privilege, “client” means a person who, directly or
8 through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or
9 securing legal service or advice from him in his professional capacity”].)

10
11
12 And finally, assuming *arguendo* Defendants contend the Department has attorney-client
13 privilege with itself or a subdivision thereof, the disclosure relevant documents to DOF, which
14 was required for budgetary purposes—not as a part of obtaining legal advice—waived any
15 attorney-client privilege held by the Department. (Evid. Code, § 912(a) [waiver of attorney-client
16 privilege occurs when “any holder of the privilege, without coercion, has disclosed a significant
17 part of the communication or has consented to disclosure made by anyone.”] Accordingly,
18 Defendants’ lawyer-client objection should be overruled.
19

20 **3. Work Product Doctrine**

21 As with all of Defendants’ objections, their objection based on the work product doctrine
22 is without any factual context or support. As explained in the preceding subsection, there is no
23 apparent reason that an attorney would create, or procure the creation of, budgetary documents.
24 The work product doctrine only “applies to documents related to legal work performed for a
25 client[,]” and the nature of the baseline budgets raises a strong presumption that they are well
26 outside the scope of the “privilege” stated in Evidence Code section 954. (See *Watt Industries*,
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those who are present to further the interest of the client in the consultation

1 *Inc. v. Superior Court* (1981) 115 Cal.App.3d 802, 805.) Based on the foregoing, the Court
2 should rule the work product doctrine is inapplicable to the documents sought.

3
4 **5. Official Information Privilege**

5 This Court’s Production Order, discussed *supra* in Section III.C.1, addresses Defendants’
6 previous attempt to withhold budgetary documents pursuant to variations of the official
7 information privilege. As the Court noted, Defendants contend that budget reports, draft letters
8 concerning budgetary issues, and budget analysts’ analyses are subject to the deliberative process
9 privilege, and cannot be disclosed because “disclosure . . . would chill the full and candid
10 assessment of departmental budget issues[.]” (Production Order at 2:9-14.) After citing relevant
11 authority, the Production Order unambiguously states that if Defendants “are engaging in
12 budgetary and other calculations concerning the appropriate amount of the DROS fee, these
13 records are discoverable in this matter.” (*Id.* at 4:7-8.)

14
15 The propriety of the DROS fee is inextricably intertwined with how money from the
16 DROS Special Fund is being spent—as the Court put it, “the Department is required to perform
17 certain budgetary calculations in order to determine the proper amount of the [DROS] fee[.]”
18 (Production Order at 2:7-8.) To the extent the relevant documents include information regarding
19 the potential or actual use of funds from the DROS Special Account or expenses no longer funded
20 from that source, it is inescapable that the public’s interest will be best served if the relevant
21 budgetary documents are disclosed. (See *Cal. First Amendment Coalition, supra*, 67 Cal.App.4th
22 at 172.) Therefore, the Court should order the production of the baseline budgets.

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25 **D. Defendants Ignore the Import of this Court’s Order of June 1, 2015, in Failing to**
26 **Produce, or Even Properly Identify, the Baseline Budgets Sought via RFP No. 63**

27 Much of the analysis provided *supra* regarding Defendants’ response to RFP No. 53 is
28 applicable to Defendants’ boilerplate objections to the remaining disputed responses. Thus, rather

1 than discuss these issues ad nasuem herein (as is the case in the Separate Statement provided
2 herewith), the discussion below concerning Defendants' objections related to RFP Nos. 63, 64,
3 65, 66, 74, and 75 are streamlined to focus on issues of particular interest that are somehow
4 distinct from the issues discussed *supra* in the preceding subsection.
5

6 The baseline budgets clearly meet the relevancy standard discussed *supra* in Section
7 III.B.1. Indeed, unless Defendants are willing to allege that the baseline budgets do not include
8 any reference to the DROS fee or the multimillion dollar DROS Special Account at the heart of
9 this lawsuit, there is no basis for their objection.⁵ (*See* Section II.A., *supra*.) The Production Order
10 is on point, and Defendants' relevance objection should be overruled.(Production Order, at 4:1-4.)
11

12 Defendants have provided no evidence that the baseline budgets should be considered
13 protected by the lawyer-client privilege explained *supra* in Section III.B.3. The baseline budgets
14 are plainly budgetary documents; Defendants have failed to identify any reason to believe a
15 lawyer was or should have been involved in the creation of the baseline budgets. (*See* Evid. Code,
16 § 952;⁶ *Costco, supra*, 47 Cal.4th at 735; *Chicago Title Ins. Co. v. Superior Court* (1985) 174
17 Cal.App.3d 1142, 1151; Evid. Code, § 951 [stating, for purpose of lawyer-client privilege, that
18 "'client' means a person who, directly or through an authorized representative, consults a lawyer
19 for the purpose of retaining the lawyer or securing legal service or advice from him in his
20 professional capacity"].)
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24 ⁵ And if Defendants *do* claim the documents are irrelevant, Plaintiffs will request
25 the Court review the documents in camera to evaluate the veracity of Defendants' claim.

26 ⁶ Evidence Code section 952 states that, as to the lawyer-client privilege,

27 'confidential communication between client and lawyer' means
28 information transmitted between a client and his or her lawyer in the
course of that relationship and in confidence by a means which, so far as
the client is aware, discloses the information to no third persons other than
those who are present to further the interest of the client in the consultation

1 The Department provides baseline budgets to the DOF for review as a part of the State’s
2 budget process. (Franklin Decl. ¶ 12.) Thus, baseline budgets are not attorney-client
3 communications between the Department and the DOF: the Department certainly employs
4 attorneys, but even if a Department attorney was involved in the creation of a baseline budget, the
5 DOF is certainly not acting as an attorney’s client when it receives and analyzes budgetary
6 documents. And assuming arguendo the Defendants contend the Department has attorney-client
7 privilege with itself or a subdivision thereof, the disclosure to DOF, which is required for
8 budgetary purposes, not as a part of obtaining legal advice, waived any attorney-client privilege
9 held by the Department. (Evid. Code, § 912(a) [waiver of attorney-client privilege occurs when
10 “any holder of the privilege, without coercion, has disclosed a significant part of the
11 communication or has consented to disclosure made by anyone.”]) Defendants’ lawyer-client
12 objection should be overruled.

15 Defendants have failed to produce any explanation as to why an attorney would be
16 involved in budgeting matters and have failed to explain why the documents sought should be
17 characterized as “related to legal work performed for a client. Given the foregoing and the nature
18 of the baseline budgets, there is a strong presumption that the baseline budgets are well outside
19 the scope of the “privilege” stated in Evidence Code section 954. (See *Watt Industries, Inc. v.*
20 *Superior Court* (1981) 115 Cal.App.3d 802, 805.) Based on the foregoing, the Court should rule
21 the work product doctrine is inapplicable to the baseline budgets.

23 Further, the Production Order explains why budgeting materials related to the DROS fee
24 are subject to disclosure. Because the baseline budgets are squarely within the intent and
25 balancing described in the Production Order, Defendants’ official information objection to RFP
26 No. 63 should be ignored. (*Marylander, supra*, 81 Cal.App.4th at pp. 1126-1127.)
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1 Finally, Defendants’ also fail in arguing that the relevant “request is oppressive and
2 burdensome in that it seeks information spanning a period of approximately twelve years.” (Sep.
3 Statement at p. 5.) The number of years at issue is irrelevant if the number of documents, and the
4 amount of hours required to locate them, are minimal. Defendants were given the opportunity to
5 explain why they contend the production of documents up to twelve years old would result in
6 undue prejudice or oppression—but they failed to do so. (Franklin Decl. at ¶ 7.) Defendants have
7 not produced any evidence that the claimed objection actually relates to a specific potential
8 burden or oppression, thus Defendants must either produce the baseline budgets or provide a
9 further response to this request per Code of Civil Procedure section 2031.310, subdivisions (a)(3)
10 and (b)(1).
11

12
13 **E. Plaintiffs Have Good Reason to Request Documents Using the Term “DROS**
14 **Enforcement Activities;]” Defendants’ Objections to RFP No. 64 Are Meritless**

15 To determine whether the DROS fee is properly calculated and not being used as a tax,
16 Plaintiffs must investigate whether the DROS fee is being used to fund payer-related costs (e.g.,
17 background checks), general fund obligations (e.g., performing law enforcement activities in the
18 field), or a specific mix thereof. The term “DROS enforcement activities” indicates that some law
19 enforcement activities are being funded out of DROS. Plaintiffs need to see documents using the
20 relevant phrase to first help identify the universe of law enforcement costs being funded from the
21 DROS Special Account, and then to analyze which costs are general fund costs that are being
22 used in lieu of general fund money. (See Code of Civ. Proc., § 2017.010; *Gonzalez, supra*, 33
23 Cal.App.4th at p. 1546.) Therefore, Defendants’ relevance objection fails.
24
25

26 Defendants’ one-sentence description for the Privilege Log items at issue (18 and 19) is
27 detailed enough to show that, under the official information balancing test of Evidence Code
28 section 1040, the balance tips in favor of disclosure. Both documents, dated May 8, 2011, are

1 captioned “BCP Concept Paper-APPS, Response to Anson’s Questions.” Clearly, the documents
2 have to do with the Department’s plan to use Budget Change Proposals to obtain funding related
3 to APPS. Inasmuch as money from the DROS Special Account was used to fund APPS prior to
4 fiscal year 2012-2013, the connection to Plaintiffs’ claims concerning improper use of the DROS
5 Special Account is not difficult to see. (Franklin Decl. ¶ 11). Because the identified documents
6 are squarely within the intent and balancing described in the Production Order, Defendants’
7 official information objection to RFP No. 64 should be ignored. (*Marylander*, *supra*, 81
8 Cal.App.4th at pp. 1126-1127.)

9
10 Further, the description provided indicates that the documents were not created in the
11 context of an attorney-client relationship, or that the documents should be reasonably expected to
12 contain attorney-client material. Because Defendants have not provided an evidence as to why
13 these rules of exception should apply, the Court should order the production of these two
14 documents. (§§ 2018.030, 2031.240, subd. (c)(1); Evid. Code, §§ 912, 954.)

15
16 Finally, Defendants also fail in arguing that the relevant “request is oppressive and
17 burdensome in that it seeks information spanning a period of approximately twelve years.” (Sep.
18 Statement at p. 8.) The number of years at issue is irrelevant if the number of documents, and the
19 amount of hours required to locate them, are minimal. Defendants were given the opportunity to
20 explain why they contend the production of documents up to twelve years old would result in
21 undue prejudice or oppression, but they failed to do so. (Franklin Decl. ¶ 7[.] Defendants have not
22 produced any evidence that the claimed objection actually relates to a specific potential burden or
23 oppression, thus Defendants must either produce the baseline budgets or provide a further
24 response to this request per Code of Civil Procedure section 2031.310, subdivisions (a)(3) and
25 (b)(1).

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28 **F. Plaintiffs Have Good Reason to Request Documents Using the Term “Enforcement Activities[;]” Defendants’ Objections to RFP No. 65 Are Meritless**

1 RFP No. 65 is very similar to RFP No. 64. They both seek information related to what
2 law enforcement activities are being funded from the DROS Special Account. The only real
3 differences are the “keyword phrases” being used (i.e., “DROS enforcement activities” versus
4 “enforcement activities”), the fact that RFP No. 35 has an express substantive limitation clause
5 (RFP No. 35 seeks documents using the phrase “enforcement activities” *that also* discuss those
6 activities “being funded from the DROS Special Account”), and different limitations regarding
7 the time frame in which responsive documents appear to have been created. Thus, in light of the
8 extreme similarity of these two requests, Plaintiff believes the Court will not be assisted in
9 repeating in this subsection the exact same arguments that are described *supra* in Section III.E.
10 and in the separate statement. As previously explained in the context of RFP No. 64, the Court
11 should order production in response to RFP No. 65.

12 **G. Defendants’ Response to RFP No. 66 Is Insufficient; Defendants Have Failed to Raise**
13 **Sufficient Grounds to Deny a Request for the Budgetary Records Sought**

14 RFP No. 66 is a counterpart to RFP No. 53. RFP No. 53 concerns documents evidencing
15 the Department and DOF’s discussions about reducing the DROS Special Account surplus. RFP
16 No. 66, which also seeks communications between the Department and DOF, is broader than
17 RFP No. 53, as RFP No. 66 seeks *any* document wherein the DROS Special Account is
18 mentioned, not just any document that mentions how the Department might reduce the DROS
19 Special Account surplus. Thus, because these requests are conceptually extremely similar,
20 Plaintiffs will not reiterate the arguments made regarding Defendants’ response to RFP No. 53 or
21 the arguments made in the Separate Statement regarding that response.

22 Plaintiff does note, however, that the descriptions provided for Privilege Log items 15, 16,
23 and 17 confirm the documents at issue are relevant and that disclosure of these documents is in
24 the public interest and that withholding them is not. Documents 15 and 16 are titled “DOJ
25 Finance Letter Concepts[.]”¹ Based on the document titles and the requirements of the request at
26 issue, these two documents appear to embody the Department’s conceptual budgetary ideas that
27 were somehow related to the DROS fee, which is likely relevant to Plaintiffs’ claims about the
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¹ See, *supra*, footnote 1 and related text.

1 DROS fee being maintained at an unreasonably high amount. In fact, these documents may be of
2 extreme relevance because of the date they appear to have been created (approximately 2007-
3 2008); if the Department was discussing the surplus in the DROS Special Account in 2008 (as
4 Defendants have effectively admitted in their response to RFP No. 53), that is relevant to the
5 question of how often, or based on what factual scenario, the Department is required to change the
6 DROS fee so that it does not exceed the amount “necessary” to cover the expenses identified in
7 Penal Code section 28225. Plaintiffs seek injunctive relief requiring the Department to properly
8 calculate what the DROS fee should be set at, so Privilege Log items Nos. 15 and 16 are clearly
9 relevant.

10 Privilege Log item no. 17, as described, has similar indicia of relevance. This document’s
11 subtitle—“Automated Firearms System Redesign BCP-Responses to Questions from the
12 Department of Finance”—shows that the Department knew was considering the DROS fee as a
13 potential funding source for the redesign of the Automated Firearm System, which may have been
14 based on a general law enforcement need, rather than a regulatory need (e.g., to improve the
15 DROS process itself). Accordingly, the discussion concerning potential use or non-use of DROS
16 fee money for such a project is likely to shed light on the budgetary decisions that are relevant to
17 this action. Furthermore, the Production Order explains why budgeting materials—like the three
18 documents identified on the privilege log as responsive hereto—related to the DROS fee are
19 subject to disclosure. Because these budgetary documents are squarely within the intent and
20 balancing described in the Production Order, Defendants’ official information objection to RFP
21 No. 66, like all of their objections to RFP No. 66, should be overruled. (*Marylander, supra*, 81
22 Cal.App.4th at pp. 1126-1127.)

23 **H. Defendants’ Boilerplate Objections to RFP No. 74 Are all Meritless, But their**
24 **Attorney-Client and Attorney Work Product Objections Seem Especially Inapt**

25 RFP No. 74, like RFP Nos. 53 and 66, seeks budgetary documents referencing
26 communications between the Department and DOF. RFP No. 74 is specifically focused on
27 communications (1) appearing to have originated from the Department’s Budget Office and (2)
28 mentioning both the DROS Special Account and APPS. For brevity’s sake, Plaintiff will refer to

1 the argument previously raised herein and in the Separate Statement, with one addition, to show
2 that Defendants' objections should not be sustained.

3 That addition has to do with Defendants' objection based on the lawyer-client privilege,
4 work product doctrine, and potentially, law enforcement privilege. Request No. 74 is limited to
5 documents concerning communications coming directly from the Department's Budget Office.
6 Presumably, the Budget Office neither has nor—more importantly—needs an attorney to be
7 involved in submitting budgetary information to the DOF. Similarly, though the Plaintiffs have no
8 particular information about the withheld documents, save the description provided by
9 Defendants, they suspect that, at least as to the information Plaintiffs are interested in, it is
10 extremely unlikely that there is confidential law enforcement information in budgetary documents
11 that should be withheld. To be clear, Plaintiffs recognize the theoretical possibility that law
12 enforcement interests could justify withholding some information in budgetary documents. But
13 because Defendants provided no factual support for these three objections, even after Plaintiffs
14 clearly raised this issue during the meet-and-confer process, the evidence available indicates there
15 is no meritorious law enforcement privilege-based claim to be made.

16 For the reasons stated above and in the separate statement, Defendants should be ordered
17 to produce the documents that were withheld from production even though they are responsive to
18 RFP No. 74.

19 **I. Defendants' Boilerplate Objections to RFP No. 75 Are All Meritless, but their**
20 **Lawyer-Client and Attorney Work Product Objections Seem Especially Inapt**

21 RFP No. 75 is almost exactly the same as RFP No. 74. The only difference is that RFP No.
22 74 seeks the production of a certain class of documents appearing to have been created by the
23 Department's Budget Office, whereas RFP No. 75 seeks the same, but as to documents appearing
24 to have been created by the Department's Accounting Office. Because the pertinent issues have
25 already been fully addressed in the separate statement and in the discussion above regarding RFP
26 Nos. 53 and 74, Plaintiff will not rehash the issue again in the context of RFP No. 75.
27 Defendants' boilerplate objections are without merit, and the Motion should be granted as to RFP
28 No. 75.

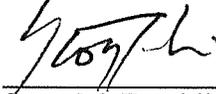
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IV. CONCLUSION

Based on the information available to Plaintiffs, all of Defendants' boilerplate objections are without merit. Furthermore, even if Defendants now produce evidence that is claimed to support such objections, it would be unfair to rely on such evidence in ruling on this Motion. Defendants should not be allowed to let Plaintiffs go to the trouble and expense of preparing and arguing a motion to compel if the timely production of factually grounded objections could have mooted some or all of such motion. Plaintiffs and Defendants have both provided extensions and courtesy accommodations in this case, so Defendants cannot claim an inability to put forth robust objections. Plaintiffs respectfully request the Court grant the Motion in full. To the extent the Court sustains one or more privilege or work product doctrine claim based on information Defendants did not include in their initial response, Plaintiffs expressly reserve their right to seek sanctions pursuant to Code of Civil Procedure, section 2023.010, subdivision (f).

Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.



Scott M. Franklin, Attorney for the Plaintiffs

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

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

NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY; MEMORANDUM IN SUPPORT THEREOF

on the interested parties in this action by placing

- the original
- a true and correct copy

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

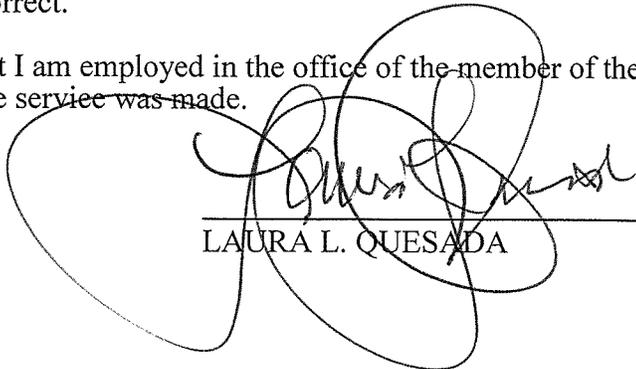
Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 25, 2016, at Long Beach, California.

 (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on April 25, 2016, at Long Beach, California.

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

 (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.



LAURA L. QUESADA