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skhgm1
By _____, Deputy
Case Number:
34-2013-80001667

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO
10

11 DAVID GENTRY, JAMES PARKER,
MARK MIDLAM, JAMES BASS, and
12 CALGUNS SHOOTING SPORTS
ASSOCIATION,

13 Plaintiffs and Petitioners,

14 v.

15 KAMALA HARRIS, in Her Official
Capacity as Attorney General For the State
16 of California; STEPHEN LINDLEY, in
His Official Capacity as Acting Chief for
17 the California Department of Justice,
BETTY YEE, in Her Official Capacity as
18 State Controller, and DOES 1 - 10,

19 Defendants and Respondents.
20

Case No. 34-2013-80001667

**PLAINTIFFS' SEPARATE STATEMENT IN
SUPPORT OF MOTION TO COMPEL
ADDITIONAL RESPONSES TO REQUESTS
FOR PRODUCTION (SET THREE)
PROPOUNDED ON DEFENDANTS KAMALA
HARRIS AND STEPHEN LINDLEY**

Date: October 28, 2016
Time: 9:00 a.m.
Dept: 31
Trial Date: None Set
Action Filed: October 16, 2013

21
22 Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and
23 Calguns Shooting Sports Association (collectively "Plaintiffs") hereby submit this Separate
24 Statement pursuant to California Rules of Court, rule 3.1345, in support of Plaintiffs' Motion to
25 Compel Further Responses to Requests for Production, Set Three, Propounded on Defendants
26 [and Respondents] Kamala Harris and Stephen Lindley (collectively "Defendants").

27 ///

1 **REQUEST FOR PRODUCTION NO. 53**

2
3 Each and every DOCUMENT evidencing CAL DOJ and the California
4 Department of Finance discussing potential actions that could lead to the reduction
5 of the DROS SPECIAL ACCOUNT (as used herein, “DROS SPECIAL
6 ACCOUNT” refers to the portion of the state’s General Fund wherein DROS FEE
7 funds are deposited) surplus, limited to DOCUMENTS appearing to have been
8 created between January 1, 2008, and the present.

9 **RESPONSE**

10 Defendants object to this request. It seeks information not relevant to the subject
11 matter or likely to lead to discovery of admissible evidence. It also seeks
12 information protected by the attorney-client privilege, work product doctrine and
13 executive and deliberative process privileges.

14 Without waiving these objections, defendants respond as follows:

15 Defendants are completing their search for responsive documents and will comply
16 with this request by producing any available documents and privilege log where
17 applicable.

18 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED (Priv.
19 Log Document Nos. 15, 16, and 17)**

20 The request plainly meets the applicable relevance standard, meaning Defendants
21 unexplained relevance objection should be disregarded. (See Code of Civ. Proc., § 2017.010
22 [“any party may obtain discovery regarding any matter, not privileged, that is relevant to the
23 subject matter involved in the pending action or to the determination of any motion made in that
24 action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead
25 to the discovery of admissible evidence”]; *Gonzalez v. Superior Court* (1995) 33 Cal. App. 4th
26 1539, 1546 [“For discovery purposes, information is relevant if it ‘might reasonably assist a party
27 in evaluating the case, preparing for trial, or facilitating settlement[.]’”].)

28 Defendants’ relevance objection is without merit—this case is primarily about how the
Department of Justice (the “Department”) spends income that is specifically related to firearms,
e.g., money obtained through the Dealers’ Record of Sales (“DROS”) fee. Communications with
California Department of Finance (“DOF”) specifically concerning how to reduce the multi-

1 million dollar surplus arising from a \$19.00 DROS fee appear likely to provide information that is
2 relevant to Plaintiffs' concerns that the DROS fee was, and is, being kept at an improperly
3 inflated amount. Defendants' relevance objection should be ignored.

4 The descriptions provided for Privilege Log items 15, 16, and 17 confirm the documents
5 at issue are relevant. Documents 15 and 16 are titled "DOJ Finance Letter Concepts[.]" Finance
6 Letters are "[p]roposals made by the Director of Finance to the chairpersons of the budget
7 committees in each house to amend the Budget Bill and the Governor's Budget from that
8 submitted on January 10 to reflect a revised plan of expenditure for the budget year and/or current
9 year."¹ Thus, based on the document titles and the requirements of the Request at issue, these two
10 documents appear to embody the Department's conceptual ideas related to the potential reduction
11 of the DROS fee, which is surely relevant to Plaintiffs' claims about the DROS fee being
12 maintained at an unreasonably high amount. In fact, these documents may be of extreme
13 relevance because of the date they appear to have been created (approximately 2007-2008); if the
14 Department was discussing a surplus in the DROS Special Account in 2008, that is relevant to the
15 question of how often, or based on what factual scenario, is the Department required to change
16 the DROS fee so that it does not exceed the amount "necessary" to cover the expenses identified
17 in Penal Code section 28225. Plaintiffs seek injunctive relief requiring the Department to properly
18 calculate what the DROS fee should be set at, so Privilege Log items 15 and 16 are clearly
19 relevant.

20 Privilege Log item 17, as described, has similar indicia of relevance. This document's
21 subtitle—"Automated Firearms System Redesign BCP-Responses to Questions from the
22 Department of Finance"—shows that the Department knew of the surplus in September 2007,
23 during its discussions with DOF as to how the DROS Special Account surplus might be relevant
24 to costs related to funding a specific project. Furthermore, because the redesign of the Automated
25 Firearm System may have been based on a general law enforcement need, rather than a regulatory
26 need (e.g., to improve the DROS process itself), the discussion concerning potential use or non-

27 _____
28 ¹ DOF's Glossary of Budget Terms was available online, as of April 11, 2016, at
http://www.dof.ca.gov/html/bud_docs/glossary.pdf.

1 use of DROS fee money for such a project is likely to shed light on the budgetary decisions that
2 are relevant to this action. Because Defendants have failed to show how these documents are not
3 relevant, their relevancy objection fails.

4 Lawyer-client privilege and attorney work product doctrine objections are also made by
5 Defendants, but they too are unsupported and thus, should be ignored. (*Costco Wholesale Corp. v.*
6 *Superior Court* (2009) 47 Cal.4th 725, 733 [“The party claiming the privilege has the burden of
7 establishing the preliminary facts necessary to support its exercise, i.e., a communication made in
8 the course of an attorney-client relationship.”].) The documents at issue are clearly budgetary
9 documents, and Defendants have shown no attorney interaction that could potentially justify the
10 documents being withheld. Similarly, to the extent attorney work product is shown to be at issue
11 regarding this request, the nature of the documents sought, which are not the type of material
12 attorneys generally produce (and are unlikely to include completely privileged “brain work”),
13 strongly suggests that the objection will fail when subjected to the relevant statutory standard.
14 (Code Civ. Proc., § 2018.030.)

15 Privilege Log items 15, 16, and 17 include objections based on the official information,
16 deliberative process, and executive privileges, which are all subject to the standard of review
17 found in Evidence Code section 1040. (See *Marylander v. Superior Court* (2000) 81 Cal.App.4th
18 1119, 1126-1127 [using the standard set forth in Evidence Code section 1040 to evaluate claims
19 made under the common law privilege known as the executive or deliberative process privilege
20 and stating that Evidence Code section 1040 “represents the exclusive means by which a public
21 entity may assert a . . . privilege based on the necessity for secrecy”].) Evidence Code section
22 1040 states, in pertinent part, that

23 [a] public entity has a privilege to refuse to disclose official information [if
24 d]isclosure of the information is against the public interest because there is a
25 necessity for preserving the confidentiality of the information that outweighs the
26 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.

1 (Evid. Code, § 1040, subd. (b).) Defendants also originally stated attorney-client privilege and
2 attorney work product-based objections to Request No. 64, but they were abandoned as of
3 Defendants' production of their Privilege Log, which does not include such objections.

4 This Court's order of June 1, 2015, is on point regarding whether an official information
5 privilege is applicable here. As to "Respondents' budget and expenditure decisions related to the
6 setting and continuation of the DROS fee; t]he public clearly has an interest in disclosure of
7 documents which identify the budgetary analyses performed by Respondents to support the
8 amount of the DROS fee." (Order of June 1, 2015 [the "Production Order"], at 4:1-4.) The
9 documents sought are exactly the type of documents that the "public clearly has in interest in"
10 being disclosed. And when it came to weighing the interest in keeping certain relevant documents
11 secret, the Court previously held it could not identify any "public interest in not disclosing
12 records of an analysis the Department is required to perform in order to charge the public a fee."
13 (*Id.* at 4:11-13.) Under the applicable balancing test, and based on the Court's previous ruling
14 regarding budgetary documents similar to those at issue here, Defendants' official information
15 privilege claims should be overruled. (*California First Amendment Coalition v. Superior Court*
16 (1998) 67 Cal.App.4th 159, 172.)

17 Because Defendants have failed to raise a viable objection to the relevant request, the
18 Court should order the production of Privilege Log items 15, 16, and 17. (Civ. Proc. Code, §
19 2031.310, subds. (a)(1) and (a)(3).)

20 **REQUEST FOR PRODUCTION NO. 63**

21
22 Each and every baseline budget submitted by the CAL DOJ to the California
23 Department of Finance since January 1, 2003.

24 **RESPONSE**

25 Defendants object to this request. It seeks information not relevant to the subject
26 matter or likely to lead to discovery of admissible evidence. The request is
27 oppressive and burdensome in that it seeks information spanning a period of
28 approximately twelve years. It also seeks information protected by the attorney-
client privilege, work product doctrine and executive and deliberative process
privileges.

1 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

2 The request plainly meets the applicable relevance standard, meaning Defendants
3 unexplained relevance objection should be disregarded. (See Code of Civ. Proc., § 2017.010
4 [“any party may obtain discovery regarding any matter, not privileged, that is relevant to the
5 subject matter involved in the pending action or to the determination of any motion made in that
6 action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead
7 to the discovery of admissible evidence”]; *Gonzalez, supra*, 33 Cal.App.4th at p. 1546 [“For
8 discovery purposes, information is relevant if it ‘might reasonably assist a party in evaluating the
9 case, preparing for trial, or facilitating settlement[.]’”].)

10 Defendants’ relevance objection is without merit—this case is primarily about how the
11 Department spends income that is specifically related to firearms, e.g., money obtained through
12 DROS fee. Baseline budgets submitted to DOF appear likely to provide information that is
13 relevant to that inquiry. DOF defines “Baseline Budget” as a budget that “reflects the anticipated
14 costs of carrying out the current level of service or activities as authorized by the Legislature. It
15 may include an adjustment for cost increases, but does not include changes in level of service
16 over that authorized by the Legislature.”² Defendants voluntary public statements concerning how
17 it is using funds out of the DROS Special Account, when combined with the lack of transparency
18 applicable to how and when the DROS fee is set and adjusted, mean that the baseline budgets are

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20 ² DOF’s Glossary of Budget Terms was available online, as of April 11, 2016, at
21 http://www.dof.ca.gov/html/bud_docs/glossary.pdf. DOF’s Finance Glossary of Accounting and
22 Budgeting Terms defines “Baseline Budget” as synonymous with “Workload Budget.” Workload
23 Budget is defined in this glossary as

24 [t]he budget year cost of currently authorized services, adjusted for changes in
25 enrollment, caseload, population, statutory cost of living adjustments, chaptered
26 legislation, one-time expenditures, full-year costs of partial-year programs, costs
27 incurred pursuant to Constitutional requirements, federal mandates, court-ordered
28 mandates, state employee merit salary adjustments, and state agency operating
expense and equipment costs adjusted to reflect inflation.

The Finance Glossary of Accounting and Budgeting Terms was available online as of April 11,
2016, at <http://www.dof.ca.gov/fisa/bag/documents/FinanceGlossary.pdf>.

1 not only relevant and reasonably calculated to lead to other relevant evidence, but that they
2 should be produced because after a reasonable amount of properly phrased discovery requests, the
3 Department's DROS fee-setting process is still relatively opaque.

4 The Production Order is on point. As to "Respondents' budget and expenditure decisions
5 related to the setting and continuation of the DROS fee; t]he public clearly has an interest in
6 disclosure of documents which identify the budgetary analyses performed by Respondents to
7 support the amount of the DROS fee." (Production Order, at 4:1-4.) The baseline budgets are
8 exactly the type of documents that the "public clearly has in interest in" being disclosed. And
9 when it came to weighing the interest in keeping certain relevant documents secret, the Court held
10 it could not identify any "public interest in not disclosing records of an analysis the Department is
11 required to perform in order to charge the public a fee. (*Id.* at 4:11-13.) Under the applicable
12 balancing test, Defendants' official information privilege claims should be overruled. (*California*
13 *First Amendment Coalition, supra*, 67 Cal.App.4th at p.172.)

14 Lawyer-client privilege and attorney work product doctrine objections are also made by
15 Defendants, but they too are unsupported and thus, should be ignored. (*Costco Wholesale Corp.*,
16 *supra*, 47 Cal.4th at p. 733 ["The party claiming the privilege has the burden of establishing the
17 preliminary facts necessary to support its exercise, i.e., a communication made in the course of an
18 attorney-client relationship."].) The documents at issue are clearly budgetary documents, and
19 Defendants have shown no attorney interaction that could potentially justify the documents being
20 withheld. Further, Defendants know that the proper course of action to support an lawyer-client
21 privilege claim is to provide "sufficient factual information[,] e.g., a privilege log, to allow
22 Plaintiffs to evaluate Defendants' privilege claims. (Civ. Proc. Code, § 2031.240, subd. (c)(1).)

23 Defendants provided a privilege log for other responses, but not for their response to
24 Request for Production No. 63, which further indicates that the attorney-based objections used
25 here are unfounded boilerplate. Similarly, to the extent attorney work product is shown to be at
26 issue regarding this request, the nature of the documents sought, which are not the type of
27 material attorneys generally produce (and are unlikely to include completely privileged "brain
28 work"), strongly suggests that the objection will fail when subjected to the relevant statutory

1 standard. (Code Civ. Proc., § 2018.030.)

2 Defendants' claim that the request is burdensome because it covers a period of twelve
3 years is without merit. The number of years at issue is irrelevant if the number of documents, and
4 the amount of hours required to locate them, are minimal. Defendants were given the opportunity
5 to explain why they contend the production of documents up to twelve years old would result in
6 undue prejudice, but they failed to do so. Defendants have not produced any evidence that the
7 claimed objection actually relates to a specific potential burden. Therefore, a further response to
8 this request should be produced under Code of Civil Procedure sections 2031.240, subdivisions
9 (b)(2)-(c)(1); and 2031.310, subdivisions (a)(3) and (b)(1).

10 Finally, Defendants claim the executive process and deliberative process doctrines (both
11 fall within the "government information" privilege found at Evidence Code section 1040) apply,
12 but without any explanation of those claims. Given the Court's analysis and ruling in the
13 Production Order, and the applicable balancing test as discussed above in the context of
14 Defendants' relevancy objection, this objection, like all of Defendants' objections, is without
15 merit. Defendants should be ordered to produce the relevant budgetary documents.

16 **REQUEST FOR PRODUCTION NO. 64**

17
18 Each and every DOCUMENT appearing to have been created on or after January
1, 2004, that uses the term "DROS Enforcement Activities[.]"

19 **RESPONSE**

20
21 Defendants object to this request. It seeks information not relevant to the subject
22 matter or likely to lead to discovery of admissible evidence. It also seeks
23 confidential law enforcement information protected by the official information,
24 law enforcement and executive privileges. It also seeks information protected by
25 the attorney-client privilege, work product doctrine and executive and deliberative
process privileges. The request is oppressive and burdensome (i.e., compliance
would be unreasonably difficult and expensive because it purports to seek "each
and every" such document within the entire Department of Justice).

26 Without waiving these objections, defendants respond as follows:
27
28

1 Defendants are completing their search for responsive documents and will comply
2 with this request by producing any available documents and privilege log where
3 applicable.

4 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED (Priv.
5 Log Document Nos. 18 and 19)**

6 The request plainly meets the applicable relevance standard, meaning Defendants
7 unexplained relevance objection should be disregarded. (See Code of Civ. Proc., § 2017.010
8 [“any party may obtain discovery regarding any matter, not privileged, that is relevant to the
9 subject matter involved in the pending action or to the determination of any motion made in that
10 action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead
11 to the discovery of admissible evidence”]; *Gonzalez, supra*, 33 Cal.App.4th at p. 1546 [“For
12 discovery purposes, information is relevant if it ‘might reasonably assist a party in evaluating the
13 case, preparing for trial, or facilitating settlement[.]’”].)

14 Defendants’ relevance objection is without merit—this case is primarily about how the
15 Department spends income that is specifically related to firearms, e.g., money obtained through
16 the DROS fee. The term “DROS enforcement activities” was previously used to refer to the
17 Department providing “firearms expertise and training to law enforcement agencies and firearms
18 dealers.” (As indicated in Defendants’ AGIC0008, produced during discovery). But now it seems
19 the Department is not just assisting local law enforcement. Rather it seems the Department is
20 either going it alone or relegating local law enforcement to the assistance role for many APPS
21 raids and non-APPS related firearms investigations.³ If the “DROS Enforcement Activities” only
22 have to do with training local law enforcement and giving specific advice to local law
23 enforcement on firearm issues (and Plaintiffs are not asking for any advice given in a particular
24 criminal situation), then that will be helpful to know when attempting to calculate if only proper
25 costs are being paid out of the DROS Special Fund. And if the term “DROS Enforcement

26 ³ For example, it seems several so-called “APPS cases” identified by the Department as such
27 were not APPS-related in any meaningful way. The issue is further discussion in Plaintiffs’
28 Motion to Compel Further Responses to Special Interrogatories, Set Three, Propounded on
Defendants Kamala Harris and Stephen Lindley, regarding Defendants refusal to respond to
discovery requests related to certain specific “APPS cases.”

1 Activities” has morphed over time to include APPS and Non-APPS related law enforcement
2 activities, that fact is still relevant to the calculation Plaintiffs intend to make, it just decreases the
3 amount of money that actually needs to be obtained to run the DROS program.

4 Privilege Log items 18 and 19 include objections based on the official information,
5 deliberative process, and executive privileges, which are all subject to the standard of review
6 found in Evidence Code section 1040. (See *Marylander, supra*, 81 Cal.App.4th at pp. 1126-1127
7 [using the standard set forth in Evidence Code section 1040 to evaluate claims made under the
8 common law privilege known as the executive or deliberative process privilege, and stating that
9 Evidence Code section 1040 “represents the exclusive means by which a public entity may assert
10 a . . . privilege based on the necessity for secrecy”].) Evidence Code section 1040 states, in
11 pertinent part, that

12 [a] public entity has a privilege to refuse to disclose official information [if
13 d]isclosure of the information is against the public interest because there is a
14 necessity for preserving the confidentiality of the information that outweighs the
15 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.

16
17 (Evid. Code, § 1040(b).) Defendants also originally stated lawyer-client privilege and attorney
18 work product-based objections to Request No. 64, but they were abandoned as of Defendants’
19 production of their Privilege Log.

20 Defendants’ one-sentence description for the Privilege Log items at issue (items 18 and
21 19) is detailed enough to show that the balance tips in favor of disclosure. Both documents, dated
22 May 8, 2011, are captioned “BCP Concept Paper-APPS, Response to Anson’s Questions.”
23 Clearly, the documents have to do with the Department’s plan to use Budget Change Proposals to
24 obtain funding related to APPS. Inasmuch money from the DROS Special Account was used to
25 fund APPS, at least in part, during fiscal year 2012-2013, the connection to Plaintiffs’ claims
26 concerning improper use of the DROS Special Account is not difficult to see. (Declaration of
27 Scott M. Franklin in Support of Plaintiffs Motion to Compel Further Responses to Requests for
28

1 Production (Set Three) [the “Franklin Decl.”] ¶ 11).

2 Furthermore, these documents are dated just a few months after the Department took
3 public comment on the later abandoned rulemaking that would have reduced the DROS fee from
4 \$19.00 to \$14.00, so Plaintiffs are reasonable in calculating that the documents will include a
5 discussion of how the reduction of the fee would impact, inter alia, the funding of APPS-based
6 law enforcement activities. This Court has previously stated that “to the extent Respondents are
7 engaging in budgetary and other calculations concerning the appropriate amount of the DROS
8 fee, these records are discoverable in this matter.” (Production Order at 4:6-8.) And the fact that
9 the description does not mention the DROS fee or Special Account is of no importance because it
10 is already known that the withheld documents refer to the term “DROS enforcement activities”
11 based on the text of the Request at issue. The Court has rightly noted that the budgetary analysis
12 related to the DROS fee “appears to be designed for public scrutiny in light of the statutory
13 limitations imposed” when it previously held that it could not identify any public interest that
14 would support Defendants’ desire to keep such documents secret. (*Id.* at 4:10-12.) Because the
15 same is true here, the weight of the public’s interests is plainly in favor of disclosure, and the
16 Court should order Defendants to produce the withheld documents.

17 Defendants’ claim that the request is burdensome is without merit. Defendants claim an
18 unfair burden will result because the request seeks “each and every” document within a particular
19 description. The use of the phrase “each and every” is common in requests for production, and
20 because the total production of “each and every” document can be zero or any other number, the
21 usage of that phrase has literally no relevance to whether a request is unduly burdensome or not.
22 Indeed, *every* document request made during litigation is intended to obtain “each and every”
23 document within a described category, regardless of who or what is responding.

24 Defendants had an opportunity to provide a cogent explanation, including a non-evasive
25 response, as to the specifics of why they should not be required to comply with this relevant
26 request, but they did not. Plaintiffs have shown the good cause required to obtain the production
27 of the documents sought via Request No. 64, thus a further response to this request should be
28 produced under Code of Civil Procedure sections 2031.240, subdivisions (b)(2)-(c)(1); and

1 2031.310, subdivisions (a)(3) and (b)(1).

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3 **REQUEST FOR PRODUCTION NO. 65**

4 Each and every DOCUMENT referring to “enforcement activities” being funded
5 from the DROS SPECIAL ACCOUNT, limited to documents appearing to have
6 been created between January 1, 2004, and October 9, 2011.

7 **RESPONSE**

8 Defendants object to this request. It seeks information not relevant to the subject
9 matter or likely to lead to discovery of admissible evidence. It also seeks
10 confidential law enforcement information protected by the official information,
11 law enforcement and executive privileges. It also seeks information protected by
12 the attorney-client privilege, work product doctrine and executive and deliberative
13 process privileges. The request is oppressive and burdensome (i.e., compliance
14 would be unreasonably difficult and expensive because it purports to seek "each
15 and every" such document within the entire Department of Justice).

16 Without waiving these objections, defendants respond as follows:

17 Defendants are completing their search for responsive documents and will comply
18 with this request by producing any available documents and privilege log where
19 applicable.

20 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED (Priv.
21 Log Document Nos. 18 and 19)**

22 The request plainly meets the applicable relevance standard, meaning Defendants
23 unexplained relevance objection should be disregarded. (See Code of Civ. Proc., § 2017.010
24 [“any party may obtain discovery regarding any matter, not privileged, that is relevant to the
25 subject matter involved in the pending action or to the determination of any motion made in that
26 action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead
27 to the discovery of admissible evidence. (*Gonzalez, supra*, 33 Cal.App.4th at p. 1546 [“For
28 discovery purposes, information is relevant if it ‘might reasonably assist a party in evaluating the
case, preparing for trial, or facilitating settlement[.]’”].)

Defendants’ relevance objection is without merit—this case is primarily about how the
Department spends income that is specifically related to firearms, e.g., money obtained through
the DROS fee. The term “DROS enforcement activities” was previously used to refer to the

1 Department providing “firearms expertise and training to law enforcement agencies and firearms
2 dealers.” But now it seems the Department is not just assisting local law enforcement. Rather it
3 seems the Department is either going it alone or relegating local law enforcement to the assistance
4 role for many APPS raids and non-APPS related firearms investigations.⁴ If the “DROS
5 Enforcement Activities” only have to do with training local law enforcement and giving specific
6 advice to local law enforcement on firearm issues (and Plaintiffs are not asking for any advice
7 given in a particular criminal situation), then that will be helpful to know when attempting to
8 calculate if only proper costs are being paid out of the DROS Special Fund. And if the term
9 “Enforcement Activities” has morphed over time to include APPS and Non-APPS related law
10 enforcement activities, that fact is still relevant to the calculation Plaintiffs intend to make, it just
11 decreases the amount of money that actually needs to be obtained to run the DROS program.

12 Privilege Log items. 18 and 19 include objections based on the official information,
13 deliberative process, and executive privileges, which are all subject to the standard of review
14 found in Evidence Code section 1040. (See *Marylander, supra*, 81 Cal.App.4th at pp. 1126-1127
15 [using the standard set forth in Evidence Code section 1040 to evaluate claims made under the
16 common law privilege known as the executive or deliberative process privilege, and stating that
17 Evidence Code section 1040 “represents the exclusive means by which a public entity may assert
18 a . . . privilege based on the necessity for secrecy”].) Evidence Code section 1040 states, in
19 pertinent part, that

20 [a] public entity has a privilege to refuse to disclose official information [if
21 d]isclosure of the information is against the public interest because there is a
22 necessity for preserving the confidentiality of the information that outweighs the
23 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.

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25
26 ⁴ For example, it seems several so-called “APPS cases” identified by the Department as such
27 were not APPS-related in any meaningful way. The issue is further discussion in Plaintiffs’
28 Motion to Compel Further Responses to Special Interrogatories, Set Three, Propounded on
Defendants Kamala Harris and Stephen Lindley, regarding Defendants refusal to respond to
discovery requests related to certain specific “APPS cases.”

1 (Evid. Code, § 1040(b).) Defendants also originally stated attorney-client privilege and attorney
2 work product-based objections to Request No. 63, but they were abandoned as of Defendants'
3 production of their Privilege Log, which does not include such objections.

4 Defendants' one-sentence description for the Privilege Log items at issue (items 18
5 and 19) is detailed enough to show that the balance tips in favor of disclosure. Both documents,
6 dated May 8, 2011, are captioned "BCP Concept Paper-APPS, Response to Anson's Questions."
7 Clearly, the documents have to do with the Department's plan to use Budget Change Proposals to
8 obtain funding related to APPS. Inasmuch money from the DROS Special Account was used to
9 fund APPS, at least in part, during fiscal year 2012-2013, the connection to Plaintiffs' claims
10 concerning improper use of the DROS Special Account is not difficult to see. (Franklin Decl.
11 ¶ 11).

12 Furthermore, these documents are dated just a few months after the Department took
13 public comment on the later abandoned rulemaking that would have reduced the DROS fee from
14 \$19.00 to \$14.00, so Plaintiffs are reasonable in calculating that the documents will include a
15 discussion of how the reduction of the fee would impact, inter alia, the funding of APPS-based
16 law enforcement activities. This Court has previously stated that "to the extent Respondents are
17 engaging in budgetary and other calculations concerning the appropriate amount of the DROS
18 fee, these records are discoverable in this matter." (Production Order at 4:6-8.) And the fact that
19 the description does not mention the DROS fee or Special Account is of no importance because it
20 is already known that the withheld documents refer to the term "DROS enforcement activities"
21 based on the fact that Defendants have already identified the salient documents as being
22 responsive to Request No. 64 (i.e., the documents include the term "*DROS Enforcement*
23 *Activities*"). (Italics added.) The Court has rightly noted that the budgetary analysis related to the
24 DROS fee "appears to be designed for public scrutiny in light of the statutory limitations
25 imposed" when it previously held that it could not identify any public interest that would support
26 Defendants' desire to keep such documents secret. (*Id.* at 4:10-12.) Because the same is true here,
27 the weight of the public's interests is plainly in favor of disclosure, and the Court should order
28 Defendants to produce the withheld documents.

1 Defendants' claim that the request is burdensome is without merit. Defendants claim an
2 unfair burden will result because the request seeks "each and every" document within a particular
3 description. The use of the phrase "each and every" is common in requests for production, and
4 that the total production of "each and every" document can be zero or any other number, meaning
5 the usage of the phrase has literally no relevance to whether a request is unduly burdensome or
6 not. Indeed, *every* document request made during litigation is intended to obtain "each and every"
7 document within a described category, regardless of who or what is responding.

8 Defendants had an opportunity to provide a cogent explanation, including a non-evasive
9 response, as to the specifics of why they should not be required to comply with this relevant
10 request, but they did not. Plaintiffs have shown the good cause required to obtain the production
11 of the documents sought via Request No. 64; thus a further response to this request should be
12 produced under Code of Civil Procedure sections 2031.240, subdivisions (b)(2)-(c)(1); and
13 2031.310, subdivisions (a)(3) and (b)(1).

14 **REQUEST FOR PRODUCTION NO. 66**

15
16 Each and every DOCUMENT that appears to be any type of communication,
17 including but not limited to letters or e-mails, between the CAL DOJ and the
18 California Department of Finance, limited to documents both: (1) appearing to
19 have been created between January 1, 2004, and the present, and (2) mentioning
20 the DROS SPECIAL ACCOUNT, either by name or number (e.g., 0460), and
21 expressly excluding any DOCUMENT already produced in response to Request
22 for Production No. 53 above.

23 **RESPONSE**

24 Defendants object to this request. It seeks information not relevant to the subject
25 matter or likely to lead to discovery of admissible evidence. It also seeks
26 information protected by the attorney-client privilege, work product doctrine and
27 executive and deliberative process privileges. The request is oppressive and
28 burdensome (i.e., compliance would be unreasonably difficult and expensive
because it purports to seek "each and every" such document within the entire
Department of Justice).

Without waiving these objections, defendants respond as follows:

1 Defendants are completing their search for responsive documents and will comply
2 with this request by producing any available documents and privilege log where
3 applicable.

4 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED (Priv.
5 Log Document Nos. 15, 16, and 17)**

6 The request plainly meets the applicable relevance standard, meaning Defendants
7 unexplained relevance objection should be disregarded. (See Code of Civ. Proc., § 2017.010
8 [“any party may obtain discovery regarding any matter, not privileged, that is relevant to the
9 subject matter involved in the pending action or to the determination of any motion made in that
10 action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead
11 to the discovery of admissible evidence”]; *Gonzalez, supra*, 33 Cal.App.4th at p. 1546 [“For
12 discovery purposes, information is relevant if it ‘might reasonably assist a party in evaluating the
13 case, preparing for trial, or facilitating settlement[.]’”].)

14 Defendants’ relevance objection is without merit—this case is primarily about how the
15 Department spends income that is specifically related to firearms, e.g., money obtained through
16 the DROS fee. Communications with DOF specifically concerning the DROS fee appear likely to
17 provide information that is relevant to Plaintiffs concerns that the DROS fee was, and is, being
18 kept at an improperly inflated amount. Defendants’ relevance objection should be ignored.

19 The descriptions provided for Privilege Log items 15, 16, and 17 confirm the documents
20 at issue are relevant. Documents 15 and 16 are titled “DOJ Finance Letter Concepts[.]”⁵ Thus,
21 based on the document titles and the requirements of the Request at issue, these two documents
22 appear to embody the Department’s conceptual budgetary ideas that were somehow related to the
23 DROS fee, which is likely relevant to Plaintiffs’ claims about the DROS fee being maintained at
24 an unreasonably high amount. In fact, these documents may be of extreme relevance because of
25 the date they appear to have been created (approximately 2007-2008); if the Department was
26 discussing a surplus in the DROS Special Account in 2008 (as Defendants have effectively
27 admitted in their response to Request No. 53), that is relevant to the question of how often, or
28 based on what factual scenario, the Department is required to change the DROS fee so that it does

⁵ See *supra*, footnotes 1 and 2, and related text.

1 not exceed the amount “necessary” to cover the expenses identified in Penal Code section 28225.
2 Plaintiffs seek injunctive relief requiring the Department to properly calculate what the DROS fee
3 should be set at, so Privilege Log items Nos. 15 and 16 are clearly relevant.

4 Privilege Log item 17, as described, has similar indicia of relevance. This document’s
5 subtitle—“Automated Firearms System Redesign BCP-Responses to Questions from the
6 Department of Finance”—shows that the Department was considering the DROS fee as a
7 potential funding source for the redesign of the Automated Firearm System, which may have been
8 based on a general law enforcement need, rather than a regulatory need (e.g., to improve the
9 DROS process itself). Accordingly, the discussion concerning potential use or non-use of DROS
10 fee money for such a project is likely to shed light on the budgetary decisions that are relevant to
11 this action. Because Defendants have failed to show how these documents are not relevant, their
12 relevancy objection fails.

13 Lawyer-client privilege and attorney work product doctrine objections are also made by
14 Defendants, but they too are unsupported and thus should be ignored. (*Costco Wholesale Corp.*,
15 *supra*, 47 Cal.4th at p. 733 [“The party claiming the privilege has the burden of establishing the
16 preliminary facts necessary to support its exercise, i.e., a communication made in the course of an
17 attorney-client relationship.”].) The documents at issue are clearly budgetary documents, and
18 Defendants have shown no attorney interaction that could potentially justify the documents being
19 withheld. Similarly, to the extent attorney work product is shown to be at issue regarding this
20 request, the nature of the documents sought, which are not the type of material attorneys generally
21 produce (and are unlikely to include completely privileged “brain work”), strongly suggests that
22 the objection will fail when subjected to the relevant statutory standard. Code Civ. Proc., §
23 2018.030).

24 Privilege Log items 15, 16, and 17 include objections based on the official information,
25 deliberative process, and executive privileges, which are all subject to the standard of review
26 found in Evidence Code section 1040. (See *Marylander*, *supra*, 81 Cal.App.4th at pp.1126-1127
27 [using the standard set forth in Evidence Code section 1040 to evaluate claims made under the
28 common law privilege known as the executive or deliberative process privilege and stating that

1 Evidence Code section 1040 “represents the exclusive means by which a public entity may assert
2 a . . . privilege based on the necessity for secrecy”). Evidence Code section 1040 states, in
3 pertinent part, that

4 [a] public entity has a privilege to refuse to disclose official information [if
5 d]isclosure of the information is against the public interest because there is a
6 necessity for preserving the confidentiality of the information that outweighs the
7 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.

8
9 (Evid. Code, § 1040(b).) Defendants also originally stated attorney-client privilege and attorney
10 work product-based objections to Request No. 66, but they were abandoned as of Defendants’
11 production of their Privilege Log, which does not include such objections.

12 The Production Order is on point regarding whether an official information privilege is
13 applicable here. As to “Respondents’ budget and expenditure decisions related to the setting and
14 continuation of the DROS fee[; t]he public clearly has an interest in disclosure of documents
15 which identify the budgetary analyses performed by Respondents to support the amount of the
16 DROS fee.” (Production Order, at 4:1-4.) The documents sought are exactly the type of
17 documents that the “public clearly has an interest in” being disclosed. And when it came to
18 weighing the interest in keeping certain relevant documents secret, the Court previously held it
19 could not identify any “public interest in not disclosing records of an analysis the Department is
20 required to perform in order to charge the public a fee. (*Id.* at 4:11-13.) Under the applicable
21 balancing test, and based on the Court’s previous ruling regarding budgetary documents similar to
22 those at issue here, Defendants’ official information privilege claims should be overruled.
23 (*California First Amendment Coalition, supra*, 67 Cal.App.4th at p. 172.)

24 Because Defendants have failed to raise a viable objection to the relevant request, the
25 Court should order the production of Privilege Log items 15, 16, and 17. (Civ. Proc. Code, §
26 2031.310, subds. (a)(3) and (b)(1).)

27 ///

1 **REQUEST FOR PRODUCTION NO. 74**

2 Each and every DOCUMENT appearing to have been created by an employee of CAL
3 DOJ’s Budget Office between January 1, 2009, and the present that refers to the Armed
4 Prohibited Persons System (regardless of the term used to refer thereto, e.g., “APPS” or “armed
5 prohibited”) and the DROS SPECIAL ACCOUNT (regardless of the term used to refer thereto,
6 e.g., the DROS Account or “the DROS Fund”).

7 **RESPONSE**

8 Defendants object to this request. It seeks information not relevant to the subject
9 matter or likely to lead to discovery of admissible evidence. It also seeks
10 confidential law enforcement information protected by the official information,
11 law enforcement and executive privileges. It also seeks information protected by
12 the attorney-client privilege, work product doctrine and executive and deliberative
13 process privileges. The request is oppressive and burdensome (i.e., compliance
14 would be unreasonably difficult and expensive because it purports to seek "each
15 and every" such document within the entire Department of Justice).

16 Without waiving these objections, defendants respond as follows:

17 Defendants are completing their search for responsive documents and will comply
18 with this request by producing any available documents and privilege log where
19 applicable.

20 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED (Priv.
21 Log Document Nos. 21 through 24)**

22 The request plainly meets the applicable relevance standard, meaning Defendants
23 unexplained relevance objection should be disregarded. (See Code of Civ. Proc., § 2017.010
24 [“any party may obtain discovery regarding any matter, not privileged, that is relevant to the
25 subject matter involved in the pending action or to the determination of any motion made in that
26 action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead
27 to the discovery of admissible evidence”]; *Gonzalez, supra*, 33 Cal.App.4th at p. 1546 [“For
28 discovery purposes, information is relevant if it ‘might reasonably assist a party in evaluating the
case, preparing for trial, or facilitating settlement[.]’”].)

Defendants’ relevance objection is without merit—this case is primarily about how the
Department spends income that is specifically related to firearms, e.g., money obtained through

1 the DROS fee. Documents created by the Department’s *budget* office that mention *both* the
2 DROS Special Account and APPS appear likely to provide information that is relevant to
3 Plaintiffs concerns that the DROS fee was, and is, being kept at an improperly inflated amount.
4 Therefore, Defendants’ relevance objection should be ignored.

5 The descriptions provided for Privilege Log items 21 through 24 confirm either that the
6 documents at issue are relevant or that Defendants have failed to “provide sufficient factual
7 information” for the relevant documents. (Code Civ. Proc., § 2031.240, subd. (c)(1).) Privilege
8 Log item 21 is titled “DLE restoration.” Right around the time this document was drafted
9 (approximately 2010-2011), \$59,000,000 was taken out of the Division of Law Enforcement’s
10 budget, which was about one-quarter of its budget for fiscal year 2012-2013. (Declaration of
11 Scott M. Franklin in Support of Motion to Compel Further Responses to Special Interrogatories,
12 Set Three, Propounded On Defendants Kamala Harris And Stephen Lindley [“Franklin Decl. re:
13 SI”] ¶ 14.) Thus, a document that refers to both the DROS Special Account and the “restoration”
14 of a division with the Department can reasonably be presumed to provide information that is
15 relevant to Plaintiffs’ concerns that the DROS fee was, and is, being used for unauthorized uses,
16 resulting in the DROS fee being kept at an improperly inflated amount.

17 Privilege Log item 22 is entitled “Analysis of Problem[.]” and apparently concerns a
18 Budget Change Proposal. Once again, this description, though minimal, provides sufficient
19 evidence that the withheld document is relevant. Because this document refers to the DROS
20 Special Account and a Budget Change Proposal, Plaintiffs reasonably expect this document will
21 talk about one or more new use of funds taken from the DROS Special Account via a Budget
22 Change Proposal. Inasmuch as this suit concerns, inter alia, how the DROS Special Account is
23 being used, there is no reason to believe this document is irrelevant.

24 Defendants’ description of Privilege Log item 23 is not sufficient to provide much
25 indication as to the contents of the document at issue: “4-page document of notes in the form of
26 questions and answers[.]” At the least, Defendants should have identified what the “questions and
27 answers” generally concerned. (Code Civ. Proc., § 2031.240, subd. (c)(1).) Regardless, because
28 Defendants have already admitted that the germane document mentions the DROS Special

1 Account and APPS, that alone strongly tends to prove relevance as to Plaintiffs' claims about the
2 improper use of the DROS Special Account.

3 Finally, Privilege Log item 24 is titled "Transition Report[,]" and based on discussions
4 between the parties' counsel, Plaintiffs understand this document to be a report prepared by
5 different divisions of the Department for use by a new attorney general to get "up to speed" on
6 the operations of the Department. Plaintiffs agree that some, and potentially much, of this
7 document may be irrelevant to this litigation. Plaintiffs do not seek production of the portions of
8 the Transition Report that are not reasonably relevant to the DROS Special Account, the DROS
9 fee, or APPS. But because Plaintiffs cannot identify the portions of the Transition Report that are
10 likely irrelevant from the Privilege Log, the Court should order Defendants to produce "sufficient
11 factual information"—i.e., describe the sections of the Transition Report that Defendants contend
12 are irrelevant hereto—to allow Plaintiffs to reasonably determine if such material is in fact
13 irrelevant. (See Code Civ. Proc., § 2031.240, subd. (c)(1).)

14 Several facts strongly suggest some portions of the Transitional Report will provide
15 information very relevant to this case: (1) the rulemaking process aimed at reducing the DROS
16 fee was active when Defendant Harris transitioned into her position as Attorney General, (2) a
17 few months thereafter the Department sponsored SB 819 so that it could expand the programs that
18 could be funded from the DROS Special Account, and (3) the Department abandoned the
19 rulemaking because SB 819 was enacted. Because Defendants have failed to show how this
20 information is not relevant, and because Plaintiffs have no objection to legitimate relevancy
21 redactions, Defendants' relevancy objection fails. (See Code Civ. Proc., § 2031.240(a) [stating
22 that objections can be made based on a part of a single item, implying that the remainder of the
23 item, e.g., a document, would be subject to discovery].)

24 Lawyer-client privilege and attorney work product doctrine objections are also made by
25 Defendants, but they too are unsupported and thus should be ignored, especially as to Privilege
26 Log items 21 through 23, for which Defendants abandoned their non-official information
27 objections. At the least, the Court should order Defendants to supplement the Privilege Log so
28 that it clearly identifies what sections of the Transition Report actually include communications

1 between an attorney and a client, who Defendants claim to be the attorney and the client in the
2 somewhat unusual context of the Attorney General attempting to rely on the lawyer-client
3 privilege, and a general statement about the substance of the relevant sections. Plaintiffs need this
4 further information to reasonably evaluate if the lawyer-client privilege or the work product
5 doctrine applies to some or all of the relevant portions of the Transition Report. (See Code Civ.
6 Proc., § 2031.240, subd. (c)(1).)

7 Privilege Log items Nos. 21 through 24 include objections based on the law enforcement,
8 official information, deliberative process, and executive privileges, which are all subject to the
9 standard of review found in Evidence Code section 1040. (See *Marylander*, *supra*, 81
10 Cal.App.4th at pp.1126-1127 [using the standard set forth in Evidence Code section 1040 to
11 evaluate claims made under the common law privilege known as the executive or deliberative
12 process privilege and stating that Evidence Code section 1040 “represents the exclusive means by
13 which a public entity may assert a . . . privilege based on the necessity for secrecy”].) Evidence
14 Code section 1040 states, in pertinent part, that

15 [a] public entity has a privilege to refuse to disclose official information [if
16 d]isclosure of the information is against the public interest because there is a
17 necessity for preserving the confidentiality of the information that outweighs the
18 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.

19
20 (Evid. Code, § 1040(b).)

21 The Production Order is on point regarding whether an official information privilege is
22 applicable here. As to “Respondents’ budget and expenditure decisions related to the setting and
23 continuation of the DROS fee[; t]he public clearly has an interest in disclosure of documents
24 which identify the budgetary analyses performed by Respondents to support the amount of the
25 DROS fee.” (Production Order at 4:1-4.) The documents sought are exactly the type of
26 documents that the “public clearly has an interest in” being disclosed. And when it came to
27 weighing the interest in keeping certain relevant documents secret, the Court previously held it
28

1 could not identify any “public interest in not disclosing records of an analysis the Department is
2 required to perform in order to charge the public a fee.” (*Id.* at 4:11-13.) Under the applicable
3 balancing test, and based on the Court’s previous ruling regarding budgetary documents similar to
4 those at issue here, Defendants’ official information privilege claims should be overruled.
5 (*California First Amendment Coalition, supra*, 67 Cal.App.4th at p. 172.)

6 Because Defendants have failed to raise a viable objection to the relevant request, the
7 Court should order the production of Privilege Log items 21 through 24, with item 24 being
8 produced in a redacted form to obscure irrelevant information, and the production of a revised
9 privilege log that more clearly identifies the material in the Transition Report that is allegedly
10 subject to the lawyer-client privilege or the attorney work product doctrine. (Civ. Proc. Code, §
11 2031.310, subs. (a)(3) and (b)(1).)

12 **REQUEST FOR PRODUCTION NO. 75**

13 Each and every DOCUMENT appearing to have been created by an employee of CAL
14 DOJ’s Accounting Office between January 1, 2009, and the present that refers to the Armed
15 Prohibited Persons System (regardless of the term used to refer thereto, e.g., “APPS” or “armed
16 prohibited”) and the DROS SPECIAL ACCOUNT (regardless of the term used to refer thereto,
17 e.g., the DROS Account or “the DROS Fund”).

18 **RESPONSE**

19 Defendants object to this request. It seeks information not relevant to the subject
20 matter or likely to lead to discovery of admissible evidence. It also seeks
21 confidential law enforcement information protected by the official information,
22 law enforcement and executive privileges. It also seeks information protected by
23 the attorney-client privilege, work product doctrine and executive and deliberative
24 process privileges. The request is oppressive and burdensome (i.e., compliance
25 would be unreasonably difficult and expensive because it purports to seek "each
26 and every" such document within the entire Department of Justice).

24 Without waiving these objections, defendants respond as follows:

25 Defendants are completing their search for responsive documents and will comply
26 with this request by producing any available documents and privilege log where
27 applicable.

1 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED (Priv.**
2 **Log Document Nos. 21 through 24)**

3 Defendants’ relevance objection is without merit—this case is primarily about how the
4 Department spends income that is specifically related to firearms, e.g., money obtained through
5 the DROS fee. Documents created by the Department’s *accounting* office that mention *both* the
6 DROS Special Account and APPS appear likely to provide information that is relevant to
7 Plaintiffs’ concerns that the DROS fee was, and is, being kept at an improperly inflated amount.
8 Therefore, Defendants’ relevance objection should be ignored.

9 The descriptions provided for Privilege Log items 21 through 24 confirm either that the
10 documents at issue are relevant or that Defendants have failed to “provide sufficient factual
11 information” for the relevant documents. (Code Civ. Proc., § 2031.240, subd. (c)(1).) Privilege
12 Log item 21 is titled “DLE restoration.” Right around the time this document was drafted
13 (approximately 2010-2011), \$59,000,000 was taken out of the Division of Law Enforcement’s
14 budget, which was about one-quarter of its budget for fiscal year 2012-2013. (Franklin Decl. re:
15 SI ¶ 14.) Thus, a document that refers to both the DROS Special Account and the “restoration”
16 of a division with the Department can reasonably be presumed to provide information that is
17 relevant to Plaintiffs’ concerns that the DROS fee was and is being used for unauthorized uses,
18 resulting in the DROS fee being kept at an improperly inflated amount.

19 Privilege Log item 22 is entitled “Analysis of Problem[,]” and apparently concerns a
20 Budget Change Proposal. Once again, this description, though minimal, provides sufficient
21 evidence that the withheld document is relevant. Because this document refers to the DROS
22 Special Account and a Budget Change Proposal, Plaintiffs reasonably expect this document will
23 talk about one or more new use of funds taken from the DROS Special Account via a Budget
24 Change Proposal. Inasmuch as this suit concerns, *inter alia*, how the DROS Special Account is
25 being used, there is no reason to believe this document is irrelevant.

26 Defendants’ description of Privilege Log item 23 is not sufficient to provide much
27 indication as to the contents of the document at issue: “4-page document of notes in the form of
28 questions and answers[.]” At the least, Defendants should have identified what the “questions and

1 answers” generally concerned. (Code Civ. Proc., § 2031.240, subd. (c)(1).) Regardless, because
2 Defendants have already admitted that the germane document mentions the DROS Special
3 Account and APPS, that alone strongly tends to prove relevance as to Plaintiffs’ claims about the
4 improper use of the DROS Special Account.

5 Finally, Privilege Log item 24 is titled “Transition Report[.]” and based on discussions
6 between the parties’ counsel, Plaintiffs understand this document to be a report prepared by
7 different divisions of the Department for use by a new attorney general to get “up to speed” on
8 the operations of the Department. Plaintiffs agree that some, and potentially much, of this
9 document may be irrelevant to this litigation. Plaintiffs do not seek production of the portions of
10 the Transition Report that are not reasonably relevant to the DROS Special Account, the DROS
11 fee, or APPS. But because Plaintiffs cannot identify the portions of the Transition Report that are
12 likely irrelevant from the Privilege Log, the Court should order Defendants to produce “sufficient
13 factual information”—i.e., describe the sections of the Transition Report that Defendants contend
14 are irrelevant hereto—to allow Plaintiffs to reasonably determine if such material is in fact
15 irrelevant. (See Code Civ. Proc., § 2031.240, subd. (c)(1).)

16 Several facts strongly suggest some portions of the Transitional Report will provide
17 information very relevant to this case: (1) the rulemaking process aimed at reducing the DROS
18 fee was active when Defendant Harris transitioned into her position as Attorney General, (2) a
19 few months thereafter, the Department sponsored SB 819 so that it could expand the programs
20 that could be funded from the DROS Special Account, and (3) the Department abandoned the
21 rulemaking because SB 819 was enacted. (Decl. with support on various facts.) Because
22 Defendants have failed to show how this information is not relevant, and because Plaintiffs have
23 no objection to legitimate relevancy redactions, Defendants’ relevancy objection fails. (See Code
24 Civ. Proc., § 2031.240(a) [stating that objections can be made based on a part of a single item,
25 implying that the remainder of the item, e.g., a document, would be subject to discovery].)

26 Lawyer-client privilege and attorney work product doctrine objections are also made by
27 Defendants, but they too are unsupported and thus, should be ignored, especially as to Privilege
28 Log items 21 through 23, for which Defendants abandoned their non-official information

1 objections. At the least, the Court should order Defendants to supplement the Privilege Log so
2 that it clearly identifies what sections of the Transition Report actually include communications
3 between an attorney and a client, who Defendants claim to be the attorney and the client in the
4 somewhat unusual context of the Attorney General attempting to rely on the lawyer-client
5 privilege, and a general statement about the substance of the relevant sections. Plaintiffs need this
6 further information to reasonably evaluate if the lawyer-client privilege or the work product
7 doctrine applies to some or all of the relevant portions of the Transition Report. (See Code Civ.
8 Proc., § 2031.240, subd. (c)(1).)

9 Privilege Log items Nos. 21 through 24 include objections based on the official
10 information, deliberative process, and executive privileges, which are all subject to the standard
11 of review found in Evidence Code section 1040. (See *Marylander, supra*, 81 Cal.App.4th at pp.
12 1126-1127 [using the standard set forth in Evidence Code section 1040 to evaluate claims made
13 under the common law privilege known as the executive or deliberative process privilege, and
14 stating that Evidence Code section 1040 “represents the exclusive means by which a public entity
15 may assert a . . . privilege based on the necessity for secrecy”].) Evidence Code section 1040
16 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 (Evid. Code, § 1040(b).)

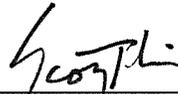
22 The Production Order is on point regarding whether an official information privilege is
23 applicable here. As to “Respondents’ budget and expenditure decisions related to the setting and
24 continuation of the DROS fee[; t]he public clearly has an interest in disclosure of documents
25 which identify the budgetary analyses performed by Respondents to support the amount of the
26 DROS fee.” (Production Order, at 4:1-4.) The accounting documents sought are exactly the type
27 of documents that the “public clearly has in interest in” being disclosed. And when it came to
28

1 weighing the interest in keeping certain relevant documents secret, the Court previously held it
2 could not identify any “public interest in not disclosing records of an analysis the Department is
3 required to perform in order to charge the public a fee.” (*Id.* at 4:11-13.) Under the applicable
4 balancing test, and based on the Court’s previous ruling regarding budgetary documents similar to
5 those at issue here, Defendants’ official information privilege claims should be overruled.
6 (*California First Amendment Coalition, supra*, 67 Cal.App.4th at p. 172.)

7 Because Defendants have failed to raise a viable objection to the relevant request, the
8 Court should order the production of Privilege Log items 21 through 24, with item 24 being
9 produced in a redacted form to obscure irrelevant information, and the production of a revised
10 privilege log that more clearly identifies the material in the Transition Report that is allegedly
11 subject to the lawyer--client privilege or the attorney work product doctrine. (Civ. Proc. Code, §
12 2031.310, subds. (a)(3) and (b)(1).)

13
14 Dated: April 25, 2016

Michel & Associates, P.C.

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16 
17 _____
18 Scott M. Franklin
19 Attorney for Plaintiffs
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28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Christina Sanchez, am employed in the City of Long Beach, Los Angeles County,
5 California. I am over the age of 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 described as

8 **PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL
9 ADDITIONAL RESPONSES TO REQUESTS 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 a true and correct copy

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

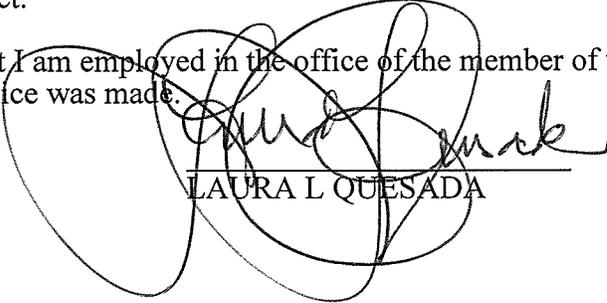
15 Anthony R. Hakl
16 Deputy Attorney General
17 1300 I Street, Suite 125
18 P.O. Box 944255
19 Sacramento, CA 94244-2550
20 *Attorney for Defendants*

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

28 (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the
practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
receipt on the same day in the ordinary course of business. Such envelope was sealed and
placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in
accordance with ordinary business practices.
Executed on April 25, 2016, at Long Beach, California.

(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