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2 **GROSS LAW**

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8 *Counsel for Plaintiffs and
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 **KEVIN MARILLEY; SALVATORE;
14 PAPETTI; SAVIOR PAPETTI**, on behalf
15 of themselves and similarly situated,

16 **Plaintiffs,**

17 **v.**

18 **CHARLTON H. BONHAM**, in his official
19 capacity,

20 **Defendant.**

21 **Case No. 11-2418 (DMR)**

22 **STIPULATION AND [~~PROPOSED~~]
23 ORDER CONCERNING THE
24 AUTHENTICITY OF CERTAIN
25 DOCUMENTS AND QUALIFICATION
26 OF SUCH DOCUMENTS UNDER
27 FEDERAL RULE OF EVIDENCE 803
28 HEARSAY EXCEPTIONS FOR
BUSINESS RECORDS AND PUBLIC
RECORDS AND REPORTS**

29 **STIPULATION AND [~~PROPOSED~~] ORDER CONCERNING THE AUTHENTICITY OF CERTAIN
30 DOCUMENTS AND QUALIFICATION OF SUCH DOCUMENTS UNDER FEDERAL RULE OF
31 EVIDENCE 803 HEARSAY EXCEPTIONS FOR BUSINESS RECORDS AND PUBLIC RECORDS AND
32 REPORTS; Case No. 11-2418**

1 WHEREAS, Plaintiffs have propounded requests for production of documents upon
2 Defendant;

3 WHEREAS, in response, Defendant produced *inter alia* certain Microsoft Excel
4 spreadsheet files containing information compiled by the California Department of Fish and
5 Game concerning persons who have paid nonresident fees challenged in the instant action;

6 WHEREAS, Defendant assigned such files the following Bates numbers: AG00000,
7 AG000290, AG000291, AG000292, AG000293, AG000294, AG000295, AG000296, and
8 AG000297;

9 WHEREAS, the documents identified in the immediately preceding whereas clause are
10 collectively referred to herein as the “Subject Documents”;

11 WHEREAS, it is Plaintiffs’ position that a foundation for the authenticity of the Subject
12 Documents can be established through testimony by Plaintiffs’ counsel concerning production
13 of the Subject Documents by Defendant and their receipt by Plaintiffs in response to Plaintiffs’
14 requests for production of documents and that the Subject Documents are admissible, as non-
15 hearsay or otherwise, and/or would be properly considered by the Court in resolving Plaintiffs’
16 motion for class certification to be filed on January 5, 2012, notwithstanding ultimate resolution
17 of questions going to their admissibility into evidence at trial;

18 WHEREAS, however, Plaintiffs wish to avoid any ambiguity and/or uncertainty in this
19 regard and the associated potential for inefficient dispute between the parties created thereby;
20 and

21 WHEREAS, the parties both desire to avoid the expense and inefficiency of conducting
22 a deposition in order to establish the authenticity of the Subject Documents and their
23 qualification as business records and/or public records and reports under Federal Rules of
24 Evidence 803(6) and 803(8), respectively;

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1 IT IS HEREBY STIPULATED AND AGREED, subject to court approval, by and
2 between the undersigned counsel on behalf of the parties as follows:

3 1. Any and all of the Subject Documents, if submitted by either party in connection
4 with motion practice or identified by either party for admission into evidence at trial, are
5 presumed to be authentic under Federal Rule of Evidence 901. Pursuant to this Stipulation, it is
6 presumed that any of the Subject Documents so submitted are authentic under Federal Rule of
7 Evidence 901, unless a party makes an affirmative showing through timely objection that the
8 submitted document is not the actual document produced. All other objections based on
9 authenticity with respect to the Subject Documents are waived.

10 2. Any and all of the Subject Documents, if submitted by either party in connection
11 with motion practice or identified by either party for admission into evidence at trial, qualify as
12 business records under Federal Rule of Evidence 803(6) and as public records under Federal
13 Rule of Evidence 803(8), without any further showing .

14 Dated: December 28, 2011

Respectfully submitted,

GROSS LAW

17
18 /s/ Stuart G. Gross
19 STUART G. GROSS

20 *Counsel for Plaintiffs and*
21 *Proposed Class*

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Dated: December 28, 2011

KAMALA D. HARRIS
Attorney General of California
ROBERT W. BYRNE
Supervising Deputy Attorney
General

/s/ Cecilia L. Dennis
CECILIA L. DENNIS
Deputy Attorney General

Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED,

Dated: January 3, 2012



