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9 Wheeler Ridge-Maricopa Water Storage District, and Dee Dillon

10 UNITED STATES DISTRICT COURT

11 EASTERN DISTRICT OF CALIFORNIA

12 COALITION FOR A SUSTAINABLE DELTA,
13 BELRIDGE WATER STORAGE DISTRICT,
BERRENDA MESA WATER DISTRICT, LOST
14 HILLS WATER DISTRICT, WHEELER RIDGE-
MARICOPA WATER STORAGE DISTRICT, and
DEE DILLON,

15 Plaintiffs,

16 vs.

17 JOHN McCAMMAN, in his official capacity as
18 Director of the California Department of Fish and
Game,

19 Defendant,

20 CENTRAL DELTA WATER AGENCY, et al.

21 Defendant-Intervenors,

22 CALIFORNIA SPORTFISHING PROTECTION
23 ALLIANCE, et al.,

24 Defendant-Intervenors.

25 AND RELATED CASES.
26
27
28

) Case No: 1:08-CV-00397-OWW-GSA
) (Related to Case Numbers 1:05-cv-OWW-
) GSA and 1:06-cv-00245-OWW-GSA)

) **DECLARATION OF BENJAMIN Z.
) RUBIN IN SUPPORT OF PLAINTIFFS'
) MOTION FOR PARTIAL SUMMARY
) JUDGMENT RE LIABILITY (WINTER
) AND SPRING-RUN SALMON) AND
) STANDING**

) Date: March 22, 2010
) Time: 10:00 a.m.
) Courtroom: 3
) Judge: Hon. Oliver W. Wanger

1 I, Benjamin Z. Rubin, declare as follows:

2 I am an attorney at law, duly licensed to practice in the United States District Court,
3 Eastern District of California, and I am an associate with the law firm of Nossaman LLP, attorneys of
4 record for Plaintiffs Coalition for a Sustainable Delta, Belridge Water Storage District, Berrenda Mesa
5 Water District, Lost Hills Water District, Wheeler Ridge-Maricopa Water Storage District, and Dee
6 Dillon (“Plaintiffs”) in the above-entitled action. I have personal knowledge of the facts stated herein
7 and, if called as a witness, I could testify competently thereto.

8 1. On or about January 29, 2008, Plaintiffs filed this action against the California Fish and
9 Game Commission, the California Department of Fish and Game, John Carlson, Jr., in his official
10 capacity as Executive Director of the California Fish and game Commission, Richard Rogers, in his
11 official capacity as President of the California Fish and Game Commission, Cindy Gustafson, in her
12 official capacity as Vice President of the California Fish and Game Commission, Jim Kellogg, in his
13 official capacity as Member of the California Fish and Game Commission, Michael Sutton, in his
14 official capacity as Member of the California Fish and Game Commission, and John McCamman, in his
15 official capacity as Interim Director of the California Department of Fish and Game (collectively, the
16 “Original Defendants”).

17 2. On March 15, 2008, the Central Delta Water Agency, South Delta Water Agency,
18 Honker Cut Marine, Inc. Rudy Mussi, and Robert Souza (collectively, the “Central Delta Defendants”)
19 filed a Motion to Intervene. Along with their moving papers, the Central Delta Defendants filed four
20 supporting declarations, including the declaration of Rodney Karnofel. All of these declarations testify
21 that the loss of the striped bass sport-fishing “regulations would expose striped bass to the negative
22 impacts of abusive angling practices, leading to population declines, reduced prospects for recovery, and
23 potentially, eradication from the Delta.” Attached hereto as **Exhibit 1**, are true and correct excerpts of
24 Rodney Karnofel’s declaration, which was filed in support of the Central Delta Defendants’ Motion to
25 Intervene.

26 3. On May 8, 2008, the Original Defendants filed a Motion for Judgment on the Pleadings.
27 On July 14, 2008, approximately a week after briefing had been concluded, the Court held a hearing on
28 the Original Defendants’ motion. At this hearing, the Original Defendants admitted that the California

1 Department of Fish and Game, through its Director and subordinate officers, is in charge of enforcing
2 the striped bass sport-fishing regulations. True and correct copies of the relevant portions of the
3 transcript of the July 14, 2008 hearing are attached hereto as **Exhibit 2**.

4 4. On July 23, 2008, the Court granted, with leave to amend, the Original Defendants'
5 Motion for Judgment on the Pleadings. The Court's order provided Plaintiffs with thirty (30) days to
6 file an amended complaint.

7 5. On August 22, 2008, the Plaintiffs timely filed a First Amended Complaint for
8 Declaratory and Injunctive Relief, substituting Defendant John McCamman, former Interim Director of
9 the California Department of Fish and Game, with Defendant Donald Koch, the then acting Director of
10 the California Department of Fish and Game ("Defendant Koch"). This substitution was made pursuant
11 to Federal Rule of Civil Procedure 25(d).

12 6. On September 19, 2008, Defendant Koch filed an Answer to Plaintiffs' First Amended
13 Complaint (Doc. No. 50). Attached hereto as **Exhibit 3**, is a true and correct copy of Defendant Koch's
14 Answer to Plaintiffs' First Amended Complaint.

15 7. On or about September 22, 2008, the Central Delta Defendants filed an Answer to
16 Plaintiffs' First Amended Complaint (Doc No. 51). Attached hereto as **Exhibit 4**, are true and correct
17 excerpts of the Central Delta Defendants' Answer to Plaintiffs' First Amended Complaint.

18 8. On November 5, 2008, the Court issued a scheduling order setting various dates and
19 deadlines. In the scheduling order, the Court noted that the parties had agreed that "[t]he California
20 Department of Fish and Game is responsible for the enforcement of the striped bass sport-fishing
21 regulations." Attached hereto as **Exhibit 5**, are true and correct excerpts of the Court's November 5,
22 2008 Scheduling Order (Doc. No. 55).

23 9. On October 30, 2008, Plaintiffs propounded a First Set of Request for Admission on
24 Defendant Koch. On the same day, Plaintiff Coalition for a Sustainable Delta propounded a First Set of
25 Interrogatories on Defendant Koch. Attached hereto as **Exhibit 6**, is a true and correct copy of the proof
26 of service for the above-described discovery.

27 10. On October 30, 2008, Plaintiffs propounded a First Set of Request for Admission on the
28 Defendant Intervenors California Sportfishing Protection Alliance, California Striped Bass Association,

1 and Northern California Council of the Federation of Flyfishers (collectively, the “CSPA Defendants”).
2 Attached hereto as **Exhibit 6**, is a true and correct copy of the proof of service for the above-described
3 discovery.

4 11. On or about December 30, 2008, the CSPA Defendants served their Response to
5 Plaintiffs’ First Set of Request for Admission. Attached hereto as **Exhibit 7**, are true and correct
6 excerpts of the CSPA Defendants’ Response to Plaintiffs’ First Set of Request for Admission.

7 12. On January 9, 2009, Defendant Koch served his response to Plaintiffs’ First Set of
8 Request for Admission. Attached hereto as **Exhibit 8**, are true and correct excerpts of Defendant
9 Koch’s Response to Plaintiffs’ First Set of Request for Admission. That same day, Defendant Koch also
10 served his response to Plaintiff Coalition for a Sustainable Delta’ First Set of Interrogatories. Attached
11 hereto as **Exhibit 9**, are true and correct excerpts of Defendant Koch’s Response to Plaintiff Coalition
12 for a Sustainable Delta’s First Set of Interrogatories.

13 13. On March 16, 2009, Defendant Koch served a Supplemental Response to Plaintiffs’ First
14 Set of Request for Admission. Attached hereto as **Exhibit 10**, are true and correct excerpts of
15 Defendant Koch’s Supplemental Response to Plaintiffs’ First Set of Request for Admission.

16 14. On February 5, 2009, Plaintiffs propounded a Second Set of Request for Admission on
17 Defendant Donald Koch, in his official capacity as Director of the California Department of Fish and
18 Game. Attached hereto as **Exhibit 11**, is a true and correct copy of the proof of service for the above-
19 described discovery.

20 15. On or about March 16, 2009, Defendant Koch served his Response to Plaintiffs’ Second
21 Set of Request for Admission. Attached hereto as **Exhibit 12**, are true and correct excerpts of
22 Defendant Koch’s Response to Plaintiffs’ Second Set of Request for Admission.

23 16. On March 27, 2009, Defendant Koch propounded a First Set of Interrogatories to
24 Plaintiff Dee Dillon.

25 17. On or about April 22, 2009, Plaintiffs served a Notice of Deposition of DFG Witnesses
26 pursuant to Federal Rule of Civil Procedure 30(b)(6), requiring the Department of Fish and Game
27 (“CDFG”) to designate one or more persons to testify on its behalf on, among other issues, the
28 following: the effect of the Striped Bass Sport-Fishing Regulations (contained in Sections 5.75 and

1 27.85 of Title 14 of the California Code of Regulations) on striped bass populations in the Delta; the
2 effects of CDFG's bag limits, size limits, and gear restrictions on sport-fishing practices and on striped
3 bass populations in the Delta; striped bass predation on the Listed Species (Sacramento River winter-run
4 chinook salmon, Central Valley spring-run chinook salmon, Central Valley steelhead, and delta smelt);
5 changes in the population of striped bass in the Delta; changes in the populations of the Listed Species in
6 the Delta; and CDFG's methods of enforcing the Striped Bass Sport-Fishing Regulation contained in
7 Sections 5.75 and 27.85 of Title 14 of the California Code of Regulations.

8 18. On or about April 23, 2009, because the original notice had specified an incorrect date of
9 deposition, Plaintiffs served a corrected Notice of Deposition of DFG Witnesses. Attached hereto as
10 **Exhibit 13**, is a true and correct copy of the April 23, 2009 corrected Notice of Deposition of DFG
11 Witnesses.

12 19. On May 12-13, 2009, pursuant to the corrected Notice of Deposition of DFG Witnesses,
13 Plaintiffs took the deposition of Marty Gingras, the CDFG's Supervising Biologist for the Bay-Delta
14 Region. The CDFG designated Mr. Gingras to testify on its behalf on, among other issues, the
15 following: the effect of the Striped Bass Sport-Fishing Regulations (contained in Sections 5.75 and
16 27.85 of Title 14 of the California Code of Regulations) on striped bass populations in the Delta; the
17 effects of CDFG's bag limits, size limits, and gear restrictions on sport-fishing practices and on striped
18 bass populations in the Delta; striped bass predation on the Listed Species (Sacramento River winter-run
19 chinook salmon, Central Valley spring-run chinook salmon, Central Valley steelhead, and delta smelt);
20 and changes in the population of striped bass in the Delta.

21 20. On May 13, 2009, pursuant to the corrected Notice of Deposition of CDFG Witnesses,
22 Plaintiffs also took the deposition of Tony Warrington, CDFG's Assistant Chief of Headquarters. The
23 CDFG designated Mr. Warrington to testify on its behalf on CDFG's methods of enforcing the Striped
24 Bass Sport-Fishing Regulation contained in Sections 5.75 and 27.85 of Title 14 of the California Code
25 of Regulations. Attached hereto as **Exhibit 14**, are true and correct excerpts of Mr. Warrington's May
26 13, 2009 deposition transcript.
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1 21. On May 27, 2009, Plaintiff Dee Dillon served his Response to Defendant Donald Koch's
2 Interrogatories, Set One. Attached hereto as **Exhibit 15**, is a true and correct copy of Plaintiff Dee
3 Dillon's Response to Defendant Donald Koch's Interrogatories, Set One.

4 22. On August 3, 2009, Plaintiffs served a Notice of Deposition of CDFG employee Perry
5 Herrgesell and others. Attached hereto as **Exhibit 16**, is a true and correct copy of the Notice of
6 Deposition of CDFG employee Perry Herrgesell and others.

7 23. On August 19, 2009, pursuant to the Notice of Deposition of CDFG employee Perry
8 Herrgesell and others, Plaintiffs took the deposition of Perry Herrgesell, CDFG's Bay-Delta Water
9 Policy Advisor. Attached hereto as **Exhibit 17**, are true and correct excerpts of Mr. Herrgesell's August
10 19, 2009 deposition transcript.

11 24. On October 9, 2009, pursuant to the Court's Scheduling Order, Plaintiffs timely served
12 their Federal Rule of Civil Procedure 26(a)(2) expert disclosures for their two identified experts, Dr.
13 Charles H. Hanson and Dr. David H. Bennett. Attached hereto as **Exhibit 18**, is a true and correct copy
14 of the Expert Report of Dr. Charles H. Hanson, entitled "Striped Bass Predation on Listed Fish within
15 the Bay-Delta Estuary and Tributary Rivers." Attached hereto as **Exhibit 19**, is a true and correct copy
16 of the Expert Report of Dr. David H. Bennett, entitled "Effect of Sport-Fishing Regulations on Striped
17 Bass Population and Predation in the Delta."

18 25. On or about October 30, 2009, Plaintiffs propounded a Second Set of Request for
19 Admission on the Central Delta Defendants. Attached hereto as **Exhibit 20**, is a true and correct copy of
20 the proof of service for the above-described discovery.

21 26. On November 6, 2009, Plaintiffs served a Notice of Deposition of CDFG employee, and
22 identified expert witness, Jason DuBois. Attached hereto as **Exhibit 21**, is a true and correct copy of the
23 Notice of Deposition of Jason DuBois.

24 27. On November 17, 2009, Plaintiffs served a Notice of Deposition of CDFG employee, and
25 identified expert witness, Matthew Nobriga. Attached hereto as **Exhibit 22**, is a true and correct copy of
26 the Notice of Deposition of Matthew Nobriga.

27 28. That same day, Plaintiffs served a Notice of Deposition of the California Department of
28 Fish and Game, continuing the deposition of Mr. Gingras, and noticing the deposition of CDFG

1 witnesses pursuant to Federal Rule of Civil Procedure 30(b)(6), requiring CDFG to designate one or
2 more persons to testify on its behalf on issues related to the cost of enforcing the Striped Bass Sport-
3 Fishing Regulations. However, pursuant to a Stipulation and Order, Plaintiffs rescinded the Notice of
4 Deposition of the California Department of Fish and Game to the extent it required the CDFG to
5 designate an individual to testify on the cost of enforcing the Striped Bass Sport-Fishing Regulations.

6 29. On November 20, 2009, pursuant to the Court's Scheduling Order, Plaintiffs timely
7 served the Rebuttal and Supplemental Expert Report of Dr. Charles H. Hanson. Attached hereto as
8 **Exhibit 23**, is a true and correct copy of the Rebuttal and Supplemental Expert Report of Dr. Charles H.
9 Hanson.

10 30. On December 2, 2009, pursuant to the Notice of Deposition of Jason DuBois, Plaintiffs
11 took the deposition of Jason DuBois, a CDFG employee and identified expert witness. Attached hereto
12 as **Exhibit 24**, are true and correct excerpts of Mr. DuBois' December 2, 2009 deposition transcript.

13 31. On or about December 9, 2009, the Central Delta Defendants served their Response to
14 Plaintiffs' Second Set of Request for Admission. Attached hereto as **Exhibit 25**, are true and correct
15 excerpts of the Central Delta Defendants' Response to Plaintiffs' Second Set of Request for Admission.

16 32. On December 16-17, 2009, pursuant to the Notice of Deposition of Matthew Nobriga,
17 Plaintiffs took the deposition of Matthew Nobriga, a CDFG employee and identified expert witness.
18 Attached hereto as **Exhibit 26**, are true and correct excerpts of Mr. Nobriga's December 16, 2009
19 deposition transcript. Attached hereto as **Exhibit 27**, are true and correct excerpts of Mr. Nobriga's
20 December 17, 2009 deposition transcript.

21 33. On December 17, 2009, Plaintiffs served a Notice of Deposition of the California
22 Department of Fish and Game re Bioenergetics Estimates, pursuant to Federal Rule of Civil Procedure
23 30(b)(6), requiring the CDFG to designate one or more persons to testify on its behalf on the following:
24 how the CDFG derived the 6.8% bioenergetics estimate of striped bass consumption of winter-run
25 chinook salmon; the assumptions, data, and calculations supporting CDFG's 6.8% bioenergetics
26 predation estimate described above; why CDFG did not publish the higher bioenergetics predation
27 estimates that CDFG calculated in 1996 for striped bass consumption of winter-run chinook salmon,
28 which averaged approximately 30% per year; and why the CDFG failed to produce until December 10,

1 2009, over 60 documents responsive to Plaintiffs' First Set of Request for Production, served on October
2 30, 2009, relating to the National Marine Fisheries Service's criticism of CDFG's underestimates of
3 striped bass predation.

4 34. However, because the CDFG designated Mr. Gingras to testify on all of the issued
5 identified above, the parties agreed to modify the deposition date set in the Notice of Deposition of the
6 California Department of Fish and Game re Bioenergetics Estimates so that it coincided with the date
7 already scheduled for Plaintiffs' continued deposition of Mr. Gingras. Accordingly, on December 21,
8 2009, Plaintiffs sent a Revised Notice of Deposition of the California Department of Fish and Game,
9 pursuant to Federal Rule of Civil Procedure 30(b)(6), requiring CDFG's designee Marty Gingras to
10 testify on its behalf on, among other issues, the following: the effect of the Striped Bass Sport-Fishing
11 Regulations (contained in Sections 5.75 and 27.85 of Title 14 of the California Code of Regulations) on
12 striped bass populations in the Delta; the effects of CDFG's bag limits, size limits, and gear restrictions
13 on sport-fishing practices and on striped bass populations in the Delta; striped bass predation on the
14 Listed Species (Sacramento River winter-run chinook salmon, Central Valley spring-run chinook
15 salmon, Central Valley steelhead, and delta smelt); changes in the population of striped bass in the
16 Delta; how the CDFG derived the 6.8% bioenergetics estimate of striped bass consumption of winter-
17 run chinook salmon; the assumptions, data, and calculations supporting CDFG's 6.8% bioenergetics
18 predation estimate described above; why CDFG did not publish the higher bioenergetics predation
19 estimates that CDFG calculated in 1996 for striped bass consumption of winter-run chinook salmon,
20 which averaged approximately 30% per year; and why the CDFG failed to produce until December 10,
21 2009, over 60 documents responsive to Plaintiffs' First Set of Request for Production, served on October
22 30, 2009, relating to the National Marine Fisheries Service's criticism of CDFG's underestimates of
23 striped bass predation. Attached hereto as **Exhibit 28**, is a true and correct copy of the Revised Notice
24 of Deposition of the California Department of Fish and Game.

25 35. On January 14, 2010 and February 3, 2010, pursuant to the Revised Notice of Deposition
26 of the California Department of Fish and Game, Plaintiffs continued the deposition of Marty Gingras,
27 the CDFG's designee to testify on its behalf on, among other issues, the following: the effect of the
28 Striped Bass Sport-Fishing Regulations (contained in Sections 5.75 and 27.85 of Title 14 of the

1 California Code of Regulations) on striped bass populations in the Delta; the effects of CDFG's bag
2 limits, size limits, and gear restrictions on sport-fishing practices and on striped bass populations in the
3 Delta; striped bass predation on the Listed Species (Sacramento River winter-run chinook salmon,
4 Central Valley spring-run chinook salmon, Central Valley steelhead, and delta smelt); and changes in
5 the population of striped bass in the Delta. Attached hereto as **Exhibit 29**, are true and correct excerpts
6 of Mr. Gingras' January 14, 2010 deposition transcript. Attached hereto as **Exhibit 30**, are true and
7 correct excerpts of Mr. Gingras' February 3, 2010 deposition transcript.

8 36. Over the course of this litigation, Plaintiffs have propounded eight Request for
9 Production on Defendant Koch, or his current successor, acting Director of the CDFG John McCamman.
10 Defendant Koch and Defendant McCamman have produced the following documents, among others, in
11 response to Plaintiffs' eight Requests for Production:

- 12 (a) *Draft Striped Bass Management Program Environmental Impact Report* (May
13 1998), true and correct excerpts of which are attached hereto as **Exhibit 31**.
- 14 (b) Memorandum from Lisa Holsinger & Steve Lindley, National Marine Fisheries
15 Service, to Don Stevens, CDFG (Sept. 1996), true and correct excerpts of which
16 are attached hereto as **Exhibit 32**.
- 17 (c) Memorandum from Alec. D. MacCall, National Marine Fisheries Service, to Lisa
18 Holsinger, National Marine Fisheries Service (Apr. 1996), true and correct
19 excerpts of which are attached hereto as **Exhibit 33**.
- 20 (d) Letter from Michael Spear, Regional Director of U.S. Fish and Wildlife Service,
21 to Ralph Draudson, President of California Striped Bass Association (Sept. 1995),
22 a true and correct copy of which is attached hereto as **Exhibit 34**.
- 23 (e) Email from Marty Gingras, CDFG Rule 30(b)(6) Designee, to Neial Manji et al.,
24 CDFG Employees (Feb. 2007) a true and correct copy of which is attached hereto
25 as **Exhibit 35**.
- 26 (f) *Shallow-Water Piscivore-Prey Dynamics in California Sacramento-San Joaquin*
27 *Delta*, San Francisco Estuary and Watershed Science (May 2007) authored by
28

1 Matthew L. Nobriga & Frederick Feyrer, a true and correct copy of which is
2 attached hereto as **Exhibit 36**.

3 (g) *A Strategic Framework for the Expenditure of Striped Bass Stamp Revenues and*
4 *Mitigation Funds for the Restoration and Maintenance of the San Francisco Bay*
5 *– Delta Striped Bass Population* (Draft Oct. 2002) authored by CDFG, true and
6 correct excerpts of which are attached hereto as **Exhibit 37**.

7 (h) *Draft Conservation Plan for the California Department of Fish and Game Striped*
8 *Bass Management Program Prepared as Part of an Application for Incidental*
9 *Take Permits Pursuant to Section (10)(a)(1)(B) of the Endangered Species Act*
10 (May 1998), authored by CDFG, true and correct excerpts of which are attached
11 hereto as **Exhibit 38**.

12 (i) *Biological Assessment for the California Department of Fish and Game Striped*
13 *Bass Management Program June, 1995 – June, 1996* (March 1995), authored by
14 CDFG, true and correct excerpts of which are attached hereto as **Exhibit 39**.

15 (j) *Endangered Species Act Section 7 Consultation – Biological Opinion: For*
16 *Implementation of the California Department of Fish and Game Striped Bass*
17 *Management Program in 1995 and 1996* (July 1995), true and correct excerpts of
18 which are attached hereto as **Exhibit 40**. The Biological Opinion explains the
19 Bureau of Reclamation “submitted a biological assessment for the program
20 prepared by CDFG entitled: ‘The California Department of Fish and Game
21 Striped Bass Management Program, June 1995-June 1996’.”

22 (k) Public Striped Bass Stamp Committee Meeting Minutes for October 5, 1999, true
23 and correct excerpts of which are attached hereto as **Exhibit 41**.

24 (l) Email from Marty Gingras, CDFG’s Rule 30(b)(6) Designee, to Chuck Armor,
25 CDFG Employee (Feb. 2007), a true and correct copy of which is attached hereto
26 as **Exhibit 42**.

1 (m) Email from Marty Gingras, CDFG's Rule 30(b)(6) Designee, to Geoff Malloway,
2 Central Coast Fly Fishing (Apr. 2009), a true and correct copy of which is
3 attached hereto as **Exhibit 43**.

4 (n) Memorandum from Glenn Delisle, CDFG Employee, to Steve Taylor, CDFG
5 Employee (Sept. 1993), a true and correct copy of which is attached hereto as
6 **Exhibit 44**.

7 37. Attached hereto as **Exhibit 45** is a true and correct excerpt of the *Public Proposed*
8 *Changes to Marine Sport Fishing Regulations for the 2006 Triennial Process, and Department*
9 *Recommendations for Acceptance or Denial of those Changes* (Sept. 2006), which I downloaded and
10 copied from the website of the California Fish and Game Commission. This document is available on
11 the Commission's website at <http://www.fgc.ca.gov/regulations/new/2006/dfganalysisocean.pdf>.

12 38. Attached hereto as **Exhibit 46**, are true and correct excerpts of the National Marine
13 Fisheries Service's *Public Draft Recovery Plan for the Evolutionary Significant Units of Sacramento*
14 *River Winter-Run Chinook Salmon and Central Valley Spring-Run Chinook Salmon and the Distinct*
15 *Population Segment of Central Valley Steelhead* (Oct. 2009), which I downloaded and copied from the
16 website of the National Marine Fisheries Service. This document is available on the Service's website
17 at <http://swr.nmfs.noaa.gov/recovery/centralvalleyplan.htm>.

18 39. Attached hereto as **Exhibit 47**, are true and correct excerpts of *Listen to the River: An*
19 *Independent Review of the CVPIA Fisheries Program* (Dec. 2008), which I downloaded and copied.
20 This document is available at http://www.cvpia-independentreview.com/FisheriesReport12_12_08.pdf.

21 40. Attached hereto as **Exhibit 48**, is a true and correct copy of *Modeling the effect of striped*
22 *bass (*Morone saxatilis*) on the population viability of Sacramento River winter-run chinook salmon*
23 *(*Oncorhynchus tshawutscha*)*, Fishery Bulletin 101:321-331 (2003), which I downloaded and copied
24 from the website of the National Marine Fisheries Service. This document is available at
25 <http://fishbull.noaa.gov/1012/10lindle.pdf>.

26 41. Attached hereto as **Exhibit 49**, is a true and correct copy of a document that I
27 downloaded and copied from the website of the California Sportfishing Protection Alliance on February
28 17, 2010. It purports to be an announcement regarding the defense of this action entitled "CSPA's Mike

1 Jackson ready to defend the beleaguered Delta Striped Bass in federal court on July 14.” It claims, inter
2 alia, that elimination of the striped bass regulations would be the “death knell” for the striped bass.

3 42. Attached hereto as **Exhibit 50**, is a true and correct copy of the *Regulatory Conservation*
4 *Measures* handout which was distributed during the June 16, 2009 meeting of the Bay Delta
5 Conservation Plan Other Stressors Conservation Measures Working Group, which is co-chaired by
6 Defendant John McCamman. I downloaded and copied this document from the website of the Bay
7 Delta Conservation Plan. This document is available at [http://baydeltaconservationplan.com/](http://baydeltaconservationplan.com/WorkGroupDocumentLibrary/6.16.09_Other_Stressors_HO5_Regulatory_CMs.pdf)
8 [WorkGroupDocumentLibrary/6.16.09_Other_Stressors_HO5_Regulatory_CMs.pdf](http://baydeltaconservationplan.com/WorkGroupDocumentLibrary/6.16.09_Other_Stressors_HO5_Regulatory_CMs.pdf).

9 I declare under penalty of perjury under the laws of the State of California and United
10 States of America that the foregoing is true and correct.

11 Executed this 20th day of February, at Irvine, California, United States.

12
13 _____
14 /s/

15 Benjamin Z. Rubin
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