

1 CHRISTOPHER J. CARR (CA SBN 184076)

2 chris.carr@bakerbotts.com

3 KEVIN M. SADLER (CA SBN 283765)

4 kevin.sadler@bakerbotts.com

5 KEVIN E. VICKERS (CA SBN 310190)

6 kevin.vickers@bakerbotts.com

7 BAKER BOTTS L.L.P.

8 101 California Street, Suite 3600

9 San Francisco, California 94111

10 Telephone: (415) 291-6200

11 Facsimile: (415) 291-6300

12
13 *Attorneys for Mark Sanders and Westpoint Harbor, LLC*

14
15
16 SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

17
18 IN THE MATTER OF:

19
20 VIOLATION REPORT/COMPLAINT FOR THE
21 IMPOSITION OF ADMINISTRATIVE CIVIL
22 PENALTIES No. ER2010.013

23
24 PROPOSED CEASE AND DESIST AND CIVIL
25 PENALTY ORDER No. CDO 2017.04

26
27 MARK SANDERS AND
28 WESTPOINT HARBOR, LLC
29

RESPONDENTS' OBJECTIONS TO
DECLARATION OF MATTHEW LEDDY

30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 Respondents Mark Sanders and Westpoint Harbor, LLC (“Respondents”) object to the
2 Declaration of Matthew Leddy (“Leddy Declaration”). The Leddy Declaration is being used to
3 introduce new purported evidence that should have been included with the Violation
4 Report/Complaint for the Imposition of Administrative Civil Penalties (Enforcement
5 Investigation No. ER2010.013) (“VR/C”), and that Respondents should have had an opportunity
6 to address in their Statement of Defense. Instead, the Leddy Declaration has been submitted less
7 than two weeks before the Enforcement Hearing, and improperly offers factual claims standing
8 on their own as well as annotated exhibits allegedly supporting the same. Under BCDC’s own
9 regulations, the entirety of the Leddy Declaration cannot be used as evidence to support any
10 factual findings or any enforcement decision. Furthermore, as detailed in the specific objections
11 below, many of the factual claims in the Leddy Declaration are inadmissible statements due to
12 improper opinion, speculative assertions, and lack of personal knowledge.

13 Declarants request that the Enforcement Committee strike the entire Declaration of
14 Matthew Leddy, or in the alternative, strike factual claims improperly contained in the
15 declaration and exclude statements that are inadmissible under the Evidence Code.

16 **General Objection to the Entire Leddy Declaration**

17 Respondents object to the entirety of the Leddy Declaration as improper under BCDC’s
18 own regulations regarding hearsay evidence and the introduction of new evidence. The
19 declaration contains much alleged evidence being offered to support factual findings in of itself,
20 including but not limited to: the alleged absence of buoys and signage in Westpoint Slough
21 (Leddy Decl., ¶¶ 7-29, 46-56); the alleged absence of information signs at Westpoint Marina
22 (Leddy Decl., ¶¶ 30, 31); the alleged commercial ferry operation in Westpoint Slough and its
23 effects (Leddy Decl., ¶¶ 33-35); the alleged absence of fencing along Westpoint Marina and its

1 effects (Leddy Decl., ¶¶ 37-40); the alleged absence of visual barriers to the Cargill salt pond and
2 its effects (Leddy Decl., ¶¶ 41-42); and the alleged signs prohibiting public access (Leddy Decl.,
3 ¶¶ 43-45). In addition, the declaration includes what amounts to be newly created trial exhibits
4 containing annotations from the Declarant, such as annotations about fencing along Westpoint
5 Martina (exhibits M and N), annotations of alleged disturbance to the Cargill salt pond (Exhibits
6 Q and R), and annotations of alleged locations of signs and buoys in Westpoint Slough as well as
7 a chart of Declarant's notes and comments about the same (Exhibit EE).

8 The introduction of hearsay evidence offered to support factual findings in of itself is
9 explicitly barred by BCDC's procedural rules at this stage. Section 11329(b) of Title 14 of the
10 California Code of Regulations states: "Hearsay evidence may be used for the purpose of
11 supplementing or explaining other evidence but **shall not be sufficient in itself to support a**
12 **finding** unless it would be admissible over objection in a civil action or unless it is in the form of
13 a declaration under penalty of perjury or in the form of another document **referred to in a**
14 **violation report or complaint for the imposition of civil penalties** and the Declarant or author
15 of the other document is subject to cross-examination as provided in Sections 11321, 11322, and
16 11327." Cal. Code Regs. tit. 14, § 11329(b). In addition, Section 11321(b) requires: "The
17 violation report shall refer to all documents on which the staff relies to provide a prima facie
18 case." Cal. Code Regs. tit. 14, § 11321(b).

19 Here, the Leddy Declaration was never "referred to in a violation report or complaint for
20 the imposition of civil penalties"—indeed, at the time the VR/C was issued, the Leddy
21 Declaration did not exist. Cal. Code Regs. tit. 14, § 11329(b). Instead, the declaration was
22 submitted not only *more than three months after the VR/C was mailed*, but after Respondents had
23 already filed their Statement of Defense. Because the Leddy Declaration was not submitted in

1 compliance with proper procedures, the California Code of Regulations mandate that the
2 declaration is hearsay evidence that “shall not be sufficient in itself to support a finding” and
3 therefore cannot be used as it is here to serve as the sole evidence of several factual claims. *Id.* In
4 addition, BCDC staff cannot rely on the Leddy Declaration in providing a prima facie case. Cal.
5 Code Regs. tit. 14, § 11321(b).

6 “A public entity has a ministerial duty to comply with its own rules and regulations
7 where they are valid and unambiguous.” *Galzinski v. Somers*, 2 Cal. App. 5th 1164, 1171 (Cal.
8 Ct. App. 2016); *see also Gregory v. State Bd. of Control*, 73 Cal. App. 4th 584, 595 (1999)
9 (including duties codified in the California Code of Regulations). A duty is ministerial when
10 there is a clearly defined rule. *Redwood Coast Watersheds All. v. State Bd. of Forestry & Fire*
11 *Prot.*, 70 Cal. App. 4th 962, 970 (1999). As discussed above, Section 11329(b) and Section
12 11321(b) are valid, unambiguous, and clearly defined rules that do not allow hearsay evidence
13 such as the Leddy Declaration to be the sole evidence used to support a finding of fact when the
14 declaration was never referred to in the VR/C. Respondents therefore request the Enforcement
15 Committee strike the Leddy Declaration in its entirety.

16 **Evidentiary Objections to Leddy Declaration**

17 In the alternative, Respondents submit the following evidentiary objections to the Leddy
18 Declaration.

19 **Objection Number 1**

20 **Declaration Text:** “From the Pacific Shores Center public access walkway, adjacent to
21 Westpoint Marina, I have observed, and taken photos of, Westpoint Slough, inter alia, on the
22 dates listed below:

23 August 3, 2012 - See attached Photo A;

1 July 12, 2013 - See attached Photos B1 and B2;

2 July 17, 2014 - See attached Photos C1 and C2....” (Leddy Decl., ¶ 9.)

3 Grounds for Objection: Irrelevant (Evid. Code, § 350); barred by laches. *See Brown v.*
4 *State Pers. Bd.*, 166 Cal. App. 3d 1151, (Ct. App. 1985). The photograph exhibits and text
5 describing the exhibits are irrelevant because under the doctrine of laches, penalties cannot be
6 assessed for any non-compliance allegedly occurring more than three years prior to the date on
7 which the VR/C was mailed. Thus, evidence of any alleged non-compliance occurring before
8 July 24, 2014 is irrelevant. Photograph exhibits A, B1, B2, C1, and C2 were all taken prior to
9 July 24, 2014 and therefore do not constitute relevant evidence.

10 Objection Number 2

11 Declaration Text: “Photographs A through G4 are copies of the same photographs that
12 were submitted to BCDC on my behalf on March 10, 2017, and inform my opinion about the
13 absence of buoys and required signage in Westpoint Slough.” (Leddy Decl., ¶ 10.)

14 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
15 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
16 §§ 800, 803). The statement is an improper opinion because the referenced photos cannot
17 reasonably be expected to provide a complete and accurate view of buoys and signage. Declarant
18 has not established that he has personal knowledge of all the buoys and signage in Westpoint
19 Slough, and therefore the statement lacks foundation and is speculative.

20 Objection Number 3

21 Declaration Text: “I took Photo A on August 3, 2012, at 10: 18 a.m. The photo was taken
22 from the Pacific Shores Center looking towards the Westpoint Slough confluence with Redwood
23 Creek. No buoy system identifying a ‘No Wake’ speed zone or delineating the center of the

1 channel were visible in the Slough. A true and correct copy of that photograph is attached hereto
2 as Exhibit A.” (Leddy Decl., ¶ 11.)

3 Grounds for Objection: Irrelevant (Evid. Code, § 350); barred by laches. *See Brown v.*
4 *State Pers. Bd.*, 166 Cal. App. 3d 1151, (Ct. App. 1985). The statement and accompanying
5 exhibit are irrelevant because under the doctrine of laches, penalties cannot be assessed for any
6 non-compliance allegedly occurring more than three years prior to the date on which the VR/C
7 was mailed. Thus, evidence of any alleged non-compliance occurring before July 24, 2014 is
8 irrelevant.

9 Objection Number 4

10 Declaration Text: “I took Photo B1 on July 12, 2013, at 1:24 p.m. The photo was taken
11 from the Pacific Shores Center looking towards the Westpoint Slough confluence with Redwood
12 Creek. No buoy system identifying a ‘No Wake’ speed zone or delineating the center of the
13 channel were visible in the Slough. A true and correct copy of that photograph is attached hereto
14 as Exhibit B1.” (Leddy Decl., ¶ 12.)

15 Grounds for Objection: Irrelevant (Evid. Code, § 350); barred by laches. *See Brown v.*
16 *State Pers. Bd.*, 166 Cal. App. 3d 1151, (Ct. App. 1985). The statement and accompanying
17 exhibit are irrelevant because under the doctrine of laches, penalties cannot be assessed for any
18 non-compliance allegedly occurring more than three years prior to the date on which the VR/C
19 was mailed. Thus, evidence of any alleged non-compliance occurring before July 24, 2014 is
20 irrelevant.

21 Objection Number 5

22 Declaration Text: “I took Photo B2 on July 12, 2013, at 1:27 p.m. The photo was taken
23 from the Pacific Shores Center. The photo is of Westpoint Slough looking towards the entrance

1 to Westpoint Marina. No buoy system identifying a ‘No Wake’ speed zone or delineating the
2 center of the channel were visible in the Slough. A true and correct copy of that photograph is
3 attached hereto as Exhibit B2.” (Leddy Decl., ¶ 13.)

4 Grounds for Objection: Irrelevant (Evid. Code, § 350); barred by laches. *See Brown v.*
5 *State Pers. Bd.*, 166 Cal. App. 3d 1151, (Ct. App. 1985). The statement and accompanying
6 exhibit are irrelevant because under the doctrine of laches, penalties cannot be assessed for any
7 non-compliance allegedly occurring more than three years prior to the date on which the VR/C
8 was mailed. Thus, evidence of any alleged non-compliance occurring before July 24, 2014 is
9 irrelevant.

10 Objection Number 6

11 Declaration Text: “I took Photo C1 on July 17, 2014, at 12:20 p.m. The photo was taken
12 from the Pacific Shores Center. The photo is of Westpoint Slough looking towards confluence
13 with Redwood Creek. No buoy system identifying a ‘No Wake’ speed zone or delineating the
14 center of the channel were visible in the Slough. A true and correct copy of that photograph is
15 attached hereto as Exhibit C1.” (Leddy Decl., ¶ 14.)

16 Grounds for Objection: Irrelevant (Evid. Code, § 350); barred by laches. *See Brown v.*
17 *State Pers. Bd.*, 166 Cal. App. 3d 1151, (Ct. App. 1985). The statement and accompanying
18 exhibit are irrelevant because under the doctrine of laches, penalties cannot be assessed for any
19 non-compliance allegedly occurring more than three years prior to the date on which the VR/C
20 was mailed. Thus, evidence of any alleged non-compliance occurring before July 24, 2014 is
21 irrelevant.

1 Objection Number 7

2 Declaration Text: "I took Photo C2 on July 17, 2014, at 12:20 p.m. The photo was taken
3 from the Pacific Shores Center. The photo is of Westpoint Slough looking towards the entrance
4 to Westpoint Marina. No buoy system identifying a 'No Wake' speed zone or delineating the
5 center of the channel were visible in the Slough. A true and correct copy of that photograph is
6 attached hereto as Exhibit C2." (Leddy Decl., ¶ 15.)

7 Grounds for Objection: Irrelevant (Evid. Code, § 350); barred by laches. *See Brown v.*
8 *State Pers. Bd.*, 166 Cal. App. 3d 1151, (Ct. App. 1985). The statement and accompanying
9 exhibit are irrelevant because under the doctrine of laches, penalties cannot be assessed for any
10 non-compliance allegedly occurring more than three years prior to the date on which the VR/C
11 was mailed. Thus, evidence of any alleged non-compliance occurring before July 24, 2014 is
12 irrelevant.

13 Objection Number 8

14 Declaration Text: "I looked up 101 SURF SPORTS on the internet. In the website photos
15 of their business operations at Westpoint Marina, I could see no visible signs on the dock
16 advising customers of the sensitive nature of Greco Island area or access restrictions on Greco
17 Island and other wetlands in the Refuge." (Leddy Decl., ¶ 31.)

18 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
19 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
20 §§ 800, 803); hearsay (Evid. Code, § 1200); lack of authentication (Evid. Code, § 1401).
21 Declarant does not establish that he has personal knowledge of signage and access restrictions,
22 and therefore the statement lacks foundation and is speculative. The statement about the alleged
23 website and its photographs is also hearsay because it is an out of court statement submitted for

1 the truth of the matter asserted regarding signage and access restrictions. Information from the
2 alleged website and its photographs has not been verified or authenticated. In addition, the
3 statement is an improper opinion because any alleged photographs cannot reasonably be
4 expected to provide a complete and accurate view of signage and access restrictions at Westpoint
5 Marina.

6 Objection Number 9

7 Declaration Text: “I became aware of commercial ferries operating in Westpoint Slough
8 around February 2016 as the result of several news stories at that time.” (Leddy Decl., ¶ 32.)

9 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
10 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); hearsay (Evid. Code, § 1200);
11 lack of authentication (Evid. Code, § 1401). Declarant does not establish that he has personal
12 knowledge of the alleged commercial ferries operating in Westpoint Slough around February
13 2016, and therefore the statement lacks foundation and is speculative. The statement about
14 alleged news stories is also hearsay because it is an out of court statement submitted for the truth
15 of the matter asserted. In addition, information from the alleged news stories has not been
16 verified or authenticated.

17 Objection Number 10

18 Declaration Text: “On June 6, 2016 at around 9 a.m., I observed a PROP catamaran ferry
19 operating in Westpoint Slough. I was on the public walkway at the Pacific Shores Center
20 property adjacent to Westpoint Marina when I saw the ferry. Based on my kayaking experience
21 and observations of boats on a regular basis, I believe this ferry was traveling at a high speed
22 (which I estimate at greater than 10 mph), and generating a substantial wake en route to
23 Westpoint Marina.” (Leddy Decl., ¶ 33.)

1 Objection Number 12

2 Declaration Text: “Based on reading articles about the effects of high speed ferries,
3 including articles printed by the nearby Redwood City Bair Island Aquatic Center website, I am
4 concerned that small boats and marine-dependent wildlife risk injury both from direct contact
5 with such high speed ferries. I am also concerned that the wakes caused by such ferries can alter
6 habitat, including erosional damage to slough mudflats and Greco Island which is part of the Don
7 Edwards SF Bay National wildlife Refuge.” (Leddy Decl., ¶ 35.)

8 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
9 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
10 §§ 800, 803); hearsay (Evid. Code, § 1200); lack of authentication (Evid. Code, § 1401). The
11 statement is an improper opinion because Declarant is not qualified as an expert on the effects of
12 high speed ferries or their wakes. Declarant has not established that he has personal knowledge
13 of the effects of high speed ferries or their wakes, and therefore the statement lacks foundation
14 and is speculative. The statement about the alleged articles is also hearsay because it is an out of
15 court statement submitted for the truth of the matter asserted. In addition, information from the
16 alleged articles has not been verified or authenticated.

17 Objection Number 13

18 Declaration Text: “My concerns about risks to the public and wildlife resulting from this
19 Westpoint Marina ferry activity is only exacerbated by the absence of buoys delineating the
20 center of the Westpoint channel and a ‘no wake’ zone.” (Leddy Decl., ¶ 36.)

21 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
22 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
23 §§ 800, 803). The statement is an improper opinion because Declarant is not qualified as an

1 expert on the effects of high speed ferries or their wakes. Declarant has not established that he
2 has personal knowledge of the effects of high speed ferries or their wakes, and therefore the
3 statement lacks foundation and is speculative.

4 Objection Number 14

5 Declaration Text: “On January 18, 2014, while looking for roosting shorebirds in the
6 Cargill salt pond adjacent to the south side of Westpoint Marina, I observed and photographed
7 three people walking out on the Cargill pond. I observed the people subsequently return to the
8 Westpoint Marina. I was at a labeled public parking space at the Westpoint Marina, looking for
9 birds, when I observed the people walking out on the Cargill pond. True and correct copies of the
10 photographs I took on January 18, 2014 of people on the Cargill pond are attached hereto as
11 Exhibits J and K.” (Leddy Decl., ¶ 37.)

12 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
13 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702). Declarant has not established
14 that he has personal knowledge of the identity of these three people, including whether they were
15 merely Cargill employees, and therefore the statement lacks foundation and is speculative.

16 Objection Number 15

17 Declaration Text: “Based on this visit and my other observations at Westpoint Marina, it
18 is my opinion that fencing along the southern boundary of the Westpoint Marina has never been
19 installed.” (Leddy Decl., ¶ 38.)

20 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
21 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
22 §§ 800, 803). Declarant has not established that he has personal knowledge of the fencing along
23 the southern boundary of the Westpoint Marina, especially if he is basing this assumption on the

1 fact that he observed three unknown individuals on the Cargill pond who may or may not have
2 been Cargill employees. The statement therefore lacks foundation and is speculative. The
3 statement is also an improper opinion because it is not rationally based on the perception of the
4 Declarant.

5 Objection Number 16

6 Declaration Text: “From my kayak in Westpoint Slough, I took a picture of the east side
7 of the Westpoint Marina with my cellphone. My cellphone notes GPS coordinates and embeds
8 these coordinates into the photo. I know the geographic location was 37°30’38.48”N, 122°1
9 1’21.04”W 37, and the time was 11:04 a.m. I enlarged, divided and cropped the photo into two
10 photos (Exhibits M and N) in order to show detail of the fencing along the east side of Westpoint
11 Marina. I observed fencing in some areas and have inserted the locations of fencing observed in
12 Exhibit M. I did not observe fencing in other areas and have inserted the locations where fencing
13 was absent in Exhibit N. True and correct copies of that photograph are attached hereto as
14 Exhibits M and N.” (Leddy Decl., ¶ 39.)

15 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
16 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
17 §§ 800, 803). The statement regarding geographic location is an improper opinion because the
18 Declarant is not qualified as an expert on GPS coordinates and was apparently relying on his
19 phone, the accuracy of which has not been authenticated or verified. The statement therefore also
20 lacks foundation and is speculative. In addition, Declarant has not established that he has
21 personal knowledge of the required locations for fencing on the eastside of the Westpoint
22 Marina. Therefore, the annotations inserted on the photograph exhibits are not based on personal
23 knowledge, lack foundation, are speculative, and constitute improper opinion.

1 Objection Number 17

2 Declaration Text: “Based on my observations, it is my opinion that Westpoint Marina has
3 never installed visual barriers between active Westpoint Marina areas and the adjacent salt pond.
4 Based on my observations, it is also my opinion that the failure to install such visual barriers
5 results in disturbance to waterbirds using the salt pond.” (Leddy Decl., ¶ 41.)

6 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
7 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
8 §§ 800, 803). In regards to the statement about visual barriers, Declarant has not established that
9 he has personal knowledge of the alleged lack of visual barriers, especially if he is basing this
10 assumption on the fact that he observed an unknown individual at the location a single time who
11 may or may not have been a Cargill employee. The statement therefore lacks foundation and is
12 speculative. The statement is also an improper opinion because it is not rationally based on the
13 perception of the Declarant. In regards to the statement about waterbirds, Declarant has not
14 established that he has personal knowledge that the alleged lack of visual barriers results in
15 disturbance to waterbirds. The statement therefore lacks foundation and is speculative. The
16 statement is also an improper opinion because it is not based on the perception of the Declarant.

17 Objection Number 18

18 Declaration Text: “I observed a person exit from their automobile in the Westpoint
19 Marina parking lot, and in the seconds that followed the birds flushed from their roost. I
20 observed all the godwits and willits, and about half of the stilts completely flush from their roost
21 at waters edge next to the Westpoint Marina parking lot and fly out over the salt pond levee
22 towards First Slough. True and correct copy of the photographs I took of this event on February
23 11, 2017 are attached hereto as Exhibits P, Q, R and S. In photographs Q and R, I have circled in

1 red the location of the person exiting their automobile that I mention above.” (Leddy Decl., ¶
2 42.)

3 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
4 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
5 §§ 800, 803). Declarant has not established that he has personal knowledge of the identity of this
6 individual, including whether he or she was merely a Cargill employee, and therefore the
7 statement lacks foundation and is speculative. Declarant has also not established that he has
8 personal knowledge of the reason that the birds allegedly took flight, including whether the flight
9 could have been triggered by any number of other variables aside from the presence of the
10 individual, and therefore the statement lacks foundation and is speculative. For the same reasons,
11 the annotations inserted on the photograph exhibits are not based on personal knowledge, lack
12 foundation, are speculative, and constitute improper opinion.

13 Objection Number 19

14 Declaration Text: “On August 14, 2012, I sent an email to Adrienne Klein at BCDC
15 regarding signs and a barrier denying public access to Westpoint Marina. I have reviewed
16 Document No. 45 in the Administrative Record for this matter. Document No. 45 is a true and
17 correct copy of my August 14, 2012 email to Adrienne Klein at BCDC.” (Leddy Decl., ¶ 43.)

18 Grounds for Objection: Cal. Code Regs. tit. 14, §§ 11329(b), 11321(b). Under BCDC’s
19 own regulations, any alleged evidence from this declaration “shall not be sufficient in itself to
20 support a finding” such as the authenticity of documents in the Administrative Record, nor can
21 alleged evidence from this declaration be relied on by BCDC staff to establish a prima facie case.

1 observation locations and summarizing my observations is attached hereto as Exhibit EE.”
2 (Leddy Decl., ¶ 47.)

3 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
4 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
5 §§ 800, 803). The accompanying exhibit includes annotations of alleged locations of
6 photographs as well as a chart of Declarant's notes and comments about signs and buoys. The
7 Declarant is not qualified as an expert on GPS coordinates and was apparently relying on his
8 phone to calculate geographic locations for his annotations and notes, the accuracy of which has
9 not been authenticated or verified. Therefore, the statement and the accompanying exhibit are not
10 based on personal knowledge, lack foundation, are speculative, and constitute improper opinion.
11 Declarant has also not established that he has personal knowledge of the required locations for
12 signs and buoys in Westpoint Slough, and therefore the statement and accompanying exhibit lack
13 foundation, are speculative, and constitute improper opinion.

14 Objection Number 22

15 Declaration Text: “On April 9, 2017, I observed no signs on Greco Island at locations 1
16 through inclusive, nor at locations 17, 19 or 20. Other than the signs and buoys photographed
17 and described below, I observed found no other signs or buoys from the confluence of Westpoint
18 Slough and First Slough to the confluence of Westpoint Slough and Redwood Creek, nor on
19 Redwood Creek towards San Francisco Bay proper.” (Leddy Decl., ¶ 48.)

20 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
21 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
22 §§ 800, 803). The statement and accompanying exhibit, including annotations of alleged
23 locations of the photographs, constitute improper opinion because the Declarant is not qualified

1 as an expert on GPS coordinates and was apparently relying on his phone, the accuracy of which
2 has not been authenticated or verified. The statement and accompanying exhibit therefore also
3 lack foundation and are speculative. Declarant has also not established that he has personal
4 knowledge of all signage and buoys in Westpoint Slough, and therefore the statement and
5 annotations inserted on the photograph exhibits lack foundation, are speculative, and constitute
6 improper opinion.

7 Objection Number 23

8 Declaration Text: “On April 9, 2017 at 11:51 a.m., at location #13, I observed a USFWS
9 Refuge sign on Greco Island. The photo was taken from GPS coordinates 37°30'59.15"N,
10 122°11'44.68"W. A true and correct copy of that photograph is attached hereto as Exhibit V.”
11 (Leddy Decl., ¶ 49.)

12 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
13 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
14 §§ 800, 803). The statement and accompanying exhibits, including annotation of the alleged
15 location of the photograph, constitute improper opinion because the Declarant is not qualified as
16 an expert on GPS coordinates and was apparently relying on his phone, the accuracy of which
17 has not been authenticated or verified. The statement and accompanying exhibits therefore also
18 lack foundation and are speculative.

19 Objection Number 24

20 Declaration Text: “On April 9, 2017 at 11:54 a.m., at location #14, I observed another
21 USFWS Refuge sign on Greco Island. The photo was taken from GPS coordinates
22 37°30'59.57"N, 122°11'51.04"W. A true and correct copy of that photograph is attached hereto as
23 Exhibit W.” (Leddy Decl., ¶ 50.)

1 GPS coordinates from 37°31'7.41"N, 122°12'15.89"W. A true and correct copy of that
2 photograph is attached hereto as Exhibit AA.” (Leddy Decl., ¶ 54.)

3 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
4 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
5 §§ 800, 803). The statement and accompanying exhibits, including annotation of the alleged
6 location of the photograph, constitute improper opinion because the Declarant is not qualified as
7 an expert on GPS coordinates and was apparently relying on his phone, the accuracy of which
8 has not been authenticated or verified. The statement and accompanying exhibits therefore also
9 lack foundation and are speculative.

10 Objection Number 29

11 Declaration Text: “On April 9, 2017 at 12:21 p.m., at location #22, I observed a red buoy
12 at the confluence of Redwood Creek and Westpoint Slough. The photo was taken from GPS
13 coordinates from 37°31'2.72"N, 122°12'13.64"W. A true and correct copy of that photograph is
14 attached hereto as Exhibit BB.” (Leddy Decl., ¶ 55.)

15 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
16 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
17 §§ 800, 803). The statement and accompanying exhibits, including annotation of the alleged
18 location of the photograph, constitute improper opinion because the Declarant is not qualified as
19 an expert on GPS coordinates and was apparently relying on his phone, the accuracy of which
20 has not been authenticated or verified. The statement and accompanying exhibits therefore also
21 lack foundation and are speculative.

1 Objection Number 30

2 Declaration Text: “On April 9, 2017 at 12:25 p.m., at location #23, I observed a ‘10
3 MPH’ buoy. The photo was taken from GPS coordinates from 37°30'59.00"N, 122°12'1.22"W. A
4 true and correct copy of that photograph is attached hereto as Exhibit CC.” (Leddy Decl., ¶ 56.)

5 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
6 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
7 §§ 800, 803). The statement and accompanying exhibits, including annotation of the alleged
8 location of the photograph, constitute improper opinion because the Declarant is not qualified as
9 an expert on GPS coordinates and was apparently relying on his phone, the accuracy of which
10 has not been authenticated or verified. The statement and accompanying exhibits therefore also
11 lack foundation and are speculative.

12 Objection Number 31

13 Declaration Text: “On April 9, 2017 at 11:39 a.m., at location #24, I observed a sign on
14 the end of PGE boardwalk. The photo was taken from GPS coordinates from 37°30'53.S"N,
15 122°11'24.59"W. A true and correct copy of that photograph is attached hereto as Exhibit DD.”
16 (Leddy Decl., ¶ 57 (misabeled as 56 in original).)

17 Grounds for Objection: Lack of personal knowledge (Evid. Code, § 702(a)); lack of
18 foundation (Evid. Code, § 403); speculation (Evid. Code, § 702); improper opinion (Evid. Code,
19 §§ 800, 803). The statement and accompanying exhibits, including annotation of the alleged
20 location of the photograph, constitute improper opinion because the Declarant is not qualified as
21 an expert on GPS coordinates and was apparently relying on his phone, the accuracy of which
22 has not been authenticated or verified. The statement and accompanying exhibits therefore also
23 lack foundation and are speculative.

1 803). Exhibit EE contains annotations of alleged locations of photographs as well as a chart of
2 Declarant's notes and comments about signage and buoys. The Declarant is not qualified as an
3 expert on GPS coordinates and was apparently relying on his phone to calculate geographic
4 locations for his annotations and notes, the accuracy of which has not been authenticated or
5 verified. The annotations and the chart therefore are not based on personal knowledge, lack
6 foundation, are speculative, and constitute improper opinion. In addition, Declarant has not
7 established that he has personal knowledge of the required locations for signage and buoys in
8 Westpoint Slough, and therefore the annotations and the chart lack foundation, are speculative,
9 and constitute improper opinion.

10 **Conclusion**

11 For the reasons set forth, Respondents request that the Enforcement Committee strike the
12 entire Declaration of Matthew Leddy, or in the alternative, strike purported factual claims
13 improperly contained in the declaration and exclude statements that are inadmissible under the
14 Evidence Code.

Dated: November 15, 2017

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Christopher J. Carr

CHRISTOPHER J. CARR (CA SBN 184076)

chris.carr@bakerbotts.com

KEVIN M. SADLER (CA SBN 283765)

kevin.sadler@bakerbotts.com

KEVIN E. VICKERS (CA SBN 310190)

kevin.vickers@bakerbotts.com

BAKER BOTTS L.L.P.

101 California Street, Suite 3600

San Francisco, California 94111

Telephone: (415) 291-6200

Facsimile: (415) 291-6300

Attorneys for Respondents

Mark Sanders and Westpoint Harbor, LLC