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November 3, 2015

Andrew Tauriainen, Esq.
SWRCB Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814

SENT VIA E-MAIL & U.S. MAIL

Re: *In Re: the Matter of ACL Complaint and Draft CDO against
Scott Fahey and Sugar Pine Spring Water, LLP*

Dear Mr. Tauriainen:

I am in receipt of your Subpoena Duces Tecum in the above-entitled matter. For clarification, I am the ongoing business counsel for Mr. Fahey and Sugar Pine Spring Water while Abbott & Kindermann continues to represent both Mr. Fahey and Sugar Pine Spring Water as well before the SWRCB. I have had the opportunity to review your demands and my client will be producing all items requested in your Request Numbers 1-6 in a timely manner. With regard to Request Numbers 7-9, inclusive, please consider this letter my attempt to meet and confer with you regarding said requests.

With regard to Request No. 7, my client is more than willing to provide you with the information which will provide both the total number of gallons of water sold and the total dollar amount of water sales during the requested time period. As we discussed in our meeting of October 30, 2015, the invoices sent to all customers contain proprietary information and those documents will not be provided by my client. In our meeting you stated that the number of gallons sold and the amount Sugar Pine was paid for the water was necessary for the hearing officers to determine the amount of penalty, we are willing to provide that, just not in the form that you have requested. If you would like to discuss ways to verify the number of gallons sold and the dollar amount received by Sugar Pine for said water, without divulging proprietary information, I am more than willing to discuss potential solutions with you.

With regard to your demand for state and federal tax returns for both Mr. Fahey and Sugar Pine Spring Water LLP, the demanded documents are confidential financial information that are subject to the constitutional right of privacy and will not be produced. In civil litigation, a party cannot be compelled to produce a copy of his or her return. "The purpose of the amended statutory provisions prohibiting disclosure is to

facilitate tax enforcement by encouraging a taxpayer to make full and truthful declarations in his return, without fear that his statements will be revealed or used against him for other purposes. If the information can be secured by forcing the taxpayer to produce a copy of his return, the primary legislative purpose of the secrecy provisions will be defeated. The effect of the statutory prohibition is to render the returns privileged, and the privilege should not be nullified by permitting third parties to obtain the information by adopting the indirect procedure of demanding copies of tax returns.” In *Webb v. Standard Oil Co.* (1957) 49 Cal. 2d 509, 319 P. 2d 621. In *King v. Mobile Home Rent Review Bd.* (1989) 216 87 Cal. App. 4th 1072, 105 Cal. Rptr. 2d 132, the court stated this privilege was applicable in administrative proceedings as well as in the civil court.

Thank you for your attention to this matter and if you would like to discuss the documents addressed in this letter, please feel free to contact me.

Sincerely,

LAW OFFICES OF MAYOL & BARRINGER

Bart Barringer

BB/aek

cc: Client;
Diane Kindermann, Esq.