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GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

By Fax

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Scott M. Franklin - S.B.N. 240254
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Attorneys for Plaintiffs/Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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

Plaintiffs and Petitioners,

vs.

KAMALA HARRIS, in her official capacity as Attorney General for the State of California; STEPHEN LINDLEY, in his official capacity as Acting Chief for the California Department of Justice; BETTY YEE, in her official capacity as State Controller for the State of California; and DOES 1-10,

Defendants and Respondents.

CASE NO. 34-2013-80001667

**NOTICE OF ERRATA RE: DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF RENEWED MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY**

Date: February 19, 2016
Time: 9:00 a.m.
Dept.: 31
Judge: Hon. Michael P. Kenny
Action filed: 10/16/13

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Plaintiffs hereby requests that the Court take notice of the following errata:

The Declaration of Scott M. Franklin in Support of Renewed Motion to Compel Further Responses to Request for Admissions, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley, filed on January 22, 2016, was unintentionally filed without a copy of the relevant separate statement, which should have been attached thereto as Exhibit 1B. Though the separate statement is already on file in this action, Plaintiffs intended to provide copies of all the

relevant documents to the Court as declaration exhibits for ease of review. Accordingly, a true and correct copy of the separate statement, labeled as Exhibit 1B, is provided herewith.

Dated: January 25, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin
Attorneys for Plaintiffs

**EXHIBIT 1B**

FILED
ENDORSED
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GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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|---|---|
| DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION,<br><br>Plaintiffs and Petitioners,<br><br>v.<br><br>KAMALA HARRIS, in Her Official Capacity as Attorney General For the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller, and DOES 1 - 10,<br><br>Defendants and Respondents. | Case No. 34-2013-80001667<br><br>**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY**<br><br>Date: April 24, 2015<br>Time: 9:00 a.m.<br>Dept: 31<br>Judge: The Honorable Michael P. Kenny<br>Trial Date: None Set<br>Action Filed: October 16, 2013 |

By Fax

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

For the convenience of the Court, Plaintiffs note that each of the disputed responses at issue is the same as the others. Therefore, the Plaintiffs' argument herein (i.e., the "Reason Why Further Response Is Required") is the same as to each disputed response.

**REQUEST FOR ADMISSION NO. 83:**

Admit that it is the position of CAL DOJ [i.e., the California Department of Justice] that law-abiding citizens who participate in the DROS PROCESS [i.e., the background check process that occurs when a firearm purchase or transfer occurs in California; CAL DOJ's own usage of "DROS PROCESS" can be found at http://oag.ca.gov/firearms/pubfaqs) place an unusual burden on the general public as to the illegal possession of firearms.

**INITIAL RESPONSE:**

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

**AMENDED RESPONSE:**

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)
Without waving this objection, defendants respond as follows:

Unable to admit or deny.

**REASON WHY FURTHER RESPONSE IS REQUIRED:**

**1. Defendants' Response Is Not Sufficient Because It Is Not Statutorily Authorized**

Defendants' substantive response, e.g., "[u]nable to admit or deny[,]" does not fall within section 2033.220(b)(3) because that section only applies if the "responding party lacks sufficient information of knowledge" on the truth of the matter at issue. Indeed, Defendants' response completely fails to state, as required by section 2033.220(b)(3), that "a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable [Defendants] to admit the matter." Failure to comply with section 2033.220(b)(3) alone justifies an order requiring further response.

More important than the procedural deficiency, however, is that Defendants appear to be improperly attempting to hide non-responsive answers under a guise of inability to comply. That is, a responding party does not have the option to claim an inability to admit or deny in response to a request for admission if the responding party has sufficient information or knowledge to provide some level of a substantive response. Civ. Proc. Code § 2033.220(b)(3). Defendants, including the Attorney General of this state, plainly have the knowledge and information required to comply with six requests for admission that seek the application of law to fact.

**2. Defendants' Objection Is Without Merit**

Each portion of the relevant objection is quoted and then discussed to explain how the entirety of the objection is without merit.

> *Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax.*

Defendants have <u>not</u> "admitted the use of DROS funds does not operate as a tax" as Defendants claim; they actually admitted, in response to Request for Admission No. 13 herein, that "*it is the position of CAL DOJ* that the use of DROS FEE FUNDS to fund APPS does not in any way operate as a tax under state law." (Emphasis added). Indeed, the requests at issue are relevant *specifically because* Plaintiffs are challenging the legal position being taken by Defendants. Defendants are effectively trying to make the claim that because they admit what

their legal position is, Plaintiffs cannot seek information about it. Requests for admission are indisputably a proper tool to obtain information concerning a "matter in controversy between the parties[,]" expressly including the "application of law to fact." Civ. Proc. Code § 2033.010.

> The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; *see also Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial.

Code of Civil Procedure section 2033.010 expressly states that the use at issue (requesting an admission on the application of law to fact) is proper. Furthermore, the interpretation of *Cembrook* offered by Defendants is far off the mark: the California Supreme Court expressly cites *Cembrook* for exactly the *opposite* of what Defendants are arguing here.

> When a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.'(*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.)

*Burke v. Superior Court*, 71 Cal. 2d 276, 282 (1969).

In fact, Defendants' expressed plan to wait until trial to contest the substantive issues underlying the relevant requests is exactly the kind of conduct requests for admissions are intended to prevent. It is clear that requests for admissions can be used to set at rest triable issues, be they factual *or* legal. Finally, it should be noted that *Stull* does not discuss Defendants' contention (e.g., the supposed impropriety of using requests for admissions regarding legal contentions) at all; it simply notes, as a perfunctory issue and in a general sense, that "[r]equests for admissions differ fundamentally from other forms of discovery[; r]ather than seeking to uncover information, they seek to eliminate the need for proof." *Stull,* 92 Cal. App. 4th at 864. Indeed, *Stull* implicitly supports *Plaintiffs'* position. *Stull* concerns a propounding party's ability to recover expenses for the responding party's failure to properly admit a request for admission of a *legal* issue—*Stull*'s discussion of the expense recovery issue is predicated on the undisputed fact that the request for admission of a legal contention was valid. *Id.* at 862-64.

> The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784." Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64-65.)

Again, the cited material is completely off the mark and in no way supports the claim that requests for admissions cannot be used regarding legal contentions. *St. Mary* concerns a propounding party's attempt to get forty-one requests for admissions deemed admitted after the opposing party, having been denied a short courtesy extension, filed a slightly tardy discovery response. *St. Mary,* 223 Cal. App. 4th at 766-67. The "windfall" referred to in *St. Mary* had nothing to do with what Defendants are attempting to argue here, it had to do with a party who was abusing the process available to have requests for admissions deemed admitted by a court. *Id.* at 783-84.

Similarly, the citations to *Haseltine* and *Elston* are clearly inappropriate. The quoted material from *Haseltine* is mixed with material that is not from *Haseltine*, a questionable practice. Regardless, *Haseltine* is another case, like *St. Mary*, that actually concerns a party's ability to obtain an award of expenses as to proving the substance of a denied request for admission. *Haseltine*, 203 Cal. App. 2d 48, 60-61.

And Defendants' quotation of *Elston* is baffling, as it is yet another case that concerns an issue ancillary to one or more requests for admission seeking a *legal* contention. *Elston*, 38 Cal. 3d at 231. *Elston* concerns requests for admission that were *deemed* admitted after a neglectful attorney failed to timely file responses, not where they were *voluntarily* admitted, thus the statement that "the request at issue here did not include issues as to which the parties might conceivably agree" is taken completely out of context by Defendants. *Id.* at 235. It is misleading for Defendants to use the quoted passage to imply it is relevant to situations other than the context of a party seeking relief on claims that were "deemed admitted" in direct opposition to that party's litigation position. Defendants are clearly wrong arguing that *Elston* somehow conflicts

with the truism that requests for admissions can be used to nail down the legal positions of a litigant.

Because Defendants cannot make a good faith claim that they are unable to respond to the relevant request, and because the objection stated is without merit, a further response should be ordered.

**REQUEST FOR ADMISSION NO. 84:**

> Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS do not place an unusual burden on the general public as to the illegal possession of firearms.

**INITIAL RESPONSE:**

> Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

**AMENDED RESPONSE:**

> Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite

matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

Without waving this objection, defendants respond as follows:

Unable to admit or deny.

**REASON WHY FURTHER RESPONSE IS REQUIRED:**

**1. Defendants' Response Is Not Sufficient Because It Is Not Statutorily Authorized**

Defendants' substantive response, e.g., "[u]nable to admit or deny[,]" does not fall within section 2033.220(b)(3) because that section only applies if the "responding party lacks sufficient information of knowledge" on the truth of the matter at issue. Indeed, Defendants' response completely fails to state, as required by section 2033.220(b)(3), that "a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable [Defendants] to admit the matter." Failure to comply with section 2033.220(b)(3) alone justifies an order requiring further response.

More important than the procedural deficiency, however, is that Defendants appear to be improperly attempting to hide non-responsive answers under a guise of inability to comply. That is, a responding party does not have the option to claim an inability to admit or deny in response to a request for admission if the responding party has sufficient information or knowledge to provide some level of a substantive response. Civ. Proc. Code § 2033.220(b)(3). Defendants, including the Attorney General of this state, plainly have the knowledge and information required to comply with six requests for admission that seek the application of law to fact.

**2. Defendants' Objection Is Without Merit**

Each portion of the relevant objection is quoted and then discussed to explain how the entirety of the objection is without merit.

*Defendants object to this request. It is irrelevant, defendants having admitted that the useof DROS funds does not operate as a tax.*

Defendants have <u>not</u> "admitted the use of DROS funds does not operate as a tax" as Defendants claim; they actually admitted, in response to Request for Admission No. 13 herein,

that "*it is the position of CAL DOJ* that the use of DROS FEE FUNDS to fund APPS does not in any way operate as a tax under state law." (Emphasis added). Indeed, the requests at issue are relevant *specifically because* Plaintiffs are challenging the legal position being taken by Defendants. Defendants are effectively trying to make the claim that because they admit what their legal position is, Plaintiffs cannot seek information about it. Requests for admission are indisputably a proper tool to obtain information concerning a "matter in controversy between the parties[,]" expressly including the "application of law to fact." Civ. Proc. Code § 2033.010.

> *The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (Cembrook v. Superior Court (1961) 56 Cal.2d 423, 429; see also Stull v. Sparrow (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial.*

Code of Civil Procedure section 2033.010 expressly states that the use at issue (requesting an admission on the application of law to fact) is proper. Furthermore, the interpretation of *Cembrook* offered by Defendants is far off the mark: the California Supreme Court expressly cites *Cembrook* for exactly the *opposite* of what Defendants are arguing here.

> When a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.'(*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.)

*Burke v. Superior Court*, 71 Cal. 2d 276, 282 (1969).

In fact, Defendants' expressed plan to wait until trial to contest the substantive issues underlying the relevant requests is exactly the kind of conduct requests for admissions are intended to prevent. It is clear that requests for admissions can be used to set at rest triable issues, be they factual *or* legal. Finally, it should be noted that *Stull* does not discuss Defendants' contention (e.g., the supposed impropriety of using requests for admissions regarding legal contentions) at all; it simply notes, as a perfunctory issue and in a general sense, that "[r]equests for admissions differ fundamentally from other forms of discovery[; r]ather than seeking to

uncover information, they seek to eliminate the need for proof." *Stull,* 92 Cal. App. 4th at 864. Indeed, *Stull* implicitly supports *Plaintiffs'* position. *Stull* concerns a propounding party's ability to recover expenses for the responding party's failure to properly admit a request for admission of a *legal* issue—*Stull*'s discussion of the expense recovery issue is predicated on the undisputed fact that the request for admission of a legal contention was valid. *Id.* at 862-64.

> *The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. St. Mary v. Superior Court (2014) 223 Cal.App.4th 762, 783-784." Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (Haseltine v. Haseltine (1962) 203 Cal.App.2d 48, 61; see also Elston v. City of Turlock (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in Tackett v. City of Huntington Beach (1994) 22 Cal.App.4th 60, 64-65.)*

Again, the cited material is completely off the mark and in no way supports the claim that requests for admissions cannot be used regarding legal contentions. *St. Mary* concerns a propounding party's attempt to get forty-one requests for admissions deemed admitted after the opposing party, having been denied a short courtesy extension, filed a slightly tardy discovery response. *St. Mary,* 223 Cal. App. 4th at 766-67. The "windfall" referred to in *St. Mary* had nothing to do with what Defendants are attempting to argue here, it had to do with a party who was abusing the process available to have requests for admissions deemed admitted by a court. *Id.* at 783-84.

Similarly, the citations to *Haseltine* and *Elston* are clearly inappropriate. The quoted material from *Haseltine* is mixed with material that is not from *Haseltine*, a questionable practice. Regardless, *Haseltine* is another case, like *St. Mary*, that actually concerns a party's ability to obtain an award of expenses as to proving the substance of a denied request for admission. *Haseltine*, 203 Cal. App. 2d 48, 60-61.

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Because Defendants cannot make a good faith claim that they are unable to respond to the relevant request, and because the objection stated is without merit, a further response should be ordered.

**REQUEST FOR ADMISSION NO. 85:**

> Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS pose no greater burden on the public as to illegal firearm possession than do law abiding citizens who have not participated in the DROS PROCESS.

**INITIAL RESPONSE:**

> Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that

cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

**AMENDED RESPONSE:**

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

Without waving this objection, defendants respond as follows:

Unable to admit or deny.

**REASON WHY FURTHER RESPONSE IS REQUIRED:**

**1. Defendants' Response Is Not Sufficient Because It Is Not Statutorily Authorized**

Defendants' substantive response, e.g., "[u]nable to admit or deny[,]" does not fall within section 2033.220(b)(3) because that section only applies if the "responding party lacks sufficient information of knowledge" on the truth of the matter at issue. Indeed, Defendants' response completely fails to state, as required by section 2033.220(b)(3), that "a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable [Defendants] to admit the matter." Failure to comply with section 2033.220(b)(3) alone justifies an order requiring further response.

More important than the procedural deficiency, however, is that Defendants appear to be improperly attempting to hide non-responsive answers under a guise of inability to comply. That is, a responding party does not have the option to claim an inability to admit or deny in response to a request for admission if the responding party has sufficient information or knowledge to provide some level of a substantive response. Civ. Proc. Code § 2033.220(b)(3). Defendants, including the Attorney General of this state, plainly have the knowledge and information required to comply with six requests for admission that seek the application of law to fact.

**2. Defendants' Objection Is Without Merit**

Each portion of the relevant objection is quoted and then discussed to explain how the entirety of the objection is without merit.

> *Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax.*

Defendants have not "admitted the use of DROS funds does not operate as a tax" as Defendants claim; they actually admitted, in response to Request for Admission No. 13 herein, that "*it is the position of CAL DOJ* that the use of DROS FEE FUNDS to fund APPS does not in any way operate as a tax under state law." (Emphasis added). Indeed, the requests at issue are relevant *specifically because* Plaintiffs are challenging the legal position being taken by Defendants. Defendants are effectively trying to make the claim that because they admit what their legal position is, Plaintiffs cannot seek information about it. Requests for admission are indisputably a proper tool to obtain information concerning a "matter in controversy between the parties[,]" expressly including the "application of law to fact." Civ. Proc. Code § 2033.010.

> The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; *see also Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial.

Code of Civil Procedure section 2033.010 expressly states that the use at issue (requesting an admission on the application of law to fact) is proper. Furthermore, the interpretation of *Cembrook* offered by Defendants is far off the mark: the California Supreme Court expressly

cites *Cembrook* for exactly the *opposite* of what Defendants are arguing here.

> When a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.'(*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.)

*Burke v. Superior Court*, 71 Cal. 2d 276, 282 (1969).

In fact, Defendants' expressed plan to wait until trial to contest the substantive issues underlying the relevant requests is exactly the kind of conduct requests for admissions are intended to prevent. It is clear that requests for admissions can be used to set at rest triable issues, be they factual *or* legal. Finally, it should be noted that *Stull* does not discuss Defendants' contention (e.g., the supposed impropriety of using requests for admissions regarding legal contentions) at all; it simply notes, as a perfunctory issue and in a general sense, that "[r]equests for admissions differ fundamentally from other forms of discovery[; r]ather than seeking to uncover information, they seek to eliminate the need for proof." *Stull,* 92 Cal. App. 4th at 864. Indeed, *Stull* implicitly supports *Plaintiffs'* position. *Stull* concerns a propounding party's ability to recover expenses for the responding party's failure to properly admit a request for admission of a *legal* issue—*Stull*'s discussion of the expense recovery issue is predicated on the undisputed fact that the request for admission of a legal contention was valid. *Id.* at 862-64.

> The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784." Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64-65.)

Again, the cited material is completely off the mark and in no way supports the claim that requests for admissions cannot be used regarding legal contentions. *St. Mary* concerns a propounding party's attempt to get forty-one requests for admissions deemed admitted after the opposing party, having been denied a short courtesy extension, filed a slightly tardy discovery response. *St. Mary,* 223 Cal. App. 4th at 766-67. The "windfall" referred to in *St. Mary* had nothing to do with what Defendants are attempting to argue here, it had to do with a party who was abusing the process available to have requests for admissions deemed admitted by a court. *Id.* at 783-84.

Similarly, the citations to *Haseltine* and *Elston* are clearly inappropriate. The quoted material from *Haseltine* is mixed with material that is not from *Haseltine*, a questionable practice. Regardless, *Haseltine* is another case, like *St. Mary*, that actually concerns a party's ability to obtain an award of expenses as to proving the substance of a denied request for admission. *Haseltine*, 203 Cal. App. 2d 48, 60-61.

And Defendants' quotation of *Elston* is baffling, as it is yet another case that concerns an issue ancillary to one or more requests for admission seeking a *legal* contention. *Elston*, 38 Cal. 3d at 231. *Elston* concerns requests for admission that were *deemed* admitted after a neglectful attorney failed to timely file responses, not where they were *voluntarily* admitted, thus the statement that "the request at issue here did not include issues as to which the parties might conceivably agree" is taken completely out of context by Defendants. *Id.* at 235. It is misleading for Defendants to use the quoted passage to imply it is relevant to situations other than the context of a party seeking relief on claims that were "deemed admitted" in direct opposition to that party's litigation position. Defendants are clearly wrong arguing that *Elston* somehow conflicts with the truism that requests for admissions can be used to nail down the legal positions of a litigant.

Because Defendants cannot make a good faith claim that they are unable to respond to the relevant request, and because the objection stated is without merit, a further response should be ordered.

**REQUEST FOR ADMISSION NO. 86:**

Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS pose a greater burden on the public as to illegal firearm possession than do law abiding citizens who have not participated in the DROS PROCESS.

**INITIAL RESPONSE:**

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

**AMENDED RESPONSE:**

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

Without waving this objection, defendants respond as follows:

Unable to admit or deny.

**REASON WHY FURTHER RESPONSE IS REQUIRED:**

**1. Defendants' Response Is Not Sufficient Because It Is Not Statutorily Authorized**

Defendants' substantive response, e.g., "[u]nable to admit or deny[,]" does not fall within section 2033.220(b)(3) because that section only applies if the "responding party lacks sufficient information of knowledge" on the truth of the matter at issue. Indeed, Defendants' response completely fails to state, as required by section 2033.220(b)(3), that "a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable [Defendants] to admit the matter." Failure to comply with section 2033.220(b)(3) alone justifies an order requiring further response.

More important than the procedural deficiency, however, is that Defendants appear to be improperly attempting to hide non-responsive answers under a guise of inability to comply. That is, a responding party does not have the option to claim an inability to admit or deny in response to a request for admission if the responding party has sufficient information or knowledge to provide some level of a substantive response. Civ. Proc. Code § 2033.220(b)(3). Defendants, including the Attorney General of this state, plainly have the knowledge and information required to comply with six requests for admission that seek the application of law to fact.

**2. Defendants' Objection Is Without Merit**

Each portion of the relevant objection is quoted and then discussed to explain how the entirety of the objection is without merit.

> *Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax.*

Defendants have <u>not</u> "admitted the use of DROS funds does not operate as a tax" as Defendants claim; they actually admitted, in response to Request for Admission No. 13 herein, that "*it is the position of CAL DOJ* that the use of DROS FEE FUNDS to fund APPS does not in any way operate as a tax under state law." (Emphasis added). Indeed, the requests at issue are relevant *specifically because* Plaintiffs are challenging the legal position being taken by Defendants. Defendants are effectively trying to make the claim that because they admit what their legal position is, Plaintiffs cannot seek information about it. Requests for admission are

indisputably a proper tool to obtain information concerning a "matter in controversy between the parties[,]" expressly including the "application of law to fact." Civ. Proc. Code § 2033.010.

> The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; *see also Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial.

Code of Civil Procedure section 2033.010 expressly states that the use at issue (requesting an admission on the application of law to fact) is proper. Furthermore, the interpretation of *Cembrook* offered by Defendants is far off the mark: the California Supreme Court expressly cites *Cembrook* for exactly the *opposite* of what Defendants are arguing here.

> When a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.'(*Cembrook v. Superior Court of City and County of San Francisco, supra,* 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.)

*Burke v. Superior Court*, 71 Cal. 2d 276, 282 (1969).

In fact, Defendants' expressed plan to wait until trial to contest the substantive issues underlying the relevant requests is exactly the kind of conduct requests for admissions are intended to prevent. It is clear that requests for admissions can be used to set at rest triable issues, be they factual *or* legal. Finally, it should be noted that *Stull* does not discuss Defendants' contention (e.g., the supposed impropriety of using requests for admissions regarding legal contentions) at all; it simply notes, as a perfunctory issue and in a general sense, that "[r]equests for admissions differ fundamentally from other forms of discovery[; r]ather than seeking to uncover information, they seek to eliminate the need for proof." *Stull,* 92 Cal. App. 4th at 864. Indeed, *Stull* implicitly supports *Plaintiffs'* position. *Stull* concerns a propounding party's ability to recover expenses for the responding party's failure to properly admit a request for admission of a *legal* issue—*Stull*'s discussion of the expense recovery issue is predicated on the undisputed fact that the request for admission of a legal contention was valid. *Id.* at 862-64.

> The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784." Section 2033 is "calculated to

> compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64-65.)

Again, the cited material is completely off the mark and in no way supports the claim that requests for admissions cannot be used regarding legal contentions. *St. Mary* concerns a propounding party's attempt to get forty-one requests for admissions deemed admitted after the opposing party, having been denied a short courtesy extension, filed a slightly tardy discovery response. *St. Mary,* 223 Cal. App. 4th at 766-67. The "windfall" referred to in *St. Mary* had nothing to do with what Defendants are attempting to argue here, it had to do with a party who was abusing the process available to have requests for admissions deemed admitted by a court. *Id.* at 783-84.

Similarly, the citations to *Haseltine* and *Elston* are clearly inappropriate. The quoted material from *Haseltine* is mixed with material that is not from *Haseltine*, a questionable practice. Regardless, *Haseltine* is another case, like *St. Mary*, that actually concerns a party's ability to obtain an award of expenses as to proving the substance of a denied request for admission. *Haseltine*, 203 Cal. App. 2d 48, 60-61.

And Defendants' quotation of *Elston* is baffling, as it is yet another case that concerns an issue ancillary to one or more requests for admission seeking a *legal* contention. *Elston*, 38 Cal. 3d at 231. *Elston* concerns requests for admission that were *deemed* admitted after a neglectful attorney failed to timely file responses, not where they were *voluntarily* admitted, thus the statement that "the request at issue here did not include issues as to which the parties might conceivably agree" is taken completely out of context by Defendants. *Id.* at 235. It is misleading for Defendants to use the quoted passage to imply it is relevant to situations other than the context of a party seeking relief on claims that were "deemed admitted" in direct opposition to that party's litigation position. Defendants are clearly wrong arguing that *Elston* somehow conflicts with the truism that requests for admissions can be used to nail down the legal positions of a

litigant.

Because Defendants cannot make a good faith claim that they are unable to respond to the relevant request, and because the objection stated is without merit, a further response should be ordered.

**REQUEST FOR ADMISSION NO. 88:**

> Admit that it is the position of CAL DOJ that law-abiding firearm owners have a greater interest, as compared to other law-abiding citizens who do not own firearms, in insuring firearms are not in the possession of persons who are not legally permitted to possess a firearm.

**INITIAL RESPONSE:**

> Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

**AMENDED RESPONSE:**

> Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not

include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

Without waving this objection, defendants respond as follows:

Unable to admit or deny.

**REASON WHY FURTHER RESPONSE IS REQUIRED:**

**1. Defendants' Response Is Not Sufficient Because It Is Not Statutorily Authorized**

Defendants' substantive response, e.g., "[u]nable to admit or deny[,]" does not fall within section 2033.220(b)(3) because that section only applies if the "responding party lacks sufficient information of knowledge" on the truth of the matter at issue. Indeed, Defendants' response completely fails to state, as required by section 2033.220(b)(3), that "a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable [Defendants] to admit the matter." Failure to comply with section 2033.220(b)(3) alone justifies an order requiring further response.

More important than the procedural deficiency, however, is that Defendants appear to be improperly attempting to hide non-responsive answers under a guise of inability to comply. That is, a responding party does not have the option to claim an inability to admit or deny in response to a request for admission if the responding party has sufficient information or knowledge to provide some level of a substantive response. Civ. Proc. Code § 2033.220(b)(3). Defendants, including the Attorney General of this state, plainly have the knowledge and information required to comply with six requests for admission that seek the application of law to fact.

**2. Defendants' Objection Is Without Merit**

Each portion of the relevant objection is quoted and then discussed to explain how the entirety of the objection is without merit.

*Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax.*

Defendants have <u>not</u> "admitted the use of DROS funds does not operate as a tax" as Defendants claim; they actually admitted, in response to Request for Admission No. 13 herein, that "*it is the position of CAL DOJ* that the use of DROS FEE FUNDS to fund APPS does not in

any way operate as a tax under state law." (Emphasis added). Indeed, the requests at issue are relevant *specifically because* Plaintiffs are challenging the legal position being taken by Defendants. Defendants are effectively trying to make the claim that because they admit what their legal position is, Plaintiffs cannot seek information about it. Requests for admission are indisputably a proper tool to obtain information concerning a "matter in controversy between the parties[,]" expressly including the "application of law to fact." Civ. Proc. Code § 2033.010.

> The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; *see also Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial.

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> When a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.'(*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.)

*Burke v. Superior Court*, 71 Cal. 2d 276, 282 (1969).

In fact, Defendants' expressed plan to wait until trial to contest the substantive issues underlying the relevant requests is exactly the kind of conduct requests for admissions are intended to prevent. It is clear that requests for admissions can be used to set at rest triable issues, be they factual *or* legal. Finally, it should be noted that *Stull* does not discuss Defendants' contention (e.g., the supposed impropriety of using requests for admissions regarding legal contentions) at all; it simply notes, as a perfunctory issue and in a general sense, that "[r]equests for admissions differ fundamentally from other forms of discovery[; r]ather than seeking to uncover information, they seek to eliminate the need for proof." *Stull,* 92 Cal. App. 4th at 864.

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> The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784." Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64-65.)

Again, the cited material is completely off the mark and in no way supports the claim that requests for admissions cannot be used regarding legal contentions. *St. Mary* concerns a propounding party's attempt to get forty-one requests for admissions deemed admitted after the opposing party, having been denied a short courtesy extension, filed a slightly tardy discovery response. *St. Mary,* 223 Cal. App. 4th at 766-67. The "windfall" referred to in *St. Mary* had nothing to do with what Defendants are attempting to argue here, it had to do with a party who was abusing the process available to have requests for admissions deemed admitted by a court. *Id.* at 783-84.

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And Defendants' quotation of *Elston* is baffling, as it is yet another case that concerns an issue ancillary to one or more requests for admission seeking a *legal* contention. *Elston*, 38 Cal. 3d at 231. *Elston* concerns requests for admission that were *deemed* admitted after a neglectful attorney failed to timely file responses, not where they were *voluntarily* admitted, thus the

statement that "the request at issue here did not include issues as to which the parties might conceivably agree" is taken completely out of context by Defendants. *Id.* at 235. It is misleading for Defendants to use the quoted passage to imply it is relevant to situations other than the context of a party seeking relief on claims that were "deemed admitted" in direct opposition to that party's litigation position. Defendants are clearly wrong arguing that *Elston* somehow conflicts with the truism that requests for admissions can be used to nail down the legal positions of a litigant.

Because Defendants cannot make a good faith claim that they are unable to respond to the relevant request, and because the objection stated is without merit, a further response should be ordered.

**REQUEST FOR ADMISSION NO. 89:**

> Admit that it is the position of CAL DOJ that law-abiding firearms owners do not have a greater interest, as compared to other law-abiding citizens who do not own firearms, in insuring firearms are not in the possession of persons who are not legally permitted to possess a firearm.
>
> **INITIAL RESPONSE:**
>
> Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)
>
> **AMENDED RESPONSE:**
>
> Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not

legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

Without waving this objection, defendants respond as follows:

Unable to admit or deny.

**REASON WHY FURTHER RESPONSE IS REQUIRED:**

**1. Defendants' Response Is Not Sufficient Because It Is Not Statutorily Authorized**

Defendants' substantive response, e.g., "[u]nable to admit or deny[,]" does not fall within section 2033.220(b)(3) because that section only applies if the "responding party lacks sufficient information of knowledge" on the truth of the matter at issue. Indeed, Defendants' response completely fails to state, as required by section 2033.220(b)(3), that "a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable [Defendants] to admit the matter." Failure to comply with section 2033.220(b)(3) alone justifies an order requiring further response.

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**2. Defendants' Objection Is Without Merit**

Each portion of the relevant objection is quoted and then discussed to explain how the entirety of the objection is without merit.

> *Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax.*

Defendants have not "admitted the use of DROS funds does not operate as a tax" as Defendants claim; they actually admitted, in response to Request for Admission No. 13 herein, that "*it is the position of CAL DOJ* that the use of DROS FEE FUNDS to fund APPS does not in any way operate as a tax under state law." (Emphasis added). Indeed, the requests at issue are relevant *specifically because* Plaintiffs are challenging the legal position being taken by Defendants. Defendants are effectively trying to make the claim that because they admit what their legal position is, Plaintiffs cannot seek information about it. Requests for admission are indisputably a proper tool to obtain information concerning a "matter in controversy between the parties[,]" expressly including the "application of law to fact." Civ. Proc. Code § 2033.010.

> The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; *see also Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial.

Code of Civil Procedure section 2033.010 expressly states that the use at issue (requesting an admission on the application of law to fact) is proper. Furthermore, the interpretation of *Cembrook* offered by Defendants is far off the mark: the California Supreme Court expressly cites *Cembrook* for exactly the *opposite* of what Defendants are arguing here.

> When a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.'(*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.)

*Burke v. Superior Court*, 71 Cal. 2d 276, 282 (1969).

In fact, Defendants' expressed plan to wait until trial to contest the substantive issues underlying the relevant requests is exactly the kind of conduct requests for admissions are intended to prevent. It is clear that requests for admissions can be used to set at rest triable issues, be they factual *or* legal. Finally, it should be noted that *Stull* does not discuss Defendants' contention (e.g., the supposed impropriety of using requests for admissions regarding legal contentions) at all; it simply notes, as a perfunctory issue and in a general sense, that "[r]equests for admissions differ fundamentally from other forms of discovery[; r]ather than seeking to uncover information, they seek to eliminate the need for proof." *Stull,* 92 Cal. App. 4th at 864. Indeed, *Stull* implicitly supports *Plaintiffs'* position. *Stull* concerns a propounding party's ability to recover expenses for the responding party's failure to properly admit a request for admission of a *legal* issue—*Stull*'s discussion of the expense recovery issue is predicated on the undisputed fact that the request for admission of a legal contention was valid. *Id.* at 862-64.

> The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784." Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64-65.)

Again, the cited material is completely off the mark and in no way supports the claim that requests for admissions cannot be used regarding legal contentions. *St. Mary* concerns a propounding party's attempt to get forty-one requests for admissions deemed admitted after the opposing party, having been denied a short courtesy extension, filed a slightly tardy discovery response. *St. Mary,* 223 Cal. App. 4th at 766-67. The "windfall" referred to in *St. Mary* had nothing to do with what Defendants are attempting to argue here, it had to do with a party who was abusing the process available to have requests for admissions deemed admitted by a court. *Id.* at 783-84.

Similarly, the citations to *Haseltine* and *Elston* are clearly inappropriate. The quoted

material from *Haseltine* is mixed with material that is not from *Haseltine*, a questionable practice. Regardless, *Haseltine* is another case, like *St. Mary*, that actually concerns a party's ability to obtain an award of expenses as to proving the substance of a denied request for admission. *Haseltine*, 203 Cal. App. 2d 48, 60-61.

And Defendants' quotation of *Elston* is baffling, as it is yet another case that concerns an issue ancillary to one or more requests for admission seeking a *legal* contention. *Elston*, 38 Cal. 3d at 231. *Elston* concerns requests for admission that were *deemed* admitted after a neglectful attorney failed to timely file responses, not where they were *voluntarily* admitted, thus the statement that "the request at issue here did not include issues as to which the parties might conceivably agree" is taken completely out of context by Defendants. *Id.* at 235. It is misleading for Defendants to use the quoted passage to imply it is relevant to situations other than the context of a party seeking relief on claims that were "deemed admitted" in direct opposition to that party's litigation position. Defendants are clearly wrong arguing that *Elston* somehow conflicts with the truism that requests for admissions can be used to nail down the legal positions of a litigant.

Because Defendants cannot make a good faith claim that they are unable to respond to the relevant request, and because the objection stated is without merit, a further response should be ordered.

Dated: February 17, 2015

Michel & Associates, P.C.

Scott M. Franklin
Attorney for Plaintiffs

**PROOF OF SERVICE**

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Laura L. Quesada, am employed in the City of Long Beach, Los Angeles County, California. I am over the age of eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

On February 17, 2015, the foregoing document described as

**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY**

on the interested parties in this action by placing
☐ the original
☒ a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

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

☒ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on February 17, 2015, at Long Beach, California.

☐ (PERSONAL SERVICE) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on February 17, 2015, at Long Beach, California.

☐ (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 February 17, 2015, 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.

CHRISTINA SANCHEZ

**PROOF OF SERVICE**

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Laura L. Quesada, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

On January 25, 2016, the foregoing document(s) described as

**DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF RENEWED MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY**

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

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

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on January 25, 2016, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on January 25, 2016, at Long Beach, California.

X (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