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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MID LAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION,

Plaintiffs and Petitioners,

v.

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 T. YEE, in her official capacity as State Controller, and DOES 1-10,

Defendants and Respondents.

Case No. 34-2013-80001667

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL

Date:	June 5, 2015
Time:	9:00 a.m.
Dept:	31
Judge:	Hon. Michael P. Kenny
Trial Date:	None set
Action Filed:	October 16, 2013

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INTRODUCTION

Plaintiffs in this action are an organization and group of individuals promoting the right to keep and bear arms. Their complaint for declaratory and injunctive relief and petition for writ of mandate seeks judicial relief that would prohibit defendants Kamala D. Harris, the Attorney General of California, and Stephen Lindley, Chief of the Bureau of Firearms of the California Department of Justice, from expending the revenues of a $19.00 firearms transaction fee on California's Armed Prohibited Persons System (APPS) program. APPS, administered by the Department of Justice ("DOJ"), is a vital law enforcement program that each year recovers thousands of firearms from persons prohibited from possessing them due to criminal behavior or mental illness.

The resolution of this case will depend on the answers to a number of legal questions, as opposed to factual ones. Nevertheless, plaintiffs have propounded an enormous amount of discovery. Defendants have answered the vast majority of that discovery to plaintiffs' satisfaction, except for the relatively few requests at issue in the instant motions to compel. As to those requests, defendants' answers are sufficient for the reasons explained below. The Court should therefore deny plaintiffs' motions to compel.

FACTUAL AND LEGAL BACKGROUND

I. PROCEDURAL HISTORY.

Plaintiffs initiated this action on October 16, 2013, by filing a complaint for declaratory and injunctive relief and petition for writ of mandamus.

Plaintiffs commenced discovery on May 14, 2014, by serving numerous discovery requests on defendants. The requests included:

- Request For Production of Documents (to defendants Harris and Lindley), which included 39 requests for production;
- Requests For Admissions ("RFA") (to defendants Harris and Lindley), which included 117 separate requests;

- Form Interrogatories (to defendants Harris and Lindley), which included Interrogatories 15.1 and 17.1;[1]
- Special Interrogatories (to defendants Harris and Lindley), which included 5 interrogatories;
- Request For Production of Documents (to defendant State Controller), which included 20 requests;
- Special Interrogatories (to defendant State Controller), which included 7 interrogatories.

Defendants responded to each of the above requests by providing written answers and numerous documents along with certain objections where appropriate. The parties met and conferred in good faith over a period of months. Defendants provided additional documents during that process, and with respect to the RFA and Form Interrogatories (to defendants Harris and Lindley), defendants provided amended discovery responses. The parties continued to meet and confer but reached an impasse regarding any additional responses. Plaintiffs' motions to compel followed.[2]

Plaintiffs have filed two motions to compel, and this opposition brief addresses both motions. Plaintiffs' motions include:

- Motion to Compel Further Responses to Requests for Admissions, which seeks further responses to RFA Nos. 83-86 and 88-89; and
- Motion to Compel Further Responses to Form Interrogatory 17.1, which seeks further explanation of defendants' responses to certain RFA, which fall into the following six groups:

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[1] As the Court is likely aware, Form Interrogatories 15.1 and 17.1 are onerous. Interrogatory 15.1 generally calls for an explanation of all of the "Denials and Special or Affirmative Defenses" in defendants' answer and Interrogatory 17.1 requires the responding party to explain each and every denial to any request for admission, which in this case included 117 such requests.

[2] Along with their motions to compel, plaintiffs have propounded still more discovery on defendants. Specifically, plaintiffs most recently served defendants with another set of Special Interrogatories (Set Two); another Request for Production of Documents (Set Two); another Request for Admissions (Set Two) – which brings the total number of RFAs to 146; and two additional sets of Form Interrogatories (i.e., Sets Two and Three), which include Form Interrogatories 15.1 and 17.1.

1. RFA Nos. 18, 19, 21 and 22;
2. RFA No. 38;
3. RFA Nos. 58 and 68;
4. RFA No. 78;
5. RFA Nos. 83-86 and 88-89; and
6. RFA Nos. 92-96 and 99

Finally, the Court should be aware that this case is related to a federal case, *Bauer, et al. vs. Harris, et al.*, Case No. 1:11-cv-01440-LJO-MJS (E.D. Cal.).) In the federal case, a similar group of plaintiffs, represented by the same counsel as in this case, sued the Attorney General and Chief of the Bureau of Firearms, arguing that the Second Amendment prohibits them from expending the revenues of the $19.00 DROS fee on the APPS program. The federal case also involved a significant amount of discovery served by plaintiffs, as well as the deposition of the Firearms Bureau Chief. Thus, this case is hardly the first occasion on which the parties have exchanged information on these issues.[3] And the district court recently rejected all of plaintiffs' federal constitutional claims on the merits, granting defendants' motion for summary judgment in its entirety. (See *Bauer,* Case No. 1:11-cv-01440-LJO-MJS (E.D. Cal.) [Memo. Decision & Order filed March 2, 2015].)

II. BRIEF SUMMARY OF RELEVANT CALIFORNIA FIREARMS LAWS.

A. Dealer's Record of Sale Transaction Fee.

When an individual purchases a firearm in California, he or she generally must pay $25.00 in fees. The majority of that sum consists of a statutory $19.00 Dealer's Record of Sale (DROS) fee intended to reimburse DOJ for specified costs. (See Penal Code, § 28225, Cal. Code. Regs.

[3] The undersigned represents that the discovery plaintiffs propounded on defendants in the related federal court case, which involved essentially the same issue as this case (i.e., DOJ's use of DROS fee revenues to fund firearms-related regulatory and enforcement activities), included approximately 73 Special Interrogatories; 74 Requests for Production of Documents; and 42 Requests for Admissions.

Tit. 11, § 4001; see also Penal Code, §§ 28230, 28235 & 28240.)[4] The Dealer's Record of Sale Special Account is the name of the state fund created by the Legislature into which all DROS fees collected as a result of firearms transactions are deposited. (§ 28235 ("[a]ll moneys received by the department pursuant to this article shall be deposited in the Dealer's Record of Sale Special Account of the General Fund, which is hereby created"). This case concerns the use of DROS fee revenues to fund certain firearms-related regulatory and enforcement activities of DOJ.

B. California's Armed Prohibited Persons System.

The California Legislature established the Armed Prohibited Persons System (APPS) in 2001. (§ 30000.) That legislation established an electronic system within DOJ to cross-reference certain databases containing records regarding persons prohibited from owning firearms and produce a list of armed prohibited persons. (*Ibid.*) In general, prohibited persons are those who have been convicted of a felony or a violent misdemeanor, are subject to a domestic violence restraining order, or have been involuntarily committed for mental health care. (§ 30005.)

Law enforcement officers throughout California can access the APPS list 24 hours a day, seven days a week, through the California Law Enforcement Telecommunications System (CLETS). (See § 30000, subd. (b); see also § 30010 ["The Attorney General shall provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm."].) DOJ uses the APPS list to conduct enforcement actions that result in the seizure of firearms in the possession of prohibited persons.

C. California Senate Bills 819 and 140.

The APPS program went into effect around 2006, at which time APPS was funded through moneys appropriated from the General Fund. But with the passage of Senate Bill 819 in 2011, the Legislature clarified that the APPS program could be funded with the DROS fees deposited into the Dealer's Record of Sale Special Account. With SB 819 the Legislature amended the DROS fee statute (i.e., section 28225) to include the costs of enforcement activities related to

[4] All further statutory citations are to the California Penal Code unless otherwise indicated.

firearms possession. As a result of SB 819, the provision states that the DROS fee shall be no more than is necessary to fund DOJ for:

> [T]he costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, *possession*, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(§ 28225, subd. (b)(11), emphasis added.)

In 2013, the Legislature passed Senate Bill 140, a bill appropriating $24 million from the DROS Special Account to DOJ to address a growing backlog in APPS. The Legislature added to the California Penal Code section 30015, which provides, in relevant part:

> The sum of twenty-four million dollars ($24,000,000) is hereby appropriated from the Dealers' Record of Sale Special Account of the General Fund to the Department of Justice to address the backlog in the Armed Prohibited Persons System (APPS) and the illegal possession of firearms by those prohibited persons.

(§ 30015, subd. (a).)

III. THE PARTIES.

The plaintiffs in this case are a firearms rights advocacy group called the Calguns Shooting Sports Association, and four individuals.

As mentioned above, the defendants include Kamala D. Harris, the Attorney General of the State of California, and Stephen Lindley, the Chief of the California Department of Justice Bureau of Firearms. The Attorney General and Lindley are generally responsible for the enforcement of a number of state laws regarding the manufacture, sale, purchase, ownership, possession, loan, and transfer of firearms, including laws related to the DROS fee and APPS.

The defendants also include the State Controller, Betty Yee, although the Controller's discovery responses are not at issue in the pending motions.

IV. PLAINTIFFS' CLAIMS.

Plaintiffs' petition and complaint contains six causes of action. The first cause of action is brought against the DOJ defendants and seeks a declaration that SB 819 violates Proposition 26, which voters approved in 2010. (Compl. for Decl. & Inj. Relief & Pet. for Writ of Mandamus ("Compl.") at p. 15 & ¶ 82.) It also seeks an injunction prohibiting DOJ from utilizing DROS

Fee revenues for the purpose of regulating the possession of firearms. (*Id.* ¶ 84.) One court of appeal has explained Proposition 26 as follows:

> Proposition 26 expanded the definition of taxes so as to include fees and charges, with specified exceptions; required a two-thirds vote of the Legislature to approve laws increasing taxes on any taxpayers; and shifted to the state or local government the burden of demonstrating that any charge, levy or assessment is not a tax. Proposition 26 amended section 3 of article XIII A and section 1 of article XIII C of the California Constitution.

(*Schmeer v. Cnty. of Los Angeles*, 213 Cal.App.4th 1310, 1322, as modified (Mar. 11, 2013), review denied (May 15, 2013); see Cal. Const., art. XIIIA, § 3, subd. (a) ["Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed."].)

The second cause of action is also brought against the DOJ defendants. (Compl. at p. 16.) Based on the claim that SB 819 violates Proposition 26, it seeks a declaration that SB 140 "is an unlawful appropriation." (*Id.* ¶ 86 & at p. 20.) It also seeks an injunction precluding DOJ from using any of the $24 million appropriated by SB 140 in connection with the APPS programs. (*Id.* ¶ 90.)

The third and fourth causes of action are against the Controller. Based on the claim that SB 140 "is an unlawful appropriation," it seeks a writ of mandate "stopping appropriation of SB 140 funds" and the "recouping of SB 140 funds," respectively. (See Compl. at pp. 17-18.)

The fifth cause of action is against the DOJ defendants. Based on the "unlawful appropriation" claim, it seeks writ relief direct the DOJ defendants return the funds appropriated under SB 140. (Compl. at p. 18.)

Finally, the six cause of action is also against the DOJ defendants and seeks a writ of mandate directing them to review the "proper amount" of the DROS fee, which is currently $19.00. (Compl. at pp. 18-19.)

ARGUMENT

I. THE COURT SHOULD DENY THE MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSIONS.

As laid out above, the requests for admissions at issue are Nos. 83-86 and 88-89. The text of all of the requests and responses at issue are set forth in plaintiffs' motion.

It is undisputed that Requests for Admission Nos. 83-86 and 88-89 seek defendants' position on the Proposition 26 issue. At this stage of the proceedings, defendants have clearly articulated its position that Proposition 26 does not apply because SB 819 simply did not "result[] in any taxpayer paying a higher tax." (Cal. Const., art. XIIIA, § 3, subd. (a).) Thus, defendants have not formulated a position on ancillary legal questions like whether those who participate in the DROS process "place an unusual burden" on the general public as to the illegal possession of firearms (see Request Nos. 83 & 84); whether they pose a "greater burden" on the public as to illegal firearm possession than those who have not participated in the DROS process (see Request Nos. 85 & 86); or whether law-abiding firearm owners have "a greater interest" than law-abiding citizens who do not own firearms in making sure that prohibited persons do not possess firearms (see Request Nos. 88 & 89). That is why defendants have stated an inability to admit or deny Requests for Admission Nos. 83-86 and 88-89 at this time, which is an appropriate response. (See *Smith v. Circle P Ranch Co.* (1978) 87 Cal.App.3d 267, 277 ["California allows a person to state that he unable to admit or deny a specific request for admission."].) Plaintiffs cannot use requests for admissions to force defendants to unnecessarily and prematurely take a position on any legal issue of plaintiffs' choosing.

Related, requests for admissions are not a vehicle for briefing a case on the merits. Rather, it is a discovery tool with limits. Their purpose is to expedite trials by setting at rest triable issues 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 ancillary legal issues implicated by Request Nos. 83-86 and 88-89 become relevant, defendants plan to contest them. Stated more broadly, plaintiffs are well aware of defendants' current position on the Proposition 26 issue, and defendants should not be required to

brief every related issue of which plaintiffs can conceive over the course of 117 requests for admissions, and the related Form Interrogatory 17.1, which effectively amounts to 117 additional discovery requests. The requests 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.) In their motions, plaintiffs attempt to distinguish these cases based on their facts. But the legal principles articulated in these cases still apply.

Finally, defendants have noticed a motion for judgment on the pleadings that, if successful, would dispose of plaintiffs' Proposition 26 claims and obviate the need for much of plaintiffs' discovery. That motion will be heard on the same day as the motions to compel. Thus, if for some reason the Court is inclined to consider ordering further responses to Request Nos. 83-86 and 88-89, and in the interest of conserving the resources of the Court and the parties, defendants respectfully request that the Court withhold any such consideration pending its ruling on the motion for judgment on the pleadings.[5]

Defendants have sufficiently responded to the vast amount of discovery served by plaintiffs. Defendants' answers to plaintiffs' 117 requests for admissions, including Request Nos. 83-86 and 88-89, are sufficient. The Court should therefore deny the motion to compel.

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[5] For their part, plaintiffs argue in their motions to compel that defendants' motion for judgment on the pleadings is bound to fail. Of course, defendants disagree. In any event, the Court should decline plaintiffs' apparent invitation to somehow rule on the motion for judgment on the pleadings based on the briefing on the motions to compel. The parties will fully brief the motion for judgment on the pleadings in its own right prior to the noticed hearing on that motion.

II. THE COURT SHOULD DENY THE MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORY 17.1.

As stated above, plaintiffs' motion to compel further responses to Form Interrogatory 17.1 seeks further explanation of defendants' responses to six groups of requests for admissions. Below, defendants address each of those groups and explain why the Court should deny the motion.

A. Form Interrogatory 17.1(b) as it relates to RFA Nos. 18, 19, 21 and 22

Like the RFA discussed above, these requests go to the Proposition 26 issue. Thus, defendants expect that the requests will become moot following the Court's resolution of the motion for judgment on the pleadings. Nevertheless, in the event that motion is denied, and defendants having considered plaintiffs' motion and reviewed the relevant requests further, defendants agree to provide further amended responses to Form Interrogatory 17.1(b) as it relates to RFA Nos. 18, 19, 21 and 22. In light of defendants' willingness in this regard, the motion to compel should be denied.

B. Form Interrogatory 17.1(b) as it relates to RFA No. 38.

According to plaintiffs' motion, this request seeks an explanation of "what the per transaction cost is for the DROS process." (Pls.' Sep. Stmnt. in Supp. of Mot. to Compel Addt'l Form Inter. Responses at p. 6.) Thus, the request is cumulative of plaintiffs' Special Interrogatories Nos. 1 & 2, which defendants have answered. The motion as to this request should be denied for this reason alone.

Regarding defendants' responses to Special Interrogatories Nos. 1 & 2, they are not encompassed by the instant motion. Moreover, defendants' answers to those interrogatories sufficiently explain why defendants' cannot state any "per transaction cost" at this stage of the litigation.

Additionally, plaintiffs' insistence on determining a "per transaction cost" is unwarranted. Plaintiffs do not seek any order setting the DROS fee at a particular level. Rather, in relevant part, plaintiffs seek a writ directing defendants "to review the DROS Fee as currently imposed to determine whether the amount is 'no more than necessary' to cover its costs for the DROS

program." (Compl. at p. 21.) It would be unfair to require defendants to effectively conduct that review to answer a discovery response in advance of the resolution of the merits question of whether defendants even have the duty to conduct such a review.

Accordingly, the motion to compel a further response to Form Interrogatory 17.1 as it relates to RFA No. 38 should be denied.

C. Form Interrogatory 17.1(b) as it relates to RFA Nos. 58 and 68.

Defendants' explanation of their denial of RFA Nos. 58 and 68 is sufficient. Defendants have advised plaintiffs of the various costs associated with operating DOJ's firearms-related regulatory and enforcement programs. In connection with the federal court case and now this case defendants have produced numerous pages of budget and financial documents detailing the Legislature's appropriation of funds out of the DROS Special Account and DOJ's expenditure of those funds by line item going back to fiscal year 2003-2004 (i.e., covering a period of more than *ten years*). In addition to this significant amount of information, in the federal case plaintiffs deposed defendant Lindley, and they will almost certainly notice his deposition again in this case. Moreover, on more than one occasion defendants have proposed that plaintiffs depose some other employee of the Department of Justice who is knowledgeable about the expenditure of DROS Special Account funds. Plaintiffs have yet to accept that proposal, even though a deposition would be a far better vehicle for a discussion of the "costs" referenced in RFA Nos. 58 and 68.

In light of these circumstances, defendants should not have to detail or otherwise explain DOJ's complicated budget and various expenditures in response to a broadly-phrased, catch-all question like Form Interrogatory 17.1. The Court should deny the motion to compel a further response to Form Interrogatory 17.1(b) as it relates to RFA Nos. 58 and 68.

D. Form Interrogatory 17.1(b) as it relates to RFA No. 78.

Defendants' admission to RFA No. 78 is sufficiently unqualified so as to make any response Form Interrogatory 17.1(b) unnecessary. Under the rules, an answer to a request for admission must be "as complete and straightforward" as the information available reasonably permits and must "(a)dmit so much of the matter involved in the request as is true . . . or as reasonably and clearly qualified by the responding party." (Code Civ. Proc., § 2033.220,

subds. (a), (b)(1).) In one published case, a request for admission asked the plaintiff to "Admit you attended a meeting with [Party Y] on or about January 13, 2006." She responded: "Admit. [Party X] was also present." The Court determined that the plaintiff's response "admitted the statement and was not improper." (*St. Mary*, *supra*, 223 Cal.App.4th at p. 781 [brackets added].) This Court should take a similar view of the instant situation regarding RFA No. 78 and deny the motion to compel.

E. Form Interrogatory 17.1(b) as it relates to RFA Nos. 83-86 and 88-89.

In their answers to RFA Nos. 83-86 and 88-89, related interrogatory answers, and this opposition brief, defendants have articulated their position on the Proposition 26 issue and explained their inability to admit or deny the requests. Defendants have also explained above the impropriety of using RFA and Form Interrogatory 17.1 to brief the merits of a case. And in any event, any discovery order regarding RFA Nos. 83-86 and 88-89 would be unnecessary and premature in light of the pending motion for judgment on the pleadings. Thus, the motion to compel in connection with these requests should be denied.

F. Form Interrogatory 17.1(b) as it relates to RFA Nos. 92-96 and 99.

Defendants' interrogatory answers explaining their denial to RFA Nos. 92-96 and 99 is sufficient. As stated above, defendants have advised plaintiffs of the costs of DOJ's relevant programs and activities. Defendants have produced detailed budget and financial documents, produced defendant Lindley for deposition in the federal case, and remain willing to participate in relevant depositions in this case at the appropriate time. Again, a deposition would be a better vehicle for a discussion of the various activities and expenditures referenced in RFA Nos. 92-96 and 99. Thus, similar to the situation with respect to RFA Nos. 58 and 68, under the circumstances defendants should not have to detail or otherwise explain DOJ's expenditures in response to a generic question like Form Interrogatory 17.1. Thus, in its discretion and in the interest of efficiently managing the discovery process, the Court should deny the motion to compel.

CONCLUSION

For the reasons set forth above, the Court should deny both of plaintiffs' motions to compel.

Dated: April 6, 2015

Respectfully Submitted,

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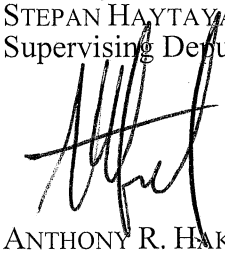

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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**
No.: **34-2013-80001667**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 6, 2015, I served the attached **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 6, 2015, at Sacramento, California.

Tracie L. Campbell
Declarant

Tracie Campbell
Signature

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