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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' SUPPLEMENTAL
BRIEF**

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

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1 **INTRODUCTION**

2 As it was inclined to do at the recent hearing, the Court should construe defendants’ motion
3 for judgment on the pleadings as a motion to strike and now strike the second alternative claim of
4 the second cause of action.

5 **BACKGROUND**

6 This matter came before the Court on June 5, 2015, for hearing on a motion for judgment
7 on pleadings by defendants Kamala D. Harris, the Attorney General of California, and Stephen
8 Lindley, the Chief of the Bureau of Firearms of the California Department of Justice (DOJ). The
9 motion challenged the first and second causes of action of plaintiffs’ complaint for declaratory
10 and injunctive relief and petition for writ of mandate. Plaintiffs include a firearms rights
11 advocacy organization and a group of individuals.

12 In relevant part, the complaint takes issue with Senate Bill 819, which the Legislature
13 passed in 2011 to clarify that California’s Armed Prohibited Persons System (APPS) could be
14 funded with the revenue generated from the \$19.00 Dealer’s Record of Sale (DROS) fee.
15 Generally speaking, an individual must pay the DROS fee when he or she purchases a firearm in
16 California.

17 Plaintiffs’ first cause of action sought a declaration that SB 819 is an unlawful tax under the
18 California Constitution. It also sought an injunction prohibiting DOJ from using DROS fee
19 revenues to regulate the possession of firearms.

20 With respect to the second cause of action, in a written order issued prior to the hearing the
21 Court observed that it “appear[ed] to plead two alternative claims.” (Order filed June 4, 2015, at
22 p. 1.) The first alternative claim was “that SB 140 is an unlawful appropriation because SB 819 is
23 an illegal tax under the California Constitution.” (*Ibid.*) The second alternative claim was that
24 “even if SB 819 is not an illegal tax, the DOJ defendants had no statutory authority to use DROS
25 fee revenues on regulating the possession of firearms prior to January 1, 2012, the date that SB
26 819 went into effect.” (*Ibid.*)

27 After the hearing, the Court issued an order granting the motion for judgment on the
28 pleadings as to the first cause of action, which the Court therefore dismissed without leave to

1 amend on the grounds that it failed to state facts sufficient to constitute a cause of action. (Order
2 After Hearing filed July 20, 2015, at p. 2.)

3 As to the first alternative claim of the second cause of action, the court also dismissed it
4 without leave to amend, the Court having granted the motion for judgment on the pleadings as to
5 the first cause of action. (Order After Hearing filed July 20, 2015, at p. 2.)

6 Finally, while the Court was inclined to construe the motion for judgment on the pleadings
7 as a motion to strike the second alternative claim of the second cause of action – and in fact strike
8 that claim¹ – it nevertheless afforded the parties an opportunity to file a short supplemental brief
9 limited to the motion to strike issue. (Order After Hearing filed July 20, 2015, at p. 2.)
10 Defendants now submit this supplemental brief.

11 ARGUMENT

12 As a general rule, a plaintiff cannot plead alternative claims in the same cause of action.
13 Rather, each legal theory must be pleaded in a separate cause of action in the complaint.
14 (*Campbell v. Rayburn* (1954) 129 Cal.App.2d 232, 235.) Moreover, a complaint that jumbles
15 together different legal theories is subject to objection. Such objections include, for example, a
16 demurrer for uncertainty (see Code Civ. Proc., § 430.10, subd. (f)), or even a general demurrer for
17 failure to state a cause of action. (See *O'Hare v. Marine Elec. Co.* (1964) 229 Cal.App.2d 33,
18 36.)

19 As indicated by the Court's question posed prior to the hearing on defendants' motion, and
20 as discussed on the record and in open court during that hearing, plaintiffs' second cause of action
21 was flawed from the outset: It purported to plead two alternative claims. It is therefore subject to
22 objection. More specifically, and as explained below, the Court having granted the motion for
23 judgment on the pleadings and dismissing the first alternative claim of the second cause of action,
24 the second alternative claim of the second cause of action is subject to a motion to strike.

25
26 ¹ The rules specifically authorize the Court to strike a pleading "upon a motion ... *or at*
27 *any time in its discretion.*" (Code Civ. Proc., § 436, italics added.) It is therefore proper for a
28 court to go so far as to strike a complaint and dismiss an action entirely on the court's own
motion. (*Lodi v. Lodi* (1985) 173 Cal.App.3d 628, 631.)

1 The Court is well within its authority in construing defendants' motion for judgment on the
2 pleadings as a motion to strike. As one court of appeal has put it:

3 [A] trial court is "free to consider the motion regardless of its label."
4 [Citations.] . . . The proposition that a trial court may construe a motion bearing
5 one label as a different type of motion is one that has existed for many decades.
6 "The nature of a motion is determined by the nature of the relief sought, not by the
7 label attached to it. The law is not a mere game of words." . . . Neither the
8 Legislature, nor the California Supreme Court, nor any Court of Appeal has ever
9 challenged that notion. . . . The principle that a trial court may consider a motion
10 regardless of the label placed on it by a party is consistent with the courts inherent
11 authority to manage and control its docket. (Code Civ. Proc., §§ 128, subd. (a),
12 187.)

13 (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193.)

14 Indeed, there is precedent involving the kinds of motions presently at issue. For example,
15 in *County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th
16 21, 32, the court of appeal affirmed the trial court's granting of a motion for judgment on the
17 pleadings without leave to amend where the trial court construed the motion to strike as one for
18 judgment on the pleadings. A similar situation existed in *Pierson v. Sharp Memorial Hospital,*
19 *Inc.* (1989) 216 Cal.App.3d 340, 343. There, "Sharp's motion, while labeled a motion to strike,
20 attacked Pierson's strict liability claim on the ground it failed to state facts sufficient to constitute
21 a cause of action. Sharp's motion effectively sought judgment on the pleadings." (*Ibid.*) The
22 court of appeal therefore "deem[ed] the [trial] court's order to grant judgment on the pleadings."
23 (*Ibid.*) Just as the courts in *County of Orange* and *Pierson* construed a motion to strike as a
24 motion for judgment on the pleadings, this Court should construe defendants motion for judgment
25 on the pleadings as a motion to strike and strike the second alternative claim of the second cause
26 of action.

27 Finally, construing defendants' motion as a motion to strike is fair.² Defendants' Notice of
28 Motion and Motion for Judgment on the Pleadings and accompanying memorandum of points and
authorities provided clear notice that defendants challenged the *entirety* of the first and second

² It also conserves the resources of the parties and the Court whereas subjecting a motion to strike to the formal notice, briefing and hearing procedures would waste those resources. This is especially so where, as here, the parties have had the opportunity to file supplemental briefs on the issue.

1 causes of action. (See Doc. nos. 35 & 36.) Plaintiffs' opposition responded in kind and never
2 parsed the first or second causes of action into any sub-claims, or alternative claims. Indeed, only
3 after this Court alerted plaintiffs to the existence of the purported second alternative claim did
4 plaintiffs object to it being dismissed. If that is not enough, neither in their opposition nor at the
5 hearing did plaintiffs' even request leave to amend in an attempt to cure any deficiencies of the
6 complaint, much less meet their burden to "show in what manner [they] can amend [their]
7 complaint and how that amendment will change the legal effect of [their] pleading." (*Goodman*
8 *v. Kennedy* (1976) 18 Cal.3d 335, 349.) And in any event, any amendment would be futile.
9 Therefore, there is no reason to save any portion of the second cause of action now, and the
10 motion to strike should be granted.

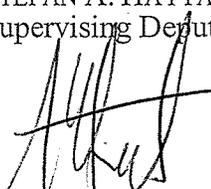
11 **CONCLUSION**

12 For the reasons set forth above, the Court should construe defendants' motion for judgment
13 on the pleadings as a motion to strike and in fact strike the second alternative claim of the second
14 cause of action.

15 Dated: August 7, 2015

Respectfully Submitted,

16 KAMALA D. HARRIS
17 Attorney General of California
18 STEPAN A. HAYTAYAN
19 Supervising Deputy Attorney General

20 
21 ANTHONY R. HAKL
22 Deputy Attorney General
23 *Attorneys for Defendants and Respondents*

24 SA2013113332

DECLARATION OF SERVICE BY 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; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On August 7, 2015, I served the attached **DEFENDANTS' SUPPLEMENTAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Scott Franklin
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

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 August 7, 2015, at Sacramento, California.

Eileen A. Ennis

Declarant



Signature