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SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SACRAMENTO  
10

11 DAVID GENTRY, JAMES PARKER, )  
MARK MIDLAM, JAMES BASS, and )  
12 CALGUNS SHOOTING SPORTS )  
ASSOCIATION )  
13 Plaintiffs and Petitioners, )  
14 )  
15 vs. )  
16 KAMALA HARRIS, in Her Official )  
Capacity as Attorney General For the State )  
17 of California; STEPHEN LINDLEY, in His )  
Official Capacity as Acting Chief for the )  
18 California Department of Justice, BETTY )  
YEE, in her official capacity as State )  
19 Controller, and DOES 1-10. )  
20 Defendants and Respondents. )

CASE NO. 34-2013-80001667  
  
FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND PETITION FOR WRIT OF  
MANDAMUS

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1 **INTRODUCTION**

2 1. The California Department of Justice (“DOJ”)<sup>1</sup> collects information from potential  
3 firearm purchasers via a Dealer Record of Sale (DROS) form. The DROS form is primarily used  
4 for conducting background checks. Along with submission of the DROS form, the DOJ requires  
5 potential purchasers<sup>2</sup> to pay a fee (the “DROS Fee”). As required by statute, monies collected  
6 from the DROS Fee are segregated in a DROS Special Account of the General Fund, to be used  
7 *only* for covering the costs associated with administering the DROS program.

8 2. The Penal Code limits what DOJ can charge for the DROS Fee to an amount “no more  
9 than is necessary” to recover DOJ’s costs of administering the DROS program. Despite this  
10 statutory limitation, in recent years, the DROS Special Account has amassed a surplus of over \$35  
11 million, primarily consisting of DROS Fee revenues.

12 3. The \$35 million surplus is extraordinary given that DOJ’s annual budget for the DROS  
13 program has been approximately \$9 million on average during the last ten years. In other words,  
14 the surplus is about four times the average amount of the annual DROS program budget.

15 4. Rather than lower the DROS Fee to reduce the surplus and to avoid such large and  
16 illegal surpluses in the future, the Legislature chose instead to “authorize” DOJ’s use of the DROS  
17 Fee for additional purposes by passing Senate Bill 819 (“SB 819”).

18 5. SB 819, effective January 2012, categorically expanded the scope of activities funded  
19 by the DROS Special Account (and specifically by DROS Fee revenues) to include general  
20 regulatory and enforcement activities related to the “possession” of firearms. These activities  
21 extend far beyond those reasonably related to the DROS program, the original purpose of which  
22 was to make sure those individuals seeking to purchase a firearm were not prohibited from doing  
23 so. Moreover, such activities had previously – and properly – been paid for out of the General

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24  
25 <sup>1</sup> Defendants, being sued in their official capacity as heads of the DOJ, and DOJ being  
26 under Defendants’ control, all references to “DOJ” herein should be construed as a reference to  
27 Defendants.

28 <sup>2</sup> With few exceptions, this “fee” applies to all types of transfers, even gifts and trades.  
But for simplicity’s sake “purchase” will be used throughout this Complaint to include all such  
activities unless specifically stated otherwise.

1 Fund.

2 6. The Legislature, relying on SB 819, passed Senate Bill 140 (“SB 140”) the following  
3 year, which appropriated the then-existing \$24 million dollar DROS Special Account surplus to  
4 pay for DOJ’s enforcement of the Armed Prohibited Persons System (APPS) program. APPS  
5 enforcement activities primarily include, e.g., hiring additional officers and staff to conduct  
6 SWAT-style raids on residents DOJ believes are illegally in possession of firearms – again,  
7 activities far removed from data collection and background checks that comprise the DROS  
8 program.

9 7. The DOJ’s current use of DROS Fee revenues to fund APPS enforcement or any other  
10 activities not reasonably related to the DROS program violates California law.

11 8. The California Constitution presumes that any bill enacting or increasing a “levy,  
12 charge, or exaction” of any kind is a tax, and, as such, must receive approval from two-thirds of  
13 all members of each house of the Legislature to be valid.

14 9. By expanding the activities for which DROS Fee revenues can be used to include  
15 regulating the “possession” of firearms, and thereby increasing the activities the DROS Fee payer  
16 is responsible to finance, SB 819 constitutes “a levy, charge, or exaction” that the law presumes is  
17 a tax.

18 10. Despite the Legislature’s attempt to paint it as such, SB 819 is not the type of  
19 regulatory measure that is exempt from being considered a tax. Rather, it represents precisely the  
20 type of government conduct that a 2010 amendment to the California Constitution was intended to  
21 stop, i.e., the government’s effort to circumvent tax-control measures by disguising new taxes or  
22 tax increases as “fees” or mere regulations.

23 11. Because SB 819 does not meet any of the exceptions for being a tax and was not  
24 passed with the requisite two-thirds majority of both legislative houses, it is void and  
25 unenforceable as an illegal tax.

26 12. And, because its authorization was based solely on the invalid adoption of SB 819, the  
27 Legislature’s appropriation of \$24 million from the DROS Special Account surplus to fund the  
28 Armed Prohibited Persons System (APPS) pursuant to SB 140 was and is an ongoing illegal

1 expenditure of state funds.

2 13. Plaintiffs-Petitioners (“Plaintiffs”) are individuals who have paid the DROS Fee in the  
3 past and who expect to pay it for their future lawful purchases of firearms. Plaintiffs seek a  
4 declaration from this Court that SB 819 is void as an illegal tax, along with an injunction  
5 prohibiting DOJ Defendants from using DROS Fee revenues for regulating the “possession” of  
6 firearms.

7 14. Plaintiffs further seek to enjoin any expenditure of DROS Fees purportedly authorized  
8 by SB 140, and a writ of mandate ordering the return of any such fees to the DROS Special  
9 Account that may have been transferred, appropriated, or otherwise allocated to DOJ pursuant to  
10 SB 140.

11 15. Additionally, because the DROS Fee has been increased from \$14 to \$19 in 2004,  
12 resulting in a surplus of at least \$35 million (despite DOJ Defendants spending DROS Fee  
13 revenues on unauthorized activities) from that time, Plaintiffs believe the DROS Fee is being  
14 charged at an amount beyond that permitted by statute.

15 16. As such, Plaintiffs seek a writ of mandate ordering DOJ Defendants to comply with  
16 their statutory duty to review the amount of the DROS Fee and establish its proper amount,  
17 without taking the costs of regulating “possession” of firearms into account, since SB 819 is void.

## 18 JURISDICTION & VENUE

19 17. This Court has jurisdiction under California Code of Civil Procedure sections 525,  
20 526, 526a, 187, and 1085 and other applicable laws.

21 18. Venue in this judicial district is proper under California Code of Civil Procedure  
22 sections 303(b) and 401 because Defendants are public officers and each maintains an official  
23 office within this judicial district. Additionally, Plaintiffs are residents of Sacramento County,  
24 wherein their injuries forming the basis of this lawsuit occurred.

## 25 PARTIES

### 26 I. Plaintiffs-Petitioners

27 19. All individual Plaintiffs are natural persons, citizens of the United States, and current  
28 residents of Sacramento County, California.

1           20. All individual Plaintiffs are eligible to possess firearms under state and federal law.

2           21. Plaintiff David Gentry has lawfully purchased firearms, for which he paid the DROS  
3 Fee, both before and after January 1, 2012, including within the last twelve months. Plaintiff  
4 Gentry expects to purchase a firearm within California in the near future, for which he would be  
5 subject to the DROS Fee.

6           22. Plaintiff James Parker is a resident and taxpayer of Sacramento, California. Plaintiff  
7 Parker has lawfully purchased firearms, for which he paid the DROS Fee, before January 1, 2012,  
8 including within the last twelve months.

9           23. Plaintiff Mark Midlam has lawfully purchased various firearms, for which he paid the  
10 DROS Fee, both before and after January 1, 2012, including within the last twelve months.  
11 Plaintiff Midlam expects to purchase a firearm within California in the near future, for which he  
12 would be subject to the DROS Fee.

13           24. Plaintiff James Bass has lawfully purchased firearms, for which he paid the DROS  
14 Fee, both before and after January 1, 2012, including within the last twelve months. Plaintiff Bass  
15 expects to purchase a firearm within California in the near future, for which he would be subject  
16 to the DROS Fee.

17           25. Plaintiff Calguns Shooting Sports Association (“CGSSA”) is a non-profit entity  
18 classified under section 501(c)(4) of the Internal Revenue Code and incorporated under the laws  
19 of California, with its principal place of business in Covina, California. CGSSA is committed to  
20 promoting and expanding safe recreational firearm shooting in California through education  
21 within the California shooting-sports Community. CGSSA is also dedicated to the protection of  
22 the rights of those involved in the shooting-sports. CGSSA represents the interests of its  
23 supporters all over California, including those within Sacramento County. Those supporters  
24 consist of firearm owners, collectors, hunters, enthusiasts, competitive and recreational shooters  
25 and others interested in safe and legal shooting-sports and firearm-related activities. The interests  
26 CGSSA seeks to protect on behalf of those supporters include being free from unlawful taxes  
27 imposed on law-abiding firearm purchasers. CGSSA brings this action on behalf of itself and its  
28 supporters in California who have been, are being, and will in the future be required to pay

1 excessive DROS Fees that are used unlawfully by Defendants-Respondents for purposes other  
2 than the DROS program.

3 **II. Defendants-Respondents**

4 26. Defendant KAMALA HARRIS is the Attorney General of California. She is the chief  
5 law enforcement officer of California, and is charged by Article V, Section 13 of the California  
6 Constitution with the duty to inform the general public and to supervise and instruct local  
7 prosecutors and law enforcement agencies regarding the meaning of the laws of the State,  
8 including the fair and proper implementation of the DROS program and use of DROS Fees. She is  
9 sued in her official capacity.

10 27. Defendant STEPHEN LINDLEY is the Acting Chief of the DOJ Bureau of Firearms  
11 and, as such, is responsible for executing, interpreting, and enforcing certain laws of the State of  
12 California, as well as customs, practices, and policies at issue in this lawsuit. He is sued in his  
13 official capacity.

14 28. Defendants HARRIS and LINDLEY (collectively "DOJ Defendants") are responsible  
15 for administering and enforcing the DROS Fee and related programs, and have in the past  
16 demanded and are presently demanding, and will continue to demand payment of the DROS Fee  
17 from firearms purchasers, including Plaintiffs. DOJ Defendants are also responsible for expending  
18 funds from the DROS Special Account as authorized and allocated to DOJ by the Legislature.

19 29. Defendant BETTY YEE is the current California Controller. As such, Defendant YEE  
20 is the Chief Fiscal Officer of California, and is responsible for accounting for and controlling the  
21 disbursement of all state funds, which would include the disbursement of funds from the DROS  
22 Special Account allocated to the DOJ Defendants by the Legislature.

23 30. The true names or capacities, whether individual, corporate, associate or otherwise of  
24 the DEFENDANTS named herein as DOES 1-10, are presently unknown to PLAINTIFFS, who  
25 therefore sue said DEFENDANTS by such fictitious names. PLAINTIFFS pray for leave to amend  
26 this Complaint and Petition to show the true names, capacities, and/or liabilities of DOE  
27 Defendants if and when they have been determined.

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1 initiating the transfer of a firearm, which fees are collected by the FFL processing the transfer.  
2 Cal. Penal Code § 28055.

3 **B. The Dealer’s Record of Sale (DROS) “Fee”**

4 37. California Penal Code sections 28225(a)-(c) [12076(e)],<sup>3</sup> 28230 [12076(f)], 28235  
5 [12076(g)], and 28240(a)-(b) [12076(I)], and California Code of Regulations section  
6 4001 establish the fees paid by a firearm transferee when processing a DROS (i.e., the DROS  
7 Fee),<sup>4</sup> and how those fees may be used.

8 38. Subdivision (a) of Penal Code section 28225 [12076(e)] provides:

9 The [DOJ] may require the [FFL] to charge each firearm purchaser a fee not to  
10 exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to  
11 exceed any increase in the California Consumer Price Index as compiled and  
12 reported by the Department of Industrial Relations.

13 39. The use of the words “may” and “not to exceed” in subdivision (a) of Penal Code  
14 section 28225 [12076(e)] make clear that DOJ Defendants are not *required* to charge the  
15 maximum fee amount allowed for by that statute, or to even charge *any* fee at all.

16 40. Subdivision (b) of Penal Code section 28225 [12076(e)] further provides that “[t]he  
17 [DROS] fee shall be no more than is necessary to fund” the activities enumerated at Penal Code  
18 section 28225(b)(1)-(11) [12076(e)(1)-(10)].

19 41. Penal Code section 28225(b)(11) [12076(e)(10)] authorizes the DOJ to use revenues  
20 from the DROS Fee to fund “the estimated reasonable costs of [DOJ] firearms-related regulatory  
21 and enforcement activities related to the sale, purchase; possession, loan, or transfer of firearms.”

22 42. Before January 1, 2012, section 28225(b)(11) [12076(e)(10)] did *not* provide for  
23 expenditure of DROS Fee revenues on firearms-related regulatory and enforcement activities

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24 <sup>3</sup> Pursuant to the Legislature’s enactment of Assembly Concurrent Resolution 73  
25 (McCarthy) 2006, which authorized a Non-Substantive Reorganization of California’s Deadly  
26 Weapons Statutes, various California Penal Code sections were renumbered as of January 1,  
2012. For convenience and ease of reference, the corresponding previous code section for each  
referenced “renumbered” Penal Code section is provided in brackets.

27 <sup>4</sup> The “fees” DOJ charges pursuant to California Code of Regulations, Title 11, Section  
28 4001, and Penal Code sections 12076(e) [28225(a)-(c)], 12076(f)(1)(B) [28230(a)(2)], discussed  
herein, shall be referred to as the “DROS Fee” throughout.

1 related to the mere “possession” of firearms. But the Legislature amended that section during the  
2 2011 Legislative session via SB 819 to “authorize” using DROS Fee revenues for this new and  
3 expansive category of activities, as explained in detail below.

4 43. Penal Code section 28230(a)(2) [12076(f)(1)(B)] provides for DOJ to also use DROS  
5 Fee revenues for “the actual processing costs associated with the submission of a [DROS] to the  
6 [DOJ].”

7 44. Section 28235 [12076(g)] provides:

8 All money received by the department pursuant to this article shall be  
9 deposited in the Dealers’ Record of Sale Special Account of the General  
10 Fund, which is hereby created, to be available, upon appropriation by the  
Legislature, for expenditure by the department to offset the costs incurred  
pursuant to any of the following:

- 11 (a) This article;
- 12 (b) Section 18910 [12305(f)-(g)];
- 13 (c) Section 27555 [12072(f)(1)];
- 14 (d) Subdivisions (d) and (e) of Section 27560 [12072(f)(2)];
- 15 (e) Article 6 (commencing with Section 28450) [12083 (entirety)];
- 16 (f) Section 31110 [12289.5];
- 17 (g) Section 31115 [12289];
- 18 (h) Subdivision (a) of Section 32020 12131(c)];
- 19 (i) Section 32670 [12234];
- 20 (j) Section 33320 [12099].

21 45. The reference to “this article” in section 28235 [12076(g)] means Article 3 of Chapter  
22 6 of Title 4 of Part 6 of the California Penal Code (beginning at section 28200 and ending with  
23 section 28250 [12076(entirety)]), which solely includes sections concerning imposition of the  
24 DROS Fee.

25 46. The activities covered in the Penal Code sections referenced by section 28235  
26 [12076(g)] also include:

27 (1) inspections of “Destructive Device” Permit-Holders (Cal. Penal Code § 18910  
28 [12305(f)-(g)]);

- 1           **(2)** the California FFL Check Program (Cal. Penal Code § 27555 [12072(f)(1)]);
- 2           **(3)** a public education program pertaining to importers of personal handguns (Cal. Penal
- 3 Code § [27560(d)-(e)] [12072(f)(2)(D)];
- 4           **(4)** the Centralized List of Exempted FFLs (Cal. Penal Code § 28450, *et seq.* [12083]);
- 5           **(5)** inspections of “Assault Weapon” Permit-Holders (Cal. Penal Code § 31110
- 6 [12289.5]);
- 7           **(6)** public education program regarding registration of “assault weapons” (Cal. Penal Code
- 8 § 31115 [12289]);
- 9           **(7)** retesting of handguns certified as “not unsafe” (Cal. Penal Code § 32020(a)
- 10 [12131(c)]);
- 11           **(8)** inspections of Machine Gun Permit-Holders (Cal. Penal Code § 32670 [12234]); and
- 12           **(9)** inspections of Short-Barreled Long Gun Permit-Holders (Cal. Penal Code § 33320
- 13 [12099]).

14           47. The DOJ currently charges the DROS Fee at \$19 for a single transaction involving one

15 or more rifles or shotguns and not more than one handgun. The DROS Fee for each additional

16 handgun being purchased at the same time is \$15. 11 Cal. Code of Reg. section 4001.

17           48. DOJ requires the DROS Fee be paid by purchasers for *all* firearm sales from an FFL,

18 as well as private party transfers of firearms that must be processed through an FFL (which

19 includes most transfers).<sup>5</sup> Cal. Penal Code § 28225.

20           49. The Penal Code mandates that revenue from the DROS Fee is to be deposited into the

21 DROS Special Account of the General Fund (“DROS Special Account”). Cal. Penal Code §

22 28235 [12076(g)].<sup>6</sup>

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24           <sup>5</sup> *But See* Cal. Pen. Code §§ 27875, 27920, 27925, and 27966 (exempting from the FFL-

25 processing requirement transfers between immediate family members, transfers by operation of

26 law, and transfers of “curios and relics”).

27           <sup>6</sup> DOJ Defendants deposit (and commingle) funds collected from some additional fees –

28 for special firearm licensing and miscellaneous services (*see e.g.*, Cal. Penal Code §§ 30900-

30905 [12285(a),(b)]), concealed weapon permit applications and Cal. Pen. Code § 26190(a)-(b)

[12054]), “Assault Weapon” Permits – into the DROS Special Account. Plaintiffs estimate that

1           **C.     The DROS Fee Has Continually Been Utilized for Expanding Purposes,**  
2           **Despite DOJ's Failure to Review Its Proper Amount for Recovering DOJ's**  
3           **Legitimate Costs**

4           50. Plaintiffs are informed and believe that the State (DOJ) began charging a DROS Fee  
5 in 1990. It was \$4.25 at that time. *See* Senate Bill 670, 1995-1996 Leg. Sess. (Cal. 1995) (as  
6 introduced Feb. 22, 1995).

7           51. By 1995, the DROS Fee had ballooned to \$14.00, an increase of greater than 300  
8 percent in less than five years. *Id.*

9           52. In 1995, the California Legislature passed Senate Bills 670 and 671 to cap the rate for  
10 a DROS fee at \$14.00, with increases “at a rate not to exceed any increase in the California  
11 Consumer Price Index.” That amendment is reflected in Penal Code section 28225(a) [12076(e)]  
12 described above.

13           53. In the following years, a trend emerged of passing bills that would allow monies in the  
14 DROS Special Account to finance an ever-expanding list of programs and services found at  
15 section 28235 [12076(g)].

16                           **1.     AB 161: Deleting specific prohibitions against using “DROS Fee”**  
17                           **funds for other purposes**

18           54. In 2003, AB 161 was proposed to expand the scope of section 28225(a)-(c) [12076(e)]  
19 by providing a “catch-all” to ensure that those programs (*i.e.*, those sections listed in section  
20 28235 [12076(g)]) could be supported by revenues collected from the “DROS Fee” that were  
21 deposited in the DROS Special Account.

22           55. As AB 161 made its way through the legislative process, the bill’s sponsor argued that  
23 it did not expand the use of revenues from the DROS Fee, but merely *clarified* their use.<sup>7</sup>

24           70-80% of the account consists of monies from the DROS Fee; Plaintiffs’ efforts to ascertain a  
25 more definite figure are hampered by the DOJ’s lack of accounting.

26           <sup>7</sup> *See* Sen. Comm. on Public Safety, Bill Analysis: Dealers Record of Sale Special  
27 Account - Expanding Authorized Use - Appropriation to Fund Firearms Trafficking Prevention  
28 Act of 2002, at 10 (July 8, 2003) *available at*  
[http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab\\_0151-0200/ab\\_161\\_cfa\\_20030708\\_141850\\_se\\_n\\_comm.html](http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0151-0200/ab_161_cfa_20030708_141850_se_n_comm.html).

1           56. Nevertheless, in its final form as signed into law, AB 161 removed the prohibition on  
2 using DROS Fee revenues to “directly fund or as a loan to fund any program not specified” and,  
3 added section 28225(b)(11) [12076(e)(10)], allowing the DOJ to use funds collected from firearm  
4 transactions for any “regulatory and enforcement activit[y] related to the sale, purchase, loan, or  
5 transfer of firearms.”

6           57. Due to AB 161’s expansion of activities to be funded by the DROS Special Account,  
7 on January 26, 2004, then Senator Morrow submitted a written request to the Joint Legislative  
8 Audit Committee (“JLAC”), seeking a formal audit of the DROS Special Account, noting that the  
9 DOJ’s previous reports lacked sufficient detail. That request was heard a month later, but was not  
10 granted.<sup>8</sup>

## 11                           **2.       11 CCR 4001: Raising the DROS Fee Amount**

12           58. Later that same year, less than one year after AB 161 expanded the list of activities  
13 that DROS Fee payers are forced to fund, and after the Legislature rejected Senator Morrow’s call  
14 for a formal audit, the DOJ, without justification or explanation, adopted California Code of  
15 Regulations, title 11, section 4001, which increased the cap on the DROS Fee from \$14 to \$19 for  
16 the first handgun in a single transaction, and for one or more rifles or shotguns in a single  
17 transaction. And, DOJ capped the DROS Fee for each additional handgun being purchased at the  
18 same time as the first handgun at \$15.

19           59. No support was provided by DOJ tying the \$5 increase of the maximum fee amount  
20 (from \$14 to \$19) to the California Consumer Price Index, to which DROS Fee increases are  
21 statutorily limited. Nor was any support provided by DOJ justifying the \$15 fee as necessary to  
22 cover its costs relating to the sale of an additional handgun.

## 23                           **3.       DOJ’s failed attempt to lower admittedly excessive DROS Fee**

24           60. California Code of Regulations, title 11, section 4001 remained in effect without any  
25 attempts by DOJ to amend it to raise or lower the DROS Fee, until 2010 when the DOJ issued a  
26 notice of proposed rulemaking, stating its intent to *lower* the maximum fee allowed from \$19 to

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27  
28           <sup>8</sup> PLAINTIFFS have so far been unable to ascertain the vote or outcome of that February  
24, 2004 hearing, despite diligent efforts.

1 the pre-2004 emergency regulation amount of \$14.

2 61. The 2010 initial statement of reasons concerning the proposed rulemaking intended to  
3 lower the DROS Fee indicated that “although the volume of DROS transactions has increased, the  
4 average time spent on each DROS, and thus the processing cost, has decreased.”<sup>9</sup> It also noted that  
5 “[t]he proposed regulations [would] lower the current \$19 DROS Fee to \$14, *commensurate with*  
6 *the actual cost of processing a DROS.*” (emphasis added).<sup>10</sup>

7 62. Ultimately, the 2010 proposed rulemaking was not adopted, thereby allowing DOJ to  
8 continue collecting the admittedly excessive DROS Fee revenues and use them to fund other  
9 government activities.

10 63. With the possible exception of DOJ’s assessment in 2010, which was never acted  
11 upon despite its finding that the amount of the DROS Fee is too high, it appears DOJ has never  
12 conducted a review of the DROS Fee to ensure “that the amount is no more than necessary to  
13 cover the reasonable costs” of the DROS program, as required by law. Cal. Penal Code §§  
14 28225(a) [12076(e)], 28225(b) [12076(e)]; *See also* Cal. Const. art. XIII A, § 3(d).

15 **D. SB 819: Further expanding potential uses for DROS Fee funds and the**  
16 **surplus accumulated in the DROS Special Account**

17 64. Rather than lower the DROS Fee, based on DOJ’s 2010 findings, and use the DROS  
18 Special Account’s surplus for purposes relating to the DROS system, in 2011, the California  
19 Legislature passed and Governor Brown signed into law Senate Bill 819 (Leno), effective as of  
20 January 1, 2012. SB 819 once again expanded the uses to which DROS Fee revenues may be put,  
21 as described in the findings for amending section 28225, quoted below.

22 65. In addition to the Legislature’s express findings to the same effect, DOJ Defendants  
23 have admitted SB 819’s purpose and effect is to use funds from the DROS Fee on activities  
24 unrelated to the DROS program: “To clear the [Armed and Prohibited Persons System] backlog of  
25

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26 <sup>9</sup> Cal. Dept. of Justice, Initial Statement of Reasons concerning Proposed DROS Fee  
27 Regulations (2010), *available at* <http://ag.ca.gov/firearms/regs/DROSIsoor.pdf>.

28 <sup>10</sup> *Id.*

1 approximately 34,000 handguns, Attorney General Harris is the sponsor of Senate Bill 819, which  
2 would revise the Penal Code to *expand* the use of existing regulatory fees collected by gun dealers  
3 to allow the state [DOJ] to use fee revenue to pay for the APPS program.” Press Release, Office of  
4 the Attorney General, Attorney General Kamala D. Harris Announces Seizure of 1,200 Guns from  
5 Mentally Unstable and Other Individuals (June 16, 2011) (emphasis added).

6 66. As noted above, prior to January 1, 2012, section 28225(b)(11) [12076(e)(10)] did not  
7 provide for expenditure of DROS Fee revenues on regulations or enforcement activities related to  
8 “possession” of firearms. Such general law enforcement activities were always funded from the  
9 General Fund. But the Legislature amended that section during the 2011 Legislative session via  
10 SB 819 to allow for such, based on its following purported findings:

11 SECTION 1. The Legislature finds and declares all of the following:

12 (a) California is the first and only state in the nation to establish an  
13 automated system for tracking handgun and assault weapon owners  
who might fall into a prohibited status.

14 (b) The California Department of Justice (DOJ) is required to  
15 maintain an online database, which is currently known as the Armed  
16 Prohibited Persons System, otherwise known as APPS, which  
17 cross-references all handgun and assault weapon owners across the  
18 state against criminal history records to determine persons who have  
19 been, or will become, prohibited from possessing a firearm  
20 subsequent to the legal acquisition or registration of a firearm or  
21 assault weapon.

22 (c) The DOJ is further required to provide authorized law  
23 enforcement agencies with inquiry capabilities and investigative  
24 assistance to determine the prohibition status of a person of interest.

25 (d) Each day, the list of armed prohibited persons in California  
26 grows by about 15 to 20 people. There are currently more than  
27 18,000 armed prohibited persons in California. Collectively, these  
28 individuals are believed to be in possession of over 34,000  
handguns and 1,590 assault weapons. The illegal possession of these  
firearms presents a substantial danger to public safety.

(e) Neither the DOJ nor local law enforcement has sufficient  
resources to confiscate the enormous backlog of weapons, nor can  
they keep up with the daily influx of newly prohibited persons.

(f) A Dealer Record of Sale fee is imposed upon every sale or  
transfer of a firearm by a dealer in California. Existing law  
authorizes the DOJ to utilize these funds for firearms-related  
regulatory and enforcement activities related to the sale, purchase,  
loan, or transfer of firearms pursuant to any provision listed in

1 Section 16580 of the Penal Code, but not expressly for the  
2 enforcement activities related to possession.

3 *(g) Rather than placing an additional burden on the taxpayers of*  
4 *California to fund enhanced enforcement of the existing armed*  
5 *prohibited persons program, it is the intent of the Legislature in*  
6 *enacting this measure to allow the DOJ to utilize the Dealer Record*  
7 *of Sale Account for the additional, limited purpose of funding*  
8 *enforcement of the Armed Prohibited Persons System. S.B. 819,*  
9 *2011 Leg., Reg. Sess. (Ca. 2011) (emphasis added).*

7 **E. SB 140: Appropriation of \$24 Million from DROS Special Account for DOJ's**  
8 **Armed Prohibited Person System**

9 67. DOJ Defendants received what they sought from SB 819 the following year, on May  
10 1, 2013, when Senate Bill 140 (2013) was signed into law as an emergency measure, adding  
11 Section 30015 to the Penal Code. SB 140 appropriates the current \$24 million surplus from the  
12 DROS Special Account to DOJ Defendants “to address the backlog in the Armed Prohibited  
13 Persons System (APPS) and the illegal possession of firearms by those prohibited persons.”

14 68. Evidenced by, among other things, their various press releases and television  
15 interviews in the last few months touting their efforts and purported accomplishments, DOJ  
16 Defendants have been aggressively spending the monies appropriated to them via SB 140 by  
17 hiring new agents to conduct APPS-related investigations, including SWAT-style raids on  
18 suspects’ homes, hoping to seize illegally possessed firearms from dangerous criminals.  
19 Regardless of the efficacy or wisdom of these raids, such activities are not reasonably related to  
20 the DROS program.

21 69. Nonetheless, as seen above in the legislative findings for Section 30015, the  
22 Legislature chose to burden potential firearm purchasers via an excessive DROS Fee with the cost  
23 of administering the APPS “[r]ather than placing an additional burden on the taxpayers of  
24 California.”

25 70. Prior to January 1, 2012, when SB 819 went into effect, there was no statutory  
26 authority for SB 140, because section 28225(b)(11) [12076(e)(10)] did not provide for  
27 expenditure of DROS Fee revenues on activities related to “possession” of firearms before that  
28 time. Nothing in SB 140 purports to justify the use of surplus DROS Fee funds collected before

1 January 1, 2012, on the “possession of firearms.”

2 71. Plaintiffs have each been required to, and have in fact paid the DROS Fee before and  
3 after SB 819 went into effect on January 1, 2012.

4 72. Plaintiffs intend to purchase additional firearms in the near future, which will require  
5 their paying the DROS Fee again.

6 **FIRST CAUSE OF ACTION**  
7 **FOR DECLARATORY AND INJUNCTIVE RELIEF INVALIDITY OF**  
8 **APPROPRIATION OF PRE-EXISTING DROS FEE REVENUES TO ARMED**  
9 **PROHIBITED PERSON SYSTEM**  
10 **California Code of Civil Procedure § 526a**  
11 **(By All Plaintiffs Against DOJ Defendants)**

12 73. All of the above paragraphs are re-alleged and incorporated herein by reference.

13 74. Even if SB 819 is not an illegal tax under California’s Constitution, DOJ Defendants  
14 did not have statutory authority to use DROS Fee revenues on regulating the “possession” of  
15 firearms before SB 819 went into effect on January 1, 2012. Therefore, at minimum, DOJ  
16 Defendants have no statutory authority to use any revenues collected from the DROS Fee before  
17 2012 for activities relating to the “possession” of firearms.

18 75. Enforcing APPS programs relates solely to regulating individuals’ “possession” of  
19 firearms. As such, any monies collected from the DROS Fee prior to SB 819 going into effect on  
20 January 1, 2012, cannot be used to fund the enforcement of APPS programs.

21 76. Because a significant portion of the \$24 million SB 140 appropriated to DOJ  
22 Defendants was amassed from individuals, including Plaintiffs, paying the DROS Fee prior to SB  
23 819 going into effect on January 1, 2012, DOJ Defendants are not authorized to use such portion  
24 of that \$24 million on APPS programs, and are thus precluded from doing so.

25 77. Plaintiffs have been and continuously are irreparably injured by DOJ Defendants  
26 using the \$24 million appropriated to them by SB 140 or, at minimum, that portion of the \$24  
27 million collected before January 1, 2012.

28 ///





1 Special Account was generated by payers, including Plaintiffs, of the DROS Fee.

2 95. Despite amassing a multi-million-dollar surplus, DOJ Defendants have failed to  
3 properly review the amount of the DROS Fee to ensure that the amount is “no more than is  
4 necessary to fund” the activities enumerated at Penal Code section 28225(b)(1)-(11)  
5 [12076(e)(1)-(10)].

6 96. DOJ Defendants are not complying with their duty to tailor the amount of the DROS  
7 Fee to DOJ's actual costs in administering the DROS program.

8 97. On information and belief, the current amount of the DROS Fee exceeds DOJ  
9 Defendants' actual costs for lawfully administering the DROS program.

10 98. PLAINTIFFS have been and continuously are irreparably injured by DOJ Defendants'  
11 imposing the DROS Fee at an amount that accrues a multi-million-dollar surplus without tying  
12 such amount to DOJ's actual costs for administering the DROS program.

13 99. Further, even if this Court holds that the use of DROS Fee funds for APPS-based law  
14 enforcement activities is legal, and that the DROS Fee was being charged at a proper amount prior  
15 to the passage of SB 819, the expansion of the scope of “necessary” costs funded by the DROS  
16 Fee resulting from that new use constitutes a major change in circumstance that requires DOJ  
17 Defendants to reassess the amount being charged for the DROS Fee based on the DOJ  
18 Defendants' clear, present, and ministerial duty pursuant to California Penal Code sections  
19 28225(a) [12076(e)] and 28225(b) [12076(e)] to determine “the amount necessary to fund” the  
20 activities enumerated at Penal Code section 28225(b)(1)-(11) [12076(e)(1)-(10)] and to only  
21 charge the DROS Fee at that amount.

22 100. In light of DOJ Defendants' duties to (1) perform a review to determine “the amount  
23 necessary to fund” the activities enumerated at Penal Code section 28225(b)(1)-(11)  
24 [12076(e)(1)-(10)] and to (2) charge the DROS Fee at that amount or less, DOJ Defendants'  
25 review of the relevant costs necessarily must include a determination of whether the use of DROS  
26 Fee funds for APPS-based law enforcement activities constitutes a tax. What is “necessary” to  
27 fund the activities referred to in the pre-SB 819 version of Penal Code section 28225 is different  
28 from what is “necessary” to fund “possession”-related law enforcement activities that are yet to be

1 specified, inasmuch as a higher level of scrutiny applies to levies purportedly incurred to fund  
2 regulatory activities (as opposed to costs paid for via funds collected for a tax).

3 **SIXTH CAUSE OF ACTION:**  
4 **FOR DECLARATORY AND INJUNCTIVE RELIEF**  
5 **VALIDITY OF SENATE BILL 819/THE DROS FEE**  
6 **Violation of California Const., Art. XIII, Sec. 1(b)**  
7 **(By All Plaintiffs Against DOJ Defendants)**

8 101. All of the above paragraphs are re-alleged and incorporated herein by reference.

9 102. By expanding the activities for which DROS Fee revenues can be used to include  
10 regulating the “possession” of firearms, thereby increasing the activities the DROS Fee payer is  
11 responsible to finance and shifting the responsibility for millions of dollars in law enforcement  
12 costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS  
13 Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

14 103. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-  
15 called regulatory fee.

16 104. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so  
17 they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under  
18 California law.

19 105. Property taxes must be assessed in proportion to the value of the property being  
20 taxed per California Constitution, article XIII, section 1(b).

21 106. On information and belief, DOJ has never attempted to determine whether the SB  
22 819-created tax is, or could be, assessed in proportion to the value of the property being taxed.

23 107. On information and belief, the SB 819-created tax is not being proportionally  
24 assessed as required by California Constitution, article XIII, section 1(b).

25 108. SB 819 is void and unenforceable because it creates a property tax that does not meet  
26 the constitutional proportionality requirement that applies to property taxes.

27 109. An actual controversy exists between the parties hereto in that Plaintiffs believe that  
28 DOJ’s use of DROS Fee funds for costs not resulting from the DROS process, purportedly  
pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ  
continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant

1 to SB 819.

2 110. Plaintiffs desire a judicial determination of the rights and duties of the parties,  
3 including a declaration that SB 819 created an illegal tax under section 1(b) of article XIII of the  
4 California Constitution.

5 111. Plaintiffs have been and continuously are irreparably injured by DOJ's use of DROS  
6 Fee revenues for APPS-related law enforcement activities pursuant to SB 819, as Plaintiffs are  
7 being subjected to an illegal tax as a result thereof.

8 112. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing  
9 DROS Fee revenues for law enforcement activities related to the "possession" of firearms  
10 pursuant to SB 819.

11 **SEVENTH CAUSE OF ACTION:**  
12 **FOR DECLARATORY AND INJUNCTIVE RELIEF**  
13 **VALIDITY OF SENATE BILL 819/THE DROS FEE**  
14 **Violation of California Const., Art. XIII, Sec. 2**  
15 **(By All Plaintiffs Against DOJ Defendants)**

16 113. All of the above paragraphs are re-alleged and incorporated herein by reference.

17 114. By expanding the activities for which DROS Fee revenues can be used to include  
18 regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is  
19 responsible to finance and shifting the responsibility for millions of dollars in law enforcement  
20 costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS  
21 Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

22 115. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-  
23 called regulatory fee.

24 116. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so  
25 they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under  
26 California law.

27 117. A two-thirds vote of the legislature is required to subject a specific type of personal  
28 property to differential taxation pursuant to California Constitution, article XIII, section 2.

118. The implementation of SB 819 resulted in the differential taxation of personal  
property (i.e., firearms).

1 119. SB 819 was not enacted by a two-thirds vote.

2 120. SB 819 is void and unenforceable because it created a differential tax that does not  
3 meet the constitutional two-thirds vote requirement that applies to the creation of a differential  
4 property tax.

5 121. An actual controversy exists between the parties hereto in that Plaintiffs believe that  
6 DOJ's use of DROS Fee funds for costs not resulting from the DROS process, purportedly  
7 pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ  
8 continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant  
9 to SB 819.

10 122. Plaintiffs desire a judicial determination of the rights and duties of the parties,  
11 including a declaration as to whether SB 819 created an illegal tax under section 2 of article XIII  
12 of the California Constitution.

13 123. Plaintiffs have been and continuously are irreparably injured by DOJ's use of DROS  
14 Fee revenues for APPS-related law enforcement activities pursuant to SB 819, as Plaintiffs are  
15 being subjected to an illegal tax as a result thereof.

16 124. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing  
17 DROS Fee revenues for law enforcement activities related to the "possession" of firearms  
18 pursuant to SB 819.

19 **EIGHTH CAUSE OF ACTION:**  
20 **FOR DECLARATORY AND INJUNCTIVE RELIEF**  
21 **VALIDITY OF SENATE BILL 819/THE DROS FEE**  
22 **Violation of California Const., Art. XIII, Sec. 3**  
23 **(By All Plaintiffs Against DOJ Defendants)**

24 125. All of the above paragraphs are re-alleged and incorporated herein by reference.

25 126. By expanding the activities for which DROS Fee revenues can be used to include  
26 regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is  
27 responsible to finance and shifting the responsibility for millions of dollars in law enforcement  
28 costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS  
29 Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

30 127. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-

1 called regulatory fee.

2 128. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so  
3 they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under  
4 California law.

5 129. “Household furnishings and personal effects not held or used in connection with a  
6 trade, profession, or business” are exempt from property taxation under California Constitution,  
7 article XIII, section 3(m).

8 130. Firearms “not held or used in connection with a trade, profession, or business” are  
9 within the category of “household furnishings and personal effects” and thus firearms purchased  
10 for non-commercial use are exempt from property taxation under California Constitution, article  
11 XIII, section 3(m).

12 131. SB 819 resulted in a tax on firearms, and because firearms are not to be taxed  
13 pursuant to the California Constitution, article XIII, section 3(m), SB 819 is void and  
14 unenforceable.

15 132. An actual controversy exists between the parties hereto in that Plaintiffs believe that  
16 DOJ’s use of DROS Fee funds for costs not resulting from the DROS process, purportedly  
17 pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ  
18 continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant  
19 to SB 819.

20 133. Plaintiffs desire a judicial determination of the rights and duties of the parties,  
21 including a declaration that SB 819 created an illegal tax under Section 3(m) of Article XIII of the  
22 California Constitution.

23 134. Plaintiffs have been and continuously are irreparably injured by DOJ’s use of DROS  
24 Fee revenues for APPS-related law enforcement activities pursuant to SB 819.

25 135. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing  
26 DROS Fee revenues for law enforcement activities related to the “possession” of firearms  
27 pursuant to SB 819.

28 ///



1 Account funds for some use other than APPS-based law enforcement activities.

2 142. Plaintiffs have been and continuously are irreparably injured by DROS Fee revenues  
3 being utilized for activities other than APPS-related law enforcement activities pursuant to SB  
4 819, as Plaintiffs are being subjected to an illegal tax as a result thereof.

5 143. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing  
6 DROS Fee revenues for purposes unrelated to the DROS background check process or APPS-  
7 based law enforcement activities.

8 **PRAYER**

9 WHEREFORE PLAINTIFFS pray for relief as follows:

10 1) For a declaration that there is no legal authorization for DOJ Defendants to use funds  
11 collected from the “DROS Fee” before Senate Bill 819 went into effect on January 1, 2012, for  
12 regulating the “possession” of firearms pursuant to section 28225(b)(11) [12076(e)(10)];

13 2) Alternatively, for a preliminary and permanent prohibitory injunction forbidding DOJ  
14 Defendants and their agents, employees, officers, and representatives, from receiving or using any  
15 monies collected from the “DROS Fee” before Senate Bill 819 went into effect on January 1,  
16 2012, that were appropriated to them via SB 140 for purposes of regulating the “possession” of  
17 firearms pursuant to section 28225(b)(11) [12076(e)(10)];

18 3) For a preliminary and permanent prohibitory injunction forbidding Defendant  
19 Controller and his agents, employees, officers, and representatives, from appropriating any funds  
20 from the DROS Special Account to DOJ Defendants pursuant to SB 819 or SB 140, limited to  
21 funds that were collected prior to Senate Bill 819 going into effect on January 1, 2012;

22 4) Alternatively, to the extent the Court believes a writ of mandate is appropriate rather  
23 than an injunction, for a peremptory writ of mandate ordering Defendant State Controller and his  
24 agents, employees, officers, and representatives, to refrain from appropriating any funds from the  
25 DROS Special Account to DOJ Defendants pursuant to SB 819 or SB 140, limited to funds that  
26 were collected prior to Senate Bill 819 going into effect on January 1, 2012;

27 5) For a peremptory writ of mandate ordering Defendant State Controller and his agents,  
28 employees, officers, and representatives, to recoup any funds that Defendant State Controller has

1 already appropriated to DOJ Defendants pursuant to SB 140, as to funds that were collected prior  
2 to Senate Bill 819 going into effect on January 1, 2012;

3 6) For a peremptory writ of mandate ordering DOJ Defendants and their agents,  
4 employees, officers, and representatives, to return any and all funds they may have received  
5 pursuant to Senate Bill 140, as to funds that were collected prior to Senate Bill 819 going into  
6 effect on January 1, 2012.

7 7) For a peremptory writ of mandate ordering DOJ Defendants and their agents,  
8 employees, officers, and representatives, to review the DROS Fee as currently imposed to  
9 determine whether the amount is “no more than is necessary” to cover its costs for the DROS  
10 program;

11 8) For a preliminary and permanent prohibitory injunction forbidding DOJ Defendants and  
12 their agents, employees, officers, and representatives, from imposing the “DROS Fee” as currently  
13 imposed, at least until the required review is conducted by DOJ and the appropriate amount for  
14 the DROS Fee is established;

15 9) For an award of reasonable attorneys’ fees, costs, and expenses pursuant to California  
16 Code of Civil Procedure § 1021.5 and/or other applicable law;

17 10) For such other and further relief as the Court may be just and proper;

18 11) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII,  
19 section 1(b) of the California Constitution and is thus void;

20 12) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII,  
21 section 2 of the California Constitution and is thus void;

22 13) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII,  
23 section 3(m) of the California Constitution and is thus void; and

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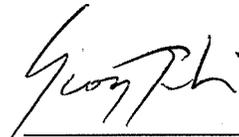
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14) Alternatively, for a declaration confirming Senate Bill 819 authorizes DOJ to use DROS Special Account funds for nothing other than costs specifically incurred as the result of APPS-based law enforcement activities, and an injunction on spending based on such declaration.

Dated: December 30, 2015

**MICHEL & ASSOCIATES, P.C.**

  
\_\_\_\_\_  
Scott M. Franklin  
Attorney for Plaintiffs

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

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

6 On December 30, 2015, the foregoing document(s) described as

7 **FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  
8 **AND PETITION FOR WRIT OF MANDAMUS**

8 on the interested parties in this action by placing

9 [ ] the original

10 [X] a true and correct copy

10 thereof enclosed in sealed envelope(s) addressed as follows:

11 Kamala D. Harris, Attorney General of California  
12 Office of the Attorney General  
13 Anthony Hakl, Deputy Attorney General  
14 1300 I Street, Suite 1101  
15 Sacramento, CA 95814

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

17 Executed on December 30, 2015, at Long Beach, California.

18 X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic  
19 transmission. Said transmission was reported and completed without error.

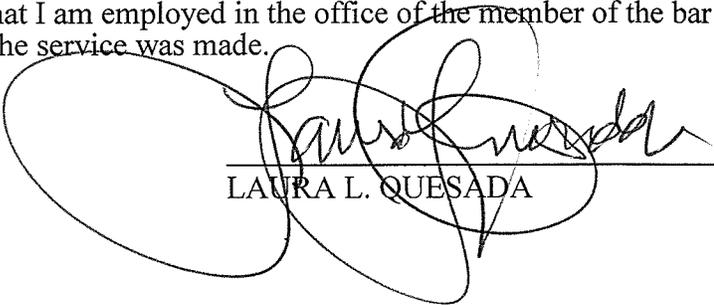
19 Executed on December 30, 2015, at Long Beach, California.

20     (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the  
21 addressee.

21 Executed on December 30, 2015, at Long Beach, California.

22 X (STATE) I declare under penalty of perjury under the laws of the State of California that  
23 the foregoing is true and correct.

24     (FEDERAL) I declare that I am employed in the office of the member of the bar of this  
25 court at whose direction the service was made.

26   
27 LAURA L. QUESADA  
28