

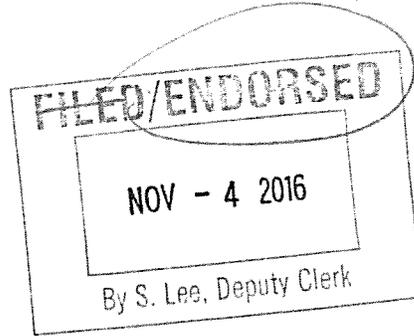
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO

13 DAVID GENTRY, JAMES PARKER,
14 MARK MIDLAM, JAMES BASS, and
15 CALGUNS SHOOTING SPORTS
16 ASSOCIATION,

17 Plaintiffs and Petitioners,

18 vs.

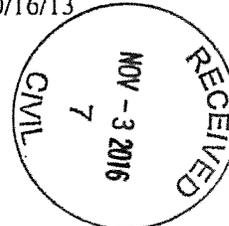
19 KAMALA HARRIS, in Her Official
20 Capacity as Attorney General for the State
21 of California; STEPHEN LINDLEY, in His
22 Official Capacity as Acting Chief for the
23 California Department of Justice, JOHN
24 CHIANG, in his official capacity as State
25 Controller for the State of California, and
26 DOES 1-10.

27 Defendants and Respondents.

CASE NO. 34-2013-80001667

STIPULATION RE: BIFURCATION AND
SETTING PARTIAL MERITS HEARING;
[PROPOSED] ORDER

Date: November 4, 2016
Time: 9:00 a.m.
Dept.: 31
Judge: Hon. Michael P. Kenny
Action filed: 10/16/13



28 The parties to this Action, through their respective counsel, hereby stipulate and agree to
the following.

AVERMENTS

WHEREAS, counsel for Plaintiffs and Defendants participated in an informal discovery
conference with this Court on October 28, 2016;

WHEREAS, during that conference, counsel and the Court discussed generally the status
of discovery in the action, primarily as to: (1) Plaintiffs' two motions to compel set for hearing on

1 October 28, 2016, and (2) potential motions to compel and/or motions for protective orders that
2 the parties anticipate as to certain recently served discovery requests;

3 WHEREAS, the Court inquired with the parties if they would be amenable to bifurcating
4 the action with the intent to narrow the action and thus potentially reduce the need for further
5 discovery and discovery dispute resolution;

6 WHEREAS, the Court continued the Motion to Compel hearings set to be heard October
7 28, 2016, to November 4, 2016, to give the parties an opportunity to meet-and-confer to
8 determine if they could stipulate to the terms of a proposed order addressing the bifurcation of the
9 action; and

10 WHEREAS, the parties have met and conferred as discussed above, and they are in
11 agreement as stipulated below.

12 **STIPULATION**

13 THEREFORE, based on the foregoing facts, the parties hereby stipulate as follows.

14 1. Plaintiffs' action is to be bifurcated such if either party desires to file a summary
15 adjudication/trial brief and separate statement of undisputed facts as to the Fifth or Ninth Cause
16 of Action (or both) pleaded in Plaintiffs' First Amended Complaint, such documents must be
17 filed by March 10, 2017, with opposition briefs filed no later than March 24, 2017, and reply
18 briefs filed no later than March 31, 2017. The Court will set the matter for hearing on April 14,
19 2017, or as soon thereafter as this Court's schedule will allow.

20 2. Memoranda filed pursuant hereto are subject to a 20-page limitation for motion
21 and opposition briefs, and a 10-page limit for reply briefs.

22 3. If a new material factual allegation is raised for the first time in a response to a
23 particular assertion made in a motion or separate statement of undisputed facts filed pursuant to
24 the bifurcation order, an ex parte application may be made to the Court for a Case Management
25 Conference so that the party may request the Court continue the relevant hearing date so that
26 limited discovery can be performed on the newly raised factual assertions. Cal. R. Court 3.723.
27 The parties making such application shall schedule such matter in good faith, expressly taking
28 into consideration the Court's and the opposing parties' schedule. The parties agree to such

1 hearing(s) being held telephonically, if permitted by the Court. This stipulation in being made in
2 an abundance of caution, to blunt any inequity that might result from a party raising new
3 allegations during the relevant briefing.

4 4. Plaintiffs have granted an extension to Defendants such that the following
5 discovery requests, propounded by Plaintiffs, require a response from Defendants Kamala Harris
6 and Stephen Lindley by November 4, 2016: Requests for Admissions (Set Three); (2) Form
7 Interrogatories (Set Four); (3) Special Interrogatories (Set Four); and (4) Request for Production
8 of Documents (Set Four). Pursuant to this Stipulation, however, the parties agree that Defendants'
9 duty to respond to these sets of discovery will be held in abeyance until the Court rules on the
10 partial merits briefing, at which time the Court shall establish a new response deadline or
11 otherwise address the pending requests.

12 5. Plaintiffs' Motion to Compel Further Responses to Requests for Production (Set
13 Three), currently set to be heard November 4, 2016, will be taken off calendar, and will be
14 rescheduled, declared moot, or otherwise expressly addressed upon the Court's ruling on the
15 partial merits briefing. Further, Plaintiffs will withdraw that motion if the parties are able to reach
16 an agreement whereby the withheld documents can be produced to Plaintiffs under a (future)
17 stipulated protective order. The parties agree to discuss the possibility of such stipulated
18 protective order in good faith.

19 6. Plaintiffs and Defendants disagree as to how the Court should handle Plaintiffs'
20 Motion to Compel Further Responses to Special Interrogatories (Set Three), and related request
21 for judicial notice, currently set to be heard November 4, 2016. They stipulate, however, to Court
22 resolving this particular issue without a further hearing on the matter. The parties' positions
23 relevant to this issue are outlined briefly below.

24 Plaintiffs contend that the three interrogatories at issue go directly to elemental issues in
25 their fifth (Special Interrogatory ["SI"] No. 25) and ninth (SI Nos. 29 and 30) causes of action,
26 causes of action that are set to be decided first under the Court's proposed bifurcation. That is, SI
27 No. 25 concerns Defendants' claimed inability to provide a total of the costs listed in Penal Code
28 28225 for fiscal year 2013-2014, which is directly relevant to the allegation in Plaintiffs' fifth

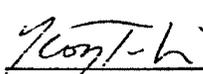
1 cause of action; i.e., that Defendants have failed to properly set the DROS Fee as required by
2 statute. And SI Nos. 29 and 30 are directly relevant to an element of Plaintiffs' ninth cause of
3 action: these SI concern whether the Department of Justice is actually spending money earmarked
4 for APPS enforcement on cases that do not fall within the scope of the relevant funding
5 authorization. Plaintiffs' ninth cause of action is for declaratory relief, which requires proof of an
6 actual controversy. Code Civ. Proc., § 1060. Further responses to SI Nos. 29 and 30 are need to
7 show that Plaintiffs do not impermissibly seek an advisory opinion, and that there is a concrete
8 dispute that can be addressed via declaratory relief. Accordingly, Plaintiff requests the Court take
9 the dispute over these three interrogatories under submission and that the relevant motion be
10 decided by this Court without any further argument.

11 Defendants contend that the motion to compel further answers to interrogatories be
12 handled in the same manner as the motion to compel further responses to requests for production
13 (i.e., taken off calendar and rescheduled, declared moot, or otherwise expressly addressed upon
14 the Court's ruling on the partial merits briefing). Defendants contend that further answers to SI
15 Nos. 25, 29, and 30 are unnecessary for the Court to resolve the fifth and ninth causes of action,
16 and that tabling the motion is more in line with the rest of this stipulation and the spirit of the
17 informal discovery conference held last week. Finally, if the Court is inclined to rule on the
18 motion to compel further answers to SI Nos. 25, 29, and 30, and because there has not yet been
19 oral argument on the motion, Defendants respectfully request that the motion be re-set for a
20 hearing so that the parties have an opportunity to present such oral argument. Defendants do not
21 oppose Plaintiffs' counsel appearing telephonically if the hearing is re-set.

22 **SO STIPULATED.**

23 Dated: November 3, 2016

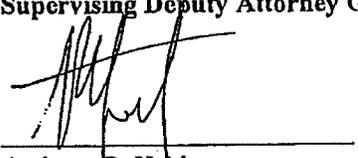
MICHEL & ASSOCIATES, P.C.

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26 _____
27 Scott M. Franklin
28 Attorneys for the Plaintiffs/Petitioners

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Dated: November 3, 2016

KAMALA D. HARRIS
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General



Anthony R. Hakl
Deputy Attorney General
Attorneys for Defendants/Respondents

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ORDER

Based on the Stipulation of the parties dated November 3, 2016, the Court **ORDERS** the Action be bifurcated pursuant to the terms outlined in the abovementioned stipulation. To wit, it is **ORDERED** that:

1. The hearing of November 4, 2016, is off calendar, and will be rescheduled by the Court if not mooted by the Court's ruling(s) on the partial merits briefing authorized hereby.
2. Plaintiffs' action is to be bifurcated such if either party desires to file a summary adjudication/trial brief and separate statement of undisputed facts as to the Fifth or Ninth cause of Action (or both) in Plaintiffs' First Amended Complaint, such documents must be filed by March 10, 2017, with opposition briefs filed no later than March 24, 2017, and reply briefs filed no later than March 31, 2017. The Court will set the matter for hearing on April 14, 2017, or as soon thereafter as its schedule will allow.
3. Memoranda filed pursuant hereto are subject to a 20-page limitation for motion and opposition briefs, and a 10-page limit for reply briefs.
4. If a new material factual allegation is raised for the first time in a response to a particular assertion made in a motion or separate statement of undisputed facts filed pursuant to the bifurcation order, an ex parte application may be made to the Court for a Case Management Conference so that the party may request the Court continue the relevant hearing date so that limited discovery can be performed on the newly raised factual assertions. Cal. R. Court 3.723. The parties making such application shall schedule such matter in good faith, expressly taking into consideration the Court's and the opposing parties' schedule. Counsel may appear at such hearing(s) telephonically.

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5. This Court will address Defendants Stephen Lindley and Kamala Harris' duty, if any, to respond to Plaintiffs': (1) Requests for Admissions (Set Three); (2) Form Interrogatories (Set Four); (3) Special Interrogatories (Set Four); and (4) Request for Production of Documents (Set Four) after this Court has ruled on the partial merits brief(s). The parties have agreed that Defendants' duty to respond to these sets of discovery will be held in abeyance until the Court rules on the partial merits briefing.

6. Plaintiffs' Motion to Compel Further Responses to Requests for Production (Set Threc), currently set to be heard November 4, 2016, is hereby taken off calendar, and will be rescheduled, declared moot, or otherwise expressly addressed upon the Court's ruling on the partial merits briefing.

7. Plaintiffs' Motion to Compel Further Responses to Special Interrogatories (Set Threc), and related request for judicial notice and evidentiary objections, currently set to be heard November 4, 2016,

IT IS SO ORDERED.

Date: 11/4/16

MICHAEL P. KENNY

Hon. Michael P. Kenny, Judge of the Superior Court

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF SACRAMENTO

4 I, Laura Palmerin, 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 Boulevard, Suite 200, Long Beach, California 90802.

7 On November 7, 2016, I served the foregoing document(s) described as

8 **STIPULATION RE: BIFURCATION AND SETTING PARTIAL MERITS
9 HEARING; ORDER**

10 on the interested parties in this action by placing
11 [] the original
12 [X] a true and correct copy

13 thereof by the following means, addressed as follows:

14 Anthony R. Hakl, Deputy Attorney General
15 Anthony.Hakl@doj.ca.gov
16 Kamala D. Harris, Attorney General of California
17 Office of the Attorney General
18 P.O. Box 944255
19 Sacramento, CA 94244-2550

20 *Attorney for Defendants/Respondents*

21 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
22 processing correspondence for mailing. Under the practice it would be deposited with the
23 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
24 California, in the ordinary course of business. I am aware that on motion of the party
25 served, service is presumed invalid if postal cancellation date is more than one day after
26 date of deposit for mailing an affidavit.
27 Executed on November 7, 2016, at Long Beach, California.

28 X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
transmission. Said transmission was reported and completed without error.
Executed on November 7, 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 PALMERIN