

FILED
Superior Court Of California,
Sacramento
04/25/2016
skhornf
By _____, Deputy
Case Number:
34-2013-80001667

1 C. D. Michel – S.B.N. 144258
Scott M. Franklin – S.B.N. 240254
2 Sean A. Brady – S.B.N. 262007
MICHEL & ASSOCIATES, P.C.
3 180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
4 Telephone: 562-216-4444
Facsimile: 562-216-4445
5 Email: cmichel@michellawyers.com

6 Attorneys for Plaintiffs

By FOX

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

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

CASE NO. 34-2013-80001667
**DECLARATION OF SCOTT M.
FRANKLIN IN SUPPORT OF MOTION TO
COMPEL FURTHER RESPONSES TO
SPECIAL INTERROGATORIES, SET
THREE, PROPOUNDED ON
DEFENDANTS KAMALA HARRIS AND
STEPHEN LINDLEY**

Date: 10/28/16
Time: 9:00 a.m.
Dept.: 31
Action filed: 10/16/2013

DECLARATION OF SCOTT M. FRANKLIN

I, Scott M. Franklin, declare:

1. I am an attorney at law admitted to practice before all courts of the state of California. I have personal knowledge of each matter and the facts stated herein as a result of my employment with Michel & Associates, P.C., attorneys for Plaintiffs/Petitioners (“Plaintiffs”), and if called upon and sworn as a witness, I could and would testify competently thereto.

2. My office served a third set of Special Interrogatories (“SIs”) on Defendants on September 4, 2015.

3. Defendants provided responses to the abovementioned discovery on October 19, 2015, based on a courtesy extension I provided.

4. When I evaluated the responses provided on October 19, 2015, I determined them to be insufficient. Accordingly, I sent a letter to Defendants’ counsel on December 14, 2015, explaining in detail how the responses provided were insufficient. Exhibit 1 to this Declaration is a true and correct copy of my letter dated December 14, 2015.

5. On December 16, 2015, I had a phone call with opposing counsel Anthony Hakl, and during that call, he agreed that his clients would consider amending the responses they provided on October 19, 2015.

6. On January 22, 2016, Defendants provided an amended response to the relevant discovery.

7. On January 29, 2016, Defendants provided a second amended response to the relevant discovery.

8. I evaluated the responses provided on January 29, 2016, and determined them to be insufficient. Accordingly, I sent a letter to Defendants’ counsel on February 19, 2016, explaining in detail how certain responses provided were insufficient. I was around this time that I spoke to opposing counsel and told him that, if the “APPS cases” discussed in SI Nos. 29 and 30 were ongoing, that might impact my analysis of whether information related thereto was privileged under Evidence Code section 1040. Exhibit 2 to this Declaration is a true and correct copy of my

1 letter dated February 19, 2016.

2 9. On March 25, 2016, Defendants provided a third amended response to relevant
3 discovery.

4 10. After I received the responses provided on March 25, 2016, I determined three
5 responses therein were still deficient. Thereafter, I communicated with opposing counsel and we
6 determined that we were at an impasse as to three specific SI responses.

7 11. Throughout the lengthy meet and confer process described above, I obtained
8 extensions of the deadline for filing a motion to compel on this matter, most recently getting an
9 extension so that the deadline for filing is April 25, 2016. This extension was memorialized in an
10 email.

11 12. Exhibit 3 to this Declaration is a true and correct copy of excerpts of the 2013-
12 2014 Biennial Report, a report published by the California Department of Justice (the
13 “Department”) under the title “Biennial Report[-]Major Activities 2013-2014.”

14 13. Exhibit 4 to this Declaration is a true and correct copy of Defendant Kamala
15 Harris’ letter to the California Legislature dated January 21, 2016, asking the Legislature to
16 establish permanent funding for the Armed Prohibited Person System (“APPS”).

17 14. Exhibit 5 to this Declaration is a true and correct copy of excerpts of the 2011-
18 2012 Biennial Report, a report published by the Department under the title “California
19 Department of Justice[-]Biennial Report[-]Major Activities[-]2011-2012.”

20 15. Exhibit 6 to this Declaration is a true and correct copy of the Departments’ tally of
21 Department “Programs Funded with DROS Special Fund” for fiscal year 2013-2014, which was
22 produced herein by Defendants in response to a request for production of documents.

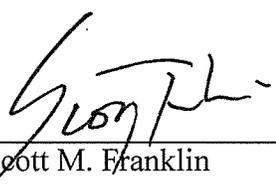
23 16. Exhibit 7 to this Declaration is a true and correct copy of excerpts from
24 Defendants’ Third Amended Responses to Special Interrogatories (Set Three).

25 17. Exhibit 8 to this Declaration is a true and correct copy of a budgetary document
26 titled “FY 2012/13 - 1st Quarter Fiscal Monitoring” that Defendants were ordered to produce in
27 this Action.

28 I declare under penalty of perjury under the laws of California that the foregoing is true

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and correct, and that this declaration was executed on April 25, 2015, at Long Beach, California.



Scott M. Franklin

Exhibit 1

SENIOR COUNSEL
C. D. MICHEL*

SPECIAL COUNSEL
JOSHUA R. DALE
ERIC M. NAKASU
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
MICHELLE BIGLARIAN
SEAN A. BRADY
SCOTT M. FRANKLIN
BEN A. MACHIDA
CLINT B. MONFORT
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA



OF COUNSEL
DON B. KATES
BATTLEGROUND, WA

RUTH P. HARING
MATTHEW M. HORECZKO
LOS ANGELES, CA

WRITER'S DIRECT CONTACT:
562-216-4474
SFRANKLIN@MICHELLAWYERS.COM

December 14, 2015

VIA EMAIL & U.S. MAIL

Mr. Anthony R. Hakl
Deputy Attorney General
Office of the Attorney General
1300 "T" Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244

Anthony.Hakl@doj.ca.gov

Re: *Follow-up Regarding Impact of Motion for Leave Being Granted and Meet-and-Confer Concerning Disputed Discovery Responses in Gentry v. Harris*

Mr. Hakl:

I write to discuss the impact of the Court's recent ruling granting Plaintiffs' motion for leave to amend, and to meet and confer about Defendants' responses to Special Interrogatories (Set Two) and Requests for Admissions (Set Two) that you emailed to me on October 19, 2015.

Issues Re: Motion for Leave to Amend Being Granted

First, my assistant sent you a copy of the proposed order we would like to file, pursuant to California Rules of Court, Rule 3.1312(a). Please let me know if it meets with your approval, and thereafter we will file it as soon as possible.

Second, I have attached hereto a draft of the Amended Complaint we intend to file. It has been modified to reflect the specific requirements set out in the Court's tentative ruling of December 10, 2015. Though I don't think there will be any dispute as to whether the Amended Complaint has been properly revised to meet the Court's expectations, I want to give you a copy before it is filed to iron out any problems that can be resolved without dispute.

Third, because Amended Complaint includes new arguments grounded on the allegation that the DROS Fee is being use as an illegal tax, the discovery requests previously ruled moot by the Court on August 31, 2015 (as a result of Defendant's Motion for Judgment on the Pleadings being granted), are no longer moot. Thus, we request that Defendants produce substantive responses to the "unmooted"

Mr. Anthony Hakl
December 14, 2015
Page 2 of 6

form interrogatories and requests for Admissions¹ 60 days after the Amended Complaint is filed and served.

If Defendants are not willing to comply with the request stated above, there are a few ways we can deal with this situation. Plaintiffs could propound the relevant discovery as “new” requests and go through another motion to compel, but I think that would only waste the parties’—and the court’s—time: this issue has been fully briefed for the Court. Accordingly, I think that it would be proper, and much, much more efficient,² to make a renewal motion under Code of Civil Procedure Section 1008(b); the new illegal tax claims in the Amended Complaint constitute new facts that justify the renewal of Plaintiffs’ Motions to Compel. Civ. Proc. Code § 1008(b). Indeed, because the Court does not need a second round of briefing on this issue, my preference is to make a motion under Section 1008(b) with a stipulation that the Court consider the issue on the previously filed briefs and issue a ruling without further argument. Please let me know if Defendants will produce substantive additional responses, and if not, whether Defendants are willing to enter into the type of stipulation mentioned above.

Request for Production of Documents (“RFP”)

RFP No. 63

This request seeks baseline budgets submitted by the California Department of Justice (the “Department”) to the California Department of Finance. The boiler plate objections provided are without merit. Specifically, Defendants provide no explanation as to why these documents would be protected under the attorney-client privilege, the work product doctrine, or the executive and deliberative process privileges. Indeed, these claims ring hollow. The budget documents sought are day-to-day budget documents, they have nothing to do with legal services being provided. Similarly, the response provided does not explain how a deliberative or executive process privilege could have been maintained here, as the documents requested are specifically ones that were, without exception,

¹ I.e., Request for Admissions Nos. 83-86, 88, and 89, and Form Interrogatory 17.1(b) as to Requests for Admissions Nos. 18-22, 83-86, 88, and 89.

²For comparison, I note that the core of Defendants’ recent Opposition brief—i.e., the claim that the Order After Hearing precluded Plaintiffs from adding newly identified illegal tax arguments to their complaint—was an issue that Plaintiffs attempted to resolve by proposing an clarification amendment to Defendants’ first draft of the proposed Order After Hearing. (See Letter to Anthony Hakl dated June 30, 2015, at 2). As you recall, Defendants refused that proposed change, and then Defendants later opposed Plaintiffs’ motion for leave based on an argument that should have been disposed of when the Order After Hearing was issued. Adding a clarification that two causes of action were being dismissed for the reasons “stated in Defendants’ Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings at 5:20-7.11” would have worked no unfair prejudice to Defendants, and it would have resolved the issue that resulted in three unnecessary briefs (i.e., the recent motion for leave briefing) and court order. Here, I am similarly trying to streamline things, and I don’t think going through an entire new round of discovery and motion practice makes sense, as the issue has already been fully briefed.

Mr. Anthony Hakl
December 14, 2015
Page 3 of 6

circulated beyond a “control” or “executive” group, meaning there is no apparent justification for these objections. And in any event, as we have previously discussed, these type of claims are always going to be subject to a balancing test, and I see no reason why the Department will prevail in this instance. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 68

In response to this request, Defendants proposed the parties confer regarding the possibility of narrowing the scope of thereof. Defendants also state that the information sought is equally available to the requesting party. Accordingly, if Defendants can provide an explanation as to how Plaintiffs can obtain the information sought as easily as having it produced by Defendants in discovery, then we will look into obtaining it through that route.

Otherwise, the statement that this request seeks “*potentially* hundreds” of documents does not, in and of itself, convince us that a limitation of this request is warranted. Nonetheless, we are open to an explanation as to why this request is overburdensome, and how it might be tailored to meet our needs without any loss of substance.

RFP No. 72

First, I note that Defendants’ characterization of this request as “oppressive and burdensome” is based on a false premise. That is, Defendants claim “compliance would be unreasonably difficult and expensive because it purports to seek ‘each and every’ such document within the entire Department of Justice[.]” But on some level, *every* document production request seeks analysis of the entirety the Department’s records for each responsive record, and this request is limited such that Defendants’ characterization does not make sense. Here, we have added multiple limiting attributes that, based on information available to us, should lead to a manageable production. If Defendants can offer a legitimate justification as to why we should amend this request, which hinges on (1) a mention of the DROS Special Account and (2) the use of the phrase “government law[.]” we are open to changing the request. But without that, a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The information sought is more akin to budgetary data, and that is plainly not going to be privileged; I think the Court’s previous discovery ruling indicates as much. (Order of June 1, 2015, at 4). Similarly, the deliberative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 73

First, I note that Defendants’ characterization of this request as “oppressive and burdensome” is based on a false premise. That is, Defendants claim “compliance would be unreasonably difficult and expensive because it purports to seek ‘each and every’ such document within the entire Department of Justice[.]” But on some level, *every* document production request seeks analysis of the entirety the

Mr. Anthony Hakl
December 14, 2015
Page 4 of 6

Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we are asking for training or guidance documents including or referring to a particular policy statement: the limitations provided should lead to a manageable production. If Defendants can offer a legitimate justification as to why we should amend this request, we are open to changing the request. But without that, a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought are used by employees when learning to track employee time, and that type of document has nothing to do with attorney work nor privileged communications. Similarly, the deliberative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 89

First, I note that Defendants' characterization of this request as "oppressive and burdensome" is based on a false premise. That is, Defendants claim "compliance would be unreasonably difficult and expensive because it purports to seek 'each and every' such document within the entire Department of Justice[.]" But on some level, *every* document production request seeks analysis of the entirety the Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we are asking for documents related to the Department's process of converting an employment position from being funded from one specific source to another specific source. Unless and until the Department is prepared to show that it has already spent a substantial amount of time, and located a substantial amount of responsive documents, Defendants' oppression objection is without impact, and a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought refer to staffing and budgetary decisions, and those type of documents have nothing to do with attorney work nor privileged communications. Similarly, the deliberative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

Special Interrogatories ("SI")

SI No. 19

This request contains a clerical error; the term "department of legal services" should have read "Government Law Section of the Division of Civil Law[.]" With this information, Defendants should be able to respond to this interrogatory.

Defendants claim the following passage, from the instant request, is vague and ambiguous: "obtains funding to cover the cost of providing lawyers when it provides lawyers to defend employees of Bureau of Firearms." Though Plaintiffs believe the interrogatory is clear with the above-noted

correction, Plaintiffs will illuminate their inquiry. Defendant want to know how the Division of Civil Law obtains funding to pay the salaries of attorneys who represent Bureau of Firearms employees (e.g., Chief Lindley), which presumably has happened pursuant to Government Code section 11040. If, however, it is the case that the Division of Civil Law has never represented a Bureau employee, that information would also be part of an appropriate response to this interrogatory.

SI No. 25

This interrogatory asks for the basis of Defendants' response to SI No. 24, which is that "Defendants are unable to answer this interrogatory." Defendants' response to SI No. 25, however, does not explain Defendants' claimed inability to respond to SI No. 24. Rather, it refers to why the Department can't repeat the calculation it did in 2002, which is not a pre-requisite for providing the calculation asked for. That is, SI No. 25 did not ask the Department to repeat a previous calculation, meaning Defendants' response to SI No. 25 is evasive. Defendants have already said they cannot "State the total amount of expenditures attributed to tasks referred to in Penal Code Section 28225 for the fiscal year 2013-2014;[,]" and now they must explain why. Failure to do so will evince a lack of good faith and justification for, at the least, a motion to compel being granted. A further response should be provided.

SI Nos. 27 & 28

Defendants claim the term "accounting designation" is vague and ambiguous, apparently as a basis for not providing a substantive response to SI Nos. 27 and 28. Though Plaintiffs disagree, Plaintiffs further explain that the term "accounting designation" was meant to refer to any line-item title, like "Firearms Database Audits[,]" that was used to identify a program that was funded by a certain source (here, the DROS Special Account).

SI No. 27 seeks an "accounting designation," e.g., title, for any program that was funded from the DROS Fund during the relevant time frame *but* excepting any class of program that turned on the "possession" of a firearm. "Possession" as used herein has the same meaning as the Department gives that word when interpreting Penal Code section 28225. Plaintiffs assume that "DROS Enforcement Activities" would *not* be a responsive "accounting designation" as to SI No. 27, though it *would* be responsive to SI No. 28, which seeks *only* accounting designations related to programs that turn on the possession of a firearm. With the foregoing information, Plaintiffs believe Defendants are capable of providing substantive responses to SI Nos. 27 and 28.

SI Nos. 29 & 30

The Department claims the two incidents at issue are "APPS cases[,]" but the facts provided suggest otherwise. As you know, one of our clients' concerns is that DROS Fees are being used to fund general law enforcement activities via the APPS program. Based on these "APPS cases[,]" however, it appears the name APPS is being applied to law enforcement activities that are not even derived from APPS-based data. If that is the case, one of my clients' primary arguments (i.e., that the DROS Fee is no longer a fee, but a general law enforcement tax being foisted upon legal gun purchasers) becomes much stronger. Thus, Defendants are plainly wrong in claiming the information sought is "irrelevant."

Mr. Anthony Hakl
December 14, 2015
Page 6 of 6

As to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought refer to staffing and budgetary decisions, and those type of documents have nothing to do with attorney work nor privileged communications. Similarly, the executive privilege and official information objections seems inapplicable (who is the executive claiming the privilege?), but even if one of them is theoretically applicable, I do not see how the balance tips in the favor of nondisclosure when information sought will confirm or refute whether the Department is improperly characterizing general law enforcement work as APPS work. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

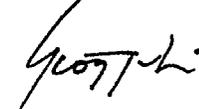
Finally, I am hesitant to believe that the law enforcement privilege claim (really just an official information claim raised in the guise of police records) will succeed. First, if the investigation of either case is over, then the weight in favor of non-disclosure is very light. *See, e.g., Cnty. of Orange v. Super. Ct.*, 79 Cal. App. 4th 759, 768 (2000) (noting that the qualified privilege that applies to police records disappears at some point). Further, Defendants have already publically touted the cases at issue as “APPS cases,” meaning they will have a hard time convincing the Court that the Department is actively trying to keep facts related to those cases “under wraps.” Second, because this is a question of balancing, I believe my clients have a strong argument: Defendants should not be able to publically claim certain cases are “APPS cases” and then deny requests for confirmation. Such a result runs contrary to the California Constitution. Cal. Const. art. 1, § 3(b) (“The people have the right of access to information concerning the conduct of the people’s business[.]”).

Defendants do not seek any person information or strategic information, they just want to know how it is that the Department can claim the two matters at issue are “APPS cases” when, based on the facts provided, they are not. Defendants knowingly put these two cases up to public scrutiny when the Department chose to use them as exemplars of APPS success stories, and the Department cannot reasonably take the position that the public has no ability to verify the Departments’ claims.

Please do not hesitate to contact me if you have any questions regarding the foregoing, and I look forward to speaking with you on Wednesday.

Sincerely,

Michel & Associates, P.C.



Scott M. Franklin

Enclosure: (Revised Draft First Amended Complaint)

Exhibit 2

SENIOR COUNSEL
C. D. MICHEL*

SPECIAL COUNSEL
JOSHUA R. DALE
ERIC M. NAKASU
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
MICHELLE BIGLARIAN
SEAN A. BRADY
SCOTT M. FRANKLIN
BEN A. MACHIDA
CLINT B. MONFORT
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA



OF COUNSEL
DON B. KATES
BATTLEGROUND, WA

RUTH P. HARING
MATTHEW M. HORECZKO
LOS ANGELES, CA

WRITER'S DIRECT CONTACT:
562-216-4474
SFRANKLIN@MICHELLAWYERS.COM

February 19, 2016

VIA EMAIL & U.S. MAIL

Mr. Anthony R. Hakl
Deputy Attorney General
Office of the Attorney General
1300 "I" Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244

Anthony.Hakl@doj.ca.gov

Re: Status of Pending Discovery and Litigation Issues (*Gentry v. Harris*, Case No. 34-2013-80001667)

Dear Mr. Hakl:

I write to follow up on a few disputed responses Defendants provided in response to Plaintiffs' third set of Special Interrogatories and third set of Requests for Production of Documents. I believe we are at an impasse in the meet-and-confer process as to the responses at issue, but I am sending this letter to memorialize my clients' position and confirm whether further informal discussions are justified. As we have previously discussed by e-mail, I have scheduled time on February 29, 2016, at 2:00 p.m., for a teleconference on this matter. If we are indeed at an impasse, I believe we can use the abovementioned call to discuss the possibility of seeking expedited review of this dispute as we have in the past. And to the extent Plaintiffs request further information hereby, Plaintiffs also request any further responses or additional information be produced to me by close of business on February 28, 2016.

Finally, before getting to the meat of this letter, there are a few "housekeeping" matters to attend to. First, I request that Defendants provide "cleaner" copies of the documents Bates-stamped AGRFP000640 and AGRFP000644. The text on these documents is very small and difficult to decipher in a low-resolution format. Second, Plaintiffs request that Defendants supplement the January 13, 2016, privilege log so that Plaintiffs can determine which request(s) are applicable to each withheld document that is described on the log.

Requests for Production

Request for Production No. 55-56

Defendants still claim they cannot produce even exemplars of the documents that are responsive to these requests. The documents seem to fall within a very small class (documents that are specifically in the records of the Department's Administrative Services Division, Budget Office, that *also* refer to the DROS FEE), so it is hard for Plaintiffs to understand why Defendants have yet to comply with this request. Unless Defendants are willing to confirm that they believe responding to these requests will result in the production of more than 1,000 pages of documents (along with an explanation of the basis for that belief), Plaintiffs plan to seek judicial relief regarding this issue. If, however, Defendants provide a reasonable explanation for why they expect the production would be over 1,000 pages, then Plaintiffs are open to selecting particular date ranges to help expedite the production of at least some of the responsive documents that should be produced in response to Request for Production Nos. 55-56.

Alternatively, to the extent Defendants intend to rely on the objections provided in response to Request for Production Nos. 55-56, Plaintiffs incorporate herein their response to Defendants' objections to Request for Production No. 63, stated below.

Request for Production No. 63

Defendants have never produced any information to support their bare objections. Regardless, Plaintiffs will attempt to explain why Defendants' objections are without merit. Defendants' relevance objection is patently unreasonable; this case is primarily about how the Department of Justice (the "Department") spends income that is specifically related to firearms, e.g., DROS fees. Baseline budgets submitted to the Department of Finance appear likely to provide information that is relevant. The Court's order of June 1, 2015, is on point. "Respondents' budget and expenditure decisions related to the setting and continuation of the DROS fee. The public clearly has an interest in disclosure of documents which identify the budgetary analyses performed by Respondents to support the amount of the DROS fee." (Order of June 1, 2015 [the "Order"], at 4:1-4.)

Defendants' claim that the request is burdensome because it covers a period of twelve years is without merit. The number of years at issue is irrelevant if the number of documents, and the amount of hours required to locate them, are minimal. Unless Defendants provide actual evidence of the supposed burden at issue, this objection will fail. Defendants are requested to either comply with this request as written, or quickly produce evidence to support their undue burden objection.

Defendants claim that these documents are covered by the attorney-client privilege and the attorney work product doctrine. As the documents at issue are clearly budgetary documents (they are referred to as "baseline budgets[,] after all), Defendants have shown no attorney interaction that could potentially justify the documents being withheld. Further, Defendants know that the proper course of action to support an attorney-client privilege claim is to provide "sufficient factual information[,] e.g., a privilege log, to allow Plaintiffs to evaluate Defendants' privilege claims. Civ. Proc. Code

§ 2031.240(c)(1). Defendants have done this for other responses, but not for their response to Request for Production No. 63, indicating the attorney-based objections used here are unfounded boilerplate. Similarly, to the extent attorney work product is shown to be at issue regarding this request, the nature of the documents sought, which are not the type of material attorneys generally produce (and are unlikely to include completely privileged “brain work”), strongly suggest that the objection will fail when subjected to the relevant standard. Civ. Proc. Code § 2018.030.

Finally, Defendants claim the executive process and deliberative process doctrines (both which fall within the “government information” privilege found at Evidence Code section 1040) apply, but without explanation. Given the Court’s analysis and ruling in the Order, and the applicable balancing test (see, e.g., *Cal. First. Am. Coal. v. Super. Ct.*, 67 Cal. App. 4th 159, 172 (1998)), this objection appears to be without merit.

Request for Production No. 64

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production No. 63 as stated above. The documents at issue, as described, appear to be either operational documents that will indicate how DROS fee funds are used or are related to budgetary work that is relevant to this action. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 64 will withstand a motion to compel, please immediately provide an explanation for that claim.

Further, to the extent Defendants claim the documents at issue are contain “confidential law enforcement information protected by the official information, law enforcement, and executive privileges[.]” Plaintiffs contend that such unexplained objections are insufficient to tip the balance in favor of non-disclosure. Unless Defendants provide an actual explanation for these objections in the near future, Plaintiffs intend to seek judicial relief.

Finally, it is worth noting that, as written, Defendants’ burden-based objection is patently unreasonable. Defendants claim an unfair burden will result because the request seeks “each and every” document within a particular description. Counsel is surely aware that the use of the phrase “each and every” is common in requests for production, and that the total production of “each and every” document can be zero or any other number, meaning the usage of the phrase has literally no relevance to whether a request is unduly burdensome or not. If Defendants do not now provide a cogent explanation, including an non-evasive response, as to the specifics of why they should not be required to comply with this relevant request, Plaintiff is confident the Court will overrule this objection and order the withheld documents produced.

Request for Production No. 65

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to indicate how DROS fee funds are used—an issue at the center of Plaintiffs’ case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 65 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production No. 66

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to concern the DROS account and budget activities related thereto, an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 66 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production No. 68

Pursuant to our previous discussion, Plaintiffs seek responsive documents that refer to the following funds: General Fund, Dealers' Record of Sale Fund, Firearms Safety & Enforcement Fund, and the Legal Services Revolving Fund.

Request for Production No. 72

Your letter of January 13, 2016, states your "understanding is that there are no outstanding issues to address in light of defendants' production of the relevant invoices on January 6, 2016." I do not think that statement is correct. The invoices at issue do not appear to be responsive to this request, which seeks documents that use the phrase "government law[.]" and the invoices at issue do not mention the phrase "government law[.]" If your letter included an error regarding this matter, please advise us of your intended response as soon as possible.

Otherwise, Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to indicate how DROS fee funds are used— an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 72 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production Nos. 74-75

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to concern how the Department's budgeting and accounting divisions were discussing the use of DROS fee funds, an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production Nos. 74-75 will withstand a motion to compel, please immediately provide an explanation for that claim.

Special Interrogatories

Special Interrogatory Nos. 24 and 25

Defendants originally claimed that they could not provide a response to Special Interrogatory No. 24, which asks Defendants to “[s]tate the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014.” But, in their most recent response to this question, Defendants responded, “[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014 was \$29,144,382. Because this interrogatory did not ask what “[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014 was[,]” the response appears non-responsive. It is possible, however, that the “total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014” is the same as the “[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014[:.]” \$29,144,382. If Defendants confirm this is correct, then no further response will be sought. If Defendants state the foregoing is not correct, then Defendants need to either stand on their original response to Special Interrogatory No. 24, or provide a different response regarding “the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014.”

And as to Defendants’ response to Special Interrogatory No. 25, confirmation that \$29,144,382 is “the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014” will prevent the need for a further response to Special Interrogatory No. 25. Otherwise, Defendants’ response to that interrogatory needs to be revised to address the issue in the preceding paragraph.

Special Interrogatory Nos. 29 and 30

Defendants blithely claim that these interrogatories seek information that is irrelevant, which is not true. Both of these interrogatories seek information about specific matters that the Department has used in publicizing the APPS program and successes supposedly resulting therefrom, but the matters appear to be general law enforcement cases not connected to APPS in any causal way. Inasmuch as Plaintiffs contend that Defendants are improperly using DROS funds to not only fund APPS, but to fund general law enforcement activities beyond APPS, the information sought is plainly relevant.

The boilerplate objections provided to these interrogatories are completely unexplained. Thus, Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above.

Plaintiffs do believe the “law enforcement” privilege, which is really just the governmental information privilege, *could* potentially be applicable—and justify Defendants’ reliance thereon— *if* the two cases at issue are *incomplete* criminal investigations. Ongoing criminal investigations provide the only conceivable reason why the law enforcement privilege might actually justify the withholding of the information sought. *See Cnty. of Orange v. Super. Ct.*, 79 Cal. App. 4th 759, 768-69 (2000). Plaintiffs suspect these two cases are not ongoing investigations because: (1) they both concern seizures occurring more than two years ago, and (2) the Department chose to use these cases as exemplars in the

Mr. Anthony Hakl
February 19, 2016
Page 6 of 8

2013-2014 Biennial Report, and Plaintiffs presume the Department would not have made that choice if the Department believed doing so would harm an ongoing investigation.

Nonetheless, if Defendants are willing to state that the two matters at issue are ongoing criminal investigations that were used in the Department's last biennial report, then Plaintiffs will not seek judicial assistance regarding these two interrogatories. If no such statement is timely made, Plaintiffs plan to move to compel the production of this information pursuant to relevant balancing standard. *Id.*

Privilege Log

Without knowing the specific request(s) at issue for each item listed on the privilege log, it is somewhat difficult to respond to the unexplained objections stated therein. Nonetheless, please consider the following.

Document Nos. 15-16

The Department states the documents being withheld are titled "DOJ Finance Letter Concepts" with unknown authors and recipients. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. Finance Letters appear to be "follow up" documents submitted to the Department of Finance with the intent of amending a particular year's proposed budget. Thus, "Finance Letter Concepts" appear to be directly related to the creation of budgets, and to the extent the documents mention APPS or DROS (which they presumably do, though Plaintiffs cannot know for sure until Defendants identify which request[s] the withheld documents are relevant to), the balance plainly tips in the favor of disclosure. (*See Order at 3:22-4:4.*)

Document No. 17

The title of the document here expressly shows that the withheld document concerns the Department of Finance's questions regarding a "BCP" (Budget Change Proposal) that the Department appears to have submitted. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 18

The title of the document here expressly shows that the withheld document concerns a BCP specifically related to APPS. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 19

The title of the document here expressly shows that the withheld document concerns a BCP specifically related to APPS. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 20

Presumably, if Defendants know which interlineations were made by an attorney and intended as a client communication, such interlineations are unavailable to Plaintiffs. Thus, if Defendants can identify the actual attorney or attorneys making interlineations or supposedly intended recipient attorneys, Plaintiffs will not challenge the attorney-client privilege claim as applied to those interlineations. If Defendants cannot identify which statements were made in the course of an attorney-client relationship, then that strongly suggests no attorney-client privilege or attorney work product-based objection can succeed. Because the interlineations presumably have to do with the funding of the APPS program, the balance tips in the favor of disclosing interlineations that are not privileged attorney-client communications.

And as to the agenda itself, it is unclear if it was actually authored by Gill Cedillo or if he was simply the Chair of the committee for which the agenda was created.¹ Assuming it is a document that is available online, Plaintiffs do not seek the production of the agenda itself.

Document No. 21

The title of this document does not provide sufficient factual information for Plaintiff to fully respond to the three privileges claimed here (which are all, in effect, variations of an Official Information privilege claim). Nonetheless, considering the fact that the Division of Law enforcement had a \$71 million budget cut in 2010-2011 (as stated in the relevant biennial report), it appears the "DLE restoration" being referred to may relate to costs being shifted from the general fund to the DROS and other special funds. Documents showing the contours of that process would clearly be relevant to Plaintiffs' case. Because the balance tips in the favor of Plaintiffs, Defendants should provide the withheld document. (*See Order at 3:22-4:4.*)

Document No. 22

The title of the document here expressly shows that the withheld document concerns a BCP, and the fact that Defendants have identified it on a privilege log suggests it is relevant, e.g., that it concerns the potential or actual use of DROS fees for a purpose Plaintiffs claim is inappropriate. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears

¹ Plaintiffs assume the agenda at issue, save interlineations, is the one available at <http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/April%2025%20PUBLIC%20Agenda.pdf>.

Mr. Anthony Hakl
February 19, 2016
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this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 23

Defendants have not provided sufficient factual information for Plaintiff to fully respond to the three privileges claimed here (which are all, in effect, variations of an Official Information privilege claim). Nonetheless, considering the fact that the Division of Law enforcement had a \$71 million budget cut in 2010-2011 (as stated in the relevant biennial report), that the supposed parties to this document are the Department's legislative, budget, and/or office staff, and that money was being shifted from the general fund to the DROS and other special funds to cover the budget cut, it seems reasonable to believe the document sought is relevant. Documents showing the contours of that process would clearly be relevant to Plaintiffs' case. Because the balance tips in the favor of Plaintiffs, Defendants should provide the withheld document. (*See Order at 3:22-4:4.*)

Document No. 24

Defendants have not provided sufficient factual information for Plaintiff to fully respond to the five privileges claimed here. Sufficed to say, however, that if the document is a summary report that concerns all of the Department, Plaintiffs have no interest in the report except as it relates to use of the DROS Special Account, the funding of law enforcement activities performed by the Bureau of Firearms (e.g., APPS), and the Departments' involvement in any legislation bearing on those two issues. If Defendants are willing to produce the sections of the Transition Report that pertain to the areas described above, then there is nothing further to dispute regarding this document.

If, however, Defendants claim that the selected portions of the Transition Report are privileged, Plaintiffs request Defendants explain, with specificity, the titles and authors of the relevant sections. Additionally, Plaintiffs request clarification as to what is meant by "DOJ Executive Office," i.e., is it a report intended for just the Attorney General and her immediate staff, an entire department, etc.

As always, please do not hesitate to contact me if you have questions regarding the foregoing.

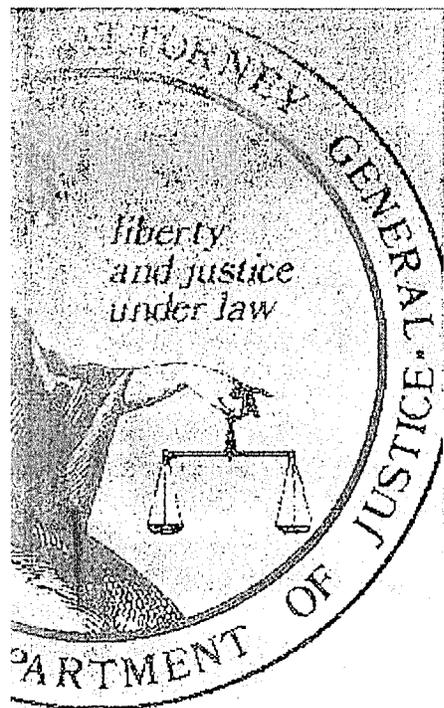
Sincerely,

Michel & Associates, P.C.



Scott M. Franklin

Exhibit 3



Biennial Report

Major Activities

2013 - 2014

California
Department of
Justice



Kamala D. Harris
Attorney General

When telephone numbers are queried or uploaded into the MTI, matches from existing cases generate a hit report. This technology uncovers possible links between suspects that otherwise would not have been found. The MTI database currently has more than 20 million call records and 270,000 subscribers.

Bureau of Firearms

The Bureau of Firearms ensures the state's firearms laws are administered fairly, enforced consistently, and understood uniformly throughout California. The bureau is a leader in innovation and collaboration, providing firearms expertise and information to law enforcement, legislators and the general public, in a comprehensive program designed to promote legitimate and responsible firearms possession and use by California residents. Law enforcement and program services are extended to all 58 counties through two regional offices, four field offices, two program offices, and one headquarters office.

On-Line Mental Health Firearms Prohibition System (MHFPS). MHFPS is an electronic application that enables public and private mental health facilities statewide to electronically report individuals who, because of mental health issues, are prohibited under state or federal law from owning/possessing firearms. This new application minimizes delays caused by the previous system, which required manual entry. In April 2014, MHFPS was expanded to allow state courts and law enforcement agencies to submit mental health prohibitions electronically.

Implementation of Mobile Justice Software. The bureau worked collaboratively with the Hawkins Data Center in the conceptualization, construction, and implementation of Mobile Justice, portable Finger Print Scanners, and the use of iPads and iPhones to improve enforcement efficiency.

Increased Personnel to Address 21,000 Persons in APPS Database. In 2013, Senate Bill 140 (Leno) appropriated \$24 million to DOJ from the Dealer Record of Sale account. The additional funding was allocated specifically to reduce 21,000 prohibited persons in the Armed Prohibited Persons System (APPS) database over a three-year period. This funding created new APPS enforcement teams at each regional office, consisting of 36 agents, six Criminal Intelligence Specialists, and six Office Technicians. In 2013, the bureau investigated 4,156 subjects and seized 3,548 firearms, and in 2014, the bureau expects to handle over 8,000 APPS investigations.

Significant APPS cases include the following:

Information Received from the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) Leads to Assault Weapons Seizure in California. In January 2013, agents received information from ATF regarding a subject who purchased three AR-15 assault rifles, two short-barreled shotguns, and a Glock 17 handgun in Arizona, using Arizona and California driver licenses. A search warrant of the subject's residence and vehicle resulted in the seizure of one AR-15 assault rifle, two Bushmaster rifles, two short-barreled shotguns, two handguns, five high-capacity magazines, two high-capacity Glock handgun magazines, one bullet button for an AR-15, one forward grip, one pistol grip, one AR-15 charging handle, one .45 caliber magazine,

and miscellaneous ammunition. The subject was arrested on weapons violations including transportation of assault weapons.

Glendale Gun Show Investigation Leads to Arrest of Convicted Felon in Possession of Assault Weapon. In March 2013, agents identified a convicted felon attempting to sell an AR-15 upper receiver at the “Crossroads of the West” gun show in Glendale. Agents followed the subject to the Moreno Valley area and conducted a consent search of his residence, where they seized one WASR-10 (AK-47 style) assault rifle, one Palmetto AR-15 lower receiver, one Glock 9mm handgun, eight high-capacity magazines, and 346 rounds of ammunition. The subject was arrested and charged with possession of assault weapons and being an ex-felon in possession of a firearm and ammunition.

□ **202 Firearms Seized from APPS Subject.** In May 2013, agents investigated an APPS subject who was prohibited from owning or possessing firearms due to an involuntary mental health commitment. The DOJ’s Automated Firearms System (AFS) Dealer Record of Sales (DROS) had 66 handguns registered in the subject’s name. A consensual search of his residence resulted in the seizure of 202 firearms found in a safe. □

Long Beach Felon Illegally in Possession of Guns and Ammo. In May 2013, agents of the Long Beach Police Department contacted an APPS subject at his residence. The subject was prohibited from owning or possessing firearms for a period of ten years due to a 2013 conviction for corporal injury to his spouse and a restraining order. The subject initially gave consent to search his residence, but later reversed his decision. By the time his consent was revoked, agents had observed enough ammunition and other evidence to obtain a search warrant. During the subsequent search, the subject was found to be in possession of two handguns, one bolt action rifle, approximately 5,000 rounds of ammunition, and a large quantity of ammunition reloading supplies. The subject was arrested and charged as an ex-felon in possession of a firearm and ammunition.

□ **Ex-Felon in Possession of Firearm at Local Gun Range.** In June 2013, agents received an anonymous tip that an ex-felon was working as the manager and firearms instructor at his family's shooting range in Corona. The business is located on a 1,200-acre ranch and is well-known to local shooting enthusiasts. Agents confirmed the subject worked at the business and was in possession of firearms and ammunition, and obtained search warrants for the business and the subject’s residence. In August 2013, agents executed search warrants and seized 28 rifles, 50 shotguns, 10 handguns, and over 10,000 rounds of ammunition. The subject was arrested and charged as being an ex-felon in possession of firearms and ammunition. □

Two Men Arrested on Weapons Charges, 412 Guns and Two WWII Grenades Seized. In September 2013, agents investigated a gun show vendor from Oildale, California. An undercover agent purchased a handgun from the vendor without going through the proper procedures. The undercover agent purchased two California-banned assault weapons from the vendor and a co-conspirator. Arrest and search warrants were obtained for the suspects and their residences. Agents seized two WWII-era grenades, one mortar round, and 412 firearms, including four assault weapons that are banned in California.

Undercover Operations Net C-4, Rocket Launcher Tube, Grenade Igniters, 39 Illegal Assault Rifles and 170 Handguns. An undercover agent was contacted by an individual who offered to sell an illegal "Galil" assault rifle and large-capacity magazines. The agent met the subject in a parking lot in the City of Ontario in November 2013, and purchased a rifle and magazines for \$3,500. The subject was arrested and found to be armed with two loaded handguns. Agents subsequently executed a search warrant at the subject's residence in Eastvale and seized 36.4 grams of C-4 explosive, eight M228 grenade fuses, one igniter time blasting fuse, one fully automatic machine gun, one fully automatic lower receiver, one short barrel shotgun, two Browning M-1919 .30 cal. rifles, one AT4 rocket launcher tube, and 39 illegal assault rifles. An additional 170 handguns and rifles and large capacity magazines were also seized. Two firearms were reported stolen. The subject was booked for possession of explosives and destructive devices, sale of an assault weapon, and related weapons violations.

Fifty Firearms Possessed by Person who had Previously Been Committed. In November 2013, agents initiated an APPS investigation of a subject in the Sacramento area who was prohibited from owning or possessing firearms due to an involuntary mental health commitment. Agents seized 50 firearms and over 10,000 rounds of ammunition from the subject, who had been buying, trading and selling firearms for the past 30 years.

Parents Jailed after Agents Find Guns and Drugs in Home with Small Children. In November 2013, agents followed up on a possible "straw purchase." This term refers to the purchase of a firearm by a "straw buyer" on behalf of someone who is either legally prohibited from making the purchase or wishes to acquire the firearm anonymously. Agents executed a search warrant on the straw buyer's residence and recovered the handgun in question, a second stolen handgun and a shotgun, and discovered a marijuana extraction lab and marijuana. The loaded firearms, lab, and marijuana were accessible to three minor children. The straw buyer and prohibited person (wife and husband, respectively) were arrested and charged with furnishing a firearm to a prohibited person, being a felon in possession of a firearm, operating a chemical extraction of a controlled substance lab, and child endangerment.

Ex-Felon/Gang Member Arrested after Attending Reno Gun Show. In April 2014, agents identified a subject on probation who was shopping for gun items at the Reno Gun Show. He was with a group of males who were subsequently detained and found to be in possession of nine large-capacity handgun magazines, one 60-round .223 rifle magazine, and one 100-round 5.56 mm rifle drum magazine. A follow-up search warrant was executed at the subject's residence in Santa Rosa, where agents seized one S&W M&P, .40 Caliber handgun, three pounds of processed marijuana, and 104 mature marijuana plants that averaged four-and-a-half feet tall. The subject was arrested for being an ex-felon with a firearm, engaging in a felony while on bail, active felonious participation in gang activity, and cultivating marijuana.

Two Bay Area Norteño Gang Members Arrested for Possessing an AK-47. In April 2014, agents observed two documented San Francisco Norteño gang members purchasing a high-capacity 100-round drum magazine at a Reno Gun Show. A vehicle stop resulted in the seizure of a loaded .40 caliber semi-auto handgun with two magazines containing 10 rounds each, an AR-15 high-capacity 100-round drum magazine, an AK-47 high-capacity 75-round drum magazine and a partial AK-47 lower receiver. One of the subjects was arrested for transporting a loaded firearm and high capacity magazine into the state.

In May 2014, agents executed search warrants at both subjects' residences in Alameda County. Both of them are documented gang members. At one residence, agents found an AK47, fully loaded with a "banana" style high-capacity magazine in the subject's girlfriend's bedroom. The subject and the girlfriend were both arrested as ex-felons in possession of an assault weapon, ex-felons in possession of a firearm, and violation of probation.

Delta Mob Outlaw Motorcycle Gang Member and Girlfriend Arrested on Firearms

Violations. In April 2014, agents from the Contra Costa County Anti-Violence Support Effort (CASE) conducted a probation search on a member of the Delta Mob outlaw motorcycle gang (which is a sanctioned farm club to the Richmond Hells Angels), who was prohibited in APPS due to a battery conviction. A search of the subject's girlfriend's residence resulted in the seizure of a loaded H&K USP .40 caliber semi-automatic pistol, one S&W .12 gauge shotgun, one AR-15 style lower receiver, one incomplete 7.62 caliber AK-47 style rifle, and 274 rounds of pistol ammunition. In April 2014, agents obtained felony arrest warrants from the Contra Costa District Attorney's Office for both the subject and his girlfriend, who were charged with four counts of illegal possession of firearms and ammunition.

Firearms Purchaser Clearance Section. The Firearms Purchaser Clearance Section (FPCS) serves as a vital public service by ensuring that no retail or private party firearms transaction results in firearms being placed in the hands of persons who are prohibited from owning a firearm. Additionally, the section identifies and notifies the employer and/or licensing authority regarding peace officers, armed security guards, and carry concealed weapon (CCW) permit holders who have subsequently become prohibited from owning/possessing firearms.

This section encompasses the following programs: the DROS Unit, Phone Resolution Unit, Law Enforcement Gun Release and the Employment & Subsequent Notification Unit.

In 2013, the section received and processed 960,179 DROS applications, and denied 7,445 applicants due to existing prohibitions. This unit also processed 50,874 DROS-related DMV mismatched transactions in 2013 (e.g., the name supplied on the DROS application did not match the applicant's DMV issued Driver License/Identification Card resulting in rejection of the transaction). The DROS unit processed 16,749 other firearms-related applications and documents in 2013.

From January to April 2014, the section received and processed 312,477 DROS applications and denied 2,643 applicants due to existing prohibitions. This section also processed 19,548 DROS-related DMV mismatched transactions and 7,890 other firearms-related applications and documents.

Dealer's Record of Sale (DROS) Entry System Customer Support Center. The DROS Entry System (DES) was established by statute in 1997 to allow dealers to transmit firearms purchase/transfer information electronically to the DOJ. The DES and associated customer support center were administered by Verizon Business Services. In December 2011, Verizon notified the Department that they would no longer administer the DES and the contract would lapse when it expired on December 31, 2013. Consequently, the Department assumed the duties previously administered by Verizon Business Services as of January 1, 2014.

Exhibit 4



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

January 21, 2016

Members of the California Legislature
State Capitol
10th Street
Sacramento, CA 95814

RE: Armed and Prohibited Persons System (APPS)

Dear Colleagues:

California has some of the strongest gun safety laws and initiatives in the nation. One of the state's most important initiatives is the Department of Justice's ("Department") Armed and Prohibited Persons System ("APPS"), which keeps firearms out of the hands of those prohibited from possessing them due to their criminal history, mental health status, or existence of a restraining order.

At my request, the Governor and Legislature three years ago made a significant – but temporary – investment in APPS (SB 140, Ch. 2, Statutes of 2013). As a result of that investment, my office has made historic reductions in the number of individuals in the APPS database. Over the last 30 months, our APPS enforcement efforts have taken 335 assault weapons, 4,549 handguns, 4,848 long-guns, and 943,246 rounds of ammunition off the streets from those who illegally possessed them.

However, that temporary infusion of financial support expires May 1, 2016. Due to subsequent changes in law that will substantially increase the number of prohibited persons and the real and present danger these individuals pose to public safety, I strongly urge you to make permanent the increased APPS funding you approved three years ago.

Until recently, the APPS database, which went into effect in December of 2006, was based almost exclusively on handgun transaction records, despite the fact that each year approximately half of all California firearm sales involve long-guns. Indeed, between 2007 and 2013 there were 4,157,849 firearm transactions conducted in California (an average of 593,978 per year), split roughly evenly between handgun and long-gun transactions.

Effective January 1, 2014, a new California law mandated for the first time that the Department collect and retain firearm transaction information for all types of guns, including long-guns. By adding the long-gun registration requirement, the number of individuals who may fall into the APPS system has doubled. In 2014, there were 931,037 firearm transactions in California and we expect a similar volume for 2015 and in the years ahead. This new law will add to the APPS those individuals who purchase the hundreds of thousands of long-guns each year who subsequently commit a prohibiting offense. This statutory change alone justifies sustained and enhanced investment in the APPS.

In addition, we anticipate increased workload due to the new Gun Violence Restraining Order (Assembly Bill 1014) law that went into effect on January 1, 2016. This law allows family members who are concerned about the mental stability of a loved one who possesses a firearm to petition a court for a restraining order that would place the individual in the APPS database. We estimate that as many as 3,000 subjects could be added to the APPS database annually through this new law. Current agent staffing levels within the Bureau of Firearms are insufficient to deal with this increase in prohibited offenders.

In May 2013, just months after the horrific tragedy in Sandy Hook, the Legislature passed Senate Bill 140 with strong bipartisan support. SB 140 provided the Attorney General's Office with \$24 million over a three-year period to significantly reduce and eliminate the roughly 20,000 subjects in the APPS database. During the past two and half years, my Special Agents and other Bureau of Firearms staff conducted over 18,608 APPS investigations statewide. This reduced the subjects in the APPS database from a high of 21,357 on November 20, 2013, to 12,691 as of December 31, 2015, the lowest since September 2008.

These historic achievements came despite the addition of the new long-gun registration requirement and the increase in subjects being identified as armed and prohibited. In short, the Department's efforts, made possible by the funding from SB 140, has decreased the number of subjects in the APPS database every day and removed nearly 20,000 armed and prohibited subjects in under two and half years.

The Department needs additional resources to continue our successful work on the APPS and adequately address the public safety threat these individuals present to California. To achieve these goals, I respectfully request that the Legislature make permanent the temporary funding it has previously authorized in order to allow the Department to continue to disarm the people who become prohibited from possessing firearms in California.

Members of the California Legislature
January 21, 2016
Page 3

The Department has been privileged to receive the Legislature's support and encouragement on this important public safety initiative that can serve as a model for the country. We look forward to continuing this partnership in the years ahead.

Respectfully,



KAMALA D. HARRIS
Attorney General

Exhibit 5



Kamala D. Harris
Attorney General

California Department of Justice

Biennial Report

Major Activities, 2011-2012

Department Overview

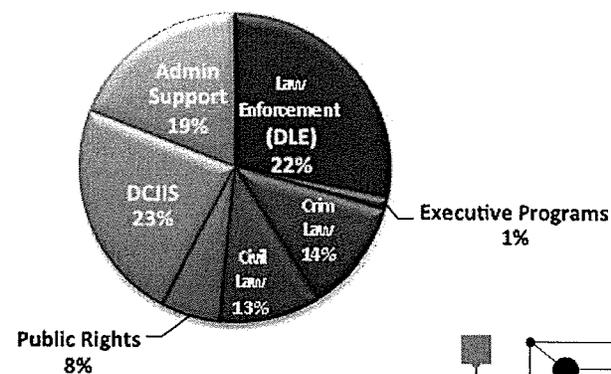
The Attorney General's responsibilities are fulfilled through the diverse programs of the Department of Justice, which has over 4,500 employees, six divisions, and an annual operating budget of over \$700 million.

Authorized Division	Positions	Budget
Division of Law Enforcement (DLE)	1,007	\$189,882,000
Public Rights Division	343	\$109,507,000
Civil Law Division	592	\$158,096,000
Criminal Law Division	618	\$126,459,000
Div. of Calif. Justice Information Services (CJIS)	1,064	\$158,029,000
Division of Administrative Support	864	(\$81,711,000)
Executive Programs	69	(\$9,618,000)
Total	4,557 positions	\$741,973,000

Through its dedicated employees, the Department represents the People in matters before the appellate and supreme courts of California and the United States, serves as legal counsel to state agencies, coordinates efforts to fight crime, provides identification and information services to criminal justice agencies, and pursues projects designed to protect the People of California from fraudulent, unfair and illegal activities.

Major issues, significant cases, and improvements in the Department's operations are highlighted on the following pages.

Division Breakdown



Division of Law Enforcement

As a result of significant cuts made by Governor Brown to the California state budget, the Division of Law Enforcement suffered a \$71 million loss in 2011. This cut had far-reaching effects on the department's capacity and capabilities.

The Division of Law Enforcement, through its 1,007 employees, provides exemplary and comprehensive law enforcement, forensic services, investigations, intelligence and training. The division ensures that the state's firearm laws are fairly administered and vigorously enforced, and regulates legal gambling activities to ensure they are conducted honestly and free from criminal and corruptive elements. The division provides a wide range of support services to law enforcement agencies and manages several of its own crime suppression programs through the Bureau of Forensic Services and the Bureau of Investigation.

The Division of Law Enforcement consists of the following bureaus:

- Bureau of Forensic Services
- Bureau of Investigation (*Bureau of Narcotic Enforcement and Bureau of Investigation and Intelligence were consolidated in 2012*)
- Bureau of Firearms
- Bureau of Gambling Control
- Western States Information Network

Bureau of Forensic Services

The bureau provides services to state and local law enforcement, district attorneys and the courts. Laboratory staff conduct forensic examinations across a broad range of physical evidence and maintain several specialized programs, including forensic toxicology, latent prints and

questioned documents. The bureau also provides forensic service training for DOJ scientists and local government crime laboratory staff through the California Criminalistics Institute.

CAL-DNA Data Bank Program

California's convicted offender DNA database has grown tenfold over the last decade from 185,653 records in 2002 to over 1.9 million records in 2012. Eighty percent of the submissions to the data bank are arrestee records. DOJ has the fourth largest DNA offender database in the world; the CAL-DNA Data Bank processes 20,000 offender/arrestee samples each month.

Rapid DNA Service

DOJ expanded its groundbreaking Rapid DNA Service program (RADS) to Sonoma, Solano, Napa and Marin counties. Under RADS, forensic hospital personnel collect body swabs from the assailant, and send standard rape kits to the DOJ DNA Laboratory in Richmond for processing

Bureau of Investigation

In July 2012, the Division of Law Enforcement's budget was reduced by \$59 million. As a result, several programs in the Bureau of Narcotic Enforcement and Bureau of Investigation and Intelligence were moved, dissolved or absorbed by the newly formed Bureau of Investigation.

Significant activities include the following:

Special Operations Unit

The unit provides statewide enforcement to combat intrastate drug trafficking and violent career criminals and gangs, and develops sources of information to identify criminal syndicates. The unit also uses sophisticated investigative techniques to identify methods of operation, as well as supply and distribution networks. The unit works to eliminate the organization, rather than arrest easily replaced members. The unit also supports the task forces and local agencies when major drug cases, inter-jurisdictional traffickers, violent career criminals and gangs exceed the capabilities of local agencies.

Murder-for-Hire Investigation

As a result of a DOJ investigation, three defendants commissioned by a Tijuana drug cartel were arrested for attempting a murder-for-hire plot against five members of a family in California. All three defendants were ultimately convicted.

Major Central Valley Gang Investigation

An 18-month operation resulted in 103 arrests, including gang members with prior felony convictions. Crimes included

the sale of drugs, firearms, and stolen property and vehicles. Charges included auto theft, possession of stolen property, gun charges, burglary, sales of narcotics (heroin, cocaine, marijuana, ecstasy), and gang enhancements.

Special Investigations Teams

The teams provide investigative support to attorneys in the legal divisions. Major investigations included:

ATM Identity Theft Investigation

The team investigated an ATM identity theft scam, also known as a "skimmer operation," that spanned seven counties. Card readers were replaced at Chase Bank ATM vestibules to retrieve card information and micro cameras captured card holder PIN numbers. With card and PIN information, fictitious ATM cards were created and used to withdraw over \$320,000. Two individuals were arrested and charged with 28 counts of fraud.

Mortgage Fraud Investigation

Desperate homeowners facing foreclosure were led to believe that "mass joinder" lawsuits would stop pending foreclosures, reduce their loan balances or interest rates, or enable them to receive title to their homes free and clear of their existing mortgage. Homeowners paid retainer fees up to \$10,000 to join the "mass joinder" lawsuit against their lender or loan servicer. As part of the team's investigation and enforcement efforts, various law firms were placed into receivership and their assets seized.

pharmaceutical drugs, such as oxycodone and hydrocodone, in San Diego, Riverside and Los Angeles counties. The traffickers utilized a large network of individuals who obtained prescriptions in return for money, smuggled drugs into Mexico where they were later sold to illicit pharmacies, and in a six-month period allegedly smuggled \$400,000 back into the U.S. to finance criminal operations. The investigation resulted in 15 arrests, including the organization's leader, who faces state and federal charges.

Bureau of Firearms

The Bureau of Firearms ensures that the state's firearms laws are administered and enforced fairly and uniformly.

Firearms Prohibition System Redesign

In February 2012, the Mental Health Firearms Prohibition System was upgraded to a new Oracle system that is shared by most DOJ law enforcement databases. The redesign also allowed for enhancements to support AB 302 (Stats. 2010, ch. 344), which required mental health facilities to electronically report patient records to DOJ. The system contains over 22,000 prohibited person records.

Dealer's Record of Sales

The bureau ensures that purchasers have no prohibitions from owning/possessing firearms. The bureau conducted 601,254 firearm purchase background checks in 2011 and projects 739,529 background checks for calendar year 2012. The bureau

prevented over 9,000 felons, dangerous mental patients, and violent domestic abusers from purchasing firearms. This is the fourth consecutive year that firearms sales have increased.

Armed and Prohibited Persons

The APPS program allows the Attorney General to continue efforts to disarm convicted felons, the mentally unstable, individuals with domestic violence restraining orders, and others prohibited by statute from possessing firearms. The bureau conducted 2,710 investigations and seized 2,960 firearms during the biennial period.

Gun Show Program

The bureau conducts background checks and administers licensing requirements on all gun show promoters who operate in California. The bureau also monitors and investigates the gun shows to ensure compliance with California law. The bureau attended 140 gun shows, confiscating 151 illegal firearms and 86,100 rounds of ammunition, of which 1,000 rounds were armor-piercing.

Bureau of Gambling Control

The Bureau of Gambling Control is responsible for the following:

- Investigates license applicant backgrounds.
- Monitors regulatory compliance.
- Investigates suspected gaming-related criminal activity.

Exhibit 6

DOJ Programs Funded with DROS Special Fund

FY 2013/14

BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual	DROS Funding %
			Year-End Expenditures	
510	Dealers Record of Sale	\$ 13,696,143	\$ 14,302,411 ^{1/}	100%
505	Armed Prohibited	\$ 6,745,965	\$ 5,826,467	100%
823	Gun Show	\$ 757,070	\$ 847,151	100%
930	APPS (SB 140)	\$ 8,000,000	\$ 6,457,616	100%
FIREARMS TOTAL DROS FUNDING		\$ 29,199,178	\$ 27,433,645	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual	DROS Funding %
			Year-End Expenditures	
861	Technology Support Bureau	\$ 1,279,000	\$ 1,279,000	2%
795	DROS - Long Gun	\$ 197,203	\$ 195,925	100%
732	Firearms Program - DROS	\$ 316,892	\$ 233,746	100%
700	CJIS Facilities	\$ 2,000	\$ 2,066	0.04%
DCJIS TOTAL DROS FUNDING		\$ 1,795,095	\$ 1,710,737 -	
DOJ TOTAL DROS FUNDING		\$ 30,994,273	\$ 29,144,382	

^{1/} Actual year-end expenditures include \$784,185 in statewide ProRata charges.

Exhibit 7

1 KAMALA D. HARRIS
 Attorney General of California
 2 STEPAN A. HAYTAYAN
 Supervising Deputy Attorney General
 3 ANTHONY R. HAKL
 Deputy Attorney General
 4 State Bar No. 197335
 1300 I Street, Suite 125
 5 P.O. Box 944255
 Sacramento, CA 94244-2550
 6 Telephone: (916) 322-9041
 Fax: (916) 324-8835
 7 E-mail: Anthony.Hakl@doj.ca.gov
Attorneys for Defendants and Respondents

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SACRAMENTO
 11

12
 13 **DAVID GENTRY, JAMES PARKER,**
MARK MID LAM, JAMES BASS, and
 14 **CALGUNS SHOOTING SPORTS**
ASSOCIATION,

Case No. 34-2013-80001667

15 Plaintiffs and Petitioners,

**DEFENDANTS ATTORNEY GENERAL
 KAMALA HARRIS AND BUREAU OF
 FIREARMS CHIEF STEPHEN
 LINDLEY'S THIRD AMENDED
 RESPONSES TO SPECIAL
 INTERROGATORIES (SET THREE)**

16 v.

17
 18 **KAMALA HARRIS, in Her Official**
Capacity as Attorney General For the State
 19 **of California; STEPHEN LINDLEY, in His**
Official Capacity as Acting Chief for the
 20 **California Department of Justice, JOHN**
CHIANG, in his official capacity as State
 21 **Controller, and DOES 1-10.,**

22 Defendants and
 23 Respondents.

24 **PROPOUNDING PARTY: PLAINTIFFS**

25 **RESPONDING PARTY: DEFENDANTS ATTORNEY GENERAL KAMALA**
 26 **HARRIS AND BUREAU OF FIREARMS CHIEF**
STEPHEN LINDLEY

27 **SET NUMBER: THREE**

1 **RESPONSE TO INTERROGATORY NO. 17:**

2 Defendants object to this interrogatory because it seeks irrelevant information.

3 Without waiving this objection, defendants respond as follows:

4 Approximately \$181,486.29. This figure includes salary and benefits.]

5 **INTERROGATORY NO. 18:**

6 State the total amount of DROS SPECIAL ACCOUNT funds spent on salary for attorneys,
7 limited to money expended during fiscal year 2005/2006.

8 **RESPONSE TO INTERROGATORY NO. 18:**

9 Defendants object to this interrogatory because it seeks irrelevant information.

10 Without waiving this objection, defendants respond as follows:

11 Defendants are unable to state the requested total amount. After a diligent search and
12 reasonable inquiry, defendants have not located the relevant data. Defendants therefore are
13 informed and believe that the relevant data no longer exists.

14 **INTERROGATORY NO. 19:**

15 Explain CAL DOJ's current policy as to how the Department of Legal Services obtains
16 funding to cover the cost of providing lawyers when it provides lawyers to defend employees of
17 Bureau of Firearms (including predecessor r versions thereof, e.g., the Firearms Division),
18 including but not limited to when such representation is provided pursuant to Government Code
19 section 11040.

20 **RESPONSE TO INTERROGATORY NO. 19:**

21 Defendants object to this interrogatory because it seeks irrelevant information. Defendants
22 also object to the phrase "Department of Legal Services." There is no such Department.

23 Defendants also object to the vague and ambiguous phrase "obtains funding to cover the cost of
24 providing lawyers when it provides lawyers to defend employees of Bureau of Firearms."

25 Without waiving this objection, defendants respond as follows:

26 The Government Law Section, as part of the Department of Justice, works within the state
27 budget process to obtain the financial resources necessary to operate. The General Fund and the
28 Legal Services Revolving Fund provide those resources. To the extent additional resources are

Exhibit 8

FY 2012/13 – 1st Quarter Fiscal Monitoring

Bureau of Firearms

505 – Armed Prohibited

- Salaries from 826 will be picked up here when funding for the grant is fully expended in December 2012.

826 – Firearms Trafficking Grant

- Funding for this grant will be fully expended by December.

510 - DROS

- Authority includes relief from CS 3.60 and approved provision.
- Salaries includes 15 CIS's effective December.
- [Consultant-Internal projection ties to PY adjusted for billable hours (\$247,558.49) to salary (\$169,652.28) for one DAG. Chargebacks are still occurring from Government Law for lawsuits related to Penal Codes and CCW's.]

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.

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

8 **DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL
9 FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET THREE,
10 PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY**

11 on the interested parties in this action by placing

12 the original

13 a true and correct copy

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

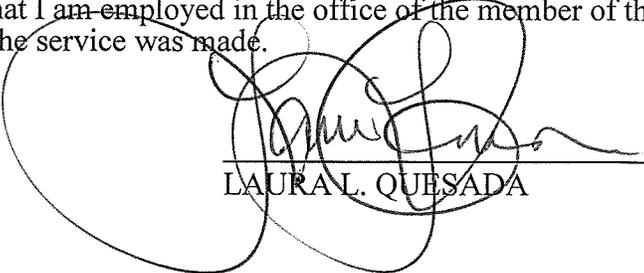
15 Kamala D. Harris, Attorney General of California
16 Office of the Attorney General
17 Anthony Hakl, Deputy Attorney General
18 1300 I Street, Suite 1101
19 Sacramento, CA 95814

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

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

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

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

22 
23 _____
24 LAURAL. QUESADA
25
26
27
28