

FILED
Superior Court Of California,
Sacramento
04/25/2016
skhorn1
By _____, Deputy
Case Number:
34-2013-80001667

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

10 Attorneys for Plaintiffs

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 v.

19 KAMALA HARRIS, in Her Official
20 Capacity as Attorney General For the State
21 of California; STEPHEN LINDLEY, in
22 His Official Capacity as Acting Chief for
23 the California Department of Justice,
24 BETTY YEE, in Her Official Capacity as
25 State Controller, and DOES 1 - 10,

26 Defendants and Respondents.

Case No. 34-2013-80001667

**PLAINTIFFS' SEPARATE STATEMENT IN
SUPPORT OF MOTION TO COMPEL
ADDITIONAL RESPONSES TO SPECIAL
INTERROGATORIES (SET THREE)
PROPOUNDED ON DEFENDANTS KAMALA
HARRIS AND STEPHEN LINDLEY**

Date: October 28, 2016
Time: 9:00 a.m.
Dept: 31
Judge: The Honorable Michael P. Kenny
Trial Date: None Set
Action Filed: October 16, 2013

27 Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and
28 Calguns Shooting Sports Association (collectively "Plaintiffs") hereby submit this Separate
Statement pursuant to California Rules of Court, rule 3.1345, in support of Plaintiffs' Motion to
Compel Further Responses to Special Interrogatories ("SI"), Set Three, Propounded on
Defendants [and Respondents] Kamala Harris and Stephen Lindley (collectively "Defendants").

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1 **SI NO. 24**

2 (Plaintiffs do not seek a further response to SI No. 24; however, Defendants' responses to SI No.
3 24 are provided herein because Defendants' responses to that SI are relevant to why Defendants'
4 Response to SI No. 25 is insufficient.)

5
6 State the total amount of expenditures attributed to tasks referred to in Penal Code
7 section 28225 for the fiscal year 2013-2014; to assist the responding parties, the
8 type of information sought hereby for fiscal year 2013-2014 was previously
9 produced by CAL DOJ for fiscal year 2001-2002 (as to section 28225's
predecessor, section 12076(e), see AG-00097, produced by the defendants in
Bauer v. Harris, United States District Court for the Eastern District of California,
Case No. 1:11-cv-1440-LJO-MJS).

10 **Response**

11 Defendants object to this interrogatory. It is not full and complete in and of itself,
12 contains subparts, and is compound. This interrogatory is also objectionable
13 because it requires referring to other documents in order to respond. Without
waiving these objections, defendants respond as follows:

14 Defendants are unable to answer this interrogatory.

15 **Amended Response (as Stated in Defendants' Second Amended Responses to**
16 **Plaintiffs' SI, Set Three)**

17 Defendants object to this interrogatory. It is not full and complete in and of itself,
18 contains subparts, and is compound. This interrogatory is also objectionable
19 because it requires referring to other documents in order to respond. Without
20 waiving these objections, and after meeting and conferring with plaintiffs,
defendants respond as follows:

21 The information previously produced by defendants for fiscal year 2001-2002 (i.e.,
22 the document produced in the Bauer litigation and Bates numbered AG-00097)
states a total amount of DR OS Fund expenditures of \$7,861,000. The total amount
of DR OS Fund expenditures for fiscal year 2013-2014 was \$29,144,382.

23 **Second Amended Response (as Stated in Defendants' Third Amended**
24 **Responses to Plaintiffs' SI Set Three)**

25
26 Defendants object to this interrogatory. It is not full and complete in and of itself,
27 contains subparts, and is compound. This interrogatory is also objectionable
28 because it requires referring to other documents in order to respond. The phrase
"attributed to" is vague. It is not clear whether plaintiffs seek information about
expenditures that DOJ attributes to tasks referred to in Penal Code section 28225

1 and/or expenditures that some other entity (i.e., the other entities referred to in the
2 statute) attributes to tasks referred to in Penal Code section 28225. Without
3 waiving these objections, and having met and conferred further with plaintiffs,
4 defendants respond as follows:

5 Defendants are unable to answer this interrogatory; however, defendants note that
6 the information previously produced by defendants for fiscal year 2001-2002 (i.e.,
7 the document produced in the Bauer litigation and Bates numbered AG-00097)
8 states a total amount of DROS Fund expenditures of \$7,861,000. The total amount
9 of DROS Fund expenditures for fiscal year 2013-2014 was \$29,144,382.

10 **SI NO. 25**

11 State the basis for the response to Interrogatory No. 24, regardless of whether that
12 response is an actual number based on a summation of costs, a statement that CAL
13 DOJ cannot provide a numerical answer in response to Interrogatory No. 24, or
14 some other response.

15 **Response to SI No. 25**

16 The document numbered AG-00097 (and related documents) produced in *Bauer v.*
17 *Harris* indicate that they were prepared approximately 13 years ago in connection
18 with the Legislative Analysts' Office Supplemental Report of the 2002 Budget Act,
19 which required the Department of Justice to report to the Joint Legislative Budget
20 Committee the information reflected in AG-00097 for fiscal years 1998-99
21 through 2001-02. Defendants are informed and believe that this was a one time
22 requirement and are unaware what data elements and calculations were used to
23 develop the information and are therefore unable to state the requested information
24 for any other fiscal year.

25 **Amended Response to SI No. 25 (as Stated in Defendants' Second & Third**
26 **Amended Responses to Plaintiffs' SI Set Three)**

27 The document numbered AG-00097 (and related documents) produced in *Bauer v.*
28 *Harris* indicate that they were prepared approximately 13 years ago in connection
with the Legislative Analysts' Office Supplemental Report of the 2002 Budget Act,
which required the Department of Justice to report to the Joint Legislative Budget
Committee the information reflected in AG-00097 for fiscal years 1998-99
through 2001-02. Defendants are informed and believe that this was a one time
requirement and are unaware precisely what data elements and calculations were
used to develop the information and are therefore unable to state the corresponding
information for any other fiscal year. Nevertheless, having reviewed the relevant
report of expenditures for fiscal year 2013-2014, defendants have been able to
calculate the figure of \$29,144,382, as stated above. The details of that calculation
are laid out in the table and supporting expenditure reports already produced by
defendants in this case and Bates numbered AGRFP000002 through
AGRFP00011.

1 funds, especially where there is evidence that statutory funding restrictions are not being
2 observed, the balance tips in favor of disclosure. (*County of Orange v. Superior Court* (2000) 79
3 Cal.App.4th 759, 764 [“investigative files sought in civil discovery must remain confidential so
4 long as the need for confidentiality outweighs the benefits of disclosure in any particular case”].)
5 Indeed, Plaintiffs contend that no privilege exists here because the Department has already
6 voluntarily labeled these matters as “APPS cases[.]” Unless Defendants are going to backtrack as
7 to that label being accurate, the Department’s identification of the “APPS cases” was effectively a
8 publication of the information Plaintiffs now seek for confirmation purposes. Finally, the balance
9 is pushed even further in favor of disclosure because Defendants’ counsel has confirmed the
10 underlying criminal matter here is not ongoing, so releasing the information sought cannot
11 prejudice an active case. (*Ibid.*) Defendants’ objections are without merit, and Plaintiffs lawsuit
12 provides sufficient grounds for the production of information relevant to how and whether
13 statutory funding limitations are being followed. (Code Civ. Proc., § 2030.300, subd. (a)(3).)

14
15 **SI NO. 30**

16
17 CAL DOJ’s Biennial Report of 2013-2014, at pages 18-20, refers to an “APPS
18 case” wherein CAL DOJ “followed up on a possible ‘straw purchase[.]’” in
19 November 2013, which led to a search warrant being issued for the straw buyer’s
20 residence, where contraband, accessible to minor children, was found; explain
21 what made this scenario an “APPS case[.]” including, but not limited to, how data
22 from the Armed Prohibited Persons System was used in this case.

23 **Response**

24
25 Defendants object to this interrogatory. It is irrelevant. It also seeks information
26 protected by the attorney-client privilege, work product doctrine and the official
27 information, law enforcement and executive privileges.

28 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

As is more fully explained in the Motion to Compel this separate statement is filed in
support of, the information sought is relevant to this action because it is sought to confirm that the
Department is funding general law enforcement activities that are only tangentially related, if at

1 all, to the APPS out of a source that is statutorily required to only be used for APPS-related law
2 enforcement activities. Further, Defendants’ objections are without merit, as Plaintiffs basically
3 seek only to confirm that the Department’s reference to this matter as an “APPS case” was a true
4 reflection of what the investigation at issue actually was.

5 Because the public has the right to know how the government is using taxpayer funds,
6 especially where there is evidence that statutory funding restrictions are not being observed, the
7 balance tips in favor of disclosure. (*County of Orange v. Superior Court* (2000) 79 Cal.App.4th
8 759, 765 [“investigative files sought in civil discovery must remain confidential so long as the
9 need for confidentiality outweighs the benefits of disclosure in any particular case”].) Indeed,
10 Plaintiffs contend that no privilege exists here because the Department has already voluntarily
11 labeled these matters as “APPS cases[.]” Unless Defendants are going to backtrack as to that label
12 being accurate, the Department’s identification of the “APPS cases” was effectively a publication
13 of the information Plaintiffs now seek for confirmation purposes. Finally, the balance is pushed
14 even further in favor of disclosure because Defendants’ counsel has confirmed the underlying
15 criminal matter here is not ongoing, so releasing the information sought will not prejudice an
16 active case. (*Ibid.*) Defendants’ objections are without merit, and Plaintiffs lawsuit provides
17 sufficient grounds for the production of information relevant to how and whether statutory
18 funding limitations are being followed. (Code Civ. Proc., § 2030.300, subd. (a)(3).)

19
20
21 Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.

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23 _____
24 Scott M. Franklin
25 Attorney for Plaintiffs
26
27
28

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 of eighteen (18) years and am not a party to the within action. My
6 business address is 180 East Ocean Blvd., Suite 200, Long Beach, CA 90802.

6 On April 25, 2015, the foregoing document described as

7 **PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL**
8 **ADDITIONAL RESPONSES TO SPECIAL INTERROGATORIES (SET THREE)**
9 **PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY**

9 on the interested parties in this action by placing

- 10 the original
- 11 a true and correct copy

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

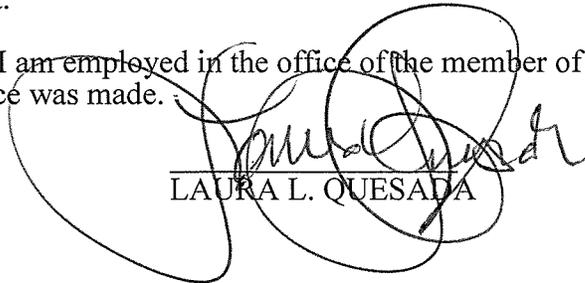
12 Anthony R. Hakl
13 Deputy Attorney General
14 1300 I Street, Suite 125
15 P.O. Box 944255
16 Sacramento, CA 94244-2550
17 *Attorney for Defendants*

15 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
16 processing correspondence for mailing. Under the practice it would be deposited with the
17 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
18 California, in the ordinary course of business. I am aware that on motion of the party served,
19 service is presumed invalid if postal cancellation date is more than one day after date of
20 deposit for mailing an affidavit.
21 Executed on February 17, 2015, at Long Beach, California.

19 (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
20 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the
21 practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
22 receipt on the same day in the ordinary course of business. Such envelope was sealed and
23 placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in
24 accordance with ordinary business practices.
25 Executed on February 17, 2015, at Long Beach, California.

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

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

26 
27 LAURA L. QUESADA
28