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By _____, Deputy
Case Number:
34-2013-80001667

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7
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)
15 vs.)
16 KAMALA HARRIS, in Her Official)
Capacity as Attorney General For the State)
17 of California; STEPHEN LINDLEY, in His)
Official Capacity as Acting Chief for the)
18 California Department of Justice, JOHN)
CHIANG, in his official capacity as State)
19 Controller, and DOES 1-10.)
20 Defendants and Respondents.)

CASE NO.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDAMUS

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By Fax

1 **INTRODUCTION**

2 1. The California Department of Justice (“DOJ”)¹ collects information from potential
3 firearm purchasers via a Dealer Record of Sale (DROS) form. The DROS form is primarily used
4 for conducting background checks. Along with submission of the DROS form, the DOJ requires
5 potential purchasers² to pay a fee (the “DROS Fee”). As required by statute, monies collected
6 from the DROS Fee are segregated in a DROS Special Account of the General Fund, to be used
7 *only* for covering the costs associated with administering the DROS program.

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

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

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

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

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

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

1 so. Moreover, such activities had previously – and properly – been paid for out of the General
2 Fund.

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

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

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

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

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

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

27 12. And, because its authorization was based solely on the invalid adoption of SB 819, the
28 Legislature’s appropriation of \$24 million from the DROS Special Account surplus to fund the

1 Armed Prohibited Persons System (APPS) pursuant to SB 140 was and is an ongoing illegal
2 expenditure of state funds.

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

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

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

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

19 JURISDICTION & VENUE

20 17. This Court has jurisdiction under California Code of Civil Procedure sections 525, 526,
21 526a, 187, and 1085 and other applicable laws.

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

26 PARTIES

27 I. Plaintiffs-Petitioners

28 19. All individual Plaintiffs are natural persons, citizens of the United States, and current

1 residents of Sacramento County, California.

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

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

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

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

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

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

1 supporters in California who have been, are being, and will in the future be required to pay
2 excessive DROS Fees that are used unlawfully by Defendants-Respondents for purposes other
3 than the DROS program.

4 **II. Defendants-Respondents**

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

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

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

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

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

OVERVIEW OF CALIFORNIA REGULATORY SCHEME

I. Regulating the Imposition of Taxes and Fees

31. Section 3 of Article XIII A of the California Constitution (hereafter “Section 3”) was originally made law by voter approval of Proposition 13 in 1978. It placed limits on the government in enacting new taxes, and defined what would constitute a “tax” for its purposes.

32. In 2010, California voters approved Proposition 26, which, relevant to Plaintiffs’ claims, amended Section 3 to clarify what constitutes a “tax” under California law.

33. Proposition 26 amended Section 3, in pertinent part, as follows:

a. “Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature.” Cal. Const., art. XIII A § 3(a).

b. “As used in [Section 3 of article XIII A of the California Constitution], ‘tax’ means any levy, charge, or exaction of any kind imposed by the State.” Cal. Const., art. XIII A § 3(b).

c. “The State bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” Cal. Const. art. XIII A, § 3(d).

34. Proposition 26’s express and primary purpose was to end the previously common legislative and regulatory practice of circumventing Proposition 13’s tax-increase restrictions – and thwarting the will of the people – by levying a tax under the guise of a regulatory “fee.”

II. Regulating Firearm Transfers

A. Licensed Dealer Requirement

35. When individuals wish to obtain a firearm in California, state law generally requires them to process the transaction through a federally-licensed, California firearm dealer (an “FFL”). Cal. Penal Code §§ 26500, 26520.

36. California requires that various fees be paid by the intended purchaser at the time of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 47. The DOJ currently charges the DROS Fee at \$19 for a single transaction involving one
13 or more rifles or shotguns and not more than one handgun. The DROS Fee for each additional
14 handgun being purchased at the same time is \$15. 11 Cal. Code of Reg. section 4001.

15 48. DOJ requires the DROS Fee be paid by purchasers for *all* firearm sales from an FFL, as
16 well as private party transfers of firearms that must be processed through an FFL (which includes
17 most transfers).⁵ Cal. Penal Code § 28225.

18 49. The Penal Code mandates that revenue from the DROS Fee is to be deposited into the
19 DROS Special Account of the General Fund (“DROS Special Account”). Cal. Penal Code §
20 28235 [12076(g)].⁶

21 ///

22

23 ⁵ *But See* Cal. Pen. Code §§ 27875, 27920, 27925, and 27966 (exempting from the FFL-
24 processing requirement transfers between immediate family members, transfers by operation of
law, and transfers of “curios and relics”).

25 ⁶ DOJ Defendants deposit (and commingle) funds collected from some additional fees –
26 for special firearm licensing and miscellaneous services (*see e.g.*, Cal. Penal Code §§ 30900-
30905 [12285(a),(b)]), concealed weapon permit applications and Cal. Pen. Code § 26190(a)-(b)
27 [12054]), “Assault Weapon” Permits – into the DROS Special Account. Plaintiffs estimate that
28 70-80% of the account consists of monies from the DROS Fee; Plaintiffs’ efforts to ascertain a
more definite figure are hampered by the DOJ’s lack of accounting.

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

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

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

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

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

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

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

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

24 56. Nevertheless, in its final form as signed into law, AB 161 removed the prohibition on
25 using DROS Fee revenues to “directly fund or as a loan to fund any program not specified” and,

26 ⁷ *See* Sen. Comm. on Public Safety, Bill Analysis: Dealers Record of Sale Special
27 Account - Expanding Authorized Use - Appropriation to Fund Firearms Trafficking Prevention
28 Act of 2002, at 10 (July 8, 2003) *available at*
http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0151-0200/ab_161_cfa_20030708_141850_se_n_comm.html.

1 added section 28225(b)(11) [12076(e)(10)], allowing the DOJ to use funds collected from firearm
2 transactions for any “regulatory and enforcement activit[y] related to the sale, purchase, loan, or
3 transfer of firearms.”

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

9 2. 11 CCR 4001: Raising the DROS Fee Amount

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

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

21 3. DOJ’s failed attempt to lower admittedly excessive DROS Fee

22 60. California Code of Regulations, title 11, section 4001 remained in effect without any
23 attempts by DOJ to amend it to raise or lower the DROS Fee, until 2010 when the DOJ issued a
24 notice of proposed rulemaking, stating its intent to *lower* the maximum fee allowed from \$19 to
25 the pre-2004 emergency regulation amount of \$14.

26 61. The 2010 initial statement of reasons concerning the proposed rulemaking intended to

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

1 lower the DROS Fee indicated that “although the volume of DROS transactions has increased, the
2 average time spent on each DROS, and thus the processing cost, has decreased.”⁹ It also noted that
3 “[t]he proposed regulations [would] lower the current \$19 DROS Fee to \$14, *commensurate with*
4 *the actual cost of processing a DROS.*” (emphasis added).¹⁰

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

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

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

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

20 65. In addition to the Legislature’s express findings to the same effect, DOJ Defendants
21 have admitted SB 819’s purpose and effect is to use funds from the DROS Fee on activities
22 unrelated to the DROS program: “To clear the [Armed and Prohibited Persons System] backlog of
23 approximately 34,000 handguns, Attorney General Harris is the sponsor of Senate Bill 819, which
24 would revise the Penal Code to *expand* the use of existing regulatory fees collected by gun dealers
25

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

28 ¹⁰ *Id.*

1 to allow the state [DOJ] to use fee revenue to pay for the APPS program.” Press Release, Office of
2 the Attorney General, Attorney General Kamala D. Harris Announces Seizure of 1,200 Guns from
3 Mentally Unstable and Other Individuals (June 16, 2011) (emphasis added).

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

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

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

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

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

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

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

24 (f) A Dealer Record of Sale fee is imposed upon every sale or transfer of a
25 firearm by a dealer in California. Existing law authorizes the DOJ to utilize
26 these funds for firearms-related regulatory and enforcement activities
related to the sale, purchase, loan, or transfer of firearms pursuant to any
provision listed in Section 16580 of the Penal Code, but not expressly for
the enforcement activities related to possession.

27 (g) *Rather than placing an additional burden on the taxpayers of California*
28 *to fund enhanced enforcement of the existing armed prohibited persons*
program, it is the intent of the Legislature in enacting this measure to allow

1 *the DOJ to utilize the Dealer Record of Sale Account for the additional,*
2 *limited purpose of funding enforcement of the Armed Prohibited Persons*
3 *System. S.B. 819, 2011 Leg., Reg. Sess. (Ca. 2011) (emphasis added).*

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

6 67. DOJ Defendants received what they sought from SB 819 the following year, on May 1,
7 2013, when Senate Bill 140 (2013) was signed into law as an emergency measure, adding Section
8 30015 to the Penal Code. SB 140 appropriates the current \$24 million surplus from the DROS
9 Special Account to DOJ Defendants “to address the backlog in the Armed Prohibited Persons
10 System (APPS) and the illegal possession of firearms by those prohibited persons.”

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

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

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

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

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

1 **FIRST CAUSE OF ACTION**
2 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
3 **VALIDITY OF SENATE BILL 819**
4 **Violation of California Const., Art. XIII A, Sec. 3**
5 **(By All Plaintiffs Against DOJ Defendants)**

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

7 74. By expanding the activities for which DROS Fee revenues can be used to include
8 regulating the “possession” of firearms, thereby increasing the activities the DROS Fee payer is
9 responsible to finance and shifting the responsibility for millions of dollars in law enforcement
10 costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS
11 Fee payers, in particular, SB 819 is a levy, charge, or exaction.

12 75. DOJ Defendants cannot meet their burden to show that such a levy, charge, or exaction
13 falls within Section 3, subdivision (b)’s five listed exceptions to being a tax, because regulating
14 the (unlawful) “possession” of firearms bears no reasonable relationship to the Plaintiffs’ (i.e.,
15 DROS Fee payers’) burden on or benefits received from DOJ Defendants’ administration of the
16 DROS program, which is neither a licensing or permitting program.

17 76. The regulation of the *unlawful* possession of firearms, which is SB 819’s main purpose
18 per its own findings, constitutes a general law enforcement activity that has no unique association
19 with DROS Fee payers. And, SB 819’s main purpose – per its own findings – is to purportedly
20 benefit society as a whole, not just lawful firearm purchasers.

21 77. The adoption of SB 819 was a post hoc justification for utilizing the multi-million-
22 dollar surplus in the DROS Special Account and, as such, is the type of legislative trick meant to
23 disguise a “tax” for the purpose of generating revenue for unrelated governmental activities that
24 Proposition 26 sought to preclude.

25 78. SB 819 is thus a tax under Section 3.

26 79. Bills enacting or increasing a “tax” require the approval of two-thirds of all members of
27 each house of the Legislature under article XIII A, section 3, subdivision (a) of the California
28 Constitution.

80. Because SB 819 was not passed by the required two-thirds vote in each house of the
Legislature, it is an illegal tax under Section 3 that never became law, and thus void and

1 unenforceable.

2 81. An actual controversy exists between the parties hereto in that Plaintiffs believe that SB
3 819 constitutes an invalid tax, whereas DOJ Defendants do not, and continue to utilize DROS Fee
4 revenues to fund regulation of the “possession” of firearms.

5 82. Plaintiffs desire a judicial determination of the rights and duties of the parties, including
6 a declaration as to whether SB 819 is an illegal tax under Section 3 of Article XIII A of the
7 California Constitution.

8 83. Plaintiffs have been and continuously are irreparably injured by “DROS Fee” revenues
9 being utilized for regulating the “possession” of firearms pursuant to SB 819.

10 84. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing DROS
11 Fee revenues for the purpose of regulating the “possession” of firearms pursuant to SB 819.

12
13 **SECOND CAUSE OF ACTION**
14 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
15 **INVALIDITY OF APPROPRIATION OF DROS FEE REVENUES TO ARMED**
16 **PROHIBITED PERSON SYSTEM**
17 **California Code of Civil Procedure § 526a**
18 **(By All Plaintiffs Against DOJ Defendants)**

19 85. All of the above paragraphs are re-alleged and incorporated herein by reference.

20 86. Because SB 819 is an illegal tax under California’s Constitution, the \$24 million
21 appropriated to DOJ Defendants via SB 140 – pursuant to and solely authorized by SB 819 – is an
22 unlawful appropriation, and SB 140 is void.

23 87. DOJ Defendants are precluded by Section 3 from using any of the \$24 million
24 appropriated by SB 140 on enforcing APPS programs.

25 88. Alternatively, even if SB 819 is not an illegal tax under California’s Constitution, DOJ
26 Defendants did not have statutory authority to use DROS Fee revenues on regulating the
27 “possession” of firearms before SB 819 went into effect on January 1, 2012. Therefore, at
28 minimum, DOJ Defendants have no statutory authority to use any revenues collected from the
DROS Fee before 2012 for activities relating to the “possession” of firearms.

89. Enforcing APPS programs relates solely to regulating individuals’ “possession” of
firearms. As such, any monies collected from the DROS Fee prior to SB 819 going into effect on

1 January 1, 2012, cannot be used to fund the enforcement of APPS programs.

2 90. Because a significant portion of the \$24 million SB 140 appropriated to DOJ
3 Defendants was amassed from individuals, including Plaintiffs, paying the DROS Fee prior to SB
4 819 going into effect on January 1, 2012, DOJ Defendants are not authorized to use such portion
5 of that \$24 million on APPS programs, and are thus precluded from doing so.

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

9
10 **THIRD CAUSE OF ACTION:**
11 **WRIT OF MANDATE – STOPPING APPROPRIATION OF SB 140 FUNDS**
12 **California Code of Civil Procedure §§ 526a, 1085**
13 **(By All Plaintiffs / Petitioners Against Defendant Controller)**

14 92. All of the above paragraphs are re-alleged and incorporated herein by reference.

15 93. Defendant Controller has, currently is, and will continue to appropriate to DOJ
16 Defendants funds pursuant to SB 140.

17 94. Because SB 140 constitutes an illegal appropriation, Defendant Controller cannot
18 lawfully appropriate to DOJ Defendants any of the \$24 million authorized by SB 140.

19 95. Plaintiffs have been and continuously are irreparably injured by Defendant Controller's
20 appropriating to DOJ Defendants funds pursuant to SB 140 because Plaintiffs have no plain,
21 speedy, and adequate remedy to prevent such an illegal appropriation.

22 96. Defendant Controller always has a clear, present, and ministerial duty to refrain from
23 unlawfully appropriating funds, and Plaintiffs always have a right to be free from the unlawful use
24 of the revenues collected from the fees they pay.

25 97. In the alternative, Defendant Controller cannot lawfully appropriate to DOJ Defendants
26 that portion of the \$24 million authorized by SB 140 that represents DROS Fee revenues collected
27 before January 1, 2012, and has a ministerial duty to refrain from doing so. Plaintiffs, as payers of
28 such DROS Fee, are irreparably injured by such unlawful appropriations.

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2 **FOURTH CAUSE OF ACTION:**
3 **WRIT OF MANDATE – RECOUPING OF SB 140 FUNDS**
4 **California Code of Civil Procedure §§ 526a, 1085**
5 **(By All Plaintiffs / Petitioners Against Defendant Controller)**

6 98. All of the above paragraphs are re-alleged and incorporated herein by reference.

7 99. Because those funds already transferred to DOJ Defendants by Defendant Controller
8 pursuant to SB 140 constituted an illegal appropriation, at least in part, Defendant Controller has a
9 clear, present, and ministerial duty to preserve and recoup any such unlawfully appropriated funds
10 from DOJ Defendants.

11 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

12 **FIFTH CAUSE OF ACTION**
13 **WRIT OF MANDATE – RETURN OF SB 140 FUNDS**
14 **California Code of Civil Procedure §§ 526a, 1085**
15 **(By All Plaintiffs / Petitioners Against DOJ Defendants)**

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

17 101. DOJ Defendants always have a clear, present, and ministerial duty to refrain from
18 accepting or using funds unlawfully appropriated to them, and Plaintiffs always have a right to be
19 free from such unlawful use of the revenues collected from the fees they pay.

20 102. Because any funds already transferred to DOJ Defendants by Defendant Controller
21 pursuant to SB 140 constituted an illegal appropriation, at least in part, DOJ Defendants have a
22 clear, present, and ministerial duty to return any such funds to Defendant Controller.

23 **SIXTH CAUSE OF ACTION:**
24 **WRIT OF MANDATE – REVIEW PROPER AMOUNT OF “DROS FEE”**
25 **(California Penal Code §§ 28225(a) [12076(e)] / 28225(b) [12076(e)])**
26 **(By All Plaintiffs / Petitioners Against DOJ Defendants)**

27 103. All of the above paragraphs are re-alleged and incorporated herein by reference.

28 104. DOJ Defendants have a clear, present, and ministerial duty pursuant to California
Penal Code sections 28225(a) [12076(e)] and 28225(b) [12076(e)] to determine “the amount
necessary to fund” the activities enumerated at Penal Code section 28225(b)(1)-(11)
[12076(e)(1)-(10)] and to only charge the DROS Fee at that amount.

105. On information and belief, DOJ Defendants have been charging the DROS Fee at the

1 maximum amount statutorily allowed, without first determining whether that amount is “no more
2 than is necessary to fund” the regulatory and enforcement activities for which they are statutorily
3 permitted to use DROS Fee revenues.

4 106. The DROS Fee is currently imposed by DOJ Defendants on Plaintiffs and other
5 firearm purchasers at \$19 per firearm transaction, plus \$15 per each additional handgun.

6 107. Since the year 2004, the DROS Special Account, despite expenditures therefrom
7 having been made on unauthorized activities, has accumulated an approximately \$35 million
8 surplus.

9 108. Most, if not all, of the approximately \$35 million in surplus revenues in the DROS
10 Special Account was generated by payers, including Plaintiffs, of the DROS Fee.

11 109. Despite amassing a multi-million-dollar surplus, DOJ Defendants have failed to
12 properly review the amount of the DROS Fee to ensure that the amount is “no more than is
13 necessary to fund” the activities enumerated at Penal Code section 28225(b)(1)-(11)
14 [12076(e)(1)-(10)].

15 110. DOJ Defendants are not complying with their duty to tailor the amount of the DROS
16 Fee to DOJ's actual costs in administering the DROS program.

17 111. On information and belief, the current amount of the DROS Fee exceeds DOJ
18 Defendants' actual costs for lawfully administering the DROS program.

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

22 PRAYER

23 WHEREFORE PLAINTIFFS pray for relief as follows:

24 1) For a declaration that Senate Bill 819 is an unlawful tax under Article XIII A, Section 3 of
25 the California Constitution and thus void;

26 2) For a preliminary and permanent prohibitory injunction forbidding DOJ Defendants and
27 their agents, employees, officers, and representatives, from using any monies from the “DROS
28 Fee” for purposes of regulating the “possession” of firearms pursuant to SB 819, as codified at

1 Penal Code section 28225(b)(11) [12076(e)(10)];

2 3) For a declaration that Senate Bill 140 is an unlawful appropriation in its entirety, and thus
3 void;

4 4) For a preliminary and permanent prohibitory injunction forbidding DOJ Defendants and
5 their agents, employees, officers, and representatives, from receiving or using any monies
6 appropriated to them from SB 140 for purposes of regulating “possession” of firearms pursuant to
7 section 28225(b)(11) [12076(e)(10)];

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

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

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

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

25 9) For a peremptory writ of mandate ordering Defendant State Controller and his agents,
26 employees, officers, and representatives, to recoup any funds that Defendant State Controller has
27 already appropriated to DOJ Defendants pursuant to SB 140, or at least those funds which were
28 collected prior to Senate Bill 819 going into effect on January 1, 2012;

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

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

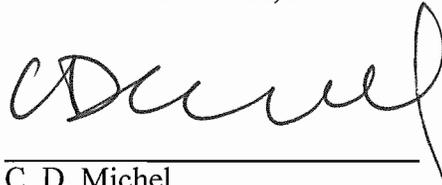
8 12) For a preliminary and permanent prohibitory injunction forbidding DOJ Defendants and
9 their agents, employees, officers, and representatives, from imposing the "DROS Fee" as currently
10 imposed, at least until the required review is conducted by DOJ and the appropriate amount for
11 the DROS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

12 13) For an award of reasonable attorneys' fees, costs, and expenses pursuant to California
13 Code of Civil Procedure § 1021.5 and/or other applicable law;

14 14) For such other and further relief as the Court may be just and proper.

15 Dated: September 24, 2013

Michel & Associates, P.C.

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19 C. D. Michel
20 Attorney for the Plaintiffs'