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APR 15 2015

FRESNO COUNTY SUPERIOR COURT
By _____
GAR - DEPUTY

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6 Attorneys for Plaintiffs
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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF FRESNO

10 KIM BELEMJIAN; JONATHAN
FAIRFIELD; T.J. JOHNSTON;
11 MATTHEW PIMENTEL; STANLEY ROY;
FFLGUARD, INC.; CALIFORNIA RIFLE
12 AND PISTOL ASSOCIATION;

13 Plaintiffs,

14 vs.

15 KAMALA D. HARRIS, in her official
capacity as Attorney General for the State
16 of California; STEPHEN LINDLEY, in his
official capacity as CHIEF OF THE
17 CALIFORNIA DEPARTMENT OF
JUSTICE BUREAU OF FIREARMS;
18 CALIFORNIA DEPARTMENT OF
JUSTICE; and DOES 1-10,
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20 Defendants.
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CASE NO. 15-CE-CG-00029

**DECLARATION OF ANNA M. BARVIR IN
SUPPORT OF PLAINTIFFS' NON-
OPPOSITION TO DEFENDANTS' AND
RESPONDENTS' DEMURRER TO FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDATE**

Date: April 15, 2015
Time: 3:30 p.m.
Dept: 503
Judge: Hon. Alan M. Simpson
Action Filed: January 6, 2015

DECLARATION OF ANNA M. BARVIR

I, Anna M. Barvir, declare as follows:

1. I am an attorney licensed to practice law before the courts of the State of California. I am an associate attorney of the law firm Michel & Associates, P.C., counsel for Plaintiffs Kim Belemjian, Jonathan Fairfield, T.J. Johnston, Matthew Pimentel, Stanley Roy, FFLGuard, Inc., and California Rifle and Pistol Association. I have personal knowledge of each fact stated in this declaration and if called as a witness I could and would competently testify thereto.

2. On or about October 2, 2014, Defendants Kamala D. Harris and Stephen Lindley sent a letter to licensed firearms retailers and certified instructors in California, announcing that the Department of Justice would be implementing several rules and procedures for the administration of the newly enacted Firearm Safety Certificate Program (“FSC Program”) set to take effect on January 1, 2015. Attached hereto as Exhibit B is a true and correct copy of Defendants’ letter dated October 2, 2014.

3. On or about December 18, 2014, Defendants Kamala D. Harris and Stephen Lindley sent a second letter to licensed firearms retailers and certified instructors in California, confirming and further explaining the rules and procedures for the FSC Program it had announced in its letter dated October 2, 2014. Attached hereto as Exhibit C is a true and correct copy of Defendants’ letter dated December 18, 2014.

4. On or about December 29, 2014, my office submitted a petition to the Office of Administrative Law (“OAL”) on behalf of Plaintiff *FFLGuard, Inc.*, complaining of Defendants’ failure to follow Administrative Procedure Act requirements when it adopted several rules for the implementation of the FSC Program and long-gun safe-handling demonstrations. A copy of this petition was sent to Defendants Harris and Lindley on the same day. Attached hereto as Exhibit D is a true and correct copy of the petition my office submitted to OAL and copied to Defendants Harris and Lindley.

5. On December 30, 2014, my office contacted Deputy Attorney General Kimberly Granger via e-mail to provide notice that on January 5, 2015, Plaintiffs would be filing a lawsuit against Defendants and seeking a temporary restraining order against the enforcement of the long-

1 gun safe-handling requirements and the implementation of the requirements specified in
2 Defendants' October 2 and December 18, 2014 letters. Subsequent responses to that e-mail show
3 that counsel for Defendants never suggested that formal regulations were in the process of being
4 prepared. Attached hereto as Exhibit E is a true and correct copy of the e-mail correspondence
5 between Plaintiffs' counsel and Defendants' counsel, including my office's December 30 e-mail
6 to Ms. Granger.

7 6. A hearing for Plaintiffs' Ex Parte Application for Order to Show Cause and
8 Temporary Restraining Order was held on January 7, 2015. Attached hereto as Exhibit F is a true
9 and correct copy of the entire Reporter's Transcript of the January 7, 2015 hearing.

10 7. On or about January 8, 2015, I received an e-mail from Sean A. Brady, co-counsel
11 for Plaintiffs, directed to counsel for Defendants, Jeffrey A. Rich, stating, among other things, that
12 Plaintiffs were willing to cease their pursuit of preliminary relief and go through mediation with
13 the Defendants. Attached hereto as Exhibit G is a true and correct copy of Mr. Brady's January 8,
14 2015 e-mail and all subsequent responses to it.

15 8. On or about January 9, 2015, I received an e-mail from Mr. Rich in response to
16 Plaintiffs' offers for settlement. See Exhibit G, p. 1. Attached to that e-mail was a letter notifying
17 Plaintiffs for the first time that Defendants were "in the process of preparing emergency
18 regulations and final regulations pursuant to the Administrative Procedures [sic] Act. . . ."
19 Attached hereto as Exhibit H is a true and correct copy of Mr. Rich's January 9, 2015 letter.

20 9. On or about January 26, 2015, I e-mailed Mr. Rich informing him that Plaintiffs
21 had refrained from seeking further preliminary relief in reliance on his January 9 representation
22 that Defendants were in the process of preparing emergency and final regulations. I also asked for
23 confirmation that the Department of Justice was still going to adopt emergency regulations and, if
24 so, when. I sent this e-mail in a further attempt to settle the dispute outside of court and keep the
25 costs of litigation down. Attached hereto as Exhibit I is a true and correct copy of my January 26,
26 2015 e-mail.

27 10. On or about January 27, 2015, Mr. Rich responded to my January 26, 2015 e-mail
28 saying he would be sending me a status report on the following day. The next day, Mr. Rich e-
mailed me saying only that there was a draft of an emergency regulation completed, but that it was

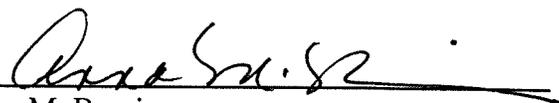
1 presently undergoing the Department of Justice's internal review and that the Department would
2 be submitting the emergency regulation package to OAL by the first week of March. See Exhibit I,
3 p. 1.

4 11. Attached to Plaintiffs' Request for Judicial Notice as Exhibit A is a true and
5 correct copy of OAL File No. 2015-0225-02E. I obtained OAL File No. 2015-0225-02E by
6 visiting the OAL's Website at <http://www.oal.ca.gov/Recent_Actions_Taken_on_Emergency_Regulations.htm> [as of April 2, 2015] and clicking on the hyperlink, "2015-0225-02E," and then
7 printing the .pdf file which was downloaded after clicking on the hyperlink.
8

9 I declare under penalty of perjury under the laws of the United States that the foregoing is
10 true and correct.

11 Executed this 2nd day of April 2015 at Long Beach, California.

12
13 Date: April 2, 2015

14 
15 Anna M. Barvir
16 Declarant
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1 **PROOF OF SERVICE**

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

5 On April 2, 2015, I served the foregoing document(s) described as:

6 **DECLARATION OF ANNA M. BARVIR IN SUPPORT OF PLAINTIFF'S NON-
7 OPPOSITION TO DEFENDANTS' AND RESPONDENTS' DEMURRER TO FIRST
8 AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
9 PETITION FOR WRIT OF MANDATE**

10 on the interested parties in this action by placing
11 the original
12 a true and correct copy
13 thereof enclosed in sealed envelope(s) addressed as follows:

14 Mr. Jeffrey Rich
15 Deputy Attorney General
16 1300 I Street
17 Sacramento, CA 95814

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

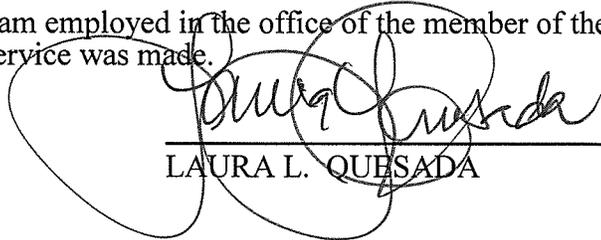
20 Executed on _____, 2015, at Long Beach, California.

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

27 Executed on April 2, 2015, at Long Beach, California.

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

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



LAURA L. QUESADA

EXHIBIT B



BUREAU OF FIREARMS
P.O. BOX 160367
SACRAMENTO, CA 95816-0367
Telephone: (916) 227-3750
Fax: (916) 227-7480

October 2, 2014

California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities

Re: Firearm Safety Certificate Program

Dear California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities:

Pursuant to Senate Bill 683 (Stats 2013, ch. 761), effective January 1, 2015, the existing Handgun Safety Certificate (HSC) program will be expanded and renamed the Firearm Safety Certificate (FSC) program. Under the FSC program, requirements that currently apply to handguns only, will apply to all firearms (handguns and long guns).

The following information outlines the new FSC program, requirements for DOJ Certified Instructors; requirements for Comparable Entities; and existing Handgun Safety Certificate program updates.

The Department plans to utilize a web-based application to make FSC materials available, including the Firearm Safety Certificates, test materials, the FSC study guide, and the FSC manual to all DOJ Certified Instructors. The FSC study guide will also be available for printing and audio/visual materials will be available for streaming/downloading from the public website at <http://www.oag.ca.gov/firearms/fsc>. **Please be advised, this link will not be available until January 1, 2015.** Any materials that require a fee will be billed through the online system. Payment options will be limited to major credit/debit cards (e.g. MasterCard, Visa, American Express, and Discover cards). **Payment by cash or check will not be accepted.**

With the new FSC program web-based application, DOJ Certified Instructors will be able to issue an FSC electronically, search for an FSC that was originally issued by them for replacement, maintain FSC records, generate reports of FSC issuances, and review/obtain FSC materials. Each existing DOJ Certified Instructor will receive login information to the new system and should keep the login information readily available.

With the new FSC program web-based application, DOJ Certified Instructors will need access to a personal computer and printer. DOJ Certified Instructors will be able to use multiple web-browsers to access the web-based application, including but not limited to: Mozilla Firefox, Internet Explorer, Safari, and Google Chrome.

- Existing DOJ Certified Instructors will not be required to be recertified in long gun safety prior to January 1, 2015. DOJ Certified Instructors will be sent login information to be able to access the new FSC program online system. A userid and temporary password will be sent separately. Upon successful

login, existing DOJ Certified Instructors will be required to acknowledge they have read the revised Firearm Safety Certificate Manual, which includes steps in long gun safety and that they will include both handgun and long gun safety as part of the safe handling demonstrations. Upon acknowledgement, a new Firearm Safety Certificate Instructor card will be generated for the DOJ Certified Instructor to print and keep for their use. If the DOJ Certified Instructor does not acknowledge the handgun and long gun safety requirement, a new DOJ Certified Instructor card will not be generated and the individual will not be in compliance as a DOJ Certified Instructor.

- All DOJ Certified Instructors will be required to have a valid Certificate of Eligibility (COE). As of January 1, 2015, new applicants will be required to obtain a COE prior to submitting an application as a DOJ Certified Instructor. Existing DOJ Certified Instructors as of December 31, 2014, will be required to have a valid COE upon renewal or by June 30, 2015, whichever comes first. Any existing DOJ Certified Instructor who has not provided proof of a valid COE by June 30, 2015, will not have access to the FSC online system. Mere submission of the application will not be considered proof of a COE; therefore, please allow 4-6 weeks for the Department to process the COE application. The Certificate of Eligibility application (form BOF 4008) is available on the Attorney General's website at <http://www.oag.ca.gov/firearms/forms>. A Request for Live Scan Service (form BCIA 8016) is attached to the COE application. COEs must be renewed annually.
- Valid HSCs can still be used to purchase **handguns only** after December 31, 2014. However, effective January 1, 2015, an FSC will be required to purchase long guns. An FSC can be used to purchase/acquire handguns and long guns.
- A Declaration will be sent out to all existing entities, recognized by the Department as a comparable entity to those entities in Penal Code section 31635, for acknowledgement of existing training courses to include long gun safety beginning January 1, 2015. The Declaration must be completed, signed and returned to the Department by January 1, 2015. Failure to do so could result in the entity being removed as giving comparable training. New applicants to be considered as a comparable entity will need to include long gun training in the course outline effective January 1, 2015.
- Firearms dealers will still be required to tag firearms with the DOJ firearms warning labels, which will not be available through the new system and must be ordered through BOF. Orders for warning tags must be made via email at boffscprogram@doj.ca.gov. **Please be advised, this email address will not be in use until January 1, 2015.** Email requests must include the following: dealer name, CFD number, mailing address, and number of tags requested.

- Any unused¹ HSCs in possession of a DOJ Certified Instructor after January 1, 2015 can be returned to the Department for refund. Unused HSCs must be returned by March 1, 2015, in order to receive a refund. To receive a refund, send a written request to the Department at: Department of Justice, Bureau of Firearms – FSC, P.O. Box 160367, Sacramento, CA 95816-0367. Your written request must include the following:
 - DOJ Certified Instructor name
 - Address
 - How many HSCs are being returned

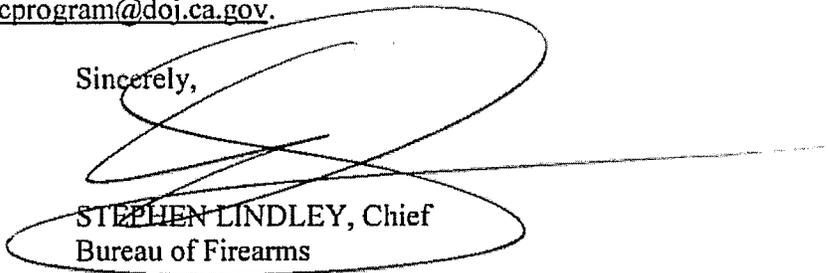
Unused HSCs received by the Department after March 1, 2015, will be destroyed and no refund will be issued.

- HSCs that have been damaged or filled out incorrectly and need to be voided can be returned to the Department prior to January 1, 2015, for a replacement HSC. Damaged or voided HSCs returned to the Department after December 31, 2014, will be destroyed. No refund will be issued for these returned HSCs.

All future correspondence between the Department and the DOJ Certified Instructors will be conducted primarily through email. DOJ Certified Instructors that currently do not have an email address will need to obtain one, otherwise, important information pertaining to the FSC program could be missed. In addition, an email address will be required to maintain access to the new web-based application (i.e., login information that is reset will be sent to an email address). If you have not been contacted recently by Department staff to confirm an email address, please send an email to bofhscprogram@doj.ca.gov with the information to be updated in the Department's records. Be sure to include your name and DOJ Certified Instructor number in your email notification.

Please be sure to check your email or mail in the near future for your login information to the new FSC system. If you have any questions, please contact the Bureau of Firearms at (916) 227-3750 or via email at bofhscprogram@doj.ca.gov.

Sincerely,



STEPHEN LINDLEY, Chief
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

¹Unused HSC cards for refund are cards that were not filled out previously and would not be considered voided.

EXHIBIT C

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF FIREARMS
P.O. BOX 160367
SACRAMENTO, CA 95816-0367
Telephone: (916) 227-3750
Fax: (916) 227-7480

December 18, 2014

[REDACTED]

Re: Firearm Safety Certificate Program - Online Access

Dear DOJ Certified Instructor:

Effective January 1, 2015, the existing Handgun Safety Certificate (HSC) Program will be changed to the Firearm Safety Certificate (FSC) Program (Senate Bill 683, Stats 2013, ch. 761).

The Department of Justice (the Department) will utilize an online system for the Firearm Safety Certificate Program to make FSC materials available to all DOJ Certified Instructors, including the Firearm Safety Certificates, test materials, the FSC study guide, and the FSC manual. The study guide will be available for printing and audio/visual materials will be available for viewing/downloading from the Bureau of Firearms website at <https://oag.ca.gov/firearms/fsc>. **Please be advised, this link will not be available until January 1, 2015.**

You have been identified as an active DOJ Certified Instructor with the Department. Below is your identifying information to access the online system.

First Name: [REDACTED]
Last Name: [REDACTED]
DOJ Certified Instructor Number: [REDACTED]
Website: <https://fcs.doj.ca.gov>
Userid: [REDACTED]

With the new FSC Program web-based application, you will need access to a personal computer and printer. DOJ Certified Instructors will be able to use multiple web browsers to access the web-based application, including but not limited to: Mozilla Firefox, Internet Explorer, Safari, Google, Chrome, and others.

You will receive your temporary password separately. Once you have your userid and temporary password, you will be able to login to the new system. Upon login, you will be prompted to make acknowledgements regarding specific information and then will be required to change your password before proceeding. Please keep your userid and password secure at all times.

December 18, 2014

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With the new FSC online system, DOJ Certified instructors will be able to electronically issue an FSC, issue a replacement FSC, pay for FSCs, maintain FSC records, generate reports of FSC issuances, and review/obtain FSC materials.

- When an individual passes an FSC test, the DOJ Certified Instructor will login to the FSC online system to issue the FSC. The DOJ Certified Instructor will enter the individual's information into the system and be able to preview the information entered prior to the FSC being generated. The DOJ Certified Instructor will be required to make payment of the FSC prior to it being generated. Once the FSC is generated, the DOJ Certified Instructor will then print the FSC to present to the individual. The FSC will be good for five years from date of issuance (i.e., issued July 1, 2014 through July 1, 2019).
- If the FSC holder loses or damages their FSC and it's still within five years of when it was initially issued, the FSC holder can get a replacement FSC from the DOJ Certified Instructor who originally issued their FSC (Penal Code section 31660(b)) and pay a \$5 replacement fee. If the DOJ Certified Instructor who originally issued the FSC is no longer in business, the FSC holder will need to acquire a new FSC card, which would require retaking and passing the FSC test and paying the applicable \$25 fee for a new FSC.
- DOJ Certified Instructors will have the ability to pay for FSCs individually as they are issued or can pay for more than one FSC at a time by adding "pending" FSCs into a shopping cart or queue. An FSC will not be generated until payment has been received. Payment can be made with a credit card or debit card.
- DOJ Certified Instructors will no longer be required to maintain hard copy records of FSCs issued. Information will be maintained electronically and the DOJ Certified Instructors will be able to generate reports of issuances if needed.
- The FSC Study Guide, FSC Manual, FSC test versions, test answer sheet and test answer key will be made available for printing through the system.

Correspondence between the Department and the DOJ Certified Instructors will be conducted primarily through email. DOJ Certified Instructors that currently do not have an email address will need to obtain one, otherwise, important information pertaining to the FSC Program could be missed. In addition, a unique email address will be required to maintain access to the new online system (i.e., login information that is reset will be sent to an email address). If you have not been contacted recently by the Department staff to confirm an email address, you can send an email to bofhscprogram@doj.ca.gov with the information to be updated in the Department's records. Be sure to include your name and DOJ Certified Instructor number in your email notification.

December 18, 2014

Page 3

If you have not received your userid, please contact the Bureau of Firearms at (916) 227-3750 or via email at bofhscprogram@doj.ca.gov. Effective January 1, 2015, the FSC Program email address will be boffscprogram@doj.ca.gov.

Sincerely,



STACY HEINSEN, Manager
Bureau of Firearms

For KAMALA D. HARRIS
Attorney General

EXHIBIT D

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C. D. MICHEL*

SPECIAL COUNSEL
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W. LEE SMITH

ASSOCIATES
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BEN A. MACHIDA
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* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA

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SAN DIEGO, CA

AFFILIATE COUNSEL
JOHN F. MACHTINGER
JEFFREY M. COHON
LOS ANGELES, CA

DAVID T. HARDY
TUCSON, AZ

December 29, 2014

Attention: Chapter 2 Compliance Unit
OFFICE OF ADMINISTRATIVE LAW
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

SENT VIA USPS, EMAIL AND FAX

Re: **California Department of Justice - Firearm Safety Certificate Program
Underground Regulation**

To Whom It May Concern:

We write you on behalf of our clients the National Rifle Association (NRA) and FFLGuard, as well as their respective members and clients who reside in California. These members include firearm dealers, distributors, manufacturers, Handgun Safety Certificate (HSC) Instructors, as well as the firearm owning public.

Pursuant to Senate Bill 683(SB 683) (Stats 2013, ch. 761), effective January 1, 2015, the HSC program¹ will be replaced by the Firearm Safety Certificate (FSC) program. SB 683 mandates that DOJ implement regulations creating a new safe firearm handling demonstration, in addition to administering the FSC program pursuant to its enumerated provisions in the Penal Code.

On October 2, 2014 the DOJ issued a letter to "California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities." (Attached as **Exhibit 1**).² This letter addressed and established

¹ As described in Cal. Penal Code §§ 31610-31670. (2014). All section references are to the California Penal Code unless otherwise indicated.

² This letter was sent in advance of the pending FSC program scheduled to take effect January 1, 2015. DOJ has also published an "FAQ" concerning the FSC program. <http://oag.ca.gov/firearms/fscpfaqs> (Last visited December, 26, 2014) (**Exhibit 2**). The FAQ provides answers to general questions the public may have concerning the FSC. However, it provides no in-depth guidance outside what can be found in the California Penal Code.

policies for implementing the new FSC program, and established the requirements for instructors operating under the new program.

As explained below, DOJ's letter sets forth new rules of general application for the implementation of the FSC program that were not adopted pursuant to Administrative Procedure Act (APA). Accordingly, because DOJ's actions are not exempt from the APA, the agency's failure to properly promulgate regulations for the safe handling demonstration, and DOJ's new rules concerning the implementation of the FSC program, constitute unlawful underground regulations.

We seek assistance in having these improper underground regulations struck down.

I. The HSC Program Under Current California Law

Under current California law, most people purchasing a handgun from a licensed firearm dealer must perform a safe handling demonstration with the firearm,³ and must present an HSC to the California firearms dealer⁴ from whom they are purchasing the firearm showing they have successfully passed a written "Handgun Safety" test.

A. Certified HSC Instructors

The HSC may be obtained by passing a test administered by a DOJ Certified Instructor.

A person is not required to be a federal firearms licensee in order to administer the HSC test. Some Federal Firearm Licensees (FFLs) are also certified HSC instructors, who administer the written test in their store. Some instructors are employees of FFLs. There are also a number of instructors who, in addition to teaching firearm safety and/or other firearm related classes, administer the tests in their classrooms or on ranges with students. Provided a person meets the prerequisite skill, knowledge, and competency required to be a HSC instructor, any person may become an instructor.⁵ Department Certified Instructors shall have a certification that they received training from specific organizations (specified by the Penal Code), any entity found by DOJ to give comparable instruction in firearm safety, or the applicant shall have similar or equivalent training to that provided by a specific organization.⁶ When applying to be an HSC instructor a person must file an application with DOJ,

³ Cal. Penal Code § 26850 (2014).

⁴ §§ 26840(a), 27540(e), and 31615 (2014).

⁵ § 31635(a) (2014).

⁶ § 31635(b) (2014). Below is the list of specified organizations:

- (1) Department of Consumer Affairs, State of California-Firearm Training Instructor.
- (2) Director of Civilian Marksmanship, Instructor or Rangemaster.
- (3) Federal Government, Certified Rangemaster or Firearm Instructor.
- (4) Federal Law Enforcement Training Center, Firearm Instructor Training Program or Rangemaster.
- (5) United States Military, Military Occupational Specialty (MOS) as marksmanship or firearms

specify which organization he or she received training from, attach a copy of the certification, and *either* provide a copy of their Certificate of Eligibility (COE) *or* enclose \$14.00 for a background check.⁷ According to DOJ's application form a person is certified for five years.⁸

1. Certificate of Eligibility

A Certificate of Eligibility (COE) is a certificate provided by the DOJ confirming the holder of the certificate is eligible to possess firearms.⁹ A COE is only required in certain circumstances. The Penal Code does not require a COE in order to become an HSC instructor. Persons applying to be licensed firearm dealers in California must obtain a COE,¹⁰ so to must employees of firearm manufacturers,¹¹ amongst other individual.¹² Employees of licensed firearm dealers are not required to obtain a COE unless required to by their employer or required by local jurisdiction requires a background check of agents or employees of firearm dealers.¹³ A person applying for a COE must submit fingerprints to DOJ and renew the COE yearly.¹⁴

B. Handgun Safe Handling and HSC Test Criteria

instructor. Assignment as Range Officer or Safety Officer is not sufficient.

(6) National Rifle Association-Certified Instructor, Law Enforcement Instructor, Rangemaster, or Training Counselor.

(7) Commission on Peace Officer Standards and Training (POST), State of California-Firearm Instructor or Rangemaster.

(8) Authorization from a State of California accredited school to teach a firearm training course.

⁷ See attached DOJ Handgun Safety Certificate Program Certified Instructor Application (**Exhibit 3**).

⁸ There is no basis for this limitation under California law or regulation.

⁹ Cal. Penal Code § 26710 (2014); pursuant to this section DOJ was required to adopt regulations relating to the administration of the COE program.

¹⁰ § 26700.

¹¹ § 29120.

¹² One must have a COE: in order to be a "consultant-evaluator" as defined in Penal Code section 16410; in order to produce, promote, sponsor, operate, or otherwise organize a gun show or sell used firearms at a gun show pursuant to sections 27200 and 26525 respectively; and to be exempt from certain firearm transfer requirements as a curio or relic collector pursuant to sections 26585, 26970, and 27966.

¹³ § 31660

¹⁴ See attached "Certificate of Eligibility Application" **Exhibit 4** and 11 CCR §§ 4037 and 4039.

The criteria for the handgun safe handling demonstration are codified in the Penal Code.¹⁵ These criteria are broken up in the Penal Code by handgun action types (i.e. semiautomatic pistol, double-action revolver, and single-action revolver¹⁶). Certain people and certain transfers are exempt from this requirement.¹⁷ Once the demonstration is complete, firearm dealer¹⁸ and the firearm purchaser shall sign an affidavit stating that the safe handling requirements were met.¹⁹

As for the HSC requirements, unless one of these few exemptions apply, it is a misdemeanor to transfer a handgun to any non-exempt person who does not have a valid HSC and for that person to receive a handgun.²⁰

If a person does not possess an HSC when attempting to purchase or receive a handgun, that person must take a 30 question test (administered by an HSC instructor) which includes questions about California laws applicable to carrying and handling firearms, responsibilities of firearm ownership, current laws relating to private sales/transfers of firearms, etc.²¹ Certain individuals are exempt from the HSC requirement.²²

The test includes 30 multiple choice questions and costs up to \$25 (\$15 goes to the DOJ, and the rest goes to the certified instructor).²³ The applicant must correctly answer at least 75% of the questions to get the HSC.²⁴

¹⁵ § 26853-26859 (2014).

¹⁶ §§ 26853, 26856, and 26859 (2014), respectively.

¹⁷ Persons exempt from the HSC requirement are also exempt from the safe handling requirement. (Cal. Penal Code § 26850(h) (2014) referencing the requirements for possession of an HSC in Penal Code section 31615, and the exceptions to that requirement in section 31700.)

¹⁸ Despite the Code requiring the firearm *dealer* to sign the affidavit the demonstration is required to be preformed before a “department-certified *instructor*.” Cal. Penal Code § 26850(e).

¹⁹ § 26850(d). See attached “Safe Handling Demonstration Affidavit,” **Exhibit 5**.

²⁰ § 31615(a)(2)-(b).

²¹ Cal. Penal Code § 31645(a) (2014).

²² §§ 31700-31835 (2014).

²³ § 31650(b) (2014).

²⁴ § 31645(a) (2014).

After passing the test, the HSC is valid for five years.²⁵ If an HSC is lost or completely destroyed, one can get a duplicate certificate by asking the issuing instructor for one, proving your identity, and paying up to \$15.²⁶

To be clear, an HSC is only necessary to *receive* a handgun, not to *possess* one.

II. The New FSC Program

On October 11, 2013, Governor Brown signed SB 683 into law. The bill completely replaces the HSC program with the new FSC program. All of the forgoing applies but instead of being applicable only to handguns the requirements now applies to all firearms. The FSC program will, in pertinent part, prohibit any person from purchasing or receiving *any* firearm (handgun or longarm) without a valid FSC, as well as prohibit any person from selling, delivering, loaning, or transferring *any* firearm to any person who does not have a valid FSC (barring limited exceptions).²⁷

The HSC instructor program officially becomes repealed and replaced by the FSC program on January 1, 2015. The HSC requirements that currently apply only to handguns (discussed above) will be revised and expanded to cover *all firearms*. This means that anyone purchasing any firearm must present an FSC to a dealer showing that they have successfully passed a written “Firearm Safety” test.²⁸ Also beginning January 1, 2015, anyone acquiring a long gun must perform a safe handling demonstration before receiving that firearm from a licensed firearms dealer.²⁹

A. The DOJ Has Failed to Adopt Mandated Regulations for the Long Gun Safe Handling Demonstrations

Penal Code section 26860 provides, in pertinent part:

- (a) Except as authorized by the department, commencing January 1, 2015, a firearms dealer shall not deliver a long gun unless the recipient performs a safe handling

²⁵ *Frequently Asked Questions*, Cal. Dept. of Justice, Office of the Attorney General, <http://oag.ca.gov/firearms/hscfaqs#a10> (last visited Dec. 18, 2014).

²⁶ Cal. Penal Code § 31660 (2014).

²⁷ SB 683 amended Cal. Penal Code §§ 27540, 27875, 27880, 27920, 27925, 28160, 31620, and 31810 and amends, repeals and replaces Cal. Penal Code §§ 26840, 31610, 31615, 31625, 31630, 31635, 31640, 31645, 31650, 31655, 31660, and 31700 (effective January 1, 2015) and adds Cal. Penal Code §§ 16535, 16865, and 26860. *See* California Legislative Information, SB-683 Firearms: firearm safety certificate.

²⁸ One of the exceptions to the FSC requirement is that if a person purchases a handgun that person may present a valid HSC. Cal. Penal Code § 26840(a) (2015). As discussed above, HSCs are only valid for 5 years after they are issued. Eventually, no members of the California public will have a valid HSC.

²⁹ Cal. Penal Code § 26860 (2014).

- demonstration with that long gun.
- (b) *The department shall, not later than January 1, 2015, adopt regulations establishing a long gun safe handling demonstration that shall include, at a minimum, loading and unloading the long gun.*
 - (c) The firearms dealer shall sign and date an affidavit stating that the requirements of subdivision (a) and the *regulations adopted...have been met...*
 - (d) The recipient shall perform the safe handling demonstration for a *department-certified instructor...*
 - (f) *Department-certified instructors* who may administer the safe handling demonstration shall meet the requirements set forth in subdivision (b) of Section 31635 [effective January 1, 2015].³⁰

In contrast to self-executing statutes, a non-self-executing statute (also known as a “wholly enabling” statute) cannot be enforced in the absence of valid implementing regulations - i.e., it “has no legal effect without the enactment of a regulation.”³¹ Such statutes are not functional until the agency charged with implementing them adopts regulations for that implementation.³²

By the long gun safe handling statute’s own language, it is “wholly enabling.” Although the FSC program is to become effective January 1, 2015, no regulations regarding the long gun safe handling demonstration have been proposed or adopted by DOJ.³³

Additionally, DOJ has not made any FSC materials, test materials, study guides or manuals available to DOJ Certified Instructors on their website. Nevertheless, DOJ has sent letters to “California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities” on October 2, 2014, indicating these materials will be available no earlier than January 1, 2015, via DOJ’s website.³⁴ However, DOJ’s letter also sets forth various new requirements for the FSC program that did not exist under the previous HSC program, and that were never subjected to the notice of “rule-making” requirements of the APA.

III. DOJ’s Letter to California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities Sets Forth Illegal Underground Regulations.

³⁰ Cal. Penal Code § 26860(a)-(d), (f) (2014) (emphasis added).

³¹ Office of Administrative Law, *What Must Be Adopted Pursuant to the APA?*, (Apr. 6, 2006), at 1, available at www.oal.ca.gov/res/docs/pdf/what_is_a_regulation.pdf

³² *See Harrott v. County of Kings*, 25 Cal. 4th 1138, 1150 (2001) (noting that amendments to the Assault Weapons Control Act of 1989 were not self-executing and thus regulations were required to define weapons covered by the statute); *Alfaro v. Terhune*, 98 Cal. App. 4th 492, 502 (“Some statutory schemes, by their nature, cannot be implemented without administrative regulations”).

³³ By contrast the safe handling requirements for semiautomatic pistols, double and single action revolvers are located in the California Penal Code. Cal. Penal Code §§ 26853-26859.

³⁴ *See* DOJ Letter, **Exhibit 1**.

Cal. Gov't Code section 11342.600 defines a "regulation" as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."

"A regulation subject to the APA thus has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.'"³⁵

On October 2, 2014, DOJ sent letters to all California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities expressly outlining "the new FSC program, *requirements* for DOJ Certified Instructors; *requirements* for Comparable Entities; and existing Handgun Safety Certificate program updates."³⁶ The letter sets forth, in pertinent part, the following "requirements" that are generally applicable to all those engaging in the FSC program and govern the manner in which DOJ is to implement the FSC program:

The Department plans to utilize a web-based application to make FSC materials available, including the Firearm Safety Certificates, test materials, the FSC study guide and the FSC manual to all DOJ Certified Instructors. The FSC study guide will also be available for printing and audio/visual materials will be available for streaming/downloading from the public website at <http://www.oag.ca.gov/firearms/fsc>. **Please be advised, this link will not be available until January 1, 2015.** Any materials that require a fee will be billed through the online system. *Payment options will be limited to major credit/debit cards (e.g. MasterCard, Visa, American Express, and Discover cards). Payment by cash or check will not be accepted....DOJ Certified Instructors will need access to a personal computer and printer....DOJ Certified Instructors will be sent login information to be able to access the new FSC program online system....* Upon successful login, existing DOJ Certified Instructors will be required to acknowledge they have read the revised Firearm Safety Certificate Manual, *which includes steps in long gun safety and that they will include both and handgun and long gun safety as part of the safe handling demonstrations.*³⁷

The DOJ's letter further states:

³⁵ *Sherwin-Williams Co. v. S. Coast Air Quality Mgmt. Dist.*, 86 Cal. App. 4th 1258, 1283 (2001), as modified (Feb. 15, 2001) (citing *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 571 (1996)).

³⁶ **Exhibit 1** (emphasis added).

³⁷ *Id.* (emphasis original) (italics added).

All DOJ Certified Instructors will be required to have a valid Certificate of Eligibility (COE). As of January 1, 2015, new applicants will be required to obtain a COE prior to submitting an application as a DOJ Certified Instructor. Existing DOJ Certified Instructors as of December 31, 2014, will be required to have a valid COE upon renewal or by June 30, 2015, whichever comes first. *Any existing DOJ Certified Instructor who has not provided proof of a valid COE by June 30, 2015, will not have access to the FSC online system.* Mere submission of the application will not be considered proof of a COE; therefore, please allow 4-6 weeks for the Department to process the COE application....COEs must be renewed annually.³⁸

The letter sets forth new rules of general applicability for DOJ's implementation of the FSC program that did not exist under the HSC program. These new rules are not authorized by any existing statute or regulation.

Specifically, the letter *requires* all DOJ Certified Instructors to have access to a *personal computer, printer, and email*. This "requirement" applies to all DOJ Certified Instructors and is thus a rule of general applicability. Furthermore, this "requirement" was created by DOJ for the purpose of implementing the FSC program and its enumerated provisions in the Penal Code. Therefore, the "requirement" that all DOJ Certified Instructors have access to a personal computer, printer, and email is a regulation subject to the requirements of the APA.

The letter also mandates that all FSC payments will be limited to *only major credit cards*. This "requirement" applies to all FSC purchasers and mandates its enforcement by DOJ Certified Instructors. Thus, this is a rule of general applicability and was created by DOJ for the purpose of implementing the FSC program. Therefore, the "requirement" that only major credit cards may be used as payment for an FSC is a regulation subject to the requirements of the APA.

The letter further mandates that the "steps in long guns safety" procedures contained in the forthcoming "revised Firearm Safety Certificate Manual" be included in the "safe handling demonstrations." But *DOJ still has not adopted any regulations regarding long gun safety demonstrations* as it is required to do so by Cal. Penal Code § 26860(b). DOJ has informed our clients that these regulations will not be available until **June, 2015**, despite the fact that Section 26860, subdivision (d) clearly requires DOJ to promulgate and adopt regulations *no later than January 1, 2015, "establishing a long gun safe handling demonstration that shall include, at a minimum, loading and unloading the long gun."*

DOJ is essentially shirking its statutory obligation to adopt regulations regarding long gun safety demonstrations by mandating instructors to use the procedures set forth in the "Firearm Safety Certificate Manual." DOJ's requirement that all DOJ Certified Instructors use the "steps in long guns safety" procedures contained in the forthcoming Firearm Safety Certificate Manual is a rule of general applicability and was created by DOJ for the purpose of implementing the FSC program. Therefore, this requirement is a regulation and subject to the requirements of the APA.

³⁸ *Id.* (emphasis added).

Lastly, DOJ's letter mandates that *all* DOJ Certified Instructors obtain a Certificate of Eligibility, *which must be renewed each year*. Previously, prospective HSC Certified Instructor applicants were given *the option* to either to provide a current COE or enclose \$14.00 with their application to accomplish a background check.³⁹ The sole purpose of providing a COE or conducting a background check is to verify whether the applicant is eligible to lawfully possess firearms. Under the HSC program, there was no reoccurring obligation for HSC Instructors to provide a renewed COE or undergo an additional background check.

DOJ's reoccurring COE requirement for all Certified FSC Instructor's lacks any regulatory or statutory basis. DOJ's COE requirement is generally applicable to all DOJ Certified Instructors and was created pursuant to implementing the FSC program. DOJ's COE requirement for all DOJ Certified Instructors is an underground regulation and subject to the requirements APA.

In sum, DOJ's letter clearly sets forth several "regulations" because these rules are generally applicable to all DOJ Certified Instructors and those seeking an FSC.⁴⁰ Additionally, the rules set forth in DOJ's letter were created for the purpose of the FSC program's implementation. "If an agency rule looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated by the courts as a regulation whether or not the issuing agency so labeled it."⁴¹ The rules DOJ sets forth in its letter are "regulations" and subject to the requirements of the APA

IV. DOJ's Regulations Are Not Exempted From the APA's Requirements.

The regulations set forth in DOJ's letter for the implementation of the FSC program are not expressly exempted by statute from the requirements of the APA. "When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language."⁴² Nothing in SB 683 or the Penal Code regarding the FSC program exempts DOJ from the regulation adoption requirements of the APA.⁴³ In the case of the long gun safe handling demonstration the Penal Code requires DOJ to implement regulations.

"The APA specifically prohibits any state agency from making any use of a state agency rule which is a 'regulation' as defined in Government Code section 11342.600, that should have, but has

³⁹ See BOF form 037 (attached as **Exhibit 3**).

⁴⁰ See *Faulkner v. California Toll Bridge Authority*, 40 Cal. 2d 317 (standard of general application applies to all members of any open class).

⁴¹ *What Must Be Adopted Pursuant to the APA?* *supra* note 10, at 7 (citing *State Water Resources Control Board v. OAL*, 12 Cal. App. 4th 697 (1993)).

⁴² *United Systems of Arkansas v. Stamhon*, 63 Cal. App. 4th 1001 (1998).

⁴³ See *Winzler & Kelly v. Department of Industrial Relations*, 121 Cal. App. 3d 120, 174 (1981) (unless "expressly" or specifically exempted, all state agencies not in legislative or judicial branch must comply with rulemaking part of the APA when engaged in quasi-legislative activities).

not been adopted pursuant to the APA (unless expressly exempted by statute).”⁴⁴

California Government Code section 11340.5(a) provides:

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Therefore, the letter DOJ sent to all California Firearms Dealers, DOJ Certified Instructors, and Comparable Entities on October 2, 2014, establish “regulations” that are not exempt from the APA. In establishing the aforementioned regulations, DOJ did not follow the procedures outlined in the APA. Thus, the regulations DOJ sets forth in its October 2, 2015, letter constitute unlawful underground regulations.

V. This Petition Raises Issues of Considerable Public Importance Because DOJ’s Underground Regulations Unduly Infringe Upon the Fundamental Right to Keep and Bear Arms.

The Second Amendment of the United States Constitution guarantees the right of law-abiding adults to keep and bear arms for lawful purposes. Our clients, the National Rifle Association and FFLGuard, represent countless California Firearm Dealers, employees of firearm dealers, firearm owners, DOJ Certified HSC Instructors, and, soon to be, DOJ Certified FSC Instructors throughout the State of California. DOJ’s underground regulations, with regard to the FSC program, unduly affect the entire process of lawfully acquiring a firearm. The safe handling demonstration and FSC test are required to be conducted through a FSC certified instructor. The requirements that FSC instructors possess computer access, e-mail, and a COE limits current HSC instructors and prevents individuals from becoming FSC instructors. The implementation of these underground regulations on January 1, 2015, will effectively “bottleneck” the public’s ability to purchase firearms within the State of California until DOJ certifies instructors qualified to issue FSC’s. Such a restriction is unconstitutional as it unduly infringes on the Second Amendment right to keep and bear arms.

V. Conclusion

DOJ was statutorily entrusted to promulgate and adopt regulations regarding the safe handling of long guns by January 1, 2015. DOJ’s letter requires **all** DOJ Certified Instructors to use the “steps of long gun safety” procedures contained in the forthcoming “revised Firearm Safety Certificate Manual” be included in the “safe handling demonstrations,” however, ***DOJ still has not adopted any regulations regarding long gun safety demonstrations*** as it was required to do so by Cal. Penal Code § 26860(b). DOJ has failed to act on the authority granted to it and has now attempted to circumvent its responsibility by creating underground regulations outside the requirements outlined by the APA.

⁴⁴ *What Must Be Adopted Pursuant to the APA?* *supra* note 10, at 2.

Without any statutory or regulatory authority, DOJ's October 2, 2014 letter requires **all** DOJ Certified Instructors to have COE's.

Without any statutory or regulatory authority, DOJ's October 2, 2014 letter requires **all** DOJ Certified Instructors to have access to computer, printer, and email.

Without any statutory or regulatory authority, DOJ's October 2, 2014 letter requires **all** FSC payment be done using only major credit cards.

These requirements are "regulations" and thus subject to the requirements of the APA. Neither the Penal Code nor SB 683 exempt DOJ from the requirements of the APA, thus the requirements set forth in DOJ's October 2, 2015, letter constitute unlawful underground regulations.

I certify that I have submitted a copy of this petition and all attachments to the state agency which has issued, used, enforced, or attempted to enforce the purported underground regulations.

Sincerely,

Michel & Associates, P.C.

Carl D. Michel

CDM/llq

cc: Kamala Harris
Stephen Lindley

EXHIBIT E

From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Tuesday, January 06, 2015 5:11 PM
To: Sean Brady
Cc: Stepan Haytayan; Anna M. Barvir
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Confirmed and confirmed.

From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Tuesday, January 06, 2015 4:53 PM
To: Jeffrey Rich
Cc: Stepan Haytayan; Anna M. Barvir
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements
Importance: High

Mr. Rich,

Can you please confirm receipt of Plaintiffs' ex parte application papers that I sent you at 3:45p.m. today? Also, please confirm that you accept that 3:45 email as sufficient service of Plaintiffs' ex parte application papers, in satisfaction of California Rules of Court, Rule 3.1206.

Thank you,

<p>Sean Brady Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: SBrady@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Tuesday, January 06, 2015 2:31 PM
To: Sean Brady
Cc: Stepan Haytayan
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements
Importance: High

When can I expect to receive the papers by e-mail; or, am I engaging in futile acts by my repeated requests to you to send them? At 12:55 p.m. I sent you an e-mail stating that I agree that e-mailing of the application papers by your office would be acceptable for service of the papers. It is now 2:31 p.m. and I am still waiting.

From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Tuesday, January 06, 2015 1:44 PM
To: Jeffrey Rich
Cc: Stepan Haytayan; Kimberly Granger; Anna M. Barvir
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements
Importance: High

Sure, but then we will also need you to serve notice on all parties and file with the court notice that you are accepting electronic service per CRC 2.25.1. Serving by fax would eliminate both the size issue and the notice issue.

We will send it to you via email as well in multiple parts so you have a clean copy, but were trying to avoid you having to file the required notice for electronic filing or having to be personally served.

Please let me know whether you will accept service via fax and at what number, and we will send you a courtesy copy via email as well. Otherwise, please file the CRC 2.25.1 notice or let us know if we should personally serve you instead.

Thanks,

<p>Sean Brady Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: SBrady@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Tuesday, January 06, 2015 1:37 PM
To: Sean Brady
Cc: Stepan Haytayan; Kimberly Granger
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Can your office send multiple smaller pdf documents or create a zip file? Thanks.

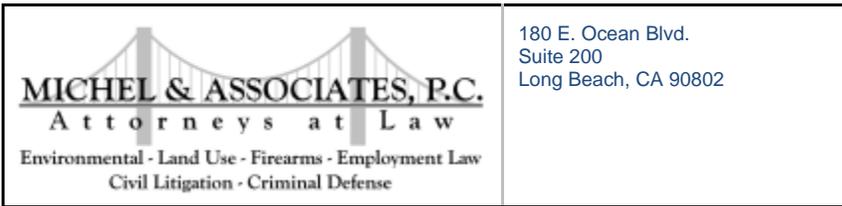
From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Tuesday, January 06, 2015 1:29 PM
To: Jeffrey Rich
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements
Importance: High

Mr. Rich,

My secretary believes that there may be a potential issue with electronically serving you the documents, due to their size. So, just in case, would you also be willing to accept service of Plaintiffs' applications papers via facsimile? If so, can you please provide me your fax number?

Thank you,

<p>Sean Brady Attorney</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: SBrady@michellawyers.com Web: www.michellawyers.com</p>
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From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Tuesday, January 06, 2015 12:55 PM
To: Sean Brady
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Yes.

From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Tuesday, January 06, 2015 12:54 PM
To: Jeffrey Rich; Joseph Silvosio; Kimberly Granger
Cc: Anna M. Barvir; Stepan Haytayan; Stephen Lindley; Douglas Woods; C.D. Michel
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Mr. Rich,

Will you accept my sending you Plaintiffs' applications papers via email as proper service of such?

Regards,



This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Tuesday, January 06, 2015 10:47 AM
To: Sean Brady; Joseph Silvosio; Kimberly Granger
Cc: Anna M. Barvir; Stepan Haytayan; Stephen Lindley; Douglas Woods; C.D. Michel
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Mr. Brady,

Please provide me with copies of plaintiffs' application papers when they are submitted to the court. Thank you.

From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Tuesday, January 06, 2015 9:50 AM
To: Jeffrey Rich; Joseph Silvosio; Kimberly Granger
Cc: Anna M. Barvir; Stepan Haytayan; Stephen Lindley; Douglas Woods; C.D. Michel
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements
Importance: High

Mr. Rich,

As designated counsel for Attorney General Kamala Harris, Bureau of Firearms Chief Stephen Lindley, and the California Department of Justice ("Defendants") in this matter, I send you this correspondence to provide notice that on Wednesday, January, 7 at the Fresno Superior Courthouse located at 1130 O Street Fresno, CA 93721, at approximately 3:30 p.m., our office, as counsel for individuals Kim Belemjian, Matthew Pimentel, Jonathan Fairfield, T.J. Johnston, and Stan Roy, and organizations FFLGuard, Inc. and the California Rifle Pistol Association, will apply for a Temporary Restraining Order (TRO) against Defendants.

With the TRO, Plaintiffs seek to enjoin Defendants from: (1) implementing any of the requirements relating to the Firearm Safety Certificate (FSC) program specified in two separate letters dated October 2 and December 18, 2014 that were distributed by the Department of Justice to firearm vendors and Handgun Safety Certificate Instructors, specifically the requirements that all California Department of Justice Certified Instructors: (a) have access to a personal computer, printer, and email; (b) make all Firearm Safety Certificate payments only by major credit cards; (c) include the "steps in long guns safety" procedures contained in the "Firearm Safety Certificate Manual" in all long gun safe handling demonstrations; and (d) obtain Certificates of Eligibility, on the basis that such requirements constitute unlawful "underground regulations"; and (2) enforcing the long-gun safe handling requirements located in subsections (a), (c), and (d) of Penal Code section 26860, on the basis that compliance with those subsections is not possible unless and until the Department promulgates regulations implementing section 26860, as subsection (b) thereof expressly requires.

The TRO will be filed along with a complaint for declaratory and injunctive relief seeking relief as described above and a verified writ of mandate seeking to compel the Department to open the rulemaking process pursuant to the Administrative Procedures Act for regulations implementing the long-gun safe handling requirements, as expressly required in Penal Code section 26860(b). The writ, however, will not be at issue in the TRO.

Please confirm whether you or someone on behalf of the above-named Defendants intends to appear at the designated courthouse to oppose Plaintiffs' TRO application. If someone does plan on appearing to oppose Plaintiffs' TRO application, please confirm whether that person intends to appear on behalf of all or just some (and which ones) of the above-named Defendants, and we will notify that person of which department the matter is assigned to as soon as we learn such from the Fresno Courthouse.

Additionally, while we have not received the filed copy of the complaint from the court, attached please find a courtesy copy of what was sent to be filed with the court.

If you have any questions or concerns please call me at the direct number below or send me an e-mail.

Sincerely,

<p>Sean Brady Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: SBrady@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]

Sent: Friday, January 02, 2015 5:13 PM

To: Sean Brady; Joseph Silvosio; Kimberly Granger

Cc: Anna M. Barvir; Stepan Haytayan; Stephen Lindley; Douglas Woods
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Mr. Brady,

Thank you for your further professional courtesy.

I am the proper person to receive ex parte notice for all defendants.

Jeffrey A. Rich
Deputy Attorney General
Office of the Attorney General
California Department of Justice
1300 I Street, P.O. Box 944255
Sacramento, CA 94244-2550
(916) 324-5154

From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Friday, January 02, 2015 5:08 PM
To: Jeffrey Rich; Joseph Silviso; Kimberly Granger
Cc: Anna M. Barvir; Stepan Haytayan
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Mr. Rich,

Out of professional courtesy, our office provided Ms. Granger (with whom our office has regular contact on these types of matters) notice of our intent to pursue ex parte relief in this matter four days ago, almost a week in advance of the hearing thereon (when all that is required under the rules is 24 hours). Yet, you waited until now to raise concerns about that notice being insufficient, a half hour after the time you believe we were required to submit our papers to the court, preventing us from curing the alleged defects.

While I believe your analysis that our notice was insufficient to be erroneous on several grounds, to avoid such a pointless dispute we will continue the hearing to a later day to be determined, likely Tuesday or Wednesday afternoon. So we will not be going in on Monday, January 5th. We will provide you sufficient notice as required per the rules. To be clear, however, nothing in the rules requires us to provide in our notice the department where the hearing will take place (only the courthouse), as such may not be determinable in time. That being said, we will provide you the department for the hearing as soon as we have it.

If you have an issue with that, I suggest you let us know at your earliest convenience so as to avoid wasting the court's and the parties' time and resources arguing over fixable procedural matters, because reaching the merits here is inevitable.

Finally, our complaint names as defendants Attorney General Kamala Harris (in her official capacity), Chief Stephen Lindley (in his official capacity), and the Department of Justice itself. Can you confirm that you are the proper person to provide notice of the ex parte hearing to for all of those named defendants?

Sincerely,

Sean Brady Attorney	Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445
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 <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Email: SBrady@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Friday, January 02, 2015 2:31 PM
To: Joseph Silvoso; Kimberly Granger
Cc: Anna M. Barvir; Sean Brady; Stepan Haytayan
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Counsel,

Mr. Silvoso's e-mail to Kimberly Granger sent on December 30, 2014 at 7:25 p.m. does not comply with the required contents for ex parte application notice under California Rules of Court, rule 3.1204(a)(1). Specifically, the e-mail fails to identify the applying parties and the department in which the ex parte application will be heard. "A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice." (*Id.*, rule 3.1203(a).) Accordingly, in addition to substantive grounds, defendants hereby and will object to your clients' ex parte application on the ground that proper notice has not been given. (See *id.*, rules 3.1203(a), 1204(a)(1); see also local rule 2.7.1.A [applications failing to comply with Cal. Rules of Court, rules 3.1200 through 3.1207 will be rejected].) Defendants request that your clients continue the January 5 ex parte hearing so that proper notice may be given.

Pursuant to local rule 2.7.1.B your clients' application and supporting papers were due to be submitted to the Court by 2:00 p.m. this afternoon. Accordingly, defendants renew their request for copies of such papers.

If your clients are not continuing the January 5 ex parte hearing, I will be attending the hearing on behalf of defendants to oppose the ex parte application on procedural and substantive grounds. Please advise me of the correct department that will hear the application and confirm that the application will be heard at 8:30 a.m.

Please attach this e-mail to your supporting declaration.

From: Joseph Silvoso [<mailto:jsilvoso@michellawyers.com>]
Sent: Friday, January 02, 2015 1:33 PM
To: Kimberly Granger; Jeffrey Rich
Cc: Anna M. Barvir; Sean Brady
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Does DOJ plan on appearing and opposing the TRO?

<p>Joseph Silvoso Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4461 Main: (562) 216-4444 Fax: (562) 216-4445 Email: jsilvoso@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Sean Brady
Sent: Friday, January 02, 2015 12:37 PM
To: Kimberly Granger; Jeffrey Rich
Cc: Anna M. Barvir; Joseph Silviso
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Ms. Granger and Mr. Rich,

Please correct me if I am wrong, but I do not see anywhere in the rules that require us to provide you the papers we intend on filing prior to the hearing. If the rules do require such, please let me know at your earliest convenience so we can plan accordingly. That being said, we are currently trying to get a draft of our complaint and writ of mandate completed in the next few hours so that we can send it to you today. The actual TRO motion, however, will likely not be available for us to send you until the hearing, but we may send it over the weekend. There is no real mystery here, though. The complaint basically explains what our arguments are. If you have any questions or concerns, please feel free to contact me.

Regards,

<p>Sean Brady Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: SBrady@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Joseph Silviso
Sent: Friday, January 02, 2015 12:14 PM
To: Kimberly Granger; Jeffrey Rich
Cc: Anna M. Barvir; Sean Brady
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

Ms. Granger and Mr. Rich,

Anna Barvir and Sean Brady will be handling this matter for our office. They are cc'ed on this e-mail and can be reached by calling our main office number.

<p>Joseph Silviso Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4461 Main: (562) 216-4444 Fax: (562) 216-4445 Email: jsilviso@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Kimberly Granger [<mailto:Kimberly.Granger@doj.ca.gov>]
Sent: Friday, January 02, 2015 11:48 AM
To: Joseph Silviso
Cc: Jeffrey Rich

Subject: RE: TRO for FSC and Long Gun Safe Handling requirements
Importance: High

Mr. Silvoso,

Please be advised that Deputy Attorney General Jeffrey Rich has been assigned to handle this case on behalf of the Department of Justice and the Bureau of Firearms. Please send all documents/correspondence regarding the upcoming TRO to Jeff. His contact information is:

Jeffrey Rich, Deputy Attorney General
1300 I Street, Sacramento, CA 95814
Email: Jeffrey.Rich@doj.ca.gov
Phone: (916) 324-5154

Please continue to copy me on emails regarding this case. Also, please provide a time frame from when we can expect to see your papers in support of your TRO request.

Best,

Kimberly

Kimberly Granger
Deputy Attorney General IV
California Department of Justice, Bureau of Firearms
Email: kimberly.granger@doj.ca.gov
Direct phone: 916.227.4003
Fax: 916.324.8835

From: Joseph Silvoso [<mailto:jsilvoso@michellawyers.com>]
Sent: Tuesday, December 30, 2014 7:39 PM
To: Kimberly Granger
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

We will try to have it to you on Friday. We still need to see the actual requirements implemented Thursday.

<p>Joseph Silvoso Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4461 Main: (562) 216-4444 Fax: (562) 216-4445 Email: jsilvoso@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Kimberly Granger [<mailto:Kimberly.Granger@doj.ca.gov>]
Sent: Tuesday, December 30, 2014 7:36 PM
To: Joseph Silvoso
Subject: RE: TRO for FSC and Long Gun Safe Handling requirements

When will you provide us with the actual papers that you intend to file?

Kimberly

From: Joseph Silvosio [jsilvosio@michellawyers.com]
Sent: Tuesday, December 30, 2014 7:25 PM
To: Kimberly Granger
Subject: TRO for FSC and Long Gun Safe Handling requirements

Ms. Granger,

This e-mail is sent to provide you and the California Department of Justice (DOJ) notice that on Monday, January, 5 at the Fresno Superior Courthouse located at 1130 O Street Fresno, CA 93721, at approximately 8:30 am, we will seek a Temporary Restraining Order (TRO) against the enforcement of the long gun safe handling requirements located in Penal Code section 26860.

Additionally, we will seek a TRO against the implementation of the requirements specified by the DOJ in the letters dated October 2 and December 18 sent to Firearm dealers and Handgun Safety Certificate Instructors relating to the Firearm Safety Certificate (FSC) program. This TRO will include any further requirements not specified by the Penal Code once the program is in place on January 1, 2015.

This TRO will be filed along with a complaint seeking to enjoin the enforcement of the long gun safe handling demonstration requirements and the requirements set forth by DOJ concerning the FSC program as these requirements constitute "underground regulations." We will also seek a Writ of Mandate requiring DOJ to implement regulations pursuant to the Administrative Procedures Act for the safe handling requirements outlined in Penal Code section 26860(b).

If you have any questions or concerns please call me at the number below.

<p>Joseph Silvosio Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4461 Main: (562) 216-4444 Fax: (562) 216-4445 Email: jsilvosio@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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EXHIBIT F

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

CENTRAL DIVISION

Before the Honorable Jeffrey Y. Hamilton, Jr., Judge

Department 402

-oOo-

KIM BELEMJIAN; JONATHAN)
FAIRFIELD; T.J. JOHNSTON;)
MATTHEW PIMENTEL; STANLEY ROY;)
FFLGUARD, INC.; CALIFORNIA)
RIFLE AND PISTOL ASSOCIATION,)

Plaintiffs,)

-vs-

KAMALA D. HARRIS, in her)
official capacity as Attorney)
General for the State of)
California; STEPHEN LINDLEY, in)
his capacity as CHIEF OF THE)
CALIFORNIA DEPARTMENT OF)
JUSTICE BUREAU OF FIREARMS;)
CALIFORNIA DEPARTMENT OF)
JUSTICE; and DOES 1-10,)

Defendants.)
_____)

Case No. 15CECG020029

REPORTER'S TRANSCRIPT

Fresno, California

January 7, 2015

-oOo-

Reported by:
MIRANDA K. ANTHONY, CSR
Certificate No. 13453

A P P E A R A N C E S:

FOR THE PLAINTIFFS:

MICHEL & ASSOCIATES, PC
BY: ANNA M. BARVIR
SEAN BRADY
180 East Ocean Blvd., Ste. 200
Long Beach, California 90802

FOR THE DEFENDANTS:

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BY: JEFFREY A. RICH
1300 I Street, Ste. 1101
Sacramento, California 94244

1 WEDNESDAY, JANUARY 7, 2015 -- AFTERNOON SESSION

2 (The following proceedings were had in
3 open court, in the presence of the Court
4 and Counsel, to wit:)

5 THE COURT: All right. The ex parte matter of
6 Kim Belemjian, et al., versus the State of California
7 and the Attorney General, et al.

8 MS. BARVIR: Good afternoon, your Honor. Anna
9 Barvir for plaintiffs Belemjian, et al.

10 MR. BRADY: Sean Brady for the plaintiffs,
11 your Honor.

12 MR. RICH: Good afternoon. Jeffrey Rich
13 appearing on behalf of defendants.

14 THE COURT: Good afternoon. Okay. I received
15 and read the plaintiffs' moving ex parte papers and
16 declarations, and, although I didn't expect it, I did
17 receive a written opposition this afternoon from
18 defendants. So that was very well done in a short,
19 short period of time. And I read that, as well.

20 Let me -- in order to, I guess, get us to the
21 neck of the funnel, let me just say a few things. I
22 tend to agree with Mr. Rich. In fact, one of the
23 callouts I had on my notes to plaintiffs was: Where is
24 the eminent harm?

25 It's certainly not that you have to have a
26 computer and be able to have e-mail. I mean, that's

1 understanding the shotgun approach that didn't hit the
2 mark. I think the only place that the Court would find
3 any reason to have any conversation, beyond denying the
4 request for T.R.O., would be the, in the Court's view,
5 potential large problem, in 26860 subdivision (b), where
6 it requires a vendor, firearm vendor, to execute an
7 affidavit stating that they have given this long gun
8 training or safety. I may be using the improper
9 terminology. But long gun safety training, much akin to
10 the present handgun requirement, the training you have
11 to go through in order to have a handgun.

12 I guess where the Court is a little concerned
13 is that, if you go to a sporting good store, Big 5 or
14 whatever one you want to pick, tomorrow, and you want to
15 buy the long gun, the shotgun, or rifle, or what have
16 you, and this vendor has to sign an affidavit saying
17 he's -- he or she has performed this training but there
18 is no defined training, and then they are subject to
19 criminal penalty, that seems, to the Court, to put them
20 in somewhat of an untenable situation, such that they
21 wouldn't have an adequate remedy of law. Because
22 what's, then, their option?

23 You're Joe Blow, working for ten bucks an hour
24 at Big 5, and you have to sign this affidavit, and you
25 have to sign it knowing you're potentially putting
26 yourself at risk.

1 I'd ask the State to answer that, if they
2 could.

3 MR. RICH: Your Honor, that is a practical
4 consideration, but the question is: Is it important
5 enough to deal with it at this stage of the litigation?
6 And, also, I'd like to invite the Court's attention to
7 the fact that the fifth cause of action, which is the
8 predicate for the injunction against defendants for
9 forcing the Penal Code section, is not a cause of
10 action; it's a request for relief.

11 THE COURT: I agree with you. I read that
12 portion.

13 MR. RICH: And so, I understand the Court's
14 concern. But, once again, is it proper to grant interim
15 or provisional relief, based on the issue that the Court
16 raised? I don't think it is. I think it is, maybe, a
17 problem that needs to be resolved when this case is
18 fully litigated. And -- but not now, because I don't
19 believe -- the Court has raised an issue, but I don't
20 believe that plaintiffs, who have the burden to produce
21 evidence, have raised this issue or have supported
22 irreparable harm.

23 I know the Court has made an observation, but,
24 once again, it was plaintiffs' burden, and I don't see
25 any of that within their -- plaintiffs' declaration
26 supporting their application. So I think there's a

1 deficiency, in terms of lack of evidence.

2 And so I would submit that the Court really
3 cannot or should not grant the application, any part of
4 it, because it's going to be the same evidence that
5 would support a preliminary injunction.

6 So it would be our position that there may be
7 some problems that need to be worked out, maybe the
8 Department of Justice can work these problems out. But
9 sitting here right now, as provisional relief,
10 plaintiffs have not met their burden.

11 THE COURT: Okay. And he does bring up a good
12 point, I think.

13 MS. BARVIR: I think I have a few responses.

14 THE COURT: Okay.

15 MS. BARVIR: First, I would like to say, the
16 point of the A.P.A. is to work those problems out before
17 the regulations are adopted, promulgated, and forced
18 upon people.

19 The problem, I think, your Honor, that you
20 were suggesting that maybe using credit cards or having
21 access to a personal computer or having an annual
22 renewal with C.O.E. isn't really irreparable harm. That
23 really, I think, sideswipes the heart of the matter.

24 The irreparable harm that is very clear is
25 that all plaintiffs are statutorily entitled to a right
26 to be heard before law regulations are enforced against

1 them. They never had an opportunity to be heard. That
2 irreparable harm happened when the Department of Justice
3 and defendants enacted the law and new regulation when
4 it went into effect on January 1st, 2015. And every
5 second that plaintiffs are required, as handgun safety
6 -- firearm safety certificate instructors to abide by
7 each of those underground regulations, that irreparable
8 harm continues.

9 Really, if there are kinks, as the Department
10 of Justice calls -- or suggested they were problems they
11 might be able to work out in the future, if plaintiffs
12 had had the opportunity, as the Administrative Procedure
13 Act required them to have before the regulations were
14 promulgated, because the point of it, the entire act,
15 the whole situation, is to let people, including
16 plaintiffs, who are stakeholders in this program, in
17 this regulatory regime, give them an opportunity to
18 clearly point out those problems before they go into
19 effect.

20 The irreparable harm was that they were not
21 given -- were not given the opportunity to weigh in, as
22 the Department of Justice was required to give them, and
23 they're now continuing to have to live under the
24 regulatory regime.

25 As we're talking a little bit about --

26 THE COURT: Well, let me stop you there and

1 make this observation -- and I appreciate that argument,
2 and I think your application was well-written. However,
3 in your papers, page 13, to be particular, lines about
4 11 through 13, I think you don't contend that the
5 requirements are unconstitutional, per se. You do
6 bicker with the manner in which they did or didn't
7 promulgate regulations; that's clear.

8 But asking this Court to issue an unusual
9 injunction, in the sense that, as Mr. Rich stated, these
10 are extraordinary measures for the Court. And the Court
11 doesn't do it very often. It seems like you're asking
12 me to order the DM -- the DMV? Too many three-letter
13 acronyms for the government; right? -- the D.O.J. to
14 immediately promulgate regulations. That's what it
15 seems like you're doing. Or at least that's what it
16 seems that's what the subtext is. And that's okay,
17 except I don't think this is the vehicle to do it.

18 Perhaps, the writ process is the right
19 vehicle. But a mandatory injunction -- I guess I'm just
20 having a hard time wrapping my mind around it, because
21 it seems that's what you want them to do.

22 MS. BARVIR: Thank you, your Honor. I see
23 that we are at a difference in understanding what we're
24 asking for.

25 The plaintiffs are not seeking a mandatory
26 injunction at this stage. Plaintiffs are seeking a writ

1 of mandate that was filed with our verified Complaint.
2 But at this stage, we're not seeking a mandatory
3 injunction asking, right now, for the defendants to
4 start to engage in the regulatory rule-making process
5 for the Long Gun Safe Handling Act.

6 Instead, a prohibitory injunction, keeping
7 subsection c, at the very least; regulation b, a, and d,
8 we believe, is something that cannot be complied with
9 without regulation.

10 But those laws, those Penal Code statutes
11 subdivision, they cannot be complied with at this time.
12 So the problem is we're subjecting people to civil and
13 criminal penalties, including FFLs, who can lose their
14 dealers license in California, if they cannot comply
15 with this law.

16 So if they cannot comply with this law, and
17 they risk losing their -- they risk losing their
18 licenses and criminal penalties. So at the end, and on
19 top of that, people cannot, then, acquire long guns,
20 which is a second amendment violation. We're not yet
21 seeking that, because we want to save this law.

22 Our plaintiffs, our clients, are mostly F.S.C.
23 instructors or -- they're certified safety instructors.
24 They are proponents, strong proponents, of this program.
25 They want to save it. But at this point, they cannot
26 comply with it, and they risk criminal penalties every

1 minute that this law is enforced against them.

2 So if the Court could issue a prohibitory
3 injunction prohibiting the enforcing of it until --
4 unless and until the D.O.J. decides it's going to pass
5 regulations that is required to -- it doesn't have to,
6 we're not asking that yet. But until it does, this law
7 cannot be enforced.

8 THE COURT: Isn't that what I just said?
9 Isn't that what I just said that you were asking for?
10 You were more artful about it.

11 MR. BRADY: Your Honor, --

12 THE COURT: Here's -- I think Mr. Rich --
13 well, in a lot of ways, I think we're all saying the
14 same thing. But I think one of the things he said was
15 important. And that is, while the Court expressed its
16 concern with our mythical Big 5 gun salesman and how he
17 or she could get himself or herself into trouble by
18 signing this affidavit saying they've given the
19 appropriate training of which there's no regulation for
20 the training, we don't have anything in the declarations
21 of your various affiants.

22 You have this Ms. Belemjian, -- if I'm saying
23 her name correctly -- she wants to buy a gun;
24 Mr. Fairfield, I think he's the one that's the big time
25 instructor. They kind of went down, as I read them.
26 This Ms. Belemjian wants to buy a gun; the next guy is a

1 very well-trained, very seasoned, thousands of
2 certificates; the next guy was less, and less, and less.

3 Nobody, though -- nowhere in the verifications
4 do I see anybody say, "I'm planning to issue a
5 certificate, and if I do so, I'm going to subject myself
6 to x, y, z." I don't see that in any of the affidavits.
7 So I think that Mr. Rich is correct that that's your
8 burden to show.

9 MS. BARVIR: I think our verified Complaint,
10 which was verified by the California Rifle and Pistol
11 Association, does go into the irreparable harm. And
12 like I was explaining, the Complaint goes into the type
13 of harm, which is the violation of the A.P.A., which
14 harms our democratic processes and takes away the
15 statutory right of people -- of the people to engage in
16 the rule-making process.

17 THE COURT: I don't disagree with that
18 proposition as stated. I don't disagree with that. But
19 the manner in which you get there, I don't know that
20 we're necessarily on the same page with.

21 I think that, in terms of the California Rifle
22 and Pistol Association, taking that entity as an
23 example, where is the immediate, irreparable, "Court,
24 you have to do something that you rarely do, issue this
25 T.R.O. now or the California Rifle and Pistol
26 Association will suffer harm" -- I don't think you get

1 there.

2 Now, let's say it's Mr. Fairfield, and he
3 says, "I've got -- in fact, Ms. Belemjian is in my shop
4 tomorrow, and she wants to buy a long gun or a shotgun,
5 and I'm going to sell it to her," or, "I'm going to
6 issue the training," et cetera, "and if I sign this
7 document tomorrow, I'm in big trouble, because
8 Mr. Rich's boys are going to come and get me." That's
9 different. But I don't see that in the declarations.

10 MR. BRADY: Your Honor, if I may, I don't
11 believe the declarations -- declaration require that the
12 law and statutes provide for that.

13 THE COURT: Evidence is required. And that's
14 how you get evidence in front of me is through
15 declarations.

16 MR. BRADY: I agree. But I believe the
17 statutes themselves say they must issue these F.S.C.
18 cards.

19 THE COURT: Okay. So what?

20 MR. BRADY: The Court can take judicial notice
21 of a statute.

22 THE COURT: I can't make up evidence, not for
23 this process. Well, not for any, frankly, but certainly
24 not this. You have to show me evidence that the law
25 you're talking about is going to cause immediate and
26 irreparable harm to something or someone.

1 So who is that vendor who is going to
2 potentially suffer immediate and irreparable harm by
3 signing his or her name to that affidavit? Which one?

4 MR. BRADY: I believe all of them would.

5 MS. BARVIR: And on top of that, I think the
6 harm is to -- like Ms. Belemjian, who intends to buy a
7 firearm, a long gun, and cannot, because she cannot take
8 acquisition of it until she performs the Long Gun Safe
9 Handling demonstration that the D.O.J. did not recreate,
10 she cannot take acceptance of that firearm, no one can,
11 including members of the California Rifle and Pistol
12 Association who all want to buy firearms, who want to
13 buy a long gun maybe tomorrow. That harm is in
14 violation of their second amendment right to acquire
15 firearms for use in lawful purposes. And I think that
16 that is pretty clear, from both the verified Complaint
17 and even Ms. Belemjian's declaration.

18 But I think that if we are at an impasse on
19 whether or not that is sufficient, I think we'll have to
20 move for a preliminary injunction.

21 MR. RICH: Your Honor, there's somewhat of
22 apples and oranges thing going on here, in terms of
23 plaintiffs' counsel. There's two components to the
24 relief they seek. One is underground reg, prohibitory
25 injunction enjoin D.O.J. from enforcing that underground
26 right. The other component is enjoined D.O.J., the

1 defendants, from enforcing a statute.

2 There is express statutory authority that
3 stands for the proposition that the Court cannot issue
4 injunction enjoining a public official from doing that
5 official's duties, including enforcing a statute.

6 The statutory authority I referred to -- or I
7 refer to is Code of Civil Procedure section 5.6
8 subdivision (b)(4) and Civil Code section 3423
9 subdivisions d, e, and/or f. And we mentioned that in
10 our opposition.

11 So if we look at the statute, in terms of an
12 injunction, in terms of enforcing the statute, the Court
13 would be, in effect, I believe, saying, if this was to
14 be -- if the application was to be granted as to the
15 component, that statute is unconstitutional, because
16 that's the only way we can get to enjoining the D.O.J.
17 from enforcing that statute.

18 THE COURT: I agree with you.

19 MR. RICH: Okay. I just wanted --

20 THE COURT: No. I agree with you. Because
21 the Court -- I think that's why I keep going back to: I
22 think we're all saying the same thing, just in a
23 slightly different way.

24 The Court has to operate from the position
25 that the statutes before it, the appellate decisions
26 that it has to follow, et cetera, are constitutional

1 unless shown otherwise. So I don't have a facial
2 challenge to this particular statute saying, in fact,
3 the opposite. Say it is probably constitutional. I
4 don't think the Court, essentially, -- I don't get a
5 flavor that this statute is unconstitutional and should
6 not be enforced.

7 So I'm really in a position, in doing the
8 Court's job, to give credence to the statute. Now, if
9 someone is harmed by the operation of the statute, as
10 Mr. Rich suggested, that's a different question for
11 which I need more evidence, is what I'm saying.

12 Here's my suggestion, I could do a couple of
13 different things: One, I could just deny the T.R.O.;
14 two, I could deny the T.R.O. without prejudice for you
15 to refile, now having the benefit of this conversation
16 and knowing the evidence that you would need to muster,
17 if you are able. And, then, it also gives Mr. Rich more
18 time, because he was -- not to use bad, stale puns, but
19 he was under the gun somewhat to get this in; right? So
20 that's probably the better of the two options.

21 MR. RICH: May I offer what defendants think
22 is an appropriate disposition? And that is deny the
23 application in its entirety. And, then, if plaintiffs
24 want to bring on a noticed motion for preliminary
25 injunction -- maybe that is what your Honor is saying --
26 then they can go ahead and do that. But we would ask

1 that the O.S.C. also be denied along with the T.R.O.

2 THE COURT: Okay.

3 MS. BARVIR: Plaintiffs would like to -- like
4 to see the Court deny without prejudice, as it suggested
5 in its second option.

6 THE COURT: Okay. I'm going to deny the
7 application, as before the Court, with the O.S.C.
8 without prejudice to it being refiled. Although -- and
9 that's the Court's ruling.

10 This is just now a friendly conversation. It
11 doesn't sound like, you know, in many instances in
12 litigation, the parties are polarly opposed; right?
13 Very, very different positions looking at the same
14 thing.

15 So it sounds like we have the opportunity, as
16 litigants, both on the State side and plaintiffs side
17 here, to maybe get things worked out. If you give
18 Mr. Rich a little bit of time -- these are very
19 difficult, these short cause matters. I mean, for you,
20 also, you did a great job, by the way, in your drafting
21 of it. You work with him and give him a little more
22 time, I think maybe things can work out well for
23 everyone --

24 MR. BRADY: We did submit an --

25 THE COURT: -- for -- what's that?

26 MR. BRADY: We did submit on O.R.L.

1 petition -- the Department is well aware; we let them
2 know a week --

3 THE COURT: I know. I saw your letter. I'm
4 not faulting you guys. I think you did a great job.

5 Okay?

6 MS. BARVIR: Thank you, your Honor.

7 THE COURT: You bet.

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State of California)
County of Fresno) ss.
)

I, MIRANDA ANTHONY, Pro Tempore Certified Shorthand Reporter of the State of California, County of Fresno, do hereby certify that the foregoing pages numbered 1 to 15, inclusive, contains a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings had and testimony given as reflected herein.

Dated: _____

MIRANDA K. ANTHONY, CSR
Certificate No. 13453

EXHIBIT G

Attachments: Ltr to Brady.pdf

From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Friday, January 09, 2015 3:15 PM
To: Sean Brady
Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan
Subject: RE: Belemjian v. Harris

Please see attached letter.

From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Thursday, January 08, 2015 5:54 PM
To: Jeffrey Rich
Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan
Subject: RE: Belemjian v. Harris

Mr. Rich,

First, there was no written order. Second, I copied and pasted from the transcript verbatim, albeit limited to the relevant sections. But I am happy to consider your position on what the Court said, if you would like to provide it with support. I have provided the relevant part of the transcript in full below so you can do so.

Sincerely,

6 Here's my suggestion: I could do a couple of
7 different things. One I could just deny the T.R.O.
8 Two, I could deny the T.R.O. without prejudice for you
9 to refile now having the benefit of this conversation
10 and knowing the evidence that you would need to muster,
11 if you are able. And then it also gives Mr. Rich more
12 time -RBG because he was -- not to use bad stale PUPBZ,
13 but he was under the gun somewhat to get this in; right?
14 So that's probably the better of the two options.

15 MR. RICH: May I offer what defendants think
16 is an appropriate disposition, and that is deny the
17 application in it's entirety. And then if plaintiffs'
18 want to bring on a noticed motion for preliminary
19 injunction, maybe that is what your Honor is saying,
20 then they can go ahead and do that. But we would ask
21 that the O.S.C. also be denied along with the T.R.O.

22 THE COURT: Okay.

23 MS. BARVIR: Plaintiffs would like to -- like
24 to see the court deny without prejudice has it suggested
25 in its second option.

26 THE COURT: Okay. 50EU78 going to deny the

22 THE COURT: Okay.

23 MS. BARVIR: Plaintiffs would like to -- like
24 to see the court deny without prejudice has it suggested
25 in its second option.

26 THE COURT: Okay. 50EU78 going to deny the

ROUGH DRAFT

1 application as before the court without O.S.C. without
2 prejudice although -- he and that's the courts ruling.
3 This is just now a friendly conversation. It doesn't
4 sounds like, you know, in many instances in litigation
5 the parties are pole arrestly opposed; right? Very very
6 different positions looking at the same thing. So it
7 sounds like we have the tunnel as litigants both on the
8 states side and plaintiffs' side here to maybe get
9 things worked out. If you give Mr. Rich a little bit of
10 time, these are very difficult, these short cause
11 matters. I mean for you, also, you did a great job, by

12 the weigh, in your drafting it of it. You work with him
13 and give him a little more time I think maybe things can
14 work out well for everyone.

15 MR. BRADY: We did submit.

16 THE COURT: -- for -- what's that.

17 MR. BRADY: We did submit on O.R. L. we let
18 them know a week.

19 THE COURT: I know I saw your letter. I'm not
20 faulting you guys I think you did a great job. Okay?

21 MS. BARVIR: Thank you, your Honor.

22 THE COURT: You bet.

23

24

Sean Brady
Attorney

Direct: (562) 216-4464
Main: (562) 216-4444
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-----Original Message-----

From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Thursday, January 08, 2015 5:45 PM
To: Sean Brady
Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan
Subject: RE: Belemjian v. Harris

Btw, I can see that you cut and pasted the order to say what you wanted it to say. I will address this more fully tomorrow.

From: Sean Brady [SBrady@michellawyers.com]
Sent: Thursday, January 08, 2015 4:55 PM
To: Jeffrey Rich
Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan
Subject: RE: Belemjian v. Harris

Mr. Rich:

Thank you for your response. Here are my responses to your points:

- 1) See section of the written transcript copied below showing Judge Hamilton expressly saying he was denying our TRO motion without prejudice for the express purpose that we could refile a TRO if plaintiffs deemed it appropriate;
- 2) See Code of Civil Procedure 1021.5 (mentioned in the prayer for relief section of our complaint);
- 3) We intend on doing just that if the Department does not agree to voluntarily suspend enforcement of the provisions at issue in this litigation and forces us to file a TRO or preliminary injunction (see 1 above);

Yes, I believe you should expect to be served with the summons tomorrow before close of business.

If you cannot provide us a final answer as to the Department's position (or at least that you are willing to submit to mediation) by Monday at noon we may decide to seek a TRO on Wednesday (not certain, but our clients are not interested in continuing to suffer irreparable harm caused by Defendants much longer; especially when the Department could give them relief immediately).

Please let me know if you continue to believe I am misunderstanding anything or if you have any questions. Thanks for your cooperation.

Sincerely,

[cid:image002.png@01D02B61.0AB1A220]
[cid:image003.png@01D02B61.0AB1A220]

Sean Brady
Attorney
[cid:image001.png@01D02B62.6446B810]<<http://www.michelandassociates.com/>>

Direct: (562) 216-4464
Main: (562) 216-4444
Fax: (562) 216-4445
Email: SBrady@michellawyers.com<<mailto:SBrady@michellawyers.com>>
Web: www.michellawyers.com<<http://www.michellawyers.com>>
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Suite 200
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From: Jeffrey Rich [mailto:Jeffrey.Rich@doj.ca.gov]

Sent: Thursday, January 08, 2015 4:28 PM

To: Sean Brady

Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan

Subject: RE: Belemjian v. Harris

Mr. Brady,

Thank you for your e-mail. Before I respond to your request for a discussion as to how DOJ intends to respond to the court's ruling, I believe I should respond to certain assertions made in your e-mail:

(1) defendants do not agree that the court's ruling permits plaintiffs to file another TRO/OSC application—rather, the court's ruling is that plaintiffs are permitted to file a noticed motion for preliminary injunction;

(2) defendants are not aware of any legal authority that would authorize plaintiffs' recovery of attorney's fees; and

(3) plaintiffs are required to offer admissible evidence showing a high degree of irreparable harm that will be suffered by them without the availability of a legal remedy.

Further, I am not aware of plaintiffs' service of a summons and complaint on defendants. Please let me know if that has occurred or will occur.

We would not be available to engage in your requested discussions until sometime next week because we need to first engage in discussions with our clients concerning your e-mail and further actions needed.

From: Sean Brady [mailto:SBrady@michellawyers.com]

Sent: Thursday, January 08, 2015 1:21 PM

To: Jeffrey Rich

Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir

Subject: Belemjian v. Harris

Importance: High

Mr. Rich,

Would you be available today or tomorrow to discuss how the Department intends to respond to the Court's ruling yesterday? While the Court denied the emergency relief Plaintiffs were seeking, by doing so without prejudice and explaining what evidence would be needed to make a showing of irreparable harm and possibly the granting of a TRO, the Court seemed to be indicating that it will rule in Plaintiffs' favor, whether at the TRO stage or later on in the litigation. In other words, Plaintiffs will likely obtain the relief they seek eventually.

As such, we believe it behooves the Department to voluntarily cease enforcing its rules concerning the FSC Program that form the basis of Plaintiffs' first four causes of action and to the long-gun safe handling demonstration per their fifth cause of action, and to open the rulemaking process pursuant to the APA for the regulations required to be adopted under PC section 26860. The Department is obviously free to open up the rulemaking process for regulations implementing the FSC Program, and our clients encourage it to do so in order to get the best system in place for everyone's sake, but we recognize the Department is not obligated to issue any regulations concerning the FSC Program.

Should the Department formally agree to do so, Plaintiffs are willing to cease their pursuit of another TRO or an expedited preliminary injunction (we have not determined which route we would take yet) and effectively stay the case. Should the Department refuse, Plaintiffs will continue such pursuit. Before we do so, we are willing to consider going to mediation with you on this issue. If the Department does not intend to voluntarily comply with the relief Plaintiffs seek, would you be amenable to mediation sometime next week?

In considering this proposal, I would again like to remind you that if Plaintiffs prevail in this matter, we will be seeking costs and attorneys' fees. If we can avoid unnecessary litigation by the Department voluntarily doing what appears will be inevitable, i.e., suspend enforcement of the underground FSC regulations and the long-gun safe handling demonstration until proper regulations are put in place, any such costs and fees will be mitigated, which benefits everyone involved, including the public (whose money is at issue here).

Please let me know your client's position about the above proposal or if you have any questions or concerns at your earliest convenience.

Sincerely,

Sean Brady
Attorney

[cid:image001.png@01D02B62.6446B810]<<http://www.michelandassociates.com/>>

Direct: (562) 216-4464

Main: (562) 216-4444

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EXHIBIT H



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 324-5154
Facsimile: (916) 324-8835
E-Mail: Jeffrey.Rich@doj.ca.gov

January 9, 2015

VIA E-MAIL (SBrady@michellawyers.com)

Sean A. Brady
Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802

RE: Belemjian v. Harris
Fresno County Superior Court, Case No. 15-CE-CG-020029

Dear Mr. Brady:

I write to respond to your January 8 e-mails.

Defendants are presently in the process of preparing emergency regulations and final regulations, pursuant to the Administrative Procedures Act, for the Firearm Safety Certificate Program. Accordingly, there is no need for discussions or mediation as you have suggested. In fact, when the emergency regulations are adopted (to be followed by the adoption of final regulations), plaintiffs' action will be rendered entirely moot.

If plaintiffs do decide to seek a temporary restraining order on Wednesday, such action would be outside the scope of the Court's January 7 ruling, denying plaintiffs' ex parte application in its entirety "without prejudice." More precisely, "without prejudice" must be construed in the context of the Court's and counsel's statements made during the hearing. In context, "without prejudice" reasonably means that plaintiffs may bring a noticed motion for preliminary injunction if and when plaintiffs have evidence showing imminent irreparable harm. The context I refer to is the following excerpt from the rough draft hearing transcript:

[THE COURT:] Here's my suggestion: I could do a couple of different things. One I could just deny the T.R.O. Two, I could deny the T.R.O. without prejudice for you to refile now having the benefit of this conversation and knowing the evidence that you would need to muster, if you are able. *And then it also gives Mr. Rich more*

time -RBG because he was -- not to use bad stale PUPBZ, but he was under the gun somewhat to get this in; right? So that's probably the better of the two options.

MR. RICH: May I offer what defendants think is an appropriate disposition, and that is deny the application in it's entirety. *And then if plaintiffs' want to bring on a noticed motion for preliminary injunction, maybe that is what your Honor is saying, then they can go ahead and do that. But we would ask that the O.S.C. also be denied along with the T.R.O.*

THE COURT: *Okay.*

MS. BARVIR: Plaintiffs would like to -- like to see the court deny without prejudice has it suggested in its second option.

THE COURT: Okay. 50EU78 going to deny the application as before the court without O.S.C. without prejudice although -- he and that's the courts ruling. This is just now a friendly conversation. It doesn't sounds like, you know, in many instances in litigation the parties are pole arrestly opposed; right? Very very different positions looking at the same thing. So it sounds like we have the tunnel as litigants both on the *states side and plaintiffs' side here to maybe get things worked out. If you give Mr. Rich a little bit of time, these are very difficult, these short cause matters.* I mean for you, also, you did a great job, by the weigh, in your drafting it of it. *You work with him and give him a little more time I think maybe things can work out well for everyone.*

MR. BRADY: We did submit.

THE COURT: -- for -- what's that.

MR. BRADY: We did submit on O.R. L. we let them know a week.

THE COURT: I know I saw your letter. I'm not faulting you guys I think you did a great job. Okay?

MS. BARVIR: Thank you, your Honor.

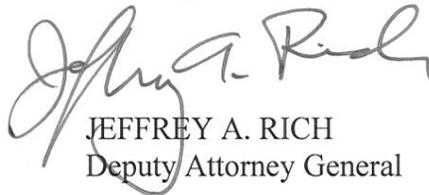
THE COURT: You bet.

(Rough draft of January 7, 2015 hearing transcript at 12:6-13:22, emphasis added.)

Based upon the above hearing transcript excerpt, it is manifest that the Court did not intend for “without prejudice” to mean that plaintiffs may, one week after the ex parte hearing, make another ex parte application for a TRO/OSC as a litigation tactic.

Further, if plaintiffs were to seek a temporary restraining order on Wednesday, such action would arguably result in a violation of Code of Civil Procedure section 128.7, subdivision (b), paragraphs (1) (“[The ex parte application] is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation”) and (3) (“The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery”).

Sincerely,



JEFFREY A. RICH
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

EXHIBIT I

From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]
Sent: Wednesday, January 28, 2015 3:16 PM
To: Anna M. Barvir
Cc: C.D. Michel; Sean Brady; Kimberly Granger; Stepan Haytayan
Subject: RE: Belemjian v. Harris [MA-Interwoven.FID60394]

Ms. Barvir,

The update is as follows.

The emergency regulation draft has been completed and is presently undergoing DOJ internal review. DOJ seeks to submit the emergency regulation package to OAL by the first week of March.

From: Anna M. Barvir [<mailto:ABarvir@michellawyers.com>]
Sent: Tuesday, January 27, 2015 2:37 PM
To: Jeffrey Rich
Cc: C.D. Michel; Sean Brady; Kimberly Granger; Stepan Haytayan
Subject: RE: Belemjian v. Harris [MA-Interwoven.FID60394]

Thank you, Mr. Rich. I appreciate your response and look forward to your update.

Anna Barvir

Sent on the new Sprint Network from my Samsung Galaxy S@4

----- Original message -----

From: Jeffrey Rich
Date: 01/27/2015 2:31 PM (GMT-08:00)
To: "Anna M. Barvir"
Cc: "C.D. Michel" ,Sean Brady ,Kimberly Granger ,Stepan Haytayan
Subject: RE: Belemjian v. Harris [MA-Interwoven.FID60394]

Ms. Barvir,

I will be sending you a status report tomorrow.

From: Anna M. Barvir [<mailto:ABarvir@michellawyers.com>]
Sent: Monday, January 26, 2015 5:39 PM
To: Jeffrey Rich
Cc: C.D. Michel; Sean Brady; Kimberly Granger; Stepan Haytayan
Subject: Belemjian v. Harris [MA-Interwoven.FID60394]

Mr. Rich,

Plaintiffs have refrained from seeking further preliminary relief because of your representation to our office in a letter dated January, 9, 2015, that the Department “is in the process of preparing emergency regulations.” To the extent it is possible, Plaintiffs prefer to avoid unnecessary costs to both sides and to further judicial economy by handling these matters outside of court. But Plaintiffs cannot wait much longer on the Department to begin the emergency rulemaking process, as Plaintiffs and others like them continue to be harmed by the absence of proper regulations every day.

More than two weeks have now passed since you indicated that the Department would be adopting emergency regulations, and we are unaware of any movement on that front. I write to ask whether the Department has a date certain in the near future to begin the official emergency process under the APA? If so, please let us know what date that is. If not, please expect that Plaintiffs will need to move forward with litigation in *Belemjian* this week.

We again remind you that Plaintiffs, if they prevail, will seek fees and costs for the work they are required to engage in over this matter. Naturally, the more work we are required to do to protect our clients’ interests and the interests of all Californians in seeing that proper rulemaking procedures are followed, the higher the costs of litigation will be. As such, if the Department intends to open the rulemaking process soon, it would be helpful for you to let us know as soon as possible, so that we are not forced to seek preliminary relief.

As always, please let me know if you have any questions or concerns.

Regards,

<p>Anna M. Barvir Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4453 Main: (562) 216-4444 Fax: (562) 216-4445 Email: ABarvir@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
--	--

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