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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF FRESNO

**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 OFFICIAL CAPACITY AS  
CHIEF OF THE CALIFORNIA  
DEPARTMENT OF JUSTICE BUREAU  
OF FIREARMS; CALIFORNIA  
DEPARTMENT OF JUSTICE; AND DOES  
1-10,**  
  
Defendants.

Case No. 15 CECG 00029  
**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
OPPOSITION TO MOTION TO DELAY  
ENTRY OF JUDGMENT**  
  
Date: May 21, 2015  
Time: 3:30 p.m.  
Dept: 503  
Judge: Hon. Alan Simpson  
Trial Date: None  
Action Filed: January 6, 2015

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STATUTES

Code of Civil Procedure

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1 Defendants and respondents Kamala D. Harris, in her official capacity as Attorney General  
2 of the State of California, Stephen Lindley, in his official capacity as Chief of the California  
3 Department of Justice Bureau of Firearms, and the California Department of Justice  
4 (“defendants”) submit the following memorandum of points and authorities in support of their  
5 opposition to the motion for delay of entry of judgment filed by plaintiffs and petitioners Kim  
6 Belemjian, Jonathan Fairfield, T.J. Johnston, Matthew Pimentel, Stanley Roy, FFLGuard, Inc.,  
7 and the California Rifle and Pistol Association (“plaintiffs”).

### 8 INTRODUCTION

9 Plaintiffs’ moved to delay entry of the judgment of dismissal following the Court’s  
10 sustaining of defendants’ demurrer without leave to amend. This Court should deny plaintiffs’  
11 motion for three reasons.

12 First, plaintiffs’ Code of Civil Procedure section 1021.5 attorney’s fee claim is defective on  
13 its face. Plaintiffs have conclusively admitted—by their complaint allegations—that their action  
14 was brought to advance their personal economic interests. As such, regardless of whether the  
15 catalyst theory applies to plaintiffs’ attorney’s fee claim, plaintiffs cannot meet their burden to  
16 establish all of the required factors under section 1021.5. When the record indicates, as in this  
17 case, that the primary effect of a lawsuit was to advance or vindicate a plaintiff’s personal  
18 economic interests, an award of attorney’s fees under section 1021.5 is improper.

19 Second, plaintiffs fail to cite any authority that specifically holds a plaintiff is entitled to  
20 conduct the discovery plaintiffs seek to conduct.

21 Third, the Court has previously rejected plaintiffs’ request for delay of the entry of the  
22 judgment of dismissal so that plaintiffs may conduct discovery for their catalyst theory.

23 Defendants submit that plaintiffs’ motion should be denied and the proposed judgment of  
24 dismissal, previously submitted to the Court upon its order, be entered without delay.

### 25 PROCEDURAL BACKGROUND

26 Plaintiffs filed their original complaint/petition on January 6, 2015, and on January 7,  
27 applied ex parte for a temporary restraining order and an order to show cause seeking to enjoin  
28

1 defendants from enforcing, among other things, Penal Code section 26860, subdivisions (a), (c)  
2 and (d). The Court denied plaintiffs' ex parte application in its entirety.

3 On February 2, 2015, plaintiffs filed a verified First Amended Complaint alleging six  
4 causes of action seeking declaratory and injunctive relief and a seventh cause of action seeking a  
5 writ of mandate. On March 4, 2015, defendants filed a demurrer to the entire First Amended  
6 Complaint. The demurrer contended that plaintiffs' entire action was mooted by the Department  
7 of Justice's promulgation of emergency regulations implementing the Firearm Safety Certificate  
8 Program and long gun safe-handling demonstrations. On April 2, 2015, plaintiffs filed a  
9 statement of non-opposition to the demurrer, which was set for hearing on April 15, 2015,  
10 agreeing that their action was moot. Plaintiffs' statement of non-opposition also requested that  
11 entry of judgment of dismissal for their action be delayed so that plaintiffs may conduct discovery  
12 to support their catalyst theory for their Code of Civil Procedure section 1021.5 attorney's fees  
13 claim.

14 On April 14, the Court issued its tentative ruling sustaining defendants' demurrer without  
15 leave to amend. Further, the Court's tentative ruling rejected plaintiffs' request for delay of entry  
16 of judgment to conduct discovery. Plaintiffs did not request oral argument.

17 The Court issued a minute order, adopting its tentative ruling and serving as the order  
18 required under Code of Civil Procedure section 1019.5, subdivision (a). On April 24, 2015, the  
19 Clerk served the parties with the minute order, which included a copy of the tentative ruling, by  
20 mail.

21 The Court's order directed defendants to submit a proposed judgment of dismissal to the  
22 Court within seven days of service of the minute order. Defendants timely provided the Court  
23 with the proposed judgment of dismissal on May 6, 2015.

#### 24 **PLAINTIFFS' STATED REASONS FOR THEIR ACTION**

25 Plaintiffs' original verified complaint alleges facts explaining each plaintiff's personal stake  
26 in the successful outcome of the action in paragraphs 12 through 18:

27 12. Kim Belemjian is a resident of Fresno County, California. She intends  
28 to purchase a firearm in California this year. Plaintiff Belemjian does not  
currently possess a Handgun Safety Certificate or a Firearm Safety Certificate, and

1 is not exempt from the Firearm Safety Certificate and long-gun safe-handling  
2 demonstration requirements of Penal Code sections 31615 and 26860. ***In order to***  
3 ***purchase a firearm in California, Plaintiff Belemjian will be subject to the***  
***changes made by SB 683 and the subsequent regulations imposed by***  
***Defendants.***

4 13. Plaintiff Jonathan Fairfield has been certified by the Department to issue  
5 Handgun Safety Certificates since December 8, 2008. He is also an NRA Certified  
6 Pistol Instructor and NRA Certified Rifle and Shotgun instructor. Plaintiff  
7 Fairfield issues Handgun Safety Certificates (now referred to as Firearm Safety  
8 Certificates) as part of his business as a firearm instructor at various gun shows, at  
9 other firearm-related events, and in his role as a Firearm Safety Certificate  
instructor at the Apple Valley Gun Club located in Victorville, California. ***In***  
***order to continue to issue Firearm Safety Certificates, which are required to***  
***transfer or purchase any firearm in California as of January 1, 2015, Plaintiff***  
***Fairfield will be subject to the changes made by SB 683 and the subsequent***  
***regulations imposed by Defendants.***

10 14. Plaintiff T.J. Johnston is the owner and proprietor of AllSafe Defense  
11 Systems (“AllSafe”), located in Orange, California, which offers both armed and  
12 unarmed self-defense classes and specializes in providing safe, fun, and effective  
13 training in the use of firearms to members of the public. . . . In November 2000,  
14 the Department issued Certificate #222, approving the AllSafe Basic Handgun  
15 class as satisfying the training requirements for individuals to be issued a Handgun  
16 Safety Certificate. Plaintiff Johnston was then approved as a certified instructor,  
authorized to issue Handgun Safety Certificates, in 2003. He has since issued over  
1,700 certificates. ***In order to continue to issue Firearm Safety Certificates,***  
***which are required to purchase any firearm in California as of January 1, 2015,***  
***Plaintiff Johnston will be subject to the changes made by SB 683 and the***  
***subsequent regulations imposed by Defendants.***

17 15. Plaintiff Matthew Pimentel is a Fresno, California, based Peace Officer  
18 Standards and Training (“POST”) Instructor, a California Department of Justice  
19 Firearms Instructor, and a National Rifle Association (“NRA”) Certified Instructor  
20 who has provided firearm-related instruction throughout California since early  
21 2000. . . . Since 2007, Mr. Pimentel has certified approximately 300 individuals  
22 to administer the Handgun Safety Certificate test, and has himself issued  
approximately 400 Handgun Safety Certificates to individuals seeking to purchase  
a handgun. ***In order to continue to issue Firearm Safety Certificates, which are***  
***required to transfer or purchase any firearm in California as of January 1,***  
***2015, Plaintiff Pimentel will be subject to the changes made by SB 683 and the***  
***subsequent regulations imposed by Defendants.***

23 16. Plaintiff Stanley Roy has been certified by the NRA as a Pistol  
24 Instructor since December 2013 and as a Rifle Instructor since July 2014. He is  
25 also the Education Committee Chairman of the Antelope Valley NRA Member’s  
26 Council, which provides classes to the local community on firearm safety and  
27 education. Plaintiff Roy wishes to provide Firearm Safety Certificates to his group  
28 as well as other individuals as a Department certified instructor. ***Plaintiff Roy has***  
***yet to apply to become a certified instructor, but intends to apply this year. In***  
***order to become certified by the Department, Mr. Roy will be subject to the***  
***changes made by SB 683 and the subsequent regulations imposed by***  
***Defendants. Plaintiff Roy also intends to purchase long guns in California over***  
***the next few years.***

1 17. Plaintiff FFLGuard LLC, is a Delaware corporation located at 244 Fifth  
2 Ave., Suite 1960, New York, New York 10001. FFLGuard offers a cooperative  
3 compliance and legal defense program for Federal Firearms Licensees (“FFLs”) by  
4 providing clients with lawyers, subject-matter experts, professionals, and para-  
5 professionals who are specialists in the area of firearms law and compliance. . . .  
6 FFLGuard represents countless California Firearm Dealers and their employees,  
7 including certified Handgun Safety Certificate Instructors and soon-to-be certified  
8 Firearm Safety Certificate Instructors throughout California. *This case falls*  
9 *squarely within the interests of FFLGuard and its clients who are licensed*  
10 *dealers, the latter being subject to criminal penalties for unintentional violation*  
11 *of the law and who cannot comply with the long-gun safe-handling*  
12 *demonstration requirements placed on FFLs unless and until Defendants adopt*  
13 *regulations pursuant to Penal Code section 26860, subdivision (b).*

14 18. Plaintiff California Rifle and Pistol Association (“CRPA”) is a nonprofit  
15 organization that seeks to defend the Second Amendment and advance laws that  
16 protect the rights of individual California residents. . . . CRPA represents the  
17 interests of the tens of thousands of its members who reside in the State of  
18 California, including those in Fresno County, who are too numerous to  
19 conveniently bring this action individually and whose interests include their desire  
20 to transact in or acquire firearms and otherwise engage in conduct protected by the  
21 Second Amendment. *CRPA also represents a number of California Firearm*  
22 *Dealers and their employees, certified Handgun Safety Certificate Instructors*  
23 *and soon-to-be certified Firearm Safety Certificate Instructors throughout*  
24 *California who are subject to the changes made by SB 683 and the subsequent*  
25 *regulations imposed by Defendants.*

26 (Original Complaint ¶¶ 12-18, emphasis added.)

27 Plaintiffs’ declarations filed in support of their ex parte application<sup>1</sup> are consistent with  
28 their complaint allegations concerning their personal stake in the outcome of the action.

**Kim Belemjian Declaration**

4. I do not currently possess a Handgun Safety Certificate or a Firearm Safety Certificate.

5. I am not exempt from the Firearm Safety Certificate and long-gun safe-handling demonstration requirements of California Penal Code sections 31615 and 26860.

6. I intend to purchase a firearm in California this year.

**Jonathan Fairfield Declaration**

7. I issue Handgun Safety Certificates as part of my business as a firearms instructor at various gun shows, at other firearm-related events, and in my role as a Firearm Safety Certificate instructor at the Appl[e] Valley Gun Club located in Victorville, California.

---

<sup>1</sup> Plaintiff California Rifle and Pistol Association did not provide a supporting declaration.



1           7. I intend to apply to become certified by the California Department of  
2 Justice to administer the Firearm Safety Certificate test this year.

3           8. In order for me to become a Firearm Safety Certificate instructor, I will  
4 be subject to the changes made by Senate Bill 683 and the subsequent regulations  
5 imposed by the California Department of Justice on the Firearm Safety Certificate  
6 program.

7           9. I intend to purchase a firearm that is not a handgun in California this  
8 year.

9                           **Christopher Chiafullo (FFL Guard, LLC) Declaration**

10           6. FFLGuard represents countless California FFLs and their employees,  
11 including Department of Justice certified Handgun Safety Certificate instructors  
12 and soon-to-be certified Firearm Safety Certificate instructors throughout  
13 California.

14           7. Many of our FFL clients and their employees in California also serve as  
15 certified Handgun Safety Certificate instructors (soon to be Firearm Safety  
16 Certificate instructors) in order to administer the required safety tests in their shops  
17 at the point of transfer.

18   **ARGUMENT**

19           **I. THERE IS NO JUSTIFICATION FOR DELAYING ENTRY OF THE JUDGMENT OF**  
20 **DISMISSAL BECAUSE PLAINTIFFS' ATTORNEY'S FEES CLAIM FACIALLY LACKS**  
21 **MERIT**

22           Section 1021.5 provides in pertinent part: "Upon motion, a court may award attorneys' fees  
23 to a successful party against one or more opposing parties in any action which has resulted in the  
24 enforcement of an important right affecting the public interest if: (a) a significant benefit,  
25 whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of  
26 persons, (b) the necessity and financial burden of private enforcement, . . . are such as to make the  
27 award appropriate, and (c) such fees should not in the interest of justice be paid out of the  
28 recovery, if any." In applying "the statutory criteria [the Courts] must consider whether:  
(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public  
interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary has been conferred on the  
general public or a large class of persons' and (3) 'the necessity and financial burden of private  
enforcement are such as to make the award appropriate.' [Where] plaintiffs' action has produced

1 no monetary recovery, factor ‘(c)’ of section 1021.5 is not applicable.” (*Woodland Hills*  
2 *Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 934–935.)<sup>2</sup>

3 Code of Civil Procedure section 1021.5 is intended as a “bounty” for pursuing public  
4 interest litigation, not a reward for litigants *motivated by their own interests* who coincidentally  
5 serve the public. (*Beach Colony II v. California Coastal Com.* (1985) 166 Cal.App.3d 106, 114,  
6 emphasis added.) “[I]ts purpose is to provide some incentive for the plaintiff who acts as a true  
7 private attorney general, prosecuting a lawsuit that enforces an important public right and confers  
8 a significant benefit, despite the fact that his or her own financial stake in the outcome would not  
9 by itself constitute an adequate incentive to litigate.” (*Satrap v. Pacific Gas & Electric Co.* (1996)  
10 42 Cal.App.4th 72, 80.)

11 “When the record indicates that the primary effect of a lawsuit was to advance or vindicate  
12 a plaintiff’s personal economic interests, an award of fees under section 1021.5 is improper.”  
13 (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 634; see also *California*  
14 *Licensed Foresters Assn. v. California St. Bd. of Forestry* (1994) 30 Cal.App.4th 562, 570  
15 [section 1021.5 fee claim denied where declarations in support of motion for preliminary  
16 injunction evidenced plaintiff’s significant pecuniary interest in the litigation].) *Flannery*  
17 concerned the plaintiff’s recovery of attorney’s fees in an action against her employer and others  
18 based on harassment and wrongful termination in violation of the Fair Employment and Housing  
19 Act. (*Id.* at p. 632.) In concluding that the plaintiff was not entitled to an award of section 1021.5  
20 attorney’s fees, the court found, in pertinent part, that “[w]hile plaintiff’s lawsuit was based on  
21 the important right to be free from unlawful discrimination, its primary effect was the vindication  
22 of her own personal right and economic interest.” (*Id.* at p. 637.)

23 Here, as in *Flannery*, based upon the record in this case consisting of plaintiffs’ judicial  
24 admissions set forth in their original complaint (see *Brown v. Aguilar* (1927) 202 Cal. 143, 149  
25 [“While a pleader is not bound by allegations of evidence or conclusions of law, he is concluded

26 \_\_\_\_\_  
27 <sup>2</sup> The moving party bears the burden of establishing each prerequisite to an award of  
28 attorney’s fees under section 1021.5. (*Ebbetts Pass Forest Watch v. California Dept. of Forestry*  
& *Fire Protection* (2010) 187 Cal.App.4th 376, 381.)

1 by material averments of his pleading, and may not, as a rule, prove facts contrary thereto”]), the  
2 motivation for, and effect of, plaintiffs’ action is the advancement of their own personal economic  
3 interests. (See Original Complaint ¶¶ 12-18; see also Kim Belemjian Declaration ¶¶ 4-6;  
4 Jonathan Fairfield Declaration ¶¶ 7-9; T.J. Johnson Declaration ¶¶ 10-12; Matthew Pimentel  
5 Declaration ¶¶ 5-11; Stanley Roy Declaration ¶¶ 5-9; Christopher Chiafullo (FFL Guard, LLC)  
6 Declaration ¶¶ 6-7.) Plaintiffs may not contend otherwise.

7 Based upon the record in this case, it is undisputed that plaintiffs brought this action to  
8 advance their respective personal economic interests. Such motivation belies plaintiffs’ role as  
9 private attorneys general.

10 **II. MOREOVER, THERE IS NO APPLICABLE LEGAL AUTHORITY SUPPORTING**  
11 **PLAINTIFFS’ MOTION**

12 Plaintiffs primarily rely upon *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553,  
13 563, 576 (*Graham*) for their contention that post-demurrer discovery concerning their catalyst  
14 theory is appropriate in this case. However, plaintiffs’ reliance upon *Graham* is misplaced.  
15 *Graham* does not provide any authority for the post-demurrer discovery plaintiffs seek.

16 First, *Graham*’s reference to the discovery conducted in the case below is merely part of the  
17 decision’s statement of facts: “Although plaintiffs’ case was dismissed, the parties continued to  
18 litigate plaintiffs’ entitlement to attorney fees.” (*Graham, supra*, 34 Cal.4th at p. 563.) Needless  
19 to say, an appellate court’s description of the proceedings in the trial court has no precedential  
20 value. Second, although *Graham* acknowledges that a factual record generally needs to be  
21 developed in cases mooted by the defendant’s conduct for the plaintiff’s catalyst theory, *Graham*  
22 does not hold that the factual record may be developed by discovery: “When the suit is mooted  
23 early in its prosecution (as occurred in the present case), it may generally be established *during*  
24 *the attorney fee proceeding by declarations, or, at the discretion of the trial court, by an*  
25 *abbreviated evidentiary hearing.* (*Id.* at p. 576.)

26 At bottom, plaintiffs have not provided any apposite authority to support their contention  
27 that entry of the judgment of dismissal should be delayed because plaintiffs are entitled to engage  
28 in discovery for their catalyst theory.

1 **III. MOREOVER, THE COURT HAS PREVIOUSLY RULED THAT PLAINTIFFS' REQUEST TO**  
2 **DELAY ENTRY OF THE JUDGMENT OF DISMISSAL IS IMPROPER**

3 The Court's tentative ruling, adopted by the Court as its final ruling and order, rejected  
4 plaintiffs' request for delay of the entry of the judgment of dismissal:

5 However, Plaintiffs request a delay in entering judgment to allow them to  
6 conduct discovery in support of a motion seeking an award of attorney's fees.  
7 Notably, no authority for this request was cited. In its reply, the Defendants  
8 submit that this request is improper. This is correct. Typically, after a demurrer is  
9 sustained without leave to amend as to all causes of action, a judgment of  
dismissal is entered. See CCP § 581 (f)(1). Therefore, the request will be denied.  
*But, the Plaintiffs are free to move for an award of attorney's fees within the  
jurisdictional time limits set forth in the California Rules of Court.*

10 (Tentative Ruling at p. 2, emphasis added.)

11 In the last sentence of the above quoted language, the Court states that plaintiffs are free to  
12 move for an award of attorney's fees after the judgment of dismissal is entered. Significantly,  
13 however, the Court does not state that plaintiffs are free to bring this motion. On this basis alone,  
14 plaintiffs' request to delay entry of the judgment of dismissal in order to conduct discovery  
15 should be rejected by the Court once again.

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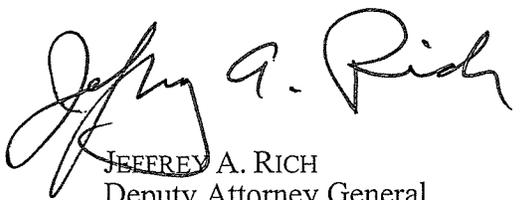
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CONCLUSION

For the reasons stated above, defendants request that plaintiffs' motion to delay entry of judgment be denied in its entirety and that the proposed judgment of dismissal, previously submitted to the Court be entered without delay.

Dated: May 7, 2015

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



JEFFREY A. RICH  
Deputy Attorney General  
*Attorneys for Kamala D. Harris, in her official capacity as Attorney General for the State of California; Stephen Lindley, in his official capacity as Chief of the California Department of Justice Bureau of Firearms; and the California Department of Justice*

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**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case Name: **Belemjian, Kim, et al. v. Kamala D. Harris, et al.**

No.: **15-CE-CG-000029**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On May 7, 2015, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO MOTION TO DELAY ENTRY OF JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with the **GOLDEN STATE OVERNIGHT COURIER SERVICE**, addressed as follows:

Anna M. Bavir  
Sean Brady  
Michel & Associates, P.C.  
180 East Ocean Blvd., Suite 200  
Long Beach CA 90802-4079

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 7, 2015, at Sacramento, California.

\_\_\_\_\_  
Tracie L. Campbell  
Declarant

\_\_\_\_\_  
*Tracie Campbell*  
Signature

**DEPARTMENT OF JUSTICE**  
Office of the Attorney General  
P.O. Box 944255  
Sacramento, California 94244-2550

**TO:**

Anna M. Bavir  
Sean Brady  
Michel & Associates, P.C.  
180 East Ocean Blvd., Suite 200  
Long Beach CA 90802-4079

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