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MAY 12 2015

FRESNO COUNTY SUPERIOR COURT
By _____ GAR - DEPUTY

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6 Attorneys for Plaintiffs

7
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.; and CALIFORNIA
12 RIFLE 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,

19 Defendants.
20

CASE NO. 15-CE-CG-00029

**PLAINTIFFS' OBJECTIONS TO
DEFENDANTS' PROPOSED JUDGMENT
OF DISMISSAL AFTER SUSTAINING
DEMURRER TO FIRST AMENDED
COMPLAINT WITHOUT LEAVE TO
AMEND**

[Cal. R. Court, R. 3.1590, subds. (j)-(k)]

Judge: Alan M. Simpson
Trial Date: None
Action Filed: January 6, 2015

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1 Pursuant to Rule 3.1590, subdivision (j), of the California Rules of Court, Plaintiffs Kim
2 Belemjian, Jonathan Fairfield, T.J. Johnston, Matthew Pimentel, Stanley Roy, *FFLGuard*, Inc.,
3 and California Rifle and Pistol Association (“Plaintiffs”) hereby submit their objections to
4 Defendants’ Proposed Judgment of Dismissal After Sustaining Demurrer to First Amended
5 Complaint Without Leave to Amend.

6 **Objection No. 1:**

7 Plaintiffs object to an order, adjudication, or decree “that plaintiffs and petitioners take
8 nothing as against defendants and respondents” ([Proposed] Judgment, p. 2, lines 7-8) to the
9 extent that adoption of Defendants’ Proposed Judgment as drafted would foreclose Plaintiffs’
10 ability to request or recover attorney’s fees. No fee motion has yet been before the Court and the
11 Court has issued no order that Plaintiffs shall take “nothing” as against Defendants. Indeed, the
12 Court’s order granting Defendants’ demurrer without leave to amend explicitly authorizes
13 Plaintiffs to move for an award of fees pursuant to the California Rules of Court. (Law & Motion
14 Minute Order, April 16, 2015.)

15 Plaintiffs thus respectfully request that the Court strike the proposed language “that
16 plaintiffs take nothing as against defendants and respondents.” They further request that any
17 adopted judgment include the following or similar language making clear that Plaintiffs are not
18 barred from seeking attorneys’ fees:

19 Notwithstanding entry of this Judgment of Dismissal, this court’s jurisdiction to
20 determine whether Plaintiffs are entitled to recover attorneys’ fees and in what
21 amount shall be retained. Entitlement to and the appropriate amount of attorneys’
fees will be determined on noticed motion to be submitted to the Court in
accordance with the California Rules of Court.

22 **Objection No. 2:**

23 Plaintiffs further object to an order, adjudication, or decree that Defendants recover costs
24 in any amount. (See [Proposed] Judgment, p. 2, lines 9-10.) The Court’s order granting
25 Defendants’ demurrer does not grant costs to Defendants and Defendants have provided no
26 documentation detailing the amount of costs they would be entitled to. In order to obtain a costs
27 award, the prevailing party must serve and file a memorandum of costs. (Cal. Rules of Court, rule
28 3.1700, subd. (a).) Moreover, the “costs bill” generally must be filed together with a proposed

1 judgment of dismissal or after securing entry of judgment pursuant to the California Rules of
2 Court. (*Boonyarit v. Payless Shoesource, Inc.* (2006) 145 Cal.App.4th 1188, 1192-1193, quoting
3 *Sanabria v. Embrey* (2001) 92 Cal.App.4th 422, 426, fn. 2 “[B]ecause there must be a dismissal
4 or judgment entered as a predicate to a costs award, ‘[a]pparently, the memorandum of costs must
5 be filed together with a proposed judgment of dismissal’ . . .”.) Defendants’ failure to do that here
6 makes any award of costs untimely and improper.

7 What’s more, Defendants have cited no statutory right to recover costs. It is Plaintiffs’
8 position that Defendants are not entitled to any such recovery in this action, in part, because they
9 are not the “prevailing party” for purposes of claiming prejudgment costs. The issue of
10 Defendants’ entitlement to costs and in what amount should thus be decided only after Defendants
11 have duly filed and noticed a memorandum of costs, providing Plaintiffs the opportunity to strike
12 and tax those costs pursuant to the California Rules of Court.

13 Plaintiffs hereby request the Court strike the following language from Defendants’
14 Proposed Judgment: “IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED
15 that defendants and respondents shall recover costs in the sum of \$_____.”

16 **Conclusion**

17 For the foregoing reasons, Plaintiffs object to Defendants’ Proposed Judgment of
18 Dismissal and respectfully ask this Court to strike the objectionable matter and insert language
19 preserving Plaintiffs’ right to seek attorneys’ fees. Alternatively, pursuant to rule 3.1590,
20 subdivision (k), of the California Rules of Court, Plaintiffs request a hearing regarding
21 Defendants’ Proposed Judgment and Plaintiffs’ objections thereto to be held before the Court
22 enters judgment.

23 Date: May 12, 2015

MICHEL & ASSOCIATES, P.C.

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25 _____
26 Anna M. Barvir
27 Counsel for Plaintiffs
28

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 May 12, 2015, I served the foregoing document(s) described as:

6 **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PROPOSED JUDGMENT OF
7 DISMISSAL AFTER SUSTAINING DEMURRER TO FIRST AMENDED COMPLAINT
8 WITHOUT LEAVE TO AMEND**

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

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

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

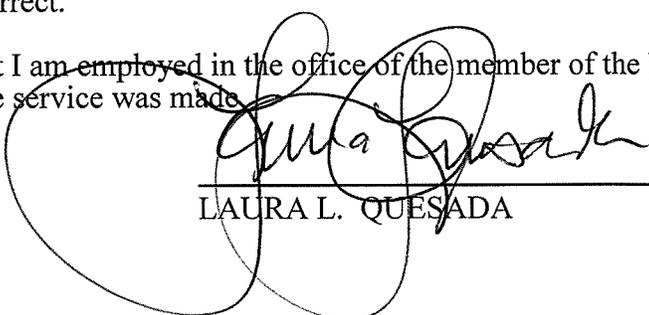
19 Executed on _____, 2015, at Long Beach, California.

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

26 Executed on May 12, 2015, at Long Beach, California.

27 X (STATE) I declare under penalty of perjury under the laws of the State of California that
28 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