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By Fax

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY; JAMES PARKER; MARK MIDLAM; JAMES BASS; and CALGUNS SHOOTING SPORTS ASSOCIATION,

Plaintiffs and Petitioners,

vs.

KAMALA HARRIS, in her official capacity as Attorney General for the State of California; STEPHEN LINDLEY, in his official capacity as Acting Chief for the California Department of Justice; BETTY YEE, in her official capacity as State Controller for the State of California; and DOES 1-10,

Defendants and Respondents.

CASE NO. 34-2013-80001667

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF RENEWED MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

Date: February 19, 2016
Time: 9:00 a.m.
Dept.: 31
Judge: Hon. Michael P. Kenny
Action filed: 10/16/13

DECLARATION OF SCOTT M. FRANKLIN

I, Scott M. Franklin, declare:

1. I am an attorney at law admitted to practice before all courts of the state of California. I have personal knowledge of each matter and the facts stated herein as a result of my employment with Michel & Associates, P.C., attorneys for Plaintiffs/Petitioners ("Plaintiffs"), and if called upon and sworn as a witness, I could and would testify competently thereto.

2. Exhibit 1 to this Declaration is a true and correct copy of the Motion to Compel Further Responses to Form Interrogatories, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley (the "Motion to Compel") dated February 17, 2015. Exhibit 1A is a true and correct copy of the declaration filed in support of the Motion to Compel, which complies with Code of Civil Procedure section 2016.040.

3. Exhibit 2 to this Declaration is a true and correct copy of the Opposition (filed in opposition to the Motion to Compel) dated April 6, 2015.

4. Exhibit 3 to this Declaration is a true and correct copy of the Reply (filed in support of the Motion to Compel), dated April 14, 2015. Exhibit 3A is a true and correct copy of the declaration filed in support of the Reply.

5. Exhibit 4 to this declaration is a true and correct copy of the Court's Order after Hearing dated July 20, 2015.

6. Exhibit 5 to this Declaration is a true and correct copy of the Court's Ruling after Additional Briefs dated August 31, 2015.

7. Exhibit 6 to this Declaration is a true and correct copy of the First Amended Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandamus ("FAC") dated December 30, 2015.

8. Exhibit 7 to this Declaration is a true and correct copy of the Court's Order after Hearing, dated December 23, 2015.

9. Exhibit 8 to this Declaration is a true and correct copy of excerpts of Defendants' Amended Responses to Requests for Admissions (Set One), dated January 22, 2015.

10. I Spoke with Defendants' counsel, Mr. Anthony Hakl, several times about the

possibility of Plaintiffs filing a renewal motion based on the Motion to Compel. Specifically, we discussed whether a renewal motion is available in the unique situation at issue, and whether Plaintiffs could obtain any additional value if they repropounded the relevant discovery in an abundance of caution, even though we agreed that doing so would not change the positions taken in the parties' previously filed Motion to Compel briefing. The parties ultimately agreed that Plaintiffs would file a renewal motion (instead of starting a new but duplicative round of discovery) and that the parties would stipulate to the Court resolving the matter on an expedited basis without additional briefing.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this Declaration was executed on January 22, 2016, at Long Beach, California.

Scott M. Franklin

Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, Plaintiffs and Petitioners, vs. KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY; MEMORANDUM IN SUPPORT THEREOF** Date: 04/24/15 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

By Fax

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 24, 2015, at 9:00 a.m. or as soon thereafter as the matter may be heard, in Department 31 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and Calguns Shooting Sports Association (collectively "Plaintiffs") will and hereby do move this Court for an order compelling Defendants/Respondents Kamala Harris and Stephen Lindley ("Defendants") to produce further responses to Plaintiffs' Form Interrogatories,

Set One, propounded on Defendants on May 14, 2014.

This Motion is brought pursuant to Code of Civil Procedure sections 2030.220(a) and 2030.300(a)(1) on the grounds that Defendants have provided evasive and incomplete statements in responses to certain interrogatories propounded by the Plaintiffs. A declaration in conformance with Code of Civil Procedure section 2016.040 is provided herewith.

This Motion is based upon this notice, the attached memorandum of points and authorities, the supporting Declaration of Scott M. Franklin, the separate statement of disputed issues concurrently served and filed with this Motion, upon all papers and pleadings currently on file with the Court, and upon such oral and documentary evidence as may be presented to the Court at the time of the hearing.

Please take further notice that pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department referenced in the local telephone directory between the hours of2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: February 17, 2015

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for Plaintiffs

I. INTRODUCTION

This Motion concerns certain response(s)[1] to Form Interrogatory No. 17.1. Because Defendants' responses are improperly evasive, the Motion should be granted.

II. STATEMENT OF FACTS

Plaintiffs served a first set of Form Interrogatories ("FI") on Defendants on May 14, 2014, (Declaration of Scott M. Franklin In Support of Motion to Compel Further Responses to Form Interrogatories, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley [the "Franklin Decl."] ¶ 2). Pursuant to a courtesy extension granted by Plaintiffs, Defendants provided responses to the FI on August 1, 2014 (*Id.* ¶ 3). Soon thereafter, Plaintiffs counsel evaluated the responses and determined them to be insufficient, and accordingly, the Plaintiffs sent a letter on October 17, 2014, explaining in detail how the responses provided were insufficient. (*Id.* ¶ 4). On October 29, 2014, counsel for the parties held a telephonic conference to discuss the disputed discovery responses, and Defendants counsel agreed that as to each of the disputed responses, the Defendants would provide some form of further response (be it a substantive response or a statement that no further response would be voluntarily provided) by November 26, 2014. (*Id.* ¶ 5). At the request of Defendants' counsel, that response date was extended to December 9, 2015 (*Id.* ¶ 6).

On December 4, 2014, Defendants' counsel sent a letter to Plaintiffs' counsel proposing that the parties put the dispute concerning Defendants' FI responses on hold. (Franklin Decl. ¶ 7). Defendants based this proposal on a claim that they intended to file a motion for judgment on the pleadings ("MJOP") at some point in the future, and that, if granted, the resolution of such motion could moot some of the dispute concerning purportedly insufficient FI responses. (*Id.*). Plaintiffs' counsel first raised this concept during the phone call of October 29, 2014. (*Id.*). On December 5, 2014, Plaintiffs' counsel emailed Defendants' counsel requesting a further explanation of the argument that Defendants purportedly intended to raise in an MJOP. (*Id.* ¶ 8). Plaintiffs' counsel provided a summary of Defendants' purported MJOP argument in a response email dated December 10, 2014. (*Id.* ¶ 9).

[1] Even though there is technically only one interrogatory at issue here, each relevant subpart is referred to individually herein for clarity's sake.

The next day, Plaintiffs' counsel sent a letter to Defendants' counsel explaining why the MJOP argument did not appear meritorious. (Franklin Decl. ¶ 10). Thereafter, counsel for the parties agreed that Defendants would provide some form of substantive response to each disputed request by January 19, 2015, which was later extended upon Defendants' counsel's request to January 22, 2015. (*Id.* ¶ 11).

Defendants' served their amended responses on January 22, 2015. (Franklin Decl. ¶ 12). On January 28, 2015, Plaintiffs' counsel sent a letter to Defendants' counsel explaining why the amended responses were insufficient. (*Id.* ¶ 13). On February 4, 2015, counsel for the parties held another telephonic meeting to discuss the disputed discovery responses, and counsel confirmed that the parties were at an impasse regarding, among other things, the amended FI responses. (*Id.* ¶ 14).

To facilitate the meet-and-confer process, the parties agreed to extend the filing deadline for the current motion several times, which was most recently extended to February 17, 2015. (Franklin Decl. ¶ 15). But because the Plaintiffs were unable to obtain sufficient, non-evasive responses after multiple attempts to resolve the disputed matter in good faith, the Motion is now required.

III. ARGUMENT

A. Generally Applicable Law Relevant to Responding to Requests for Admissions

Code of Civil Procedure section 2030.220 sets out the boundaries for responding to interrogatories.

> (a) Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits.
>
> (b) If an interrogatory cannot be answered completely, it shall be answered to the extent possible.
>
> (c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.[2]

[2] None of the disputed responses addressed herein include a statement that "responding party does not have personal knowledge sufficient to respond fully[.]" (Sep. Statement *passim*).

If "[a]n answer to a particular interrogatory is evasive or incomplete[,]" "the propounding party may move for an order compelling a further response[.]" Civ. Proc. Code § 2030.300(a)(1).

B. Definitions

The following terms are defined as follows for the purpose of this Memorandum.

APPS: the Armed Prohibited Persons System program, i.e., Prohibited Armed Person File (Penal Code section 30000), and enforcement activities based on data derived from APPS.

DROS Fee/DROS Fee Funds: the fee (which is currently set at $19.00) and funds collected pursuant to Penal Code section 28225 and Code of Regulations, title 11, section 4001.

DROS PROCESS: the background check process that occurs when a firearm purchase or transfer occurs in California.

DROS SPECIAL ACCOUNT: the Dealers Record of Sale Special Account of the General Fund (Penal Code section 28235).

PER TRANSACTION COST: the average cost of performing a given transaction, including a proportional share of overhead costs.

C. Defendants Have Knowingly Refused to Provide Sufficient Responses Notwithstanding Their Ability to Do So–Further Responses Should Be Ordered

All of the responses at issue were served in response to Form Interrogatory No. 17.1. (See Separate Statement in Support of Motion to Compel Further Responses to Form Interrogatories, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley [the "Sep. Statement"] *passim*). Form Interrogatory No. 17.1(b) asks, in relevant part: "Is your response to each request for admission served with these Interrogatories an unqualified admission? If not, for each response that is not an unqualified admission . . . state all facts upon which you base your response . . . [.]" (*Id. passim*). Accordingly, the form interrogatory responses discussed herein concern only request for admission ("RFA") responses that are something other than unqualified admissions (i.e., denials, qualified admissions, or statements of inability to comply).

Though the relevant RFAs, responses, and amended responses are all stated in full and responded to in the Separate Statement filed herewith, Plaintiffs discuss the more salient points of the dispute below.

1. Defendants' Cut-and-Paste Responses Are Insufficient, and Further Responses to FI 17.1(b) (Re: RFA Nos. 18, 19, 21, and 22) Should Be Ordered

Defendants provided the same response to Form Interrogatory No. 17.1(b) regarding Request for Admission Nos. 18, 19, 21, and 22; i.e.,

> [d]epending on the circumstances of a particular case, payment of a DROS fee may ultimately lead to a ***benefit*** realized by the payor vis-a-vis the APPS program. For example, a person who pays a DROS fee may later become prohibited from possessing firearms and have firearms recovered as a result of the APPS program.

(*e.g.*, Sep. Statement 2:15-18) (emphasis added).

RFA Nos. 18, 21, and 22 do not concern a "benefit" at all, and as the response provided concerns only a supposed "benefit[,]" the responses plainly do not actually respond to the question asked. In fact, it is clear that the response provided for FI 17.1 (re: RFA Nos. 18, 21, and 22) was copied from Defendants' response to FI 17.1 (re: RFA No. 17) where a special benefit *was* at issue.[3] (Franklin Decl. ¶¶ 21, 22; Sep. Statement *passim*).

And as to Request No. 19, that request does concern a "benefit[,]" but the question at issue inquires whether one class of individuals get a different "benefit" than another class of individuals. (Sep. Statement 3:4-6). Because the response provided has nothing to do with the comparative question being asked, a further response is required. Civ. Proc. Code § 2030.220(a).

The relevant RFAs and FIs go to one of the issues at the core of this case, e.g., whether the DROS Fee has become, at least in part, an illegal tax under article XIII A, section 3, of the California Constitution (i.e., Proposition 26). The California Constitution clearly excludes certain levies from being characterized as taxes if the payor gets a "special benefit" or "special government service[,]" and it appears Defendants are attempting to avoid providing "complete and straightforward" responses because doing so would be damaging to their case. Further responses should be ordered. Civ. Proc. Code § 2030.220(a).

[3] Because of the possibility that Defendants were treating the relevant terms as synonymous ("benefit[,]" "special privilege," and "APPS-related service"), Plaintiffs expressly explained to Defendants how, by simply swapping the relevant terms for the oft repeated "benefit[,]" the amended responses would be legally compliant, even if Plaintiffs substantively disagreed with such responses. (Franklin Decl. ¶ 13 [Ex. 5 at 3-4]). No (additional) amended responses were provided, however, confirming Defendants do *not* treat the terms at issue as synonymous, and that further responses should be ordered.

2. Defendants' Cannot Use Evasive Responses to Avoid Answering Relevant Questions—Further Response to FI 17.1(b) (Re: RFA No. 38) Should Be Ordered

Here, Plaintiffs asked Defendants to "[a]dmit that the PER TRANSACTION COST of the DROS PROCESS is less than $19.00." (Sep. Statement 5:26-6:2). Defendants denied this request, which obviously means Defendants contend the cost at issue is $19.00 or more. Plaintiffs believe the denial provided may be untrue. Regardless, as stated in a well-regarded practice guide, when a responding party provides an unqualified denial to an RFA that does not appear true, "[t]he proper procedure in such a case is to serve interrogatories on the responding party asking him or her to state the facts upon which the denials are based." Hon. William F. Rylaarsdam, et al., Cal. Practice Guide: Civil Procedure Before Trial ¶ 8:1378-81 (The Rutter Group 2014).

The FI response at issue does not provide any facts that support Defendants' claim that the cost at issue is at least $19.00. Indeed, Defendants' response consists of a reference to special interrogatory responses, which is in and of itself improper. *Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 783-784 (1978). Furthermore, the cited special interrogatory responses, produced more than six months ago, specifically state that Defendants are going to produce a estimate of the relevant cost. (Sep. Statement 6:8-9); Franklin Decl. ¶ 23 [Ex. 12 at 2:1-16]). No such production has occurred as of the date of this filing.

A key allegation in this lawsuit is that the DROS Fee being charged is not justified based on the list of costs to be considered in setting such cost. *See* Penal Code § 28225. FI No. 17.1(b) (re: RFA No. 38) seeks facts supporting the contention that the current fee is properly set based on relevant costs incurred by the California Department of Justice (the "Department" or "CAL DOJ"). If Defendants have facts to support their contentions, they must produce them, as such facts are indisputably relevant. And if Defendants do *not* have such facts, that too is clearly relevant to Plaintiffs' claim that the amount of the DROS Fee is unfounded, and in that situation, Defendants should be required to provide a further response that reflects their lack of factual support on this issue. Civ. Proc. Code § 2030.220(a).

3. Vague, Obfuscatory Responses Are Insufficient—Defendants Should Be Ordered to Provide Further Responses as to FI No. 17.1(b) (Re: RFA Nos. 58 and 68)

Defendants provided the same response to FI No. 17.1(b) regarding RFA Nos. 58 and 68, i.e.:

> The Bureau of Firearms is aware of the amount of money necessary to fund its program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget.

(Sep. Statement 7:5-8, 8:18-22).

This response is improperly evasive. The underlying RFAs ask Defendants about whether Defendants are aware of (a) what the Department paid for "electronic or telephone transfer of information pursuant to Penal Code section 28215," and (b) a calculation being performed "to determine the sum of the estimated costs listed in [Penal Code] SECTION 28225(c)." (Sep. Statement 6:22-25, 8:9-11).

As to issue (a), the response provided does not actually give any facts to support the relevant RFA responses. Instead, the Defendants make a blanket statement that, *in total*, the Department knows what its "program costs" are. (*Id.* at 6:22-25). Plaintiffs did not ask for "total" information, as their claim that the DROS Fee is too high hinges on the specific costs that are considered in setting the DROS Fee. (Compl. 18:20-19.21). And regardless, had Defendants identified where in the "publicly available" material relevant *specific* facts are contained, Plaintiffs would not need to pursue a further response. But, of course, the Governor's Budget does not go into the level of detail Defendants implicitly claim, meaning Defendants' "misdirect" to the Governor's budget was inappropriate.

Issue (b) is a similar matter. Based on Defendants' denial of RFA No. 68, the Department is aware "of a calculation being performed after January 1, 2005, to determine the sum of costs and estimated costs listed in [Penal Code] Section 28225(C)." (Sep. Statement 8:9-11). Again, the response provided says nothing about the calculation at issue. It may well be that the calculation at issue was part of a bigger determination, but as it appears Defendants are attempting to avoid direct responses by providing general (and thus non-responsive) statements, the responses cannot

withstand a challenge.

Defendants should be ordered to provide further responses that are "straighforward[,]" as required by law. Civ. Proc. Code § 2030.220(a).

4. Defendants' Response to RFA No. 78 Is Not an "Unqualified Admission[,]" Thus a Response to FI 17.1 (Re: RFA No. 78) Is Required

RFA No. 78 asks Defendants to admit if the current DROS Fee was set based on a comparison of the money that went into, and flowed out of, the DROS Special Account. (Sep. Statement Sep. Statement 9:24-26). In response, Defendants stated "[a]dmitted, although that comparison was not the sole basis for setting the fee at $19.00." (*Id.* at 9:27-10:1). That response is clearly not a an "unqualified admission[,]" meaning that Defendants were required to provide the facts supporting their RFA response pursuant to FI 17.1(b) (re: RFA No. 78). They did not. A further response is required. Civ. Proc. Code §§ 2030.290(b),[4] 2030.300(a)(1).

5. Defendants Cannot Avoid Providing Discovery Responses Based on a Hypothetical Argument—Further Responses to FI 17.1 (Re: RFA Nos. 83-86, 88, and 89) Are Required

Defendants provided the same response to FI No. 17.1(b) regarding RFA Nos. 83, 84, 85, 86, 88, and 89, i.e.:

> This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not "result[] in any taxpayer paying a higher tax[.]" Cal. Const., art. XIIIA § 3(a). Thus, ***at this time*** defendants have no position either way on the precise issue identified in this request for admission.

(*E.g.,* Sep. Statement 11:2-5) (emphasis added).

This response is based on an argument that is fully debunked in the Motion to Compel Further Responses to Request for Admissions, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley that is being filed contemporaneously herewith. That motion concerns insufficient responses to RFA Nos. 83, 84, 85, 86, 88, and 89, the same RFAs that provide the foundation for the disputed response(s) quoted above. Put simply, Defendants are trying to avoid providing a handful of responses that, apparently, will be detrimental to Defendants' case.

[4] Because Defendants failed to provide a response to one specific interrogatory subsection, but otherwise responded, Plaintiffs contend their motion is properly heard under Code of Civil Procedure section 2030.300(a). Plaintiffs only raise Code of Civil Procedure section 2030.290(b) in an abundance of caution.

Defendants cannot have their cake and eat it too by failing to provide proper responses now *but also* leaving themselves a window to provide compliant responses at some time in the future (e.g., "***at this time*** defendants have no position either way on the precise issue identified in this request for admission." (*E.g.,* Sep. Statement 11:2-5)) (emphasis added). The Discovery Act does not provide that an inchoate mootness argument is a sufficient justification for a court to disregard the normal rules of discovery.

Plaintiffs do not want to burden the Court by repeating the argument stated in the motion filed herewith, but they nonetheless must emphasize that the argument framed in the response(s) quoted above appears to be a facial challenge that could have been brought in a demurrer or motion for judgment on the pleadings at any time since this action was filed, which occurred in late *2013*. (Compl.) Defendants, however, did not raise this argument until Plaintiffs challenged Defendants' insufficient discovery responses. (Franklin Decl. ¶ 7).

It is quite hard to accept Defendants' statement that they "have no position either way on the precise issue identified in this request for admission." (*E.g.,* Sep. Statement 11:2-5). The underlying requests all refer to certain classes of levies that are excluded from being classified as taxes under Proposition 26. Cal. Const. art. XIII A, § 3(b) (Sep. Statement 10:19-21, 11:16-17, 12:12-14, 13:8-10, 14:4-6, 14:28-15:2). Clearly, Defendants contend that at least one of the Proposition 26 exclusions applies. That is, because Defendants contend "that the use of DROS funds does not operate as a tax[,]" they have, necessarily, already made a determination that one of the exclusions applies, or else they would be precluded from contending "that the use of DROS funds does not operate as a tax." (Sep. Statement *passim*).

Defendants clearly *do* have a position on the relevant issue, and there is no justification for their failure to provide support for their questionable responses to the underlying RFAs (e.g., "Unable to admit or deny."). Because Defendants' response is evasive and appears to be based on a false premise, further responses should be ordered. Civ. Proc. Code § 2030.220(a).

6. Defendants' Responses Are Prolix But Fail to Actually Provide Responsive Facts as Required: Further Responses to FI No. 17.1(b) (Re: 92-96 and 99) Should Be Ordered

Defendants provided the same response to FI No. 17.1(b) regarding RFA Nos. 92, 93, 94,

95, 96, and 99, i.e.:

> The California Department of Justice in general, and its Bureau of Firearms in particular, serves law enforcement, legislators and the general public by engaging in a wide array of education, regulation, and enforcement activities regarding the manufacture, sales, ownership, safety training, transfer and possession of firearms. The Department and its Bureau receive funding for these activities from the DROS special account, within which the DROS fees are deposited.

(*E.g.*, Sep. Statement 16:2-5).

All of the underlying RFAs were denied by Defendants, meaning Defendants were required to provide facts that support the denial, per the terms of FI No. 17.1(b). Once again, Defendants provided a general statement that might theoretically incorporate a reference to a responsive fact, but because such facts would be indistinguishable assuming they exist, the response above is clearly not "as complete and straightforward as the information reasonably available to the responding party permits." Civ. Proc. Code § 2030.220(a).

For example, RFA No. 93 ask Defendants to "[a]dmit that CAL DOJ has not spent any DROS SPECIAL ACCOUNT money to regulate firearm possession, other than costs arising from APPS." By denying this RFA, Defendants were effectively claiming that some DROS Account money was spent to regulate firearm possession, in addition to such funds spent APPS-based costs. The interrogatory response provided, however, does not identify the type of facts that would support the denial, e.g., a list of non-APPS costs that were both: (a) funded from the DROS Account; and (b) related to the regulation of firearm possession.

As specifically described in the Separate Statement filed herewith, the responses provided to FI No. 17.1(b) (re: RFA Nos. 92, 93, 94, 95, 96, and 99) are evasive. Accordingly, there is ample justification for the Court to order the further responses requested by Plaintiffs. Civ. Proc. Code § 2030.220(a).

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IV. CONCLUSION

As explained above, the disputed responses concern key aspects of this action, and Defendants responses appear impermissibly crafted to evade. Plaintiffs respectfully request the Court grant this Motion and provide the relief requested hereby.

Dated: February 17, 2015

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for the Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On February 17, 2015, the foregoing document(s) described as

NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY; MEMORANDUM IN SUPPORT THEREOF

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

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

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

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on February 17, 2015, at Long Beach, California.

X (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.

Christina Sanchez
CHRISTINA SANCHEZ

Exhibit 1A

C. D. Michel - S.B.N. 144258
Glenn S. McRoberts - S.B.N. 144852
Scott M. Franklin - S.B.N. 240254
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION

Plaintiffs and Petitioners,

vs.

KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller for the State of California, and DOES 1-10.

Defendants and Respondents

CASE NO. 34-2013-80001667

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

By Fax

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DECLARATION OF SCOTT M. FRANKLIN

I Scott M. Franklin, declare:

1. I am an attorney at law admitted to practice before all courts of the State of California. I have personal knowledge of each matter and the facts stated herein as a result of my employment with Michel & Associates, P.C., attorneys for Plaintiffs/Petitioners ("Plaintiffs"), and if called upon and sworn as a witness, I could and would testify competently thereto.

2. Plaintiffs served a first set of Requests for Admissions ("RFA") and a first set of Form Interrogatories ("FI") on Defendants Kamala Harris and Stephen Lindley on May 14, 2014.

3. Defendants provided responses to RFA Set One and FI Set One on August 1, 2014, pursuant to a courtesy extension granted by Plaintiffs.

4. Soon after receipt of the responses provided on August 1, 2014, I determined those responses to be insufficient (e.g., the Defendants did not provide substantive responses to RFA Nos. 83-86 and 88-89), and after some discussion with opposing counsel on the matter (and an agreement to address the issue after I returned from my honeymoon, which took me out of the office from September 12 through 30, 2014), I sent a letter explaining the insufficiency to Defendants' counsel on October 17, 2014. A true and correct copy of that letter is attached hereto as Exhibit 1.

5. On October 29, 2014, I had a telephonic conference with Defendants' counsel, Mr. Anthony Hakl, to discuss the disputed discovery responses. Mr. Hakl agreed that as to each of the disputed responses, the Defendants would provide some form of further response (be it a substantive response or a statement that no further response would be voluntarily provided) by November 26, 2014.

6. The November 26, 2014 deadline was extended, at the request of the Defendants, to December 9, 2014.

7. On December 4, 2014, I received a letter from Mr. Hakl proposing that the parties put the dispute concerning Defendants' RFA and FI responses on hold. The proposal was based on a claim that Defendants intended to file a motion for judgment on the pleadings ("MJOP") at some point in the future, and that, if granted, the resolution of such motion could moot some of the

disputed requests. Mr. Hakl first raised this concept to me during the phone call of October 29, 2014. A true and correct copy of the letter dated December 4, 2014, is attached hereto as Exhibit 2.

8. On December 5, 2014, I emailed Mr. Hakl requesting a further explanation of the argument that Defendants purportedly intended to raise in an MJOP.

9. Mr. Hakl provided a summary of Defendants' purported MJOP argument in a response email dated December 10, 2014. A true and correct copy of that email is attached hereto as Exhibit 3.

10. I sent a letter to Mr. Hakl on December 11, 2014. That letter states: (a) why the MJOP argument did not appear meritorious; and (b) that the majority of the requests for admissions concerned facts and opinions related to causes of action that would not be resolved even if the contemplated MJOP were ultimately granted. A true and correct copy of that letter is attached hereto as Exhibit 4.

11. Based on a proposal in my letter of December 11, 2014, Mr. Hakl and I agreed that Defendants would provide some form of substantive response to each disputed request by January 19, 2015, which was later extended upon Mr. Hakl's request to January 22, 2015.

12. My office received Defendants' amended RFA and FI responses on January 22, 2015.

13. I sent a letter to Mr. Hakl on January 28, 2015, explaining why the amended responses were insufficient. A true and correct copy of that letter is attached hereto as Exhibit 5.

14. Mr. Hakl and I participated in a telephonic meeting on February 4, 2015, to discuss the disputed discovery responses, and Mr. Hakl confirmed that the parties were at an impasse regarding, among other things, the RFA and FI responses that are at issue in the motions filed contemporaneously herewith.

15. The meet-and-confer process detailed in Paragraphs 3-14 above meets the requirement found in Code of Civil Procedure section 2016.040. To facilitate the meet-and-confer process, the counsel for the parties agreed to extend the filing deadline for the current motion several times, which was most recently extended to February 17, 2015.

16. A true and correct copy of excerpts of a document produced by Defendants (DROS Fee Regulations Public Comments and DOJ Responses, dated December 15, 2010) is attached to Exhibit 6.

17. A true and correct copy of SB 819, as enacted, is attached hereto as Exhibit 7.

18. A true and correct copy of excerpts of the document titled "California Department of Justice Legislative Analysts' Office Supplemental Report of The 2002 Budget Act [—] Item 0820-001-0460 Dealers' Record of Sale Fund (DROS)" is attached hereto as Exhibit 8.

19. A true and correct copy of excerpts of Defendants' RFA responses served herein is attached hereto as Exhibit 9.

20. A true and correct copy of the fund summary for the DROS Special Account (Fund No. 460) dated July 27, 2010, and produced by Defendants in this matter, is attached hereto as Exhibit 10. The current version of the relevant fund summary is available at http://www.dof.ca.gov/accounting/manual_of_state_funds/index/documents/0460.pdf as of the date of this Declaration. The current version of the fund summary states that it was amended August 2012.

21. A true and correct copy of excerpts of Defendants' Amended Responses to RFA, Set One, is attached hereto as Exhibit 11.

22. A true and correct copy of excerpts of Defendants' Amended Responses to FI, Set One, is attached hereto as Exhibit 12.

23. A true and correct copy of excerpts of Defendants' Response to Special Interrogatories, Set One, is attached hereto as Exhibit 13. This set of discovery responses was received by my office on or about August 1, 2014.

24. A true and correct copy of excerpts of Defendants' Amended Responses to Requests for Admission, Set One, produced in the action *Bauer et al. v Harris et al.*, 1:11-cv-1440-LJO-MJS (E.D. Cal.), is attached hereto as Exhibit 14.

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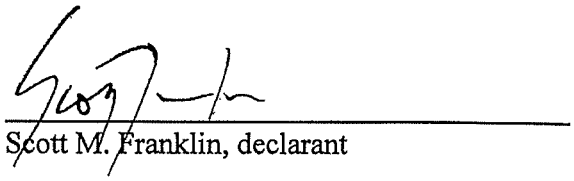
I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on February 17, 2015, at Long Beach, California.



Scott M. Franklin, declarant

EXHIBIT 1

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October 17, 2014

VIA EMAIL & U.S. MAIL

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Re: ***Gentry v. Harris*, Case No. 34-2013-80001667**
Meet-and-Confer re: Defendants' Responses to Various Discovery Requests

Dear Mr. Hakl:

This letter constitutes our initial attempt to meet and confer with you regarding certain insufficient or otherwise problematic responses provided to this office by your clients on August 1, 2014. We propose a telephonic meeting on October 24, 2014, to discuss the responses for the purpose of determining if the parties can resolve the current discovery dispute without judicial intervention. We are flexible on the date and time of the teleconference, and do not have any objection to it being held later than October 24, 2014, assuming the stipulated motion to compel filing deadline (currently November 7, 2014) is moved back accordingly.

Before addressing specific deficient responses, two general issued must first be addressed.

First, Defendants' responses to the relevant requests for production of documents include the common but problematic promise to produce documents "without waiving these objections," making it difficult for Plaintiffs to determine what objections Defendants are actually relying on to withhold documents. Thus, please inform me whether or not any documents are being withheld on a privilege claim, and if one or more document is being withheld for that reason, please provide a privilege log on or before October 31, 2014.

Second, Defendants' responses include several privilege claims on issues related to evidence of how the DROS Fee was set at $19.00 and similar Department analysis (see, e.g., Defendants' responses

to Request for Production Nos. 26 and 28, Defendants' response to Form Interrogatory No. 15.1). Please be advised that, as to any relevant information withheld pursuant to a privilege claim, Plaintiffs will seek to exclude testimony on such subjects at trial. For example, if Defendants withhold the specifics of how the $19.00 DROS Fee was calculated (e.g., identification of the specific costs and estimated costs, if any, that were considered in selecting the $19.00 amount) under an official information, deliberative process, executive process, or any other privilege, Plaintiffs will make the necessary motion(s) in limine to prevent Defendants from introducing evidence as to what went into such calculations, and whether or not the relevant analyses were appropriate or legally sufficient. *See, e.g., A & M Records v. Heilman*, 75 Cal. App. 3d 554, 566-67 (1977).

The specific insufficiencies of Defendants' responses are outlined below.

(DOJ) Defendants' Responses to Plaintiffs' Request for Production of Documents, Set One

Request Nos. 1, 2, 3 & 5

The Department's responses improperly limits the scope of response to responsive documents created in the last two years, based on an objection that the requests are unlimited as to time and thus the burden of responding would be oppressive. This case is primarily about whether the DROS Fee being charged since 2005 ($19.00) is justified. These requests seek to obtain documents that show what costs or estimated costs were or could have been considered in setting/maintaining the $19.00 fee. Thus, the information is relevant, and the Department has failed to provide any evidence that the time frame(s) at issue somehow create a situation that is oppressive. *See, e.g., West Pico Furniture Co. v. Super. Ct.*, 56 Cal. 2d 407, 417 (1961) (no oppression where party responding to interrogatory claimed proper response would require searching records at 78 locations, but without explaining the amount of hours of work that such search would require).

Plaintiffs cannot accept temporally truncated responses on an unsupported oppression claim. In fact, it may be that a declaration of purported burden and oppression, filed in opposition to a motion to compel, would actually inure to Plaintiffs' benefit because it would show that the Department cannot provide any evidence regarding the specifics of how the DROS Fee was set in 2005. In the spirit of compromise, and without knowing what the basis is for the objection at issue, Plaintiffs can accept as sufficient a response that is narrowed to responsive documents concerning the years FY 2003-2004 to the present. Agreeing to a limitation period starting any later, however, unreasonably limits the response period to *after* when the DROS Fee was set at $19.00, and the setting of that fee is relevant to this case.

As to the documents actually produced, they do not appear to be responsive. That is, the "budget documents" at issue do not respond to the requests at issue. For example, Request Nos. 1-2 seek documents "that show[] the calculation of a cost, including an estimated cost, referred to in SECTION 28225" of the Penal Code, or that show a figure identified as such a cost. The "budget documents" do not expressly show a section 28225 cost being calculated or simply stated, and if the Department contends these documents impliedly do, its is the Department's duty to explain how that information can be extracted. *See* Civ. Proc. Code § 2031.280.

Request Nos. 7, 8, 17, 18, 32, 33 & 38

The Department appears to have limited its response to documents created January 1, 2010, or after. The Department has not provided any justification for limiting the time frame of this response, which means the objection will fail. The Department has failed to provide any evidence that the time frame(s) at issue somehow create a situation that is oppressive. *See, e.g., West Pico Furniture Co. v. Super. Ct.*, 56 Cal. 2d 407, 417 (1961) (no oppression where party responding to interrogatory claimed proper response would require searching records at 78 locations, but without explaining the amount of hours of work that such search would require).

As indicated above, the fact that the DROS Fee was set in 2005 means that documents from around that same time (e.g., starting January 1, 2004) are relevant to this case, which concerns the validity of the $19.00 DROS Fee currently being charged. Therefore, it seems the reasonable compromise is that the Department should provide further responses to these requests subject to a limitation that otherwise responsive documents appearing to have been created prior to January 1, 2004, need not be produced.

Request Nos. 11, 12, 13 & 14

These requests seek documents related to CONTACTS as that term is defined in the request. A statistical chart was provided that does not refer to CONTACTS in any way, which means the entire response is non-responsive. If it is the case that the requested documents (concerning CONTACTS) do not exist, a response stating such would be sufficient. And the production of responsive documents would obviously also be a proper response. If the Department contends neither of those options are available to it (especially if that is because the Department is relying on "the official information, law enforcement and[or] executive privileges"), however, this may be the type of issue that can be resolved via the production of a chart similar to what was offered, but concerning CONTACTS.

Request Nos. 21 & 22

The Department appears to have limited its responses to responsive documents created during or after fiscal year 2010-2011. The Department has not provided any justification for limiting the time frame of this response, which means the objection will fail. The Department has failed to provide any evidence that the time frame at issue somehow create a situation that is oppressive. *See, e.g., West Pico Furniture Co. v. Super. Ct.*, 56 Cal. 2d 407, 417 (1961) (no oppression where party responding to interrogatory claimed proper response would require searching records at 78 locations, but without explaining the amount of hours of work that such search would require).

As indicated above, the fact that the DROS Fee was set in 2005 means that documents from around that same time (e.g., starting January 1, 2004) are relevant to this case, which concerns the validity of the $19.00 DROS Fee currently being charged. Therefore, it seems the reasonable compromise is that the Department should provide further responses to these requests subject to a limitation that otherwise responsive documents appearing to have been created prior to January 1, 2004, need not be produced.

Furthermore, Defendants' executive privilege and deliberative process objections are without

merit. Even assuming for the purpose of argument that a budget change proposal could be a non-public document, Defendants have failed to provide any evidence as to how budget change proposals could be withheld under the executive or deliberative process doctrines in this instance. If Defendants do not provide a legitimate explanation as to why documents that are not normally privileged (e.g., responsive budget change proposals approved since fiscal year 2010-2011, which Defendants agreed to provide) are apparently being withheld, Plaintiffs will have sufficient grounds to seek judicial relief on this issue. Civ. Proc. § 2031.310(a)(3).

Request No. 25

Defendants' response is unclear as to whether only responsive documents are within the 2010 rulemaking file, or if the only documents being *produced* are those in the 2010 rulemaking file. If it is the latter and other responsive documents exist that are not part of the 2010 rulemaking file (e.g., a statement to a member of the public as to why the 2010 rulemaking was abandoned), Defendants need to express that clearly. Such information should be included in the privilege log requested.

Request No. 29

The response at issue appears to indicate that neither the relevant rulemaking file, nor documents that would be a part thereof, can be found by Defendants after a diligent search. Please confirm that Plaintiffs' understanding of this response is correct.

Request No. 30

Defendants' response is unclear as to whether only responsive documents are within the 2010 rulemaking file, or if the only documents being *produced* are those in the 2010 rulemaking file. If it is the latter and other responsive documents exist that are not part of the 2010 rulemaking file (e.g., a transcript of comments made the hearing of September 15, 2010), Defendants need to express that clearly. Such information should be included in the privilege log requested.

(SCO) Defendants' Responses to Plaintiffs' Request for Production of Documents, Set One

Request Nos. 5 & 6

These responses state that the respondent "will comply with this demand in part." Please provide clarification as to what is being withheld, if anything, why, and the distinction, if any, between what is withheld and what has been provided. Civ. Proc. Code § 2031.240.

(SCO) Defendants' Responses to Plaintiffs' Special Interrogatories, Set One

Interrogatory Nos. 5, 6 & 7

The interrogatories seek information that would appear to be in the respondents' possession, i.e., information related to disbursements from a fund the respondent oversees. Perhaps it is the case that the response at issue (the same for all three requests: "The State Controller's Office is not in possession of this information.") is intended to mean that the requested information does not exist.

The way the response is phrased, however, is ambiguous and could mean that the responding party is aware of the existence of the requested information, but such information is not in the responding party's possession. Please provide a further clear and straightforward response to resolve this ambiguity. Civ. Proc. Code § 2030.220(a), (b).

(DOJ) Defendants' Responses to Plaintiffs' Requests for Admissions, Set One

Request Nos. 12, 14[1], 41 & 101

Defendants claim that the requests at issue are improperly repetitive because they seek an admission or denial on an issue for which a "mirror image" request is already made. E.g., Defendants would object to the request "admit X did not occur" if they previously responded in the affirmative to the request "admit X did occur."

First, there are only four requests at issue (and potentially four corollary form interrogatory responses), so a claim that the requests are unfairly burdensome does not rise to the level of actionable oppression, especially without a challenge to the declaration of necessity filed with the requests. Civ. Proc. Code § 2033.080(2). Second, because Plaintiffs did not know whether Defendants would admit or deny (or claim an inability to respond) on the issues of interest, it made sense to provide "mirror" requests on select issues; had Plaintiffs not done so, and asked only for "positive" claims (e.g., admit the use of DROS FEE funds for APPS operates as a tax), that would not have fleshed out the issue actually in dispute, and would have likely required an additional round of discovery to get at the substance of the matters actually in dispute. Third, as there are "repetitive" responses Defendants respond to without objection (Request Nos. 11, 13, 40, and 100), the fact that the "repetitive" requests that require additional work (in the form of form interrogatory responses) *are* being objected to confirms that the real basis of the objection is that Defendants don't want to provide the related form interrogatory responses that Defendants plainly have a duty to. Civ. Proc. Code § 2033.010; 2033.710

The intention behind Plaintiffs' limited use of "mirror" requests for admissions was to narrow the issues for trial. To the extent Defendants denied a proposition Plaintiffs believe should be admitted, Plaintiffs have the right to use form interrogatories to obtain an explanation as to why Defendants did not admit something Plaintiffs believes they should have. Complete responses (i.e., denials, as supported by form interrogatory responses, or unequivocal admissions) to Request Nos. 12, 14 (as corrected, see footnote one), 41, and 101, are required.

Request No. 15

Plaintiffs disagree with Defendants' claim that this request is "so ambiguous that the

[1] Request for Admission No. 14 includes a typographical error, viz., the word "not" was unintentionally included in the request, making it literally duplicative of the prior request. Based on the pattern of responses provided by Defendants, it is assumed that Defendants still would have objected to this request as repetitive regardless of this error, so it is considered along with the other "repetitive" objections herein. To the extent that assumption is in error, please advise counsel accordingly.

responding party cannot in good faith frame an intelligent reply." It is obvious that this request asks whether the operation of the DROS PROCESS can occur regardless of whether APPS is operational or not. If Defendants decide to rely on their current response, Plaintiffs are confident a judge would find the response insufficient under Code of Civil Procedure section 2030.220(a),(b). Accordingly, Defendants should provide a straightforward and complete response.

Request Nos. 17, 18, 19, 21-26 &101

Because of the number of times Defendants attempt to rely on this "long objection," each portion thereof is discussed individually below to explain how the entirety of the objection is without merit.

> *"Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax."*

Defendants have not "admitted the use of DROS funds does not operate as a tax" as Defendants claim here; they actually admitted that "*it is the position of CAL DOJ* that the use of DROS FEE FUNDS to fund APPS does not in any way operate as a tax under state law." (Emphasis added). Indeed, the requests at issue are relevant *specifically because* Plaintiffs are challenging the legal position being taken by Defendants. Defendants are effectively trying to make the claim that because they admit what their legal position is, Plaintiff can't seek information about it! Requests for admission are indisputably a proper tool to obtain information concerning a "matter in controversy between the parties[,]" expressly including the "application of law to fact." Civ. Proc. Code § 2033.010.

> *"The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (Cembrook v. Superior Court (1961) 56 Cal.2d 423, 429; see also Stull v. Sparrow (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial."*

Code of Civil Procedure section 2033.010 expressly states that the use at issue (requesting an admission on the application of law to fact) is proper. Furthermore, the interpretation of *Cembrook* offered by Defendants is far off the mark: the California Supreme Court expressly cites *Cembrook* for exactly the *opposite* of what Defendants are arguing here.

> When a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.'(*Cembrook v. Superior Court of City and County of San Francisco, Supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.)

Burke v. Super. Ct. 71 Cal. 2d 276, 282 (1969). In fact, Defendants' expressed plan to wait until trial to contest the substantive issues underlying the relevant requests is exactly the kind of conduct requests

for admissions are intended to prevent. It is clear that requests for admissions can be used to set at rest triable issues, be they factual *or* legal. Finally, it should be noted that *Stull* does not discuss Defendants' contention (e.g., the supposed impropriety of using requests for admissions regarding legal contentions) at all; it simply notes, as a perfunctory issue and in a general sense, "Requests for admissions differ fundamentally from other forms of discovery[; r]ather than seeking to uncover information, they seek to eliminate the need for proof." Indeed, *Stull* implicitly supports *Plaintiffs'* position. *Stull* concerns a propounding party's ability to recover expenses for the responding party's failure to properly admit a request for admission of a *legal* issue – *Stull*'s discussion of the expense recovery issue is predicated on the undisputed fact that the request for admission of a legal contention was valid.

> *"The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. St. Mary v. Superior Court (2014) 223 Cal.App.4th 762, 783-784." Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (Haseltine v. Haseltine (1962) 203 Cal.App.2d 48, 61; see also Elston v. City of Turlock (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in Tackett v. City of Huntington Beach (1994) 22 Cal.App.4th 60, 64-65.)"*

Again, the cited material is completely off point, and in no way supports the claim that requests for admissions cannot be use regarding legal contentions. *St. Mary* concerns a propounding party's attempt to get 41 requests for admissions deemed admitted after the opposing party, having been denied a short courtesy extension, filed a slightly tardy discovery response. The "windfall" referred to in *St. Mary* had nothing to do with what Defendants are attempting to argue here, it had to do with a party who was abusing the process available to have requests for admissions deemed admitted by a court.

Similarly, the citations to *Haseltine* and *Elston* are clearly inappropriate. The quoted material from *Haseltine* is mixed with material that is not from *Haseltine*, a questionable practice. Regardless, *Haseltine* is another case that actually concerns a party's ability to obtain an award of expenses as to proving the substance of a denied request for admission. And though it is not entirely clear, it seems at least some of the requests for admission at issue were requests concerning *legal* contentions (again implicitly supporting *Plaintiffs'* position on the issue at hand). Finally, Defendants' quotation of *Elston* is baffling, as it is yet another case that concerns an issue ancillary to one or more request for admission seeking a *legal* contention. *Elston* concerns requests that were deemed admitted, thus the statement that "the request at issue here did not include issues as to which the parties might conceivably agree" was taken completely out of context by Defendants. It is misleading to use that quote, which refers to the concept of responses that are deemed admitted, to support a discovery objection arguing that requests for admissions cannot be used to nail down legal positions.

Defendants' objection is baseless. Plaintiffs will be successful on a motion to compel further responses to Request Nos. 17, 18, 19, 21, 22, 23, 24, 25, and 101. Accordingly, unless Defendants

want to raise these same objections before a judge, further responses must be provided in a timely manner.

Request No. 26

Defendants' response to this request include the "long objection" discussed in detail above and an additional objection that the following phrases "are so ambiguous that the responding party cannot in good faith frame an intelligent reply": "costs arising from the implementation of APPS" and "regulatory costs directly arising from performing background investigations as part of the DROS PROCESS." It is my honest belief that these phrases are not ambiguous and that a court would agree such a claim is evasive. Specifically, the fact that Defendants chose to include the long objection discussed above, which takes issue with the substance of the request, strongly suggests that Defendants do have a sufficient understanding to attempt a response to this request. That is, if this request is actually unintelligible as Defendants claim, they would not have known that they wanted to use "long objection," which is only used in response to a limited number of requests.

This request can be rephrased as follows: "Admit that the performance of background checks as part of the DROS PROCESS does not require any costs to be incurred that are recorded in accounting records as attributable to APPS." A further response should be provided. Civ. Proc. Code § 2030.220(a),(b).

Request No. 33

The Department's response improperly limits the scope of response to the last five years, based on an objection that the request is unlimited as to time. This case is primarily about whether the DROS Fee being charged since 2005 ($19.00) is justified. These requests seek to obtain information that shows what costs or estimated costs were, or could have been, considered in setting/maintaining the $19.00 fee. Thus, the information sought is obviously relevant, and the Department has failed to provide any evidence that the time frame at issue somehow create a situation that is oppressive. *See, e.g., West Pico Furniture Co. v. Super. Ct.*, 56 Cal. 2d 407, 417 (1961) (no oppression where party responding to interrogatory claimed proper response would require searching records at 78 locations, but without explaining the amount of hours of work that such search would require). Plaintiffs are willing to accept a response that is limited to the time frame of January 1, 2004, to the present.

If Defendants are unaware of a report created January 1, 2004, or later that is substantively relevant to this request, Defendants must provide an unqualified admission. And if Defendants are not aware of such report, an unqualified denial must be provided.

Request No. 36

Defendants' failure to explain how this request is vague is strong evidence that the objection made on that ground is without merit. The question is simple: does the respondent believe it is permitted by law to set the DROS Fee at an amount that the respondent believes will provide total DROS Fee revenue equal to or greater than the total costs of the DROS Process and APPS? Failure to provide a straightforward answer violates the Discovery Act. Civ. Proc. Code § 2033.220(a), (b).

Request Nos. 42, 43 & 62-67

The Department's responses improperly limits the scope of response to the last five years, based on an objection that the request is unlimited as to time. This case is primarily about whether the DROS Fee being charged since 2005 ($19.00) is justified. These requests seek to obtain information that shows what costs or estimated costs were, or could have been, considered in setting/maintaining the $19.00 fee. Thus, the information sought is obviously relevant, and the Department has failed to provide any evidence that the time frame at issue somehow create a situation that is oppressive. *See, e.g., West Pico Furniture Co. v. Super. Ct.*, 56 Cal. 2d 407, 417 (1961) (no oppression where party responding to interrogatory claimed proper response would require searching records at 78 locations, but without explaining the amount of hours of work that such search would require). Plaintiffs are willing to accept responses that are limited to the time frame of January 1, 2004, to the present, but that response must be either an unqualified admission or unqualified denial.

Request Nos. 44-61, 83-86, 88 & 89

Defendants' objections appear to be nothing more than boilerplate, and Defendants should provide a clear explanation of how each is applicable if Defendant intends to rely on them. Without such explanation, Plaintiffs are not required to speculate as to all of the reasons why such objections might be meritless. For example, Defendants claim that, to respond to this request, it must "reference information not in the possession, custody, and control of defendants." The request, however, concerns whether or not a specific type of request has been made *to DOJ*. As the knowledge of what requests DOJ has received is undeniably in Defendants possession, the objection makes no sense. To the extent Defendants are objecting to these requests based on a claim that responding would require reference to a section of California's statutory code, Plaintiffs are aware of no legal authority for such claim. It is unreasonable to state these requests are objectionable because they do not include the text of a referred to statute (though Plaintiffs will stipulate to the inclusion of such text if that will resolve Defendants' objection). And in any event, the prohibition Defendants appear to rely on (Code of Civil Procedure section 2033.060(d)'s instruction that "Each request for admission shall be full and complete in and of itself") appears to be a prohibition on prefaces or instructions, not referring to code sections.[2]

Defendants responses are evasive. Further responses are required. Civ. Proc. Code § 2030.220(a-c).

Request No. 68 & 81

The objection is evasive, and Plaintiffs have no concern about bringing this matter before a judge. All of the objections incorporated into this objection appear to turn on the fact that these requests refer to, but do not incorporate the text of, Penal Code section 28225(c). It is unreasonable to state these requests are objectionable because they do not include the text of a referred to statute (though Plaintiffs will stipulate to the inclusion of such text if that will resolve Defendants' objection).

[2] Code of Civil Procedure section 2033.060(d) states, in full, "Each request for admission shall be full and complete in and of itself. No preface or instruction shall be included with a set of admission requests unless it has been approved under Chapter 17 (commencing with Section 2033.710)."

And in any event, the prohibition Defendants appear to rely on (Code of Civil Procedure section 2033.060(d)'s instruction that "Each request for admission shall be full and complete in and of itself" appears to be a prohibition on prefaces or instructions, not referring to code sections. Further responses should be provided.

Request Nos. 79 & 82

Plaintiffs are confident the term "specific cost data" is not vague nor ambiguous, it refers to numerical representation of particular expenditures. Accordingly, the response given is evasive. That is, the request at issue did not ask Defendants to admit that a document provides an explanation or evaluation as to why a $19.00 DROS fee is appropriate (which are the responses given), rather, Defendants were asked to admit that a document *utilizing specific cost data* was created to provide an explanation as to why a $19.00 DROS FEE was appropriate. The term "specific cost data" is simply not so ambiguous that it cannot be given a reasonable interpretation and thus be understood. If Defendants truly did not understand what the term was intended to mean, they should have made a good faith effort to interpret it and respond accordingly. Further responses are required. Civ. Proc. Code § 2033.220(a), (b).

Request No. 80

Defendants' response is contradictory: Defendants make privilege (attorney-client, attorney work product doctrine) claims, yet also state that "the Department of Justice considered a variety of issues and made certain determinations in connection with the proposal in 2010 to lower the DROS fee, *as reflected in the relevant rulemaking file[.]*" (Emphasis added). If the consideration and determinations were actually reflected in the relevant file, the privilege claims are waived; and if these matters were not reflected in the relevant file, than Defendants are providing an evasive answer that admits something that is not responsive to the request made. Again, the response provided does not match the request, which seeks a response concerning whether a "review of the revenues into and expenditures out the DROS SPECIAL ACCOUNT" occurred, not (as Defendants responded) "the Department of Justice considered a variety of issues and made certain determinations in connection[.]" The response is evasive and a further response, be it an unequivocal admission, denial, or privilege objection is required. Civ. Proc. Code § 2033.220(a), (b).

Request Nos. 113 & 114

The requests at issue are plainly relevant; they seek to confirm that DROS Fees, and/or funds from the DROS Special Account, were spent on the post-incident investigation of the high-profile deaths attributed to Shareef Allman. Whether or not the DOJ spends DROS Fee money directly or via employee time investigating matters outside the bounds of the DROS Process or APPS is patently relevant to the claims in this case. Because the incident was high-profile, Plaintiffs suspect there is a higher likelihood of memories being more clear and records being more specific, as compared to less publicized matters.

As to the official information, law enforcement, executive privilege, attorney-client, and work product privilege claims, they all fail because the source of a particular DOJ employee's salary, or the particular source of funding for a task known to have been performed, are hard facts that are already in

the public sphere, at least generally. Indeed, if Defendants rely so heavily on privilege claims that Plaintiffs cannot determine what Defendants actually use DROS Fee funds for on a day-to-day basis, Plaintiffs are going to be able to make a strong showing that their concerns about lack of transparency (vis-à-vis the use of DROS Fee funds) are justified.

If Defendants desire an objection-by-objection discussion as to their responses to Request Nos. 113 and 114, we can oblige during the anticipated telephone conference. Otherwise, proper responses (e.g., admissions, denials, or statements and explanations concerning an inability to respond) are now required.

(DOJ) Defendants' Responses to Plaintiffs' Form Interrogatories, Set One

Interrogatory No. 15.1

Defendants' boilerplate objections are vague and need not be responded to because of their lack of specificity. Further, regarding Defendants' privilege objections raised in the context of an interrogatory seeking the basis for the affirmative defenses pled by Defendants, Defendants should be aware that their ability to effectively offer evidence regarding affirmative defenses may be hampered or even precluded if Defendants chose to rely on privileges and not substantively respond to this interrogatory. *See, e.g., A & M Records v. Heilman*, 75 Cal. App. 3d 554, 566-67 (1977).

Regarding Defendants' boilerplate "form" objections, the interrogatory at issue is a form interrogatory, so "form" objections are unlikely to be sustained. Rylaarsdam, et al., *California Practice Guide: Civil Procedure Before Trial* § 8:933 (The Rutter Group 2014).

As to Defendants' objection that it would be "unfair to expect defendants to respond to Form Interrogatory 15.1 because Plaintiffs did not file a verification previously, that objection is at least partially ineffective, as the non-petition portion of the Complaint/Petition did not need to be verified, and the factual underpinnings of the Complaint are basically the same as those that apply vis-à-vis the Petition. Regardless, the failure to include a verification was an oversight, and Plaintiffs intend to file an errata or amended pleading (depending on the preference of the Court) to correct the error, assuming Defendants are willing to stipulate to leave being granted for that purpose.[3]

Unless Defendants intend to oppose leave to add a verification that was unintentionally omitted, the objection based on the non-filing of a verification will be moot. Therefore, a further response should be provided. Civ. Proc. Code § 2030.010(a), (b).

Interrogatory No. 17.1 (Re: Request for Admission Nos. 12, 14, 15, 17-19, 21-26, 33, 36, 41-68, 79-86, 88, 89, 101, 113 & 114)

To the extent Defendants provide a new denial, or an expanded denial, to one of the requests for

[3] Because Defendants waived any objection to the lack of verification by filing an answer and not a motion to strike, Plaintiffs do not see any grounds upon which Defendants could legitimately object to the proposed correction. *Perlman v. Mun. Ct.*, 99 Cal. App. 3d 568, 574 (1979).

admissions listed in the header above, Defendants' response to interrogatory No. 17.1 should be supplemented accordingly.

Interrogatory No. 17.1 (Re: Request for Admission Nos. 42 & 43)

The requests for admission at issue asks Defendants to admit that CAL DOJ is not aware of the specific amount spent, in any given year, on certain cost categories utilized in Penal Code section 28225. Defendants responded "Denied with respect to the last five years." In support of a (partial) denial, Defendants' response to Form Interrogatory No. 17.1 states, in relevant part:

> The Bureau of Firearms is aware of the amount of money necessary to fund its program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget.

This response is evasive. The relevant form interrogatory instruction requires the respondent to "state all facts upon which you base your response[,] i.e., denial. Here, however, the facts stated do not support the denial. Pursuant to the denial, Defendants are claiming that CAL DOJ *is* aware of the specific amount it spent in a given year on each specific cost category. The form interrogatory response, however, cannot support that denial, as the form interrogatory response refers to only the Bureau of Firearms' *general* knowledge of "the amount of money necessary to fund its program costs and meet its statutory obligations." The substantive issue here is clearly specific classes of cost that are paid out of the DROS Special Account, not whether the respondent knows the total amount to fund *all* of its programs and statutory obligations. Those are two very different issues.

In addition, it is unclear why Defendants state "[t]he costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget." Defendants do not make an objection that the information sought is equally available to the propounding party, so that cannot be the explanation for this sentence. Further, the sentence is unclear in that "costs" do not "fund" anything; this use of the word "costs" may be a typographical error (perhaps the intended word was "money"), and Plaintiffs assume as much. Regardless, it seems Defendants are trying to claim the very specific information sought by this portion of Form Interrogatory is publically available in annual budget documents. Plaintiffs' counsel has reviewed the relevant budget documents, and is comfortable representing to a reviewing court that specific information at issue is not expressly stated (and apparently not stated at all) in the cited budgetary documents.

Finally, to the extent Defendants contend the interrogatory response segment at issue was not meant to be a general statement, but instead a statement summarizing that the Bureau of Firearms knows "the [specific] amount of money necessary to fund [each of] its program costs and meet [each of] its statutory obligations[,]" such response is evasive, as it is *narrow* cost categories (DROS Special Account-related cost categories, to be precise) referred to in the relevant requests that are relevant to this lawsuit.

If Defendants are going to continue to assert that a denial is a proper response to Request for Admission Nos. 42 and 43, Defendants' response to Form Interrogatory 17.1 must be supplemented

with a good faith identification of the specific facts that support such a denials. Civ. Proc. Code § 2030.010(a), (b).

Interrogatory No. 17.1 (Re: Request for Admission Nos. 62 & 64)

The requests for admission at issue asks Defendants to admit that CAL DOJ is not aware of the specific amount spent, in any given year, on certain cost categories utilized in Penal Code section 28225. Defendants responded "Denied with respect to the last five years." In support of a (partial) denial, Defendants' response to Form Interrogatory No. 17.1 states, in relevant part:

> The Bureau of Firearms is aware of the amount of money necessary to fund its program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget.

This response is evasive. The relevant form interrogatory instruction requires the respondent to "state all facts upon which you base your response[,] i.e., denial. Here, however, the facts stated do not support the denial. Pursuant to the denial, Defendants are claiming that CAL DOJ *is* aware of the specific amount it spent in a given year on each specific cost category. The form interrogatory response, however, cannot support that denial, as the form interrogatory response refers to only the Bureau of Firearms' *general* knowledge of "the amount of money necessary to fund its program costs and meet its statutory obligations." The substantive issue here is clearly specific classes of cost that are paid out of the DROS Special Account, not whether the respondent knows the total amount to fund *all* of its programs and statutory obligations. Those are two very different issues.

In addition, it is unclear why Defendants state "[t]he costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget." Defendants do not make an objection that the information sought is equally available to the propounding party, so that cannot be the explanation for this sentence. Further, the sentence is unclear in that "costs" do not "fund" anything; this use of the word "costs" may be a typographical error (perhaps the intended word was "money"), and Plaintiffs assume as much. Regardless, it seems Defendants are trying to claim the very specific information sought by this portion of Form Interrogatory is publically available in annual budget documents. Plaintiffs' counsel has reviewed the relevant budget documents, and is comfortable representing to a reviewing court that specific information at issue is not expressly stated (and apparently not stated at all) in the cited budgetary documents.

Finally, to the extent Defendants contend the interrogatory response segment at issue was not meant to be a general statement, but instead a statement summarizing that the Bureau of Firearms knows "the [specific] amount of money necessary to fund [each of] its program costs and meet [each of] its statutory obligations[,]" such response is evasive, as it is *narrow* cost categories (DROS Special Account-related cost categories, to be precise) referred to in the relevant requests that are relevant to this lawsuit.

If Defendants are going to continue to assert that a denial is a proper response to Request for Admission Nos. 62 and 64, Defendants' response to Form Interrogatory 17.1 must be supplemented

with a good faith identification of the specific facts that support such a denials. Civ. Proc. Code § 2030.010(a), (b).

Interrogatory No. 17.1 (Re: Request for Admission Nos. 63 & 65)

The requests for admission at issue asks Defendants to admit that CAL DOJ is not aware of a specific estimate being made, in any given year, on certain cost categories utilized in Penal Code section 28225. Defendants responded "Denied with respect to the last five years." In support of a (partial) denial, Defendants' response to Form Interrogatory No. 17.1 states, in relevant part:

> The Bureau of Firearms is aware of the amount of money necessary to fund its program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget.

This response is evasive. The relevant form interrogatory instruction requires the respondent to "state all facts upon which you base your response[,] i.e., denial. Here, however, the facts stated do not support the denial. Pursuant to the denial, Defendants are claiming that CAL DOJ *is* aware of specific estimates that were made regarding each specific cost category at issue. The form interrogatory response, however, cannot support that denial, as the form interrogatory response refers to only the Bureau of Firearms' *general* knowledge of "the amount of money necessary to fund its program costs and meet its statutory obligations." The substantive issue here is clearly specific classes of cost that are paid out of the DROS Special Account, not whether the respondent knows the total amount to fund *all* of its programs and statutory obligations. Those are two very different issues.

In addition, it is unclear why Defendants state "[t]he costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget." Defendants do not make an objection that the information sought is equally available to the propounding party, so that cannot be the explanation for this sentence. Further, the sentence is unclear in that "costs" do not "fund" anything; this use of the word "costs" may be a typographical error (perhaps the intended word was "money"), and Plaintiffs assume as much. Regardless, it seems Defendants are trying to claim the very specific information sought by this portion of Form Interrogatory is publically available in annual budget documents. Plaintiffs' counsel has reviewed the relevant budget documents, and is comfortable representing to a reviewing court that the specific information at issue is not expressly stated (and apparently not stated at all) in the cited budgetary documents.

Finally, to the extent Defendants contend the interrogatory response segment at issue was not meant to be a general statement, but instead a statement summarizing that the Bureau of Firearms knows "the [specific] amount of money necessary to fund [each of] its program costs and meet [each of] its statutory obligations[,]" such a response is evasive, as it is *narrow* cost categories (DROS Special Account-related cost categories, to be precise) referred to in the relevant requests that are relevant to this lawsuit.

If Defendants are going to continue to assert that a denial is a proper response to Request for Admission Nos. 63 and 65, Defendants' response to Form Interrogatory 17.1 must be supplemented

with a good faith identification of the specific facts that support such a denials. Civ. Proc. Code § 2030.010(a), (b).

Interrogatory No. 17.1 (Re: Request for Admission No. 66)

The requests for admission at issue asks Defendants to admit that CAL DOJ is not aware of the existence of a specific list. In support of a (partial) denial, Defendants' response to Form Interrogatory No. 17.1 states, in relevant part:

> The Bureau of Firearms is aware of the amount of money necessary to fund its program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget.
>
> Defendants have no additional documents to identify other than the documents identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose contact information is above.

This response is evasive. For Defendants to assert that a denial is a proper response to Request for Admission No. 66, that necessarily means the list mentioned in Request for Admission No. 66 is in Defendants' possession. Defendants' response to Form Interrogatory 17.1 must be supplemented with a good faith identification of the list, or the production of a copy of the list. Civ. Proc. Code § 2030.010(a), (b).

Interrogatory No. 17.1 (Re: Request for Admission No. 67)

The requests for admission at issue asks Defendants to admit that CAL DOJ is not aware of the existence of specific protocol for classifying costs pursuant to Penal Code section 28225. In support of a (partial) denial, Defendants' response to Form Interrogatory No. 17.1 states, in relevant part:

> The Bureau of Firearms is aware of the amount of money necessary to fund its program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget.
>
> Defendants have no additional documents to identify other than the documents identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose contact information is above.

This response is evasive. For Defendants to assert that a denial is a proper response to Request for Admission No. 67, that necessarily mean the protocol mentioned in Request for Admission No. 67 exists. Defendants' response to Form Interrogatory 17.1 must be supplemented with a good faith identification of the protocol, or the production of a copy of the protocol if it is recorded as a document. Civ. Proc. Code § 2030.010(a), (b).

Sincerely,

Michel & Associates, P.C.

Scott M. Franklin

EXHIBIT 2

KAMALA D. HARRIS
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December 4, 2014

Scott Franklin
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180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

RE: *Gentry v. Harris*
Superior Court of California, County of Sacramento, Case No. 34-2013-80001667

Dear Mr. Franklin:

This letter responds to plaintiffs' correspondence dated October 17, 2014, regarding the discovery requests served by plaintiffs, and defendants' responses to those requests.[1] It also follows up on our subsequent telephone conversation regarding that discovery.

As an initial matter, plaintiffs have asked that defendants more specifically identify any documents being withheld based on a privilege and provide a privilege log. Defendants agree to that request and will provide a privilege log.

In their letter, plaintiffs have also expressed a concern suggesting that defendants have failed to produce any "evidence of how the DROS Fee was set at $19.00." (Oct. 17, 2014 letter at p. 1.) Defendants have produced such evidence. For example, defendants have produced the relevant rulemaking file from 2004, when the fee at issue was raised from $14.00 to $19.00. Also, in the privilege log defendants will identify the handful of documents withheld based on a claim of privilege. Thus, there is no basis for the broad motion in limine contemplated in plaintiffs' letter.

---

[1] To date, defendants have responded to the following discovery requests served by plaintiffs:

1. Special Interrogatories (as to the Attorney General and Chief of the Bureau of Firearms ("DOJ"));
2. Form Interrogatories (as to DOJ);
3. Request for Admissions (as to DOJ);
4. Request for Production of Documents (as to DOJ);
5. Special Interrogatories (as to the State Controller's Office ("SCO"); and
6. Request for Production of Documents (as to SCO).

Each of the remaining items addressed in plaintiffs' letter and discussed during our telephone conversation is addressed below.

(DOJ) Defendants' Responses to Plaintiffs' Request for Production of Documents, Set One

Request Nos. 1, 2, 3 & 5

Plaintiffs have asked that defendants produce documents responsive to these requests for the period covering Fiscal Year ("FY") 2003/04 to FY 2013/14. Defendants agree to that request. Accordingly, in further response to Request Nos. 1, 2, 3 & 5, defendants agree to produce the relevant budget documents for FY 2003/04 through FY 2006/07, to the extent the information still exists. As you likely recall, the documents for FY 2007/08 through FY 2013/14 have already been produced, either earlier in this action or in *Bauer v. Harris*, United States District Court for the Eastern District of California, Case No. 1:11-cv-1440-LJO-MJS.

With respect to the budget documents, please know that they reflect a substantial amount of relevant financial information. In sum, for each fiscal year the documents identify every DOJ program (including but not limited to the DROS and APPS programs) funded by monies from the DROS Special Fund, the Firearms Safety and Enforcement Special Fund, and the Firearms Safety Account Special Fund. For each of those programs, defendants have also detailed the relevant appropriations by the Legislature and DOJ's actual expenditures on those programs by year. Defendants have produced additional reports breaking down those annual expenditures by line item.

Finally, while defendants agree to produce the additional budget documents, they are also continuing to search for still other responsive documents based on the expanded period of time the parties have now agreed upon, a period that spans more than ten years. Defendants are completing that search and will produce the existing responsive documents that fall within the relevant time frame.

Request Nos. 7, 8, 17, 18, 32, 33 & 38

Plaintiffs have asked that defendants respond to these requests for the period going back to January 1, 2004. Defendants agree to do so with respect to Request Nos. 7, 8, 17, 18, 32, and 33. By its own terms, though, Request No. 38 is limited to "testimony given after January 2, 2011." So defendants do not believe any further response to Request No. 38 is needed. Please let me know if you disagree.

With respect to Request Nos. 7, 8, 18, 32 & 33, and after a diligent search and reasonable inquiry, defendants have not located any responsive documents dated January 1, 2004 or after.

With respect to Request No. 17, attached to this letter as Exhibit A are additional press releases dated January 1, 2004 or after. Please be aware that some of these press releases do not directly reference "APPS"—which Request No. 17 focuses on—but out of an abundance of

caution defendants have produced any press release relating to firearms in general during the relevant period.

Request Nos. 11, 12, 13 & 14

Regarding these requests, and in response to plaintiffs' request, defendants clarify that documents concerning the term "CONTACTS" as defined by plaintiffs in their request do not exist. This is why in their original response defendants provided the statistics for the number of APPS "investigations" per year since 2007 and the number of firearms seized for each of those years.

Request Nos. 21 & 22

In response to plaintiffs' request that defendants respond to these items for the period 2004 to the present, defendants agree to produce the Budget Change Proposals ("BCPs") approved for FY 2004/05 through FY 2009/10. The BCPs for FY 2010/11 and beyond have already been produced. Also, please be aware that defendants are not withholding any approved BCPs based on any claim of privilege.

Request Nos. 25 & 30

Regarding Request No. 25, and in response to plaintiffs' request, defendants clarify that other than what is in the 2010 rulemaking file already produced, defendants are not aware of any "statement to a member of the public as to why the 2010 rulemaking was abandoned," as stated in plaintiffs' October 17 letter.

Regarding Request No. 30, please be aware that a transcript of comments made at the hearing of September 15, 2010, referred to in plaintiffs' letter is in the 2010 rulemaking file already produced. Defendants have also located an audio/video recording of that hearing on compact disc. Although that recording may be duplicative of the transcript, defendants have made a copy and a compact disc is enclosed with the copy of this letter arriving by regular mail.

Request No. 29

In response to Request No. 29, defendants can confirm that defendants have no responsive documents. But please note that by its own terms the request excludes documents produced in *Bauer v. Harris*, and the 2004 rulemaking file was produced in that case.

(SCO) Defendants' Responses to Plaintiffs' Request for Production o(Documents, Set One

Request Nos. 5 & 6

For plaintiffs' clarification, and pursuant to your request, please know that SCO limited its production in response to these requests to documents for the period FY 2003/04 through FY 2013/14, although plaintiffs phrased the original requests in terms of "any document created after

January 1, 2000." Based on plaintiffs' position with respect to the requests discussed above (i.e., plaintiffs' agreement to limit other discovery to the period 2004 and after), the SCO presumes this limitation is agreeable. If not, please let me know.

(SCO) Defendants' Responses to Plaintiffs' Special Interrogatories, Set One

Interrogatory Nos. 5, 6, & 7

To clarify the answers to these questions, SCO understands these interrogatories to ask for a list of disbursements made specifically *for APPS*, or law enforcement activity *based on APPS*. As such, the SCO can confirm that it is not in possession of the requested information. Nor does the SCO know if the information requested is in the possession of another state agency, although such information may be in the possession of the state agency responsible for carrying out the program(s) at issue.

(DOJ) Defendants' Responses to Plaintiffs' Requests for Admissions, Set One

As we discussed during our telephone conversation, defendants intend to file a motion for judgment on the pleadings to dispose of at least the first and second causes of action alleged in the Complaint For Declaratory and Injunctive Relief and Petition for Writ of Mandamus. If the Court grants that motion, the issues in this case will be significantly narrowed and many of the requests for admissions will be mooted. Thus, defendants propose deferring any further responses to the requests for admissions at this time.

This proposal will help conserve the resources of the parties and the Court. It is also reasonable in light of the sheer number and breadth of discovery requests plaintiffs have served and the responses defendants have already provided. With respect to the requests for admissions alone, plaintiffs served 117 requests—more than triple the number expressly authorized by the rules—and defendants have already admitted or denied the vast majority of those requests (i.e., more than 70 of them). Finally, plaintiffs will not suffer any prejudice under this proposal. A discovery cut-off date has yet to be set and defendants are willing to agree to extend plaintiffs' deadline to file a motion to compel further responses to the requests for admissions until after the Court rules on the motion for judgment on the pleadings.

Regarding our intended motion, we have contacted the Court regarding available hearing dates. At this time, the earliest available date is February 20, 2014, at 9:00 a.m. I propose that date. (Other dates currently available are March 27 and April 3, 10, or 24, each at 9:00 a.m.) Please let me know if February 20 is agreeable and I will file a notice of hearing to formally reserve the date.

(DOJ) Defendants' Responses to Plaintiffs' Form Interrogatories, Set One

Request No. 15.1

Defendants objected to this interrogatory because, among other things, plaintiffs failed to verify their petition for writ of mandate as required by the rules. As defendants have explained, in the absence of the required verification it is unfair to expect defendants to respond to Form Interrogatory 15.1. After our telephone conversation, plaintiffs expressed an intention to correct this deficiency by filing an appropriate verification. But plaintiffs have yet to do so. Defendants are willing to reconsider their position on any further response to this interrogatory if and when plaintiffs file the required verification.

Request No. 17.1

Form Interrogatory 17.1 relates to the requests for admissions. Accordingly, consistent with our proposal regarding any further responses to those requests, we also propose deferring any further response to Form Interrogatory 17.1.

Thank you for continuing to meet and confer on these issues. As mentioned above, some additional materials are being produced with this letter. We hope to produce any additional responsive documents and the privilege log next week. In the meantime, please let me know whether plaintiffs agree with the proposal regarding any further responses to the requests for admissions. Also, please let me know about the hearing date.

Sincerely,

ANTHONY R. HAKL
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

SA2013113332
11618027.doc

EXHIBIT 3

Scott Franklin

From: Anthony Hakl <Anthony.Hakl@doj.ca.gov>
Sent: Wednesday, December 10, 2014 2:33 PM
To: Scott Franklin
Subject: RE: Re Letter of December 4, 2014 (Gentry v. Harris)

Scott:

The central claim of the petition and complaint is that SB 819 violates Proposition 26. In relevant part, Proposition 26 states that "[a]ny change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature." Cal. Const., art. XIIIA § 3(a). But SB 819 does not "result[] in any taxpayer paying a higher tax[.]" Rather, SB 819 simply concerns the use of DROS monies. In other words, prior to SB 819, a purchaser of a firearm paid $19. After SB 819, he or she still paid $19. There is no "higher tax." So SB 819 does not apply. That's a rough outline of our MJOP.

Tony

EXHIBIT 4

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December 11, 2014

VIA EMAIL & U.S. MAIL

Mr. Anthony R. Hakl
Deputy Attorney General
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Anthony.Hakl@doj.ca.gov

Re: *Disputed Discovery Responses in Gentry v. Harris*

Mr. Hakl:

I write in response to your letter of December 4, 2014. Sean Brady and I both analyzed the rough outline of Defendants' proposed MJOP, and it is our belief that the argument you forwarded would not be meritorious if argued to the Court, as discussed below. Thus, we are not able to agree to the proposal to defer further responses as outlined in your letter of December 4, 2014.

The Proposed MJOP Does Not Justify Putting Discovery on Hold

We are confident that the fact the "DROS Fee" was $19.00 before and after SB 819's enactment is irrelevant to the tax implication that resulted in the changed use of funds collected under the DROS Fee moniker. That is, pre-SB 819, DROS Fee funds went primarily (if not completely) to costs we assume the DOJ considers to be regulatory, and my Clients argue that currently, some percentage of those funds, post SB 819, go to a non-regulatory, general law enforcement use (i.e., APPS). This means that there is some amount of tax where there was no tax before. Because SB 819's amendment of Penal Code § 28225(b) results in the DROS Fee going from including (1) zero percent tax pre-SB 819 to (2) some portion of tax post-SB 819, which is the effect of SB 819 alleged in our clients' pleadings, there clearly is "a change in state statute which results in any taxpayer paying a higher tax." Cal. Const., art. XIIIA § 3(a).

Indeed, our Clients' Sixth Cause of Action seeks relief on an interrelated point. Namely, if the DROS Fee had been properly set as of the passage of SB 819 (i.e., set to only cover the "the amount necessary to fund" the items listed in Penal Code § 28225(b)), it would have been impossible for it to

stay the same when an additional cost category ("possession" matters, e.g., APPS) was added to the mix, especially a cost category that was as big as APPS-related expenditures was anticipated to be (and is) after SB 819 passed. It is our clients' contention that had the DROS Fee been properly set to begin with, the DOJ would not have been able to "keep" the DROS Fee at $19.00.

Additionally, I should take a moment to discuss the actual breakdown of the RFA responses that are sought to be deferred. Of the approximately 52 responses at issue, by my count, about 35 go the issues raised in my Clients' Sixth Cause of Action ("Write of Mandate - Review of Proper Amount of "DROS Fee"), which will still exist even if the MJOP, as described, is granted. And of the remaining RFAs, most appear to be very simple questions about what benefits or burdens DROS Fee payors do or don't create or receive. I cannot in good faith put this relatively small but important amount of discovery on hold based on an MJOP that I don't think will be successful.

Your letter of December 4, 2014, does not suggest what course of action should be taken if the parties do not agree to put the disputed RFA responses "on hold." Presumably, there are only two options now: (1) Defendants agree to timely provided further responses, or (2) a motion to compel is filed, and Defendants will take some action to oppose. Because neither the December 4, 2014, letter nor the objections stated with the relevant responses provide any argument we find to be persuasive as to the outstanding RFA responses, we believe further responses should be provided. I don't know how much time you need to determine whether further responses will be provided, but I request that, by December 15, 2014, you either: (a) agree to provide the further responses (and related further form interrogatory responses, if any) by January 19, 2014 (with a new motion to compel filing deadline for RFAs, e.g., February 13, 2015), or (b) you let me know that you need a few more days to make a decision, and that we will work in good faith to reschedule the relevant motion to compel deadline.

The Remaining Disputed Discovery Issues

Also, there are a handful of documents that Defendants have agreed to produce, and I want to be careful that I don't let any deadlines pass unintentionally. Specifically, the documents at issue are: 1) the privilege log referred to in paragraph three of your letter of December 4, 2014; 2) further documents in responses to document production request nos. 1, 2, 3, and 5[1]; and 3) Budget Change Proposals for fiscal year 2004/2005 through 2009/10, in response to requests nos. 21 and 22. In addition, now that the verification issue has been resolved by the filing of an errata and a verification, I believe the related Form Interrogatory objection has been resolved and accordingly further responses are required. My proposal is that we agree these four classes of documents will be produced by December 29, 2014, and that the related MTC deadlines for the relevant sets of discovery will be moved back to January 13, 2015.

Finally, as to your question about the scheduling of the MJOP hearing, my preferred hearing dates

[1] I am unclear on exactly what is being said the letter of December 4, 2014, as to the documents produced in response to requests nos. 1, 2, 3, and 5. That is, in the statement that "Defendants have produced additional reports breaking down those annual expenditures by line item[,]" I cannot tell which "reports" are being referred to. If you would provide the Bates nos. for the documents being referred to, I would appreciate it.

would be either April 3 or April 7, 2015.

Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

Michel & Associates, P.C.

Scott M. Franklin

EXHIBIT 5

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January 28, 2015

VIA EMAIL & U.S. MAIL

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Re: ***Disputed Discovery Responses in Gentry v. Harris***

Mr. Hakl:

I write in response to the privilege log provided on December 6, 2014, and the amended responses provided on January 19, 2015.

Though I believe many of the previously identified insufficient responses have been sufficiently amended, there are still many unresolved issued. Accordingly, this letter is intended to be a (further) meet-and-confer communication aimed at resolving the currently disputed matters.

The Privilege Log Provided Does Not Justify the Withholding of Documents, with a Few Exceptions

Items 5 and 6 on the privilege log provided by the Department each provide sufficient information to confirm the withholding of the relevant documents appears to be justified under the attorney-client privilege. Also, I would like to know what request item 12 responds to, because it appears to be irrelevant at this time, and presumably we do not need it produced. Accordingly, my clients are not challenging at least two, and perhaps three, privilege log entries. As to the other documents withheld, however, the descriptions provided are not sufficient to ameliorate my belief that the documents are potentially subject to disclosure. Indeed, it may be the case that, because the privileges primarily being relied on (e.g., the official information and deliberative process privileges) are not absolute and are subject to substantive balancing, I cannot state that providing further detail in the privilege log will allay my belief that those privileges are inapplicable to most of the material being withheld.

Accordingly, I think it is worth discussing why the documents referred to in the privilege log are not only important to Plaintiffs' case, but why I think we have a strong chance of obtaining them on a motion to compel. I certainly welcome any further detail you can provide regarding the withheld documents, but I want to be forthright in stating that providing such detail may only stoke my belief that the withheld documents should be produced.

In your letter of December 4, 2014, you claim that the 2004 rulemaking file provides evidence of how the DROS fee was set at $19.00. I must disagree, at least as to the extent DOJ is claiming the 2004 rulemaking file has substantive evidence of how the $19.00 amount was determined (obviously, the 2004 rulemaking file shows, procedurally, how the $19.00 DROS fee was set). I have gone through the 2004 Rulemaking file carefully, and I was not able to find any calculation, analysis, or other externally verifiable explanation of the claim therein that "The proposed $19 fee is commensurate with DOJ's processing costs of $19 per DROS[.]" AGRFP000399.

If you can show me a portion of the 2004 rulemaking file that actually explains the calculation behind the DOJ's conclusion, then perhaps that will be sufficient for our arguments. But at this point, I see nothing in the 2004 rulemaking file that is relevant to this issue, meaning the documents being withheld are the *only* evidence of the data/analysis relied upon in setting the DROS fee at $19.00. Because my clients expressly plead a claim that the current fee is inappropriate, the data considered in setting such fee is crucial to "the fair presentation of the[ir] case." *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1129 (2000) (citation omitted). Further, the other *Marylander* factors also cut in favor of disclosure. That is, because there is no other possible source for the information at issue, "the availability of the material to the litigant by other means" is non-existent, thus mooting any inquiry as to "the effectiveness and relative difficulty of such other means[.]" *Id.*

Accordingly, I believe that, where the privileges alleged are subject to a balancing test, the balance weighs in favor of disclosure for all of the documents where no absolute privilege claim is made.

I see one option that might streamline our further action on this. If the Department is willing to offer a sworn statement as to the *specifics* of how the new DROS fee was determined in 2004, that would seem to preclude our need for the withheld documents, assuming the explanation produced matched up with the documents and facts already produced. Technically, the statement probably would not cover item 9, which appears to have been drafted after the 2004 rulemaking. But I believe we would, as a matter of compromise, not challenge the withholding of that document if a sufficient sworn statement is provided.

Some of the Amended Request for Admission Responses Are Still Insufficient

RFA No. 33

Defendants' amended response to RFA includes a date of "January 1, 2014," which appears to be a typo. If it is not a typo, then the response fails to correct the improper time limitation previously raised in my letter of October 27, 2014. A further response should be provided. Civ. Proc. Code § 2033.220(a), (b).

RFA Nos. 83-86, 88-89

Just because the Defendants claim Proposition 26 does not apply does not mean they simply do not have to respond. I have addressed this concept before in my letter of October 17, 2014. Because these RFAs have to do with the question of whether or not a certain position is held by the Department, "unable to admit or deny" is not an truthful option. That is, either the position at issue is held by the Department, or it is not. There is no middle position. The responses are evasive, and based on the fact that this is the second time Defendants have attempted to evade the questions at the heart of this case, I suspect there will not be further productive discussion on this issue. Either the Defendants comply by providing their position on these issues, or we will be required to move to compel on this issue. Civ. Proc. Code § 2033.290(a)(1).

RFA Nos. 113 & 114

The responses at issue have not changed notwithstanding the parties having met and conferred, and Defendants have never provided a legitimate basis for failing to answer these RFAs. Thus, because the parties were not able to resolve this issue even after a good faith attempt, a motion to compel is now appropriate regarding these two responses.

Some of the Amended Form Interrogatory Responses Are Still Insufficient

FI No. 15.1

I am aware of no rule that allows a defendant to avoid answering Form Interrogatory No. 15.1 based on the fact that the defendant filed or planned to file an amended responsive pleading. Furthermore, Form Interrogatory No. 15.1 is not limited to Defendants' original general denial, it refers to "each special or affirmative defense in your pleadings[,]" meaning it applies to the contemplated responsive pleading as well. And in any event, I cannot imagine why the filing of a verification would change the affirmative defenses being plead, save Affirmative Defense No. 8. Indeed, the refusal to provide a further response to the remaining affirmative defenses indicates an intent to delay. As the Plaintiffs clearly have a right for the information sought, I request Defendants agree to provide the information sought by February 2, 2015, with the actual production occurring no later than February 27, 2015. Otherwise, the Plaintiffs will (re)propound Form Interrogatory 15.1 again as to the new responsive pleading.

FI No. 17.1 (RFA No. 18)

The response provided is not responsive as to subsection (b). The RFA at issue asks the Defendants to admit that there is no "special privilege" granted to the DROS Fee payor. The response to Form Interrogatory 17.1(re RFA No. 17), at subsection (b), does not refer to any privilege that is granted to a DROS payor. It is unclear if the repetition is a clerical error, or if it was intentional. Either way, the amended response is not "as complete and straightforward as the information reasonably available to the responding party permits[,]" meaning a further amended response should be provided. Civ. Proc. Code § 2030.220(a).

If it is the Defendants' position that, in the context of this matter, a "special privilege" and a

"benefit" are synonymous, then a further amended response substituting the words "special privilege" for the word "benefit" in subsection (b) would be legally sufficient (though Plaintiffs substantively disagree with that position).

FI No. 17.1 (RFA No. 19)

The response provided is not responsive as to subsection (b). The RFA at issue asks the Defendants to admit that a DROS Fee payor does not get a greater benefit than an person who has not paid such fee. The response does not respond to the comparative question as to whether one class of person gets a greater benefit than another class of person. It is unclear if the repetition is a clerical error, or if it was intentional. Either way, the amended response is not "as complete and straightforward as the information reasonably available to the responding party permits[,]" meaning a further amended response should be provided. Civ. Proc. Code § 2030.220(a).

If it is the Defendnats' position that, in the context of this matter, the alleged APPS-related "benefit" running to DROS payors is greater than the APPS-related benefit running to those who do not pay a DROS fee (which must be true, if the Department is going to stick with its "denial" response to RFA No. 19), subsection (b) must have some factual allegation concerning the APPS-related benefit, or lack of benefit, that runs to those who do not pay a DROS fee.

FI No. 17.1 (RFA No. 21)

The response provided is not responsive as to subsection (b). The RFA at issue asks the Defendants to admit that there is no "APPS-related service" provided to the DROS Fee payor. The response to Form Interrogatory 17.1(re RFA No. 17), at subsection (b), does not refer to any service that is granted to a DROS payor. It is unclear if the repetition is a clerical error, or if it was intentional. Either way, the amended response is not "as complete and straightforward as the information reasonably available to the responding party permits[,]" meaning a further amended response should be provided. Civ. Proc. Code § 2030.220(a).

If it is the Defendants' position that, in the context of this matter, an "APPS-related service" and a "benefit" are the synonymous, then a further amended response substituting the words "APPS-related service" for the word "benefit" in subsection (b) would be legally sufficient (though Plaintiffs substantively disagree with that position).

FI No. 17.1 (RFA No. 22)

The response provided is not responsive as to subsection (b). The RFA at issue asks the Department to admit that a DROS Fee payor does not get any different APPS-related government service when compared to a person who has not paid such fee. The response given does not respond the comparative question as to whether one class of person gets a different benefit than another class of person. It is unclear if the repetition is a clerical error, or if it was intentional. Either way, the amended response is not "as complete and straightforward as the information reasonably available to the responding party permits[,]" meaning a further amended response should be provided. Civ. Proc. Code § 2030.220(a).

If it is the Department's position that, in the context of this matter, the alleged APPS-related "government service" running to DROS payors is different than the APPS-related benefit running to those who do not pay a DROS fee (which must be true, if the Department is going to stick with its "denial" response to RFA No. 22), subsection (b) must have some factual allegation concerning the APPS-related government service, or lack APPS-related governmental service, that runs to those who do not pay a DROS fee.

FI No. 17.1 (RFA No. 26)

By denying the underlying RFA, the Department has effectively admitted "that costs arising from the implementation of APPS are [] regulatory costs directly arising from performing background investigations as part of the DROS PROCESS." The form interrogatory response provided regarding that RFA response, however, does not in anyway attempt to explain how the costs of implementing APPS could be regulatory costs arising from the performance of background checks. Subsection (b) of the relevant form interrogatory response only cites to Penal Code section 28225 and states "the DROS fee is designed to cover a number of costs, as specified." Inasmuch section 28225 does not provide an explanation of APPS-cost being regulatory costs, let alone costs that arise "from performing background investigations as part of the DROS PROCESS[,]" a further response is required. Civ. Proc. Code § 2030.220(a).

FI No. 17.1 (RFA No. 27)

By denying the underlying RFA, the Department has effectively admitted "that is the position of CAL DOJ that Section 28225 does [] place a duty on CAL DOJ to consider whether the DROS FEE currently being charged is excessive." But the response to the relevant form interrogatory, strangely, states that "Section 28225 does not speak in terms of any 'duty,' ministerial or otherwise." This response is evasive, and a further response to subsection (b)) should be provided, even if it is a simple statement that, "section 28225 requires the Department to consider whether the DROS FEE currently being charged is excessive, though that section does not indicate when such consideration should occur."

FI No. 17.1 (RFA No. 38)

The response provided is evasive. By denying the underlying RFA, the Department has effectively admitted "that the PER TRANSACTION COST of the DROS PROCESS is [not] less than $19.00." Accordingly, the response to subsection (b) should explain that the PER TRANSACTION COST is $19.00 or more. Instead, the Department refers to a previous a set of previous special interrogatory responses that basically said that the Department did not know what the current PER TRANSACTION COST is for the DROS PROCESS, but that the responding parties were working "in good faith" to make a PER TRANSACTION COST estimate. The fact that Defendants have had months to work in good faith to reach an estimate of the PER TRANSACTION COST, and because of the underlying RFA denial, I believe a second amended response to subsection (b) is required. Civ. Proc. Code § 2030.220(a).

FI No. 17.1 (RFA No. 58)

The responding parties' denial of the underlying RFA is basically an admission "that CAL DOJ is [] aware of what amount it paid in any given year, calendar, fiscal, or otherwise, for actual costs associated with the electronic or telephonic transfer of information . . . ." But the relevant form interrogatory response does not state facts supporting that denial as is required. Instead, responding parties first make a general claim that does not respond to the RFA at hand (being "aware of the amount of money necessary to fund [various unnamed] programs" is *not* the same as being aware of the issue raised in the relevant RFA, i.e., the "amount paid in any given year" for a very narrow class of costs incurred subject to Penal Code section 28215) and that public documents exist that support that claim.

Stating that the Governor's annual budget includes "[t]he costs needed to fund th Bureau's programs" is evasive. Even had Plaintiffs asked about the Bureau's program costs *as a whole* (assuming that is actually stated in the Governor's annual budget), the interrogatory response at issue would be boarderline evasive. *See* Civ. Proc. Code § 2030.220(a) (interrogatory responses "shall be as complete and *straightforward* as the information *reasonably* available to the responding party permits") (italics added). But the underlying RFA asks about yearly cost in a very narrow category, and I am confident there is not a portion of the Governor's annual budget that expressly deals with the specific costs incurred under Penal Code section 28215. Indeed, if Plaintiffs are unable to obtain clearer identification of the supposedly responsive portion of the Governor's annual budget pursuant to this request, I believe that provides a sufficient basis for seeking that same information via deposition.

Whether the responding parties decide to change their response to the underlying RFA or provide a sufficient response to the form interrogatory subsection at issue is for the Department to decide. But as it stands, the response currently provided for subsection (b) is insufficient such that a motion to compel further response is proper. Civ. Proc. Code § 2030.300(a)(1).

FI No. 17.1 (RFA No. 68)

The responding parties' denial of the underlying RFA is basically an admission "that CAL DOJ is []aware of a calculation being performed after January 1, 2005, to determine the sum of costs and estimated costs listed in SECTION 28225(c)." And yet, the relevant form interrogatory response does not mention or refer to any such calculation. Because the subsection (b) response provided by the responding parties is not meandering and difficult to discuss in toto, it must be broken down sentence-by-sentence for analysis.

> The Bureau of Firearms is aware of the amount of money necessary to fund its program costs and meet its statutory obligations.

The issue in the underlying RFA is not whether "[t]he Bureau of Firearms is aware of the amount of money necessary to fund its program costs and meet its statutory obligations, including those referenced in § 28225(b)(1), (2), (10), & (11)[;]" the issue is if the responding parties know of a calculation of the sum of costs listed in Penal Code section 28225(c). The response provided does not even address the relevant code section, so this sentence is off point. Further, it conflicts with other portions of the Defendants' FI No. 17.1 response that state Defendants are *unaware* of the calculation

of a yearly cost under section 28255(b)(1), (2), (10), and (11).

> The costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget.

Again, the RFA at issue did not ask about "[t]he costs needed to fund the Bureau's programs," it asked about a specific lists of costs. This sentence obfuscates the request, and is improper accordingly. As discussed above, if sufficient form interrogatory responses are not provided, the only other option I see is getting the information sought through deposition.

> The Bureau is not aware of the total amount of costs incurred by mental health facilities, hospitals, local law enforcement agencies, and other state departments as referenced in section 28225(b)(3)-(9).

Just like the preceding two sentences, this statement does not align with the underlying RFA and response thereto. Indeed, the fact that the Bureau admits that it does not know cost amounts that are part, but not all of, the sum of actual and estimated costs listed in section 28225, tends to suggest Defendants' "denial" in response to RFA No. 68 is untrue.

In sum, the response at issue is evasive, and if Defendants are not going to amend their response to the underlying RFA to an admission, then a further amended response to the relevant FI subsection is required. Civ. Proc. Code § 2030.220(a).

FI No. 17.1 (RFA No. 78)

Form Interrogatory 17.1 requires a response for each related RFA response that is not an unqualified admission. The response provided was a qualified admission. Thus, Defendants should have provided a form interrogatory 17.1 response regarding the statement in the RFA response that the comparison mentioned in the RFA "was not the sole basis for setting the fee at $19.00."

FI No. 17.1 (RFA No. 83-86, 88-89)

The subsection (b) responses provided here are without merit. Just because the Defendants claim Proposition 26 does not apply does not mean they simply do not have to respond. I have addressed this concept before in my letter of October 17, 2014, and I address it above regarding the response to RFA No. 83. As you know, just because a party claims a legal theory does not apply, that does not absolve the party from providing a response to discovery concerning the disputed legal theory. If the response at issue was a true statement of discovery law, no one could ever get opposing parties to produce information concerning disputed claims, which is the point of the discovery process.

Furthermore, Defendants' attempt to sit on the fence by claiming they, "at this time . . . have no position on the . . . issue" is not a legitimate response option. Ultimately, the problem here is derived from the improper response to RFA Nos. 83-86, 88-89. However, because the relevant form interrogatory responses do not legitimately explain the alleged inability, they are insufficient and must be revised or replaced. Civ. Proc. Code § 2030.220(a).

FI No. 17.1 (RFA No. 92-96, 99)

By denying the underlying RFAs, the Defendants effectively admit the inverse of the proposed admissions. The subsection (b) responses at issue here are insufficient because, when all of the unrelated verbiage is stripped out of Defendants' responses, it is clear that they do not provide any facts that support the RFA denials at issue, as is required per Form Interrogatory 17.1(b). In fact, the subsection (b) response is basically a restatement of the relevant RFAs, in the negative. If Defendants are going to stick with the denial of the underlying RFA, the proper subsection (b) response will include all examples Defendants are reasonably aware of that actually support the denials given. Civ. Proc. Code § 2030.220(a).

Conclusion

I suspect we are at an impasse regarding all of the issues above, excepting perhaps the privilege log matter. Regardless, assuming the current February 13, 2015, motion to compel filing deadline can be moved accordingly, we are open to further discussion on the matters addressed above. Please let me know by February 2, 2015, whether (a) a second round of amended responses (re RFA and FI) are forthcoming or (b) you wish to further discuss the disputed matters.

Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

Michel & Associates, P.C.

Scott M. Franklin

EXHIBIT 6

DROS Fee Regulations
Public Comments and DOJ Responses

#	Organization	Commenter	Subject	Comment	DOJ Response
1	Greta's Guns	Chris Biller	Private Party Transfer Fees	My name is Chris Biller and I am the owner of Greta's Guns in Simi Valley Ca. My real concern revolves around the fee that has been set in stone concerning what a retail store can charge on a private party transaction(ppt). PPT take a long time to complete, especially when there are multiple guns involved. The amount of paper work that it entails is cumbersome, time consuming, especially when there are more than two guns (ATF multi gun sales forms). The current price was set in 1992, and it has not been changed. Five dollars is a little under the fair market value of the cost to do such a transaction, especially when the State requires the retailer to complete the transaction. Thank you for the opportunity to respond.	The Department acknowledges the comment, Although it does not address the proposed regulations. The fee a dealer can charge for processing a private party transfer is established by statute and cannot be changed by regulations. Furthermore, the current fee is $10, not $5 as stated in the comment.
2	Legal Community Against Violence	Juliet Leftwich, Benjamin VanHouton	General	Legal Community Against Violence (LCAV) strongly opposes the proposed changes to California Code of Regulations Title 11, Division 5, Chapter 1, Section 4001, which would reduce the fees charged by the DOJ in connection with the processing of firearms transfers using the DROS process.	The Department acknowledges the comment. However, the comment does not request any particular change to the proposed regulations.
3	Legal Community Against Violence	Juliet Leftwich, Benjamin VanHouton	Volatility of Sales	The proposed fee reductions are unnecessary and imprudent, especially given the well known volatility in the firearms sales market and the broader financial challenges facing CA today. The Initial Statement of Reasons acknowledges the "extreme volatility in the firearms market," stating that, "DROS volume is extremely difficult to predict and is driven by a variety of factors including civil unrest, natural disasters, crime rates, proposed legislation, and the economy." LCAV agrees. Firearm and ammunition sales skyrocketed toward the end of 2008 and into 2009, fueled by fear of an "Obama gun ban" that had been stoked by the gun lobby. All available evidence indicates, however, that firearm sales have decreased significantly from that peak.	The Department disagrees with the comment. The proposed regulations would allow the Department to retain a much smaller but more reasonable reserve in the DROS account.
4	Legal Community Against Violence	Juliet Leftwich, Benjamin VanHouton	DROS Fund Supports Programs	By significantly reducing and limiting DROS fee revenue, the proposed regulations would limit the abilities of this and future Attorneys General to implement and support the variety of programs that are funded by the fee. The DROS fee is not intended to merely offset the cost of conducting a background check to determine whether a person is prohibited from possessing firearms. On the contrary, pursuant to AB 161 (2003), the fee funds DOJ "for the costs associated with firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.	The Department disagrees with the comment. The proposed regulations would establish a DROS fee that will allow the Department to effectively operate the mandated programs as intended by the Legislature.
5	Legal Community Against Violence	Juliet Leftwich, Benjamin VanHouton	DROS Fund Supports Programs	DOJ has used DROS funds for a variety of important enforcement activities, including dealer inspections and investigations, and enforcement of the state's Handgun Safety Certificate requirement for handgun purchasers. The Department's ability to enforce CA firearms laws is vital to the state's public safety. Such a need is particularly acute given the recent spike in firearms sales, which increases the likelihood of additional gun violence.	The Department acknowledges the comment. However, the comment does not request any change to the proposed regulations.
6	Legal Community Against Violence	Juliet Leftwich, Benjamin VanHouton	Reserve Needed	The need to preserve the current DROS fee is further justified by California's dire financial state. In a climate where the CA Legislature must regularly make difficult choices about which programs to fund and which to sacrifice, it would be imprudent to weaken a reliable source of funds for DOJ's enforcement of California firearms laws. The current DROS fee has allowed DOJ to accrue a sensible reserve available for use in times of crisis. The proposed regulations would jeopardize the state's ability to maintain such a reserve.	The Department disagrees with the comment. Funds from the DROS fee may only be used for specified purposes delineated in Penal Code section 12076. The proposed regulations would allow the Department a reasonable, albeit a much smaller, reserve.
7	Legal Community Against Violence	Juliet Leftwich, Benjamin VanHouton	Volatility of Sales	The benefits of the boom touted in the Initial Statement of Reasons - a significant reserve in the DROS account, the "economy of scale" in processing costs - will fade as the number of firearms sales draws down, while the challenge to prevent gun violence will remain. Because firearm sales fluctuate, it simply does not make sense to reduce DROS fees and jeopardize the state's ability to fund DROS-related programs and maintain a fiscally responsible reserve.	The Department disagrees with the comment. The proposed regulations would allow the Department to retain a much smaller but more reasonable reserve in the DROS account.
8	The Calguns Foundation	Jason Davis	General	The stated purpose of the proposed regulation is to adjust the Department of Justice (DOJ) fee for processing firearms purchase/transfer applications commonly referred to in statute as Dealer's Record of Sale (DROS). The proposed regulation lowers the current $19 DROS fee to $14, allegedly commensurate with the actual cost of processing a DROS. The proposed regulations would also establish a process for DOJ to administratively adjust the DROS fee.	The Department agrees with comment. However, the comment does not request any changes to the proposed regulations.

AGR-FP000175

DROS Fee Regulations
Public Comments and DOJ Responses

#	Organization	Commenter	Subject	Comment	DOJ Response
16	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Malte	DROS Fund Supports Programs	Comment: DROS Funds should be used to strengthen firearm-related regulatory and enforcement programs. For years, pro-gun groups and individuals have stated that we do not need more gun laws but rather should just enforce the laws we have. The DROS account could and should be used for improved enforcement of firearm laws; however, it appears that in recent years, enforcement programs have not kept up with the need. To better understand this situation and to obtain documentation, a request for a full accounting of DROS fees accrued and expended in the last ten years, as well as other information, pursuant to the California PRA is being made jointly by the California Chapters of the Brady Campaign to Prevent Gun Violence and the Legal Community Against Violence. DROS Funds could and should be used to fund more agents and personnel to better enforce existing firearm laws. DOJ should seek appropriation and use the large reserves in the DROS Account to: 1. Hire more agents to assist in the implementation of the Armed Prohibited Persons System (APPS) program and seize more guns from prohibited purchasers. 2. Hire more agents to provide better oversight of gun shows in California. 3. Hire more agents to investigate the importation of illegal guns from gun shows in Nevada and Arizona. 4. Fund additional enhancements to the Automated Firearm Systems (AFS) 5. Hire more agents to provide better oversight of gun dealers, including an annual unannounced audit. 6. Hire more analysts and investigators to conduct more traces of crime guns. All crime guns must be traced back to the original purchaser in order to identify and prosecute straw purchasers and illegal trafficking channels. 7. Step up enforcement to decrease trafficking of firearms to other states and countries (i.e.stop CA guns being trafficked to Mexico). 8. Send letters to all gun buyers during waiting period regarding firearm ownership responsibilities, as done on a trial basis in L.A. 9. Enter old records that should be in CFIS but are not. 10. Ensure violent misdemeanor records are getting into the background check system. 11. Assist local law enforcement agencies with firearm-related enforcement activities. 12. Vigorously enforce the assault weapons ban. APPS: The California Brady Campaign Chapters are in strong support of the APPS program and greatly appreciate the work being done by DOJ to disarm prohibited persons. Unfortunately, the total number of armed prohibited persons has not been reduced, despite the implementation of the APPS program and numerous sweeps by agents to seize illegal guns. Although agents have successfully worked many cases and seized thousands of illegal firearms, new cases of armed and newly prohibited individuals are being added to the system faster than agents can work the cases. The current number of DOJ agents and analysts simply cannot handle the volume of APPS case; however, no additional appropriation of DROS funds for this purpose has been sought. The California Brady Campaign Chapters have encouraged local police chiefs to obtain APPS Secure Mailboxes and work with DOJ to implement the APPS program. While some local law enforcement agencies are pursuing APPS cases, most departments do not have enough officers to effectively implement the APPS program. In this time of economic crises, local law enforcement agencies are being forced to make difficult reductions in personnel. Budgetary cuts are forcing detectives, who could be working APPS cases, to fill-in on patrol. DOJ should be using its available resources, such as the DROS funds, to assist local law enforcement agencies with firearm-related enforcement activities. GUN SHOWS: A recent study by Dr. Garen Wintemute has shown that gun shows in CA are no longer a significant source of illegal guns due to the oversight by DOJ agents. Unless this oversight is frequent and sustained, gun shows will once again become a source of illegal guns. It is well known that many crime guns in California come from out of state gun shows. Specifically, many guns used in crime in the East Bay Area come from the Reno gun shows. Because of the "gun show loophole" in Nevada and Arizona, a criminal or other prohibited person can easily purchase a gun with no background check or waiting period. (California has closed this loophole and requires background checks and waiting periods for all firearm purchases at gun shows.) More agents are needed to monitor California license plates at out-of-state gun shows and apprehend those who are illegally bringing firearms back into California. These persons may be prohibited purchasers, straw buyers or illegal firearm traffickers. AFS: DROS Funds should be used to continually upgrade and enhance the Automated Firearms System (AFS). This is particularly important because the current major upgrade project was narrowed in scope to be within budget and many desired features were not included. In addition, as technology continues to improve, the AFS will need necessary enhancements and upgrades to stay current.	The Department disagrees with the comment. Funds from the DROS fee may only be used for specific purposes delineated in Penal Code section 12076. The Department is not authorized to use DROS funds on the APPS program or to notify new gun buyers of their duties and responsibilities as gun owners as recommended by the commenter.

AGRFP000179

EXHIBIT 7

SB-819 Firearms.(2011-2012)

Bill Start

Senate Bill No. 819

CHAPTER 743

An act to amend Section 28225 of the Penal Code, relating to firearms.

[Approved by Governor October 09, 2011. Filed with Secretary of State October 09, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 819, Leno. Firearms.

Existing law authorizes the Department of Justice to require a firearms dealer to charge each firearm purchaser a fee, as specified, to fund various specified costs in connection with, among other things, a background check of the purchaser, and to fund the costs associated with the department's firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms. The bill would make related legislative findings and declarations.

This bill would also authorize using those charges to fund the department's firearms-related regulatory and enforcement activities related to the possession of firearms, as specified.

Digest Key

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

The Legislature finds and declares all of the following:

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

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

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

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

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

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

(g) Rather than placing an additional burden on the taxpayers of California to fund enhanced enforcement of the existing armed prohibited persons program, it is the intent of the Legislature in enacting this measure to allow the DOJ to utilize the Dealer Record of Sale Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System.

SEC. 2.

Section 28225 of the Penal Code is amended to read:

28225.

(a) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

(b) The fee under subdivision (a) shall be no more than is necessary to fund the following:

(1) The department for the cost of furnishing this information.

(2) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(3) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(4) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(5) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(7) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(8) For the actual costs associated with the electronic or telephonic transfer of information pursuant to Section 28215.

(9) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(10) The department for the costs associated with subdivisions (d) and (e) of Section 27560.

(11) The department for the costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(c) The fee established pursuant to this section shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (3) of subdivision (b), the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (4) of subdivision (b), the estimated reasonable costs of local mental hospitals,

sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (5) of subdivision (b), the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (7) of subdivision (b), the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, the estimated reasonable costs of the department for the costs associated with subdivisions (d) and (e) of Section 27560, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(d) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be used for the submission of the fees described in this section to the department.

EXHIBIT 8

CALIFORNIA DEPARTMENT OF JUSTICE

LEGISLATIVE ANALYSTS' OFFICE
SUPPLEMENTAL REPORT OF THE 2002 BUDGET ACT

ITEM 0820-001-0460
DEALERS' RECORD OF SALE FUND (DROS)

November 1, 2002

Attachment I

DEPARTMENT OF JUSTICE
DEALERS' RECORD OF SALE (DROS) FUND REVENUE INFORMATION
FISCAL YEARS 1998-1999 THROUGH 2001-2002

The DROS Fund contains a multiple number of sources of revenue other than revenues received from dealers' records of sales of firearms. The chart below identifies fourteen sources of revenue that are deposited in the DROS Fund.

TRANSACTION & STATUTORY AUTHORITY	FY 98-99	FY 99-00	FY 00-01	FY 01-02
DEALERS RECORD OF SALE OF FIREARM (DROS) - PC 12076(e)	5,450,000	6,548,000	5,101,000	5,014,000
PEACE OFFICER STANDARD TRAINING (POST) - PC 13511.5	55,000	57,000	45,000	27,000
PEACE OFFICER FIREARMS ELIGIBILITY APPLICANT - PC 832.15(c)	381,000	399,000	430,000	482,000
SECURITY GUARD FIREARMS ELIGIBILITY APPLICANT - B&P 7583.26(a)	342,000	345,000	339,000	393,000
HANDGUN REPORT - VOL REG, OPER OF LAW, NEW RES, CURIO/RELIC - PC 12076(f)(1)	46,000	47,000	49,000	56,000
ASSAULT WEAPON REGISTRATION - PC 12285(a)	-	20,000	839,000	37,000
CERTIFICATE OF ELIGIBILITY (COE) - PC 12071(a)(5)	74,000	69,000	64,000	84,000
CARRY CONCEALED WEAPON LICENSE - PC 12054(a)	898,000	793,000	513,000	743,000
CENTRALIZED LIST OF GUN DEALERS & DEALER INSPECTIONS - PC 12071(f)	274,000	201,000	238,000	272,000
DANG WEAPONS LICENSES & PERMITS - PC 12095, 12231, 12250, 12287, 12305(e), 12424	59,000	102,000	51,000	53,000
FIREARMS MANUFACTURERS LICENSE - PC 12086(b)(3)	-	6,000	4,000	5,000
GUN SHOW PROMOTER'S LICENSE - PC 12071.1(d)	-	1,000	1,000	1,000
SAFE HANDGUN TESTING & LABORATORY TESTING - PC 12130(b), 12131(b)(1)	-	-	101,000	131,000
ASSAULT WEAPON GUIDE - PC 12285	-	-	5,000	1,000
DROS (0460) TOTAL	7,579,000	8,588,000	7,778,000	7,279,000

Note: Some applications involve the purchase of more than one firearm. As an example, the first long gun transaction is $14, with subsequent transactions at $10. Therefore, Attachment I and Attachment V do not tie out for that reason.

EXHIBIT 9

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MID LAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION,

Plaintiffs and Petitioners,

v.

KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller, and DOES 1-10,

Defendants and Respondents.

Case No. 34-2013-80001667

DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S AMENDED RESPONSES TO REQUESTS FOR ADMISSIONS (SET ONE)

PROPOUNDING PARTY:	**PLAINTIFFS**
RESPONDING PARTY:	**DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY**
SET NUMBER:	**ONE**

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Defendants object to this request. The phrase "segregated in any way" is vague and ambiguous. Without waiving this objection, defendants respond as follows:

Admitted.

REQUEST FOR ADMISSION NO. 8:

Admit it is impossible to trace a specific DROS FEE payment once it is deposited into the DROS SPECIAL ACCOUNT.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Defendants object to this request. The use of the word "trace" is vague and ambiguous. Without waiving this objection, defendants respond as follows:

Admitted.

REQUEST FOR ADMISSION NO. 9:

Admit that, for Fiscal Year 2013-2 014, CAL DOJ spent more than $6,000,000 on APPS related law enforcement activities.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Admitted.

REQUEST FOR ADMISSION NO. 10:

Admit that, for Fiscal Year 2013-2014, no money from the GENERAL FUND was used to fund CAL DOJ's APPS-related activities.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Denied.

REQUEST FOR ADMISSION NO. 11:

Admit that it is the position of CAL DOJ that the use of DROS FEE FUNDS to fund APPS does not in any way operate as a tax under state law.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Admitted.

abiding citizens who have not participated in the DROS PROCESS.

RESPONSE TO REQUEST FOR ADMISSION NO. 86:

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64–65.)

Without waiving this objection, defendants respond as follows:

Unable to admit or deny.

REQUEST FOR ADMISSION NO. 87:

Admit that, as of the date of this request, it is the position of CAL DOJ that DROS FEE FUNDS may legally be used for expenditures related to APPS without any legislative action other than appropriation legislation.

RESPONSE TO REQUEST FOR ADMISSION NO. 87:

Admitted.

REQUEST FOR ADMISSION NO. 88:

Admit that it is the position of CAL DOJ that law-abiding firearm owners have a greater

EXHIBIT 10

Department of Finance **STATE OF CALIFORNIA** **MANUAL OF STATE FUNDS**	**Fund: 0460** **PAGE 1** Renumbered From:
Legal Title Dealers' Record of Sale Special Account	
Legal Citation/Authority Chapter 327 Statutes of 1982 Penal Code, Section 12076	
Fund Classification **GAAP Basis** Governmental/Special Revenue	**Fund Classification** **Legal Basis** Governmental/Other Governmental Cost Funds
Purpose Administration of the registration program for fees imposed on firearm dealers for sales of firearms capable of being concealed.	
Administering Agency/Org. Code Organization Code – 0820/Department of Justice	
Revenue Sources Fees on sale of concealable firearms by a dealer.	
Disposition of Funds (upon abolishment) Pursuant to Government Code 16346, absent language that identifies a successor fund, any balance remaining in this fund upon abolishment shall be transferred to the General Fund.	
Appropriation Authority Section 12076 of the Penal Code provides that the money is available when appropriated by the Legislature.	
State Appropriations Limit Excluded – Revenues in this fund are not proceeds of taxes, however, when transferred, may become proceeds of taxes. These revenues are used to regulate the activities engaged in by the payers.	
Historical Comments	

EXHIBIT 11

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MID LAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, Plaintiffs and Petitioners, **v.** **KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller, and DOES 1-10,** Defendants and Respondents.	Case No. 34-2013-80001667 **DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S AMENDED RESPONSES TO REQUESTS FOR ADMISSIONS (SET ONE)**

PROPOUNDING PARTY: **PLAINTIFFS**

RESPONDING PARTY: **DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY**

SET NUMBER: **ONE**

REQUEST FOR ADMISSION NO. 12:

Admit that it is the position of CAL DOJ that the use of DROS FEE FUNDS to fund APPS operates as a tax under state law.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Defendants object to this request. The request is irrelevant and unduly repetitive in light of Request for Admission No. 11 and defendants' response to it. Plaintiffs having asked Form Interrogatory No. 17.1 in connection with their requests for admissions, preparing a response to this request would also impose an unfair burden on defendants.

Without waiving this objection, defendants respond as follows:

Denied.

REQUEST FOR ADMISSION NO. 13:

Admit that it is the position of CAL DOJ that funding APPS with funds from the DROS SPECIAL FUND does not cause the DROS FEE to be a tax under state law.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Admitted.

REQUEST FOR ADMISSION NO. 14:

Admit that it is the position of CAL DOJ that funding APPS with funds from the DROS SPECIAL FUND does not cause the DROS FEE to be a tax under state law.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Defendants object to this request. The request is repetitive. It is the same as Request for Admission No. 13.

Without waiving this objection, defendants respond as follows:

Plaintiffs having clarified during the meet and confer process that Request for Admission No. 14 inadvertently contains the word "not," defendants deny that it is the position of CAL DOJ that funding APPS with funds from the DROS SPECIAL FUND does cause the DROS FEE to be a tax under state law

REQUEST FOR ADMISSION NO. 15:

Admit that the DROS PROCESS (as used herein, "DROS PROCESS" refers to the

background check process that occurs when a firearm purchase or transfer occurs in California; CAL DOJ' s own usage of "DROS PROCESS" can be found at http://oag.ca.gov/firearms/pubfaqs) does not rely in any way on the implementation of APPS.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Defendants object to this request. The phrase "does not rely in any way on the implementation of APPS" is so ambiguous that the responding party cannot in good faith frame an intelligent reply.

Without waiving this objection, defendants respond as follows:

Plaintiffs having clarified during the meet and confer process that Request for Admission No. 15 intends to ask whether the operation of the DROS PROCESS can occur regardless of whether APPS is operational or not, defendants admit that the DROS process can so operate.

REQUEST FOR ADMISSION NO. 16:

Admit that the purpose of law enforcement sweeps conducted based on APPS data is to remove firearms from the possession of persons who once participated in the DROS PROCESS but are now not legally allowed to possess firearms.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Defendant objects to this request. It is vague in that it suggests only one purpose of the law enforcement efforts referenced in Request for Admission No. 16 and that those efforts are limited solely to "persons who once participated in the DROS PROCESS." Without waiving these objections, defendants respond as follows:

Admitted.

REQUEST FOR ADMISSION NO. 17:

Admit that the payment of a DROS FEE does not result in an APPS-related special benefit being granted directly to the payor.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need

for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64–65.)

Without waiving this objection, defendants respond as follows:

[Denied.]

REQUEST FOR ADMISSION NO. 18:

Admit that the payment of a DROS FEE does not result in an APPS-related special privilege being granted directly to the payor.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all

EXHIBIT 12

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KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller, and DOES 1-10,

Defendants and Respondents.

Case No. 34-2013-80001667

DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S AMENDED RESPONSES TO FORM INTERROGATORIES (SET ONE)

PROPOUNDING PARTY:	**PLAINTIFFS**
RESPONDING PARTY:	**DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY**
SET NUMBER:	**ONE**

under state law.

(c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact information is above.

(d) Defendants have no additional documents to identify other than the documents identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose contact information is above.

(a) **Request for Admission No. 14.**

(b) Defendants' legal position is that funding APPS with funds from the DROS special fund does not cause the DROS fee to be a tax under state law

(c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact information is above.

(d) Defendants have no additional documents to identify other than the documents identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose contact information is above.

(a) **Request for Admission No. 17.**

(b) Depending on the circumstances of a particular case, payment of a DROS fee may ultimately lead to a benefit realized by the payor vis-à-vis the APPS program. For example, a person who pays a DROS fee may later become prohibited from possessing firearms and have firearms recovered as a result of the APPS program.

(c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact information is above.

(d) Defendants have no additional documents to identify other than the documents identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose contact information is above.

EXHIBIT 13

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Defendants and Respondents.

Case No. 34-2013-80001667

DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S RESPONSES TO SPECIAL INTERROGATORIES (SET ONE)

PROPOUNDING PARTY:	**PLAINTIFFS**
RESPONDING PARTY:	**DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY**
SET NUMBER:	**ONE**

RESPONSES TO SPECIAL INTERROGATORIES

INTERROGATORY NO. 1:

State CAL DOJ' s (as used herein, "CAL DOJ" refers to the California Department of Justice, including the office of the Attorney General, and all employees and representatives of the California Department of Justice) best estimate as to the average PER TRANSACTION COST (as used herein, "PER TRANSACTION COST" refers to the average cost of performing a given transaction, including a proportional share of overhead costs) to perform the tasks included in the DROS PROCESS (as used herein, "DROS PROCESS" refers to the background check process that occurs when a firearm purchase or transfer occurs in California; CAL DOJ' s own usage of "DROS PROCESS" can be found at http://oag.ca.gov/firearms/pubfaqs) regarding the purchase of one handgun.

RESPONSE TO INTERROGATORY NO. 1:

Defendants object to the term "DROS PROCESS" as defined to the extent that Plaintiffs' definition does not comport with its reference to the Defendants' usage of that term on its public website at http://oag.ca.gov/firearms/pubfaqs. Defendants' use of the term "DROS PROCESS" on that website only refers to the "front-end" portion of a firearms purchase (i.e., where the purchaser visits a firearms dealer to purchase a firearm). Subject to and without waiving this objection, Defendants respond as follows:

Defendants currently do not have the personal knowledge sufficient to respond fully to this interrogatory even after making a reasonable and good faith effort to obtain the information sought.

INTERROGATORY NO. 2:

If CAL DOJ contends that, upon a reasonable and good faith effort, it cannot provide a response to Interrogatory No. 1, please describe, in detail, what barriers, be they financial, factual, or otherwise, prevent the response sought from being provided.

RESPONSE TO INTERROGATORY NO. 2:

While defendants know the approximate number of DROS transactions actually processed per year, defendants are not aware of any calculation showing the total annual cost of the "DROS PROCESS" as defined by plaintiffs.

There are a number of barriers to even estimating this cost. For example, the criminal histories of firearms purchasers can fluctuate greatly from purchaser to purchaser. One purchaser may have no criminal history, in which event the approval of the purchase can happen quickly, whereas another purchaser may have an extensive criminal history, requiring considerable time and resources to review and assess.

Another example is that the number of DROS transactions to be processed can vary widely over time. Firearms purchasing activity can fluctuate considerably based on a variety of factors, such as the time of year (e.g., holiday season, hunting season) or even certain political events (e.g., elections).

Nevertheless, defendants in good faith continue to work with California Department of Justice administrative and program personal to make such an estimate. Defendants will supplement this interrogatory answer accordingly.

INTERROGATORY NO. 3:

List every line item amount, by Object Code, Object Title, or Object Description, that when summed comprised the $9,204,449 total for Actual Year-End Expenditures for Fiscal Year 2011/2012 for the Dealers' Record of Sale program (Unit Code 510).

RESPONSE TO INTERROGATORY NO. 3:

The amounts requested in this interrogatory are listed in the document attached hereto as Exhibit A. Also, note that the correct actual year-end expenditures for the year in question total $9,292,915.84.

INTERROGATORY NO. 4:

State the Actual Year-End Expenditures for Fiscal Year 2012/2013 for the Dealers' Record of Sale program (Unit Code 510).

EXHIBIT 14

KAMALA D. HARRIS
Attorney General of California
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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY BAUER, STEPHEN WARKENTIN, NICOLE FERRY, LELAND ADLEY, JEFFREY HACKER, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., CALIFORNIA RIFLE PISTOL ASSOCIATION FOUNDATION, HERB BAUER SPORTING GOODS, INC., Plaintiffs, v. **KAMALA HARRIS, in Her Official Capacity as Attorney General For the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, and DOES 1-10,** Defendants.	1:11-cv-1440-LJO-MJS **DEFENDANT'S AMENDED RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS, SET ONE**

PROPOUNDING PARTY: PLAINTIFF BARRY BAUER

RESPONDING PARTY: DEFENDANT KAMALA D. HARRIS

SET NUMBER: ONE

///

///

fees, are deposited collectively in that account. Thus, defendant does not know precisely what percentage of the funding of APPS-related activities is derived from DROS fees exclusively.

REQUEST FOR ADMISSION NO. 14

Admit that revenues from the collection of DROS FEES are all deposited in the DROS SPECIAL ACCOUNT.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Admitted.

REQUEST FOR ADMISSION NO. 15

Admit that it is impossible to determine a specific percentage of DROS FEES that are expended on APPS-related expenditures in a given fiscal year because revenue from the collection of DROS FEES becomes indistinguishable from other money when deposited into the DROS SPECIAL ACCOUNT.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Admitted.

REQUEST FOR ADMISSION NO. 16

Admit that, for fiscal year 2012-1013, BOF received approximately $20,725,000 in budget funds from the DROS SPECIAL ACCOUNT.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Admitted.

REQUEST FOR ADMISSION NO. 17

Admit that, for fiscal year 2012-1013, and with regard only to budget funds obtained that fiscal year from the DROS SPECIAL ACCOUNT, BOF spent approximately $6,607,000 on APPS-related law enforcement activities.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Admitted.

REQUEST FOR ADMISSION NO. 18

Admit that the approximately $6,607,000 of funds BOF obtained from the DROS SPECIAL ACCOUNT in fiscal year 2012-2013 was the PRIMARY source of funding for the costs of employing NON-SWORN PERSONS working in the APPS UNIT.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Admitted.

REQUEST FOR ADMISSION NO. 19

Admit that more than 50% of the money that BOF spent on APPS-related law enforcement activities in fiscal year 2012-2013 was spent on the costs of employing SWORN PERSON performing APPS-related law enforcement activities.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Admitted.

REQUEST FOR ADMISSION NO. 20

Admit that, in addition to money obtained from the DROS SPECIAL ACCOUNT, BOF spent more than $1,000,000 of funds obtained from the GENERAL FUND on APPS-related expenditures during fiscal year 2012-2013.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Denied.

REQUEST FOR ADMISSION NO. 21

Admit that prior to fiscal year 2012-2013, APPS-related activities were funded completely with funds from the GENERAL FUND.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Denied.

REQUEST FOR ADMISSION NO. 22

Admit that prior to fiscal year 2012-2013, APPS-related activities were funded PRIMARILY with funds from the GENERAL FUND.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Admitted.

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

On February 17, 2015, I served the foregoing document(s) described as

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

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

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

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

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on February 17, 2015, at Long Beach, California.

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

X (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.

CHRISTINA SANCHEZ

Exhibit 2

KAMALA D. HARRIS
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Supervising Deputy Attorney General
ANTHONY R. HAKL, State Bar No. 197335
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Attorneys for Defendants and Respondents

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MID LAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, Plaintiffs and Petitioners, **v.** **KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10,** Defendants and Respondents.	Case No. 34-2013-80001667 **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** Date: June 5, 2015 Time: 9:00 a.m. Dept: 31 Judge: Hon. Michael P. Kenny Trial Date: None set Action Filed: October 16, 2013

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INTRODUCTION

Plaintiffs in this action are an organization and group of individuals promoting the right to keep and bear arms. Their complaint for declaratory and injunctive relief and petition for writ of mandate seeks judicial relief that would prohibit defendants Kamala D. Harris, the Attorney General of California, and Stephen Lindley, Chief of the Bureau of Firearms of the California Department of Justice, from expending the revenues of a $19.00 firearms transaction fee on California's Armed Prohibited Persons System (APPS) program. APPS, administered by the Department of Justice ("DOJ"), is a vital law enforcement program that each year recovers thousands of firearms from persons prohibited from possessing them due to criminal behavior or mental illness.

The resolution of this case will depend on the answers to a number of legal questions, as opposed to factual ones. Nevertheless, plaintiffs have propounded an enormous amount of discovery. Defendants have answered the vast majority of that discovery to plaintiffs' satisfaction, except for the relatively few requests at issue in the instant motions to compel. As to those requests, defendants' answers are sufficient for the reasons explained below. The Court should therefore deny plaintiffs' motions to compel.

FACTUAL AND LEGAL BACKGROUND

I. PROCEDURAL HISTORY.

Plaintiffs initiated this action on October 16, 2013, by filing a complaint for declaratory and injunctive relief and petition for writ of mandamus.

Plaintiffs commenced discovery on May 14, 2014, by serving numerous discovery requests on defendants. The requests included:

- Request For Production of Documents (to defendants Harris and Lindley), which included 39 requests for production;
- Requests For Admissions ("RFA") (to defendants Harris and Lindley), which included 117 separate requests;

- Form Interrogatories (to defendants Harris and Lindley), which included Interrogatories 15.1 and 17.1;[1]

- Special Interrogatories (to defendants Harris and Lindley), which included 5 interrogatories;

- Request For Production of Documents (to defendant State Controller), which included 20 requests;

- Special Interrogatories (to defendant State Controller), which included 7 interrogatories.

Defendants responded to each of the above requests by providing written answers and numerous documents along with certain objections where appropriate. The parties met and conferred in good faith over a period of months. Defendants provided additional documents during that process, and with respect to the RFA and Form Interrogatories (to defendants Harris and Lindley), defendants provided amended discovery responses. The parties continued to meet and confer but reached an impasse regarding any additional responses. Plaintiffs' motions to compel followed.[2]

Plaintiffs have filed two motions to compel, and this opposition brief addresses both motions. Plaintiffs' motions include:

- Motion to Compel Further Responses to Requests for Admissions, which seeks further responses to RFA Nos. 83-86 and 88-89; and

- Motion to Compel Further Responses to Form Interrogatory 17.1, which seeks further explanation of defendants' responses to certain RFA, which fall into the following six groups:

[1] As the Court is likely aware, Form Interrogatories 15.1 and 17.1 are onerous. Interrogatory 15.1 generally calls for an explanation of all of the "Denials and Special or Affirmative Defenses" in defendants' answer and Interrogatory 17.1 requires the responding party to explain each and every denial to any request for admission, which in this case included 117 such requests.

[2] Along with their motions to compel, plaintiffs have propounded still more discovery on defendants. Specifically, plaintiffs most recently served defendants with another set of Special Interrogatories (Set Two); another Request for Production of Documents (Set Two); another Request for Admissions (Set Two) – which brings the total number of RFAs to 146; and two additional sets of Form Interrogatories (i.e., Sets Two and Three), which include Form Interrogatories 15.1 and 17.1.

1. RFA Nos. 18, 19, 21 and 22;
2. RFA No. 38;
3. RFA Nos. 58 and 68;
4. RFA No. 78;
5. RFA Nos. 83-86 and 88-89; and
6. RFA Nos. 92-96 and 99

Finally, the Court should be aware that this case is related to a federal case, *Bauer, et al. vs. Harris, et al.*, Case No. 1:11-cv-01440-LJO-MJS (E.D. Cal.).) In the federal case, a similar group of plaintiffs, represented by the same counsel as in this case, sued the Attorney General and Chief of the Bureau of Firearms, arguing that the Second Amendment prohibits them from expending the revenues of the $19.00 DROS fee on the APPS program. The federal case also involved a significant amount of discovery served by plaintiffs, as well as the deposition of the Firearms Bureau Chief. Thus, this case is hardly the first occasion on which the parties have exchanged information on these issues.[3] And the district court recently rejected all of plaintiffs' federal constitutional claims on the merits, granting defendants' motion for summary judgment in its entirety. (See *Bauer,* Case No. 1:11-cv-01440-LJO-MJS (E.D. Cal.) [Memo. Decision & Order filed March 2, 2015].)

II. BRIEF SUMMARY OF RELEVANT CALIFORNIA FIREARMS LAWS.

A. Dealer's Record of Sale Transaction Fee.

When an individual purchases a firearm in California, he or she generally must pay $25.00 in fees. The majority of that sum consists of a statutory $19.00 Dealer's Record of Sale (DROS) fee intended to reimburse DOJ for specified costs. (See Penal Code, § 28225, Cal. Code. Regs.

[3] The undersigned represents that the discovery plaintiffs propounded on defendants in the related federal court case, which involved essentially the same issue as this case (i.e., DOJ's use of DROS fee revenues to fund firearms-related regulatory and enforcement activities), included approximately 73 Special Interrogatories; 74 Requests for Production of Documents; and 42 Requests for Admissions.

Tit. 11, § 4001; see also Penal Code, §§ 28230, 28235 & 28240.)[4] The Dealer's Record of Sale Special Account is the name of the state fund created by the Legislature into which all DROS fees collected as a result of firearms transactions are deposited. (§ 28235 ("[a]ll moneys received by the department pursuant to this article shall be deposited in the Dealer's Record of Sale Special Account of the General Fund, which is hereby created"). This case concerns the use of DROS fee revenues to fund certain firearms-related regulatory and enforcement activities of DOJ.

B. California's Armed Prohibited Persons System.

The California Legislature established the Armed Prohibited Persons System (APPS) in 2001. (§ 30000.) That legislation established an electronic system within DOJ to cross-reference certain databases containing records regarding persons prohibited from owning firearms and produce a list of armed prohibited persons. (*Ibid.*) In general, prohibited persons are those who have been convicted of a felony or a violent misdemeanor, are subject to a domestic violence restraining order, or have been involuntarily committed for mental health care. (§ 30005.)

Law enforcement officers throughout California can access the APPS list 24 hours a day, seven days a week, through the California Law Enforcement Telecommunications System (CLETS). (See § 30000, subd. (b); see also § 30010 ["The Attorney General shall provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm."].) DOJ uses the APPS list to conduct enforcement actions that result in the seizure of firearms in the possession of prohibited persons.

C. California Senate Bills 819 and 140.

The APPS program went into effect around 2006, at which time APPS was funded through moneys appropriated from the General Fund. But with the passage of Senate Bill 819 in 2011, the Legislature clarified that the APPS program could be funded with the DROS fees deposited into the Dealer's Record of Sale Special Account. With SB 819 the Legislature amended the DROS fee statute (i.e., section 28225) to include the costs of enforcement activities related to

[4] All further statutory citations are to the California Penal Code unless otherwise indicated.

firearms possession. As a result of SB 819, the provision states that the DROS fee shall be no more than is necessary to fund DOJ for:

> [T]he costs associated with funding Department of Justice firearms-related regulatory and enforcement activities related to the sale, purchase, *possession*, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(§ 28225, subd. (b)(11), emphasis added.)

In 2013, the Legislature passed Senate Bill 140, a bill appropriating $24 million from the DROS Special Account to DOJ to address a growing backlog in APPS. The Legislature added to the California Penal Code section 30015, which provides, in relevant part:

> The sum of twenty-four million dollars ($24,000,000) is hereby appropriated from the Dealers' Record of Sale Special Account of the General Fund to the Department of Justice to address the backlog in the Armed Prohibited Persons System (APPS) and the illegal possession of firearms by those prohibited persons.

(§ 30015, subd. (a).)

III. THE PARTIES.

The plaintiffs in this case are a firearms rights advocacy group called the Calguns Shooting Sports Association, and four individuals.

As mentioned above, the defendants include Kamala D. Harris, the Attorney General of the State of California, and Stephen Lindley, the Chief of the California Department of Justice Bureau of Firearms. The Attorney General and Lindley are generally responsible for the enforcement of a number of state laws regarding the manufacture, sale, purchase, ownership, possession, loan, and transfer of firearms, including laws related to the DROS fee and APPS.

The defendants also include the State Controller, Betty Yee, although the Controller's discovery responses are not at issue in the pending motions.

IV. PLAINTIFFS' CLAIMS.

Plaintiffs' petition and complaint contains six causes of action. The first cause of action is brought against the DOJ defendants and seeks a declaration that SB 819 violates Proposition 26, which voters approved in 2010. (Compl. for Decl. & Inj. Relief & Pet. for Writ of Mandamus ("Compl.") at p. 15 & ¶ 82.) It also seeks an injunction prohibiting DOJ from utilizing DROS

Fee revenues for the purpose of regulating the possession of firearms. (*Id.* ¶ 84.) One court of appeal has explained Proposition 26 as follows:

> Proposition 26 expanded the definition of taxes so as to include fees and charges, with specified exceptions; required a two-thirds vote of the Legislature to approve laws increasing taxes on any taxpayers; and shifted to the state or local government the burden of demonstrating that any charge, levy or assessment is not a tax. Proposition 26 amended section 3 of article XIII A and section 1 of article XIII C of the California Constitution.

(*Schmeer v. Cnty. of Los Angeles*, 213 Cal.App.4th 1310, 1322, as modified (Mar. 11, 2013), review denied (May 15, 2013); see Cal. Const., art. XIIIA, § 3, subd. (a) ["Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed."].)

The second cause of action is also brought against the DOJ defendants. (Compl. at p. 16.) Based on the claim that SB 819 violates Proposition 26, it seeks a declaration that SB 140 "is an unlawful appropriation." (*Id.* ¶ 86 & at p. 20.) It also seeks an injunction precluding DOJ from using any of the $24 million appropriated by SB 140 in connection with the APPS programs. (*Id.* ¶ 90.)

The third and fourth causes of action are against the Controller. Based on the claim that SB 140 "is an unlawful appropriation," it seeks a writ of mandate "stopping appropriation of SB 140 funds" and the "recouping of SB 140 funds," respectively. (See Compl. at pp. 17-18.)

The fifth cause of action is against the DOJ defendants. Based on the "unlawful appropriation" claim, it seeks writ relief direct the DOJ defendants return the funds appropriated under SB 140. (Compl. at p. 18.)

Finally, the six cause of action is also against the DOJ defendants and seeks a writ of mandate directing them to review the "proper amount" of the DROS fee, which is currently $19.00. (Compl. at pp. 18-19.)

ARGUMENT

I. THE COURT SHOULD DENY THE MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSIONS.

As laid out above, the requests for admissions at issue are Nos. 83-86 and 88-89. The text of all of the requests and responses at issue are set forth in plaintiffs' motion.

It is undisputed that Requests for Admission Nos. 83-86 and 88-89 seek defendants' position on the Proposition 26 issue. At this stage of the proceedings, defendants have clearly articulated its position that Proposition 26 does not apply because SB 819 simply did not "result[] in any taxpayer paying a higher tax." (Cal. Const., art. XIIIA, § 3, subd. (a).) Thus, defendants have not formulated a position on ancillary legal questions like whether those who participate in the DROS process "place an unusual burden" on the general public as to the illegal possession of firearms (see Request Nos. 83 & 84); whether they pose a "greater burden" on the public as to illegal firearm possession than those who have not participated in the DROS process (see Request Nos. 85 & 86); or whether law-abiding firearm owners have "a greater interest" than law-abiding citizens who do not own firearms in making sure that prohibited persons do not possess firearms (see Request Nos. 88 & 89). That is why defendants have stated an inability to admit or deny Requests for Admission Nos. 83-86 and 88-89 at this time, which is an appropriate response. (See *Smith v. Circle P Ranch Co.* (1978) 87 Cal.App.3d 267, 277 ["California allows a person to state that he unable to admit or deny a specific request for admission."].) Plaintiffs cannot use requests for admissions to force defendants to unnecessarily and prematurely take a position on any legal issue of plaintiffs' choosing.

Related, requests for admissions are not a vehicle for briefing a case on the merits. Rather, it is a discovery tool with limits. Their purpose is to expedite trials by setting at rest triable issues and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the ancillary legal issues implicated by Request Nos. 83-86 and 88-89 become relevant, defendants plan to contest them. Stated more broadly, plaintiffs are well aware of defendants' current position on the Proposition 26 issue, and defendants should not be required to

brief every related issue of which plaintiffs can conceive over the course of 117 requests for admissions, and the related Form Interrogatory 17.1, which effectively amounts to 117 additional discovery requests. The requests for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784.) Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree"], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64–65.) In their motions, plaintiffs attempt to distinguish these cases based on their facts. But the legal principles articulated in these cases still apply.

Finally, defendants have noticed a motion for judgment on the pleadings that, if successful, would dispose of plaintiffs' Proposition 26 claims and obviate the need for much of plaintiffs' discovery. That motion will be heard on the same day as the motions to compel. Thus, if for some reason the Court is inclined to consider ordering further responses to Request Nos. 83-86 and 88-89, and in the interest of conserving the resources of the Court and the parties, defendants respectfully request that the Court withhold any such consideration pending its ruling on the motion for judgment on the pleadings.[5]

Defendants have sufficiently responded to the vast amount of discovery served by plaintiffs. Defendants' answers to plaintiffs' 117 requests for admissions, including Request Nos. 83-86 and 88-89, are sufficient. The Court should therefore deny the motion to compel.

[5] For their part, plaintiffs argue in their motions to compel that defendants' motion for judgment on the pleadings is bound to fail. Of course, defendants disagree. In any event, the Court should decline plaintiffs' apparent invitation to somehow rule on the motion for judgment on the pleadings based on the briefing on the motions to compel. The parties will fully brief the motion for judgment on the pleadings in its own right prior to the noticed hearing on that motion.

II. THE COURT SHOULD DENY THE MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORY 17.1.

As stated above, plaintiffs' motion to compel further responses to Form Interrogatory 17.1 seeks further explanation of defendants' responses to six groups of requests for admissions. Below, defendants address each of those groups and explain why the Court should deny the motion.

A. Form Interrogatory 17.1(b) as it relates to RFA Nos. 18, 19, 21 and 22

Like the RFA discussed above, these requests go to the Proposition 26 issue. Thus, defendants expect that the requests will become moot following the Court's resolution of the motion for judgment on the pleadings. Nevertheless, in the event that motion is denied, and defendants having considered plaintiffs' motion and reviewed the relevant requests further, defendants agree to provide further amended responses to Form Interrogatory 17.1(b) as it relates to RFA Nos. 18, 19, 21 and 22. In light of defendants' willingness in this regard, the motion to compel should be denied.

B. Form Interrogatory 17.1(b) as it relates to RFA No. 38.

According to plaintiffs' motion, this request seeks an explanation of "what the per transaction cost is for the DROS process." (Pls.' Sep. Stmnt. in Supp. of Mot. to Compel Addt'l Form Inter. Responses at p. 6.) Thus, the request is cumulative of plaintiffs' Special Interrogatories Nos. 1 & 2, which defendants have answered. The motion as to this request should be denied for this reason alone.

Regarding defendants' responses to Special Interrogatories Nos. 1 & 2, they are not encompassed by the instant motion. Moreover, defendants' answers to those interrogatories sufficiently explain why defendants' cannot state any "per transaction cost" at this stage of the litigation.

Additionally, plaintiffs' insistence on determining a "per transaction cost" is unwarranted. Plaintiffs do not seek any order setting the DROS fee at a particular level. Rather, in relevant part, plaintiffs seek a writ directing defendants "to review the DROS Fee as currently imposed to determine whether the amount is 'no more than necessary' to cover its costs for the DROS

program." (Compl. at p. 21.) It would be unfair to require defendants to effectively conduct that review to answer a discovery response in advance of the resolution of the merits question of whether defendants even have the duty to conduct such a review.

Accordingly, the motion to compel a further response to Form Interrogatory 17.1 as it relates to RFA No. 38 should be denied.

C. Form Interrogatory 17.1(b) as it relates to RFA Nos. 58 and 68.

Defendants' explanation of their denial of RFA Nos. 58 and 68 is sufficient. Defendants have advised plaintiffs of the various costs associated with operating DOJ's firearms-related regulatory and enforcement programs. In connection with the federal court case and now this case defendants have produced numerous pages of budget and financial documents detailing the Legislature's appropriation of funds out of the DROS Special Account and DOJ's expenditure of those funds by line item going back to fiscal year 2003-2004 (i.e., covering a period of more than *ten years*). In addition to this significant amount of information, in the federal case plaintiffs deposed defendant Lindley, and they will almost certainly notice his deposition again in this case. Moreover, on more than one occasion defendants have proposed that plaintiffs depose some other employee of the Department of Justice who is knowledgeable about the expenditure of DROS Special Account funds. Plaintiffs have yet to accept that proposal, even though a deposition would be a far better vehicle for a discussion of the "costs" referenced in RFA Nos. 58 and 68.

In light of these circumstances, defendants should not have to detail or otherwise explain DOJ's complicated budget and various expenditures in response to a broadly-phrased, catch-all question like Form Interrogatory 17.1. The Court should deny the motion to compel a further response to Form Interrogatory 17.1(b) as it relates to RFA Nos. 58 and 68.

D. Form Interrogatory 17.1(b) as it relates to RFA No. 78.

Defendants' admission to RFA No. 78 is sufficiently unqualified so as to make any response Form Interrogatory 17.1(b) unnecessary. Under the rules, an answer to a request for admission must be "as complete and straightforward" as the information available reasonably permits and must "(a)dmit so much of the matter involved in the request as is true . . . or as reasonably and clearly qualified by the responding party." (Code Civ. Proc., § 2033.220,

subds. (a), (b)(1).) In one published case, a request for admission asked the plaintiff to "Admit you attended a meeting with [Party Y] on or about January 13, 2006." She responded: "Admit. [Party X] was also present." The Court determined that the plaintiff's response "admitted the statement and was not improper." (*St. Mary*, *supra*, 223 Cal.App.4th at p. 781 [brackets added].) This Court should take a similar view of the instant situation regarding RFA No. 78 and deny the motion to compel.

E. Form Interrogatory 17.1(b) as it relates to RFA Nos. 83-86 and 88-89.

In their answers to RFA Nos. 83-86 and 88-89, related interrogatory answers, and this opposition brief, defendants have articulated their position on the Proposition 26 issue and explained their inability to admit or deny the requests. Defendants have also explained above the impropriety of using RFA and Form Interrogatory 17.1 to brief the merits of a case. And in any event, any discovery order regarding RFA Nos. 83-86 and 88-89 would be unnecessary and premature in light of the pending motion for judgment on the pleadings. Thus, the motion to compel in connection with these requests should be denied.

F. Form Interrogatory 17.1(b) as it relates to RFA Nos. 92-96 and 99.

Defendants' interrogatory answers explaining their denial to RFA Nos. 92-96 and 99 is sufficient. As stated above, defendants have advised plaintiffs of the costs of DOJ's relevant programs and activities. Defendants have produced detailed budget and financial documents, produced defendant Lindley for deposition in the federal case, and remain willing to participate in relevant depositions in this case at the appropriate time. Again, a deposition would be a better vehicle for a discussion of the various activities and expenditures referenced in RFA Nos. 92-96 and 99. Thus, similar to the situation with respect to RFA Nos. 58 and 68, under the circumstances defendants should not have to detail or otherwise explain DOJ's expenditures in response to a generic question like Form Interrogatory 17.1. Thus, in its discretion and in the interest of efficiently managing the discovery process, the Court should deny the motion to compel.

CONCLUSION

For the reasons set forth above, the Court should deny both of plaintiffs' motions to compel.

Dated: April 6, 2015

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
STEPAN HAYTAYAN
Supervising Deputy Attorney General

ANTHONY R. HAKL
Deputy Attorney General
Attorneys for Defendants and Respondents

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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**
No.: **34-2013-80001667**

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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 6, 2015, I served the attached **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Scott M. Franklin, Esq.
C. D. Michel, Esq.
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

E-mail Address:
Sfranklin@michellawyers.com
CMichel@michellawyers.com
E-mail Address:

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 April 6, 2015, at Sacramento, California.

Tracie L. Campbell
Declarant

Tracie Campbell
Signature

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Exhibit 3

C. D. Michel - S.B.N. 144258
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION Plaintiffs and Petitioners, vs. KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **REPLY IN SUPPORT OF MOTIONS TO COMPEL FURTHER RESPONSES TO: (1) REQUEST FOR ADMISSIONS, SET ONE; AND (2) FORM INTERROGATORIES, SET ONE, BOTH PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY** Date: 06/05/15 (resched. from 04/24/15) Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/13

I. INTRODUCTION

The Plaintiffs believe judicial economy will be best served if the Court issues a tentative ruling on the current Motions[1] on or before April 24, 2015, the date the Motions were first set for

[1] I.e., Plaintiffs' Motion to Compel Further Responses to Form Interrogatories, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley ("Motion re: FI") and Plaintiffs' Motion to Compel Further Responses to Requests for Admissions Propounded on Defendants Kamala Harris and Stephen Lindley ("Motion re: RFA").

hearing.[2] Defendants and Respondents Kamala Harris and Stephen Lindley's (collectively "Defendants") Opposition to Plaintiffs' Motions to Compel ("Opposition") is premised on a claim that they can argue their primary defense to the Motions *currently* before the Court in a later, as-of-now unfiled motion for judgment on the pleadings ("MJOP"). Briefing on the Motions is now closed under both generally applicable law (Code of Civil Procedure section 1005) and this Court's Order of March 13, 2015. Defendants should not be allowed to manipulate the Court's schedule to use an MJOP as a de facto sur-reply to raise arguments and objections that Plaintiffs have already shown to be untimely and without merit.

Specifically, Defendants have requested that the Court withhold consideration of the current Motions until the hearing on Defendants' inchoate MJOP. Defendants claim that the proposed delay will conserve the Court's resources.[3] The evidence indicates the opposite is true.

Plaintiffs have shown, and Defendants have utterly failed to rebut, that there is no pleading deficiency that will prevent success on the Motions. Therefore, a well-timed tentative ruling reflecting that reality will give Defendants the ability to avoid wasting the parties and the Court's time on an MJOP founded on an argument that has already been considered by the Court in the context of the current Motions.

Defendants intentionally chose to file the Opposition sans argument regarding their supposed justification for discovery non-compliance, and they should not be rewarded with a second bite at the apple through the MJOP process, especially where Plaintiffs have already shown the proposed MJOP is not likely to succeed. And in any event, even if the Court issues the tentative ruling sought, that works no prejudice on Defendants, as that tentative ruling would not bar the filing of an MJOP.

Accordingly, Plaintiffs request that the Court issue a tentative order on or about April 24, 2015, indicating an inclination to grant the relief sought in the Motions.

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[2] The hearing date for the Motions was rescheduled by stipulation to resolve a scheduling conflict, though the parties did agree to complete briefing for the Motions by April 17, 2015, with the hearing on those Motions, if necessary, being held on June 5, 2015. (*See* Order of March 13, 2015).

[3] (Opp. 8:17-21).

II. ARGUMENT

Before delving into discussion concerning specific discovery requests and responses, Plaintiffs need to address a "theme" that is reiterated throughout the Opposition. The Opposition repeatedly refers to the amount of discovery propounded by Plaintiffs, characterizing Plaintiffs' discovery as "enormous[,]" "numerous[,]" "vast[,]" and otherwise intimating that complying with the discovery at issue would unduly burden Defendants. (Opp. 1:12-13; 1:21-22; 2:24-28; 8:22-23). Defendants' comments on this point are specious, inasmuch as Defendants: (1) did not timely[4] raise an undue burden or oppression objection concerning the discovery requests at issue,[5] and (2) Defendants did not promptly, or ever, seek a protective order in response to the discovery requests Plaintiffs served on Defendants. Civ. Proc. Code §§ 2030.090, 2033.080; *see St. Mary v. Super. Ct.*, 223 Cal. App. 4th 762, 774 (indicating that section 2033.080's use of the word "promptly" refers to taking action in less than thirty days from the service of a set of requests for admissions); *accord* Rylaarsdam, et al., *California Practice Guide: Civil Procedure Before Trial* §§ 8:1013, 8:1304.1 (The Rutter Group 2014).

Because Defendants have waived any argument of undue burden as to the discovery requests actually at issue, Defendants' protestations on this issue should be ignored by the Court.

A. Further Responses to RFA Nos. 83-96 and 88-89 Should Be Ordered

1. Defendants' Claimed Inability to Respond Lacks Veracity

Defendants are still claiming an "inability to admit or deny Request for Admissions Nos. 83-86 and 88-89" notwithstanding what the Opposition confirms: Defendants believe they *can* respond, they just do not want to, regardless of the plain requirements of Code of Civil

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[4] Objections to requests for admissions that are not timely made are waived. *See* Civ. Proc. Code §§ 2030.240(b), 2030.260(a); *see also Scottsdale Ins. Co. v. Super. Ct.*, 59. Cal. App. 4th 263, 272-273 (1997) (holding that, in the context of an attorney-client privilege objection made *after* a timely interrogatory response, "an objection based on privilege must be made in the *original* response or waiver results") (emphasis in original).

[5] *See* Plaintiffs' Separate Statement in Support of Motion to Compel Further Responses to Request for Admissions, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley ("Sep. Statement re: RFA"); Plaintiffs' Separate Statement in Support of Motion to Compel Further Responses to Form Interrogatories, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley ("Sep. Statement re: FI").

Procedure section 2033.220. (Opp. 7:26-27) ("In the event the ancillary legal issues implicated by Request Nos. 83-86 and 88-89 become relevant, defendants plan to contest them."). Defendants are not entitled to set the bounds of relevance based on their viewpoint, and their claim that they are unable to comply with the relevant Requests for Admissions ("RFA") offends the spirt and the letter of California's Discovery Act.

The statutory bounds of relevance are clear"any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action[.]" Civ. Proc. Code § 2017.010. The benefits, burdens, and interests related to the feepayers at issue are the substance of the request for admissions at issue, and because this case is about: (1) the proper use of the money provided by feepayers as limited by Article XIII A of the California Constitution; and (2) the justification for the amount being paid by the feepayers, the Court should order the production of the information sought. *Id.* § 2017.010 (*See, e.g.,* Compl. ¶¶ 75, 105).

2. The "No Higher Tax" Argument Fails Procedurally and Substantively

Defendants incorrectly allege that responding to the relevant RFAs would "force defendants to unnecessarily and prematurely take a position on" legal issues. (Opp. 7:19-21). The law is clear that "[p]leading deficiencies generally do not affect either party's right to conduct discovery[.]" *Mattco Forge, Inc. v. Arthur Young & Co.*, 223 Cal. App. 3d 1429, 1437 n.3 (1990) (citation omitted). Therefore, even assuming arguendo that the proposed MJOP might be successful, Defendants' initial RFA responses, served more than nine months ago (and several months before the "no higher tax" argument was explained) needed to be complete at the time they were served, *regardless* of a supposed pleading defect raised months later. Defendants could have promptly sought a protective order to stay discovery pending the resolution of an MJOP, but they did not, so that "objection" was waived, as described above. Civ. Proc. Code § 2033.080(a).

> [Defendants now claim that, a]t this stage of the proceedings, defendants have clearly articulated its [sic] position that Proposition 26 does not apply because SB 819 simply did not "result[] in any taxpayer paying a higher tax." (Cal. Const., art. XIIIA, § 3, subd. (a).) Thus, defendants have not formulated a position on ancillary legal questions like **[(1)]** whether those who participate in the DROS process "place an unusual burden" on the general public [citation]; **[(2)]** whether they pose a "greater burden" on the public as to illegal firearm possession than those who have not participated in the DROS process [citation]; or **[(3)]** whether law-abiding firearm owners have "a greater interest" than law-abiding citizens who

> do not own firearms in making sure that prohibited persons do not possess firearms [citation].

(Opp. 7:7-16).

First, contrary to their claim, Defendants have never "clearly articulated" their "no higher tax" position. The Opposition's omission of a citation to support Defendants' claim is telling. (*Id.*). And perhaps more to the point, neither the "no higher tax" argument, nor the threatened MJOP, was referred to in Defendants' RFA responses. (*See* Sep. Statement re: RFA).

In reality, the only place Defendants have ever provided a written explanation of this argument was in a somewhat cryptic email sent well after the meet-and-confer process started, wherein Defendants' attorney provided a few sentences comprising a "rough outline" of the inchoate MJOP. (Declaration of Scott M. Franklin in Support of Motion to Compel Further Responses to Requests for Admissions, Set One, Propounded on Defendants Kamala Harris and Stephen Lindley Ex. 3). As that email predated the Motions, Defendants have never responded to the Motions' arguments as to how Proposition 26 should be interpreted.

For example, the Opposition does not provide any response regarding the fact that the California Department of Finance has clearly stated that the funds at issue, "when transferred, may become proceeds of taxes." (Motion re: RFA 9:9-27). Nor have Defendants ever addressed the fact that the relevant legislative history clearly states Proposition 26 requires "a two–thirds vote of each house of the Legislature to approve laws that increase taxes on any taxpayer, ***even if the law's overall fiscal effect does not increase state revenues***." Legislative Analyst's Office, *Proposition 26* [Title and Summary/Analysis] 57 (2010) (emphasis added) (Declaration of Scott M. Frankin in Support of Plaintiffs' Reply Ex. 1). Thus, though Defendants had the opportunity to use the Opposition to rebut Plaintiffs' claim that the "no higher tax" argument is meritless, they instead chose to gamble that the Court will let them brief the issue during the MJOP process.

Second, it is unreasonable for Defendants to argue that, because they have taken a position that Plaintiffs' Proposition 26 claim is flawed, that "fact" caused them to not formulate a position on certain questions that are directly relevant to their constitutional burden to show the challenged fee is in no way a tax. Cal. Const. art. XIII A, § 3(b, d) (Opp. 7:7-17). Just the opposite is true.

Defendants' have sworn that their position is "that the use of DROS funds does not operate as a tax." (Sep. Statement re: RFA at 2:18-19). To reach that position, Defendant *must* have considered the constitutional exceptions that allow certain governmental levies to be excluded from the presumption that such fees are taxes, e.g., "'tax' means any levy, charge, or exaction of any kind imposed by the State, *except* the following . . . ." Cal. Const. art. XIII A, § 3(a, b, d) (italics added) ("The State bears the burden of proving[, among other things, that the costs of a governmental activity allocated to a charge payor bear a] fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.").

Third, it is hard to swallow Defendants' attempt to paint key constitutional questions, e.g., the three numbered inquires in the block quote above, as "ancillary legal questions[.]" (Opp. 6:9-16). Indeed, whether a person paying the fee at issue has a specific interest in the use of the funds the payer paid, or if all who pay the fee create a specific burden on the public, those issues seem likely to be determinative as to Plaintiffs' Proposition 26 claim. Cal. Const. art. XIII A, § 3(b, d); (*e.g.*, Compl. ¶¶ 73-84.) Accordingly, because any relevancy-based claim Defendants are attempting to make are patently meritless, and because the "no higher tax" argument cannot withstand scrutiny, the Court should order further responses to RFA Nos. 83-86 and 88-89.

B. <u>Further FI Responses Should Be Ordered</u>

1. FI No. 17.1(b) Re: RFA Nos. 18, 19, 21, and 22

The Opposition states that "[l]ike the RFA discussed above, these requests go to the Proposition 26 issue. Thus, defendants expect that the requests will become moot following the Court's resolution of the [MJOP]." (Opp. 9:8-10). Even setting aside Plaintiffs' general position that Defendants' cannot rely on an inchoate MJOP argument, the Opposition fails to mention a critical distinction between "the RFA discussed above" (i.e., RFA Nos. 83-86, 88-89) and the specific portion of Form Interrogatory ("FI") 17.1(b) at issue here.

RFA Nos. 18, 19, 21, and 22, unlike RFA Nos. 83-86, 88-89, *have already been denied* by Defendants. (Sep. Statement re: RFA, *passim*; Sep. Statement re: FI at 1:22-2:2). In fact, Defendants have already responded, though insufficiently, to the relevant portion of FI at issue. (*See* Sep. Statement re: FI at 2:3-4:23). Clearly, it would be no great burden for Defendants to

provide the information sought, as the denials of RFA Nos. 18, 19, 21, and 22 must have been based on something. And regardless, because Defendants did not make a timely oppression objection, Defendants' allegations of undue burden are without legal import. (*Id.* at, *e.g.*, 11:1-5); *see Scottsdale Ins. Co. v. Super. Ct.*, 59. Cal. App. 4th 263, 272-273 (1997).

It is unreasonable for Defendants to try to backtrack and avoid providing the further responses upon Plaintiffs having now proven that the "cut and paste" responses at issue were non-responsive. The existence of Defendants' sworn response denying RFA Nos. 18, 19, 21, and 22 necessarily means Defendants already have the information required to answer the relevant portion of FI 17.1(b). In light of that key fact, there is no legitimate reason Defendants should be allowed to keep secret this relevant information that is already in Defendants' possession.

2. FI No. 17.1(b) Re: RFA No. 38 (Non-MJOP Response)

Initially, Plaintiffs want to point out that the disputed response is *not* related to the "no tax increase" issue, and thus a ruling on the threatened MJOP will not, even if successful, provide a basis for Defendants to avoid their insufficient response to FI No. 17.1(b) re: RFA No. 38. As to this and all of the other disputed responses that are unaffected by the potential MJOP, they are referred to as "non-MJOP" responses herein.

Once again, Defendants were able to deny the underlying RFA (Sep. Statement re: FI at 1:22-2:2), but when it came to explaining their denial, the relevant FI response is evasive: "Defendants refer to their answer to Special Interrogatories Nos. 1 & 2, where defendants address the issue of "per transaction cost." (*Id.* at 6:8-9). Furthermore, Defendants' argument on this issue continues to be evasive, as they claim "defendants have answered" "Special Interrogatories Nos. 1 & 2," when in fact, Defendants' response to Interrogatory No. 2 included a promise to provide an estimate of the relevant "per transaction cost[,]" something Defendants have yet to do eight months after the promise was made. It is misleading for Defendants to suggest that a promise to provide information in the future is a actually a complete answer.

The Opposition further ventures into dangerous territory by claiming that the answers to Special Interrogatories Nos. 1 and 2 "sufficiently explain why defendants' cannot state any 'per transaction cost' at this stage of the litigation." (Opp. 9:21-24). That allegation makes little sense

based on Defendants' previous promise, and further, why would the "stage of litigation" be relevant to producing a "per transaction cost" estimate? Plaintiffs are concerned that Defendants' are letting their litigation strategy dictate their level of compliance with certain discovery requests.

Defendants claim the information sought by FI No. 17.1(b) re: RFA No. 38 is "unwarranted" and "unfair[,]" but they never back up their allegations with even a single legal citation. (*Id.* 9:25-26; 10:1-3). Because Defendants cite no authority that exempts them from Code of Civil Procedure section 2030.220's requirement that "[e]ach answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits[,]" Defendants are required to provide a further response to FI No. 17.1(b) re: RFA No. 38 that actually supports the underlying denial.

3. FI No. 17.1(b) re: RFA Nos. 58 and 68 (Non-MJOP Responses)

The discovery process is not intended to be a shell game, especially on the issue of the costs relied on in setting the Dealers' Record of Sale Fee, a keystone issue herein. Plaintiffs' underlying RFAs ask whether the California Department of Justice was unaware of certain *specific* cost calculations being made. (Sep. Statement re: FI at 6:22-25; 8:10-11). Because Defendants denied the RFAs at issue (Sep. Statement re: FI at 2:1-2), they were required to provide an FI 17.1(b) response as to each denial. But instead of stating the facts that support their denials (which necessarily would have included a reference to the specific cost calculations at issue), Defendants evaded the questions asked and responded based on the premise that "[t]he costs needed to fund the Bureau's programs (both regulatory and enforcement) are publicly available and are contained within the Governor's annual budget." (*Id.* 8:9-11; 9:20-21). Poignantly, Plaintiffs have already pointed out that the Governor's annual budget does not refer to the specific cost calculations at issue for this portion of Defendants' FI response, and yet the Opposition does not even attempt to rebut that claim. (Motion re: RFA at 5:20-22).

Defendants' obfuscatory intention is made clear in the Opposition in at least two ways. First, Defendants state they "have produced numerous pages of budget and financial documents detailing the Legislature's appropriation of funds out of the DROS Special Account and DOJ's expenditure of those funds by line item going back to fiscal year 2003-2004[.]" (Opp. 9:9-13).

Those documents, however, are *macro-level* budgetary documents, meaning that the "line items" therein are not itemized costs (i.e., the type of cost information Plaintiffs seek), they are groups of costs. For example, Defendants position is akin to claiming that a macro-level budget document showing the total amount spent on equipment costs for a given department would also show the total amount spent on pencils alone, which is obviously untrue.

Second, it is at least disingenuous for Defendants to claim "a deposition would be a far better vehicle [than an FI response] for a discussion of the 'costs' referenced in RFA Nos. 58 and 68." (Opp. 10:17-18). Assuming the relevant cost calculations exists (which we must because of Defendants' sworn RFA responses apparently affirming that fact) it is clearly illogical to think the best discovery tool to obtain historical budgetary information is a human being's memory, as opposed to a document review-based FI response.

Put simply, because Defendants were able to respond to the underlying RFAs, that necessarily means that either: (1) they already know the facts upon which such responses were based (so production thereof is no kind of hardship); or (2) the underlying RFA responses were incorrect. Assuming Defendants are not going to amend the underlying RFA responses, a further response to FI No. 17.1(b) re: RFA Nos. 58 and 68 should be ordered.

4. FI No. 17.1(b) re: RFA No. 78 (Non-MJOP Response)

Defendants claim the relevant underlying RFA response, "is sufficiently unqualified so as to make any response Form Interrogatory 17.1 (b) unnecessary." (Opp. 10:24-25). FI No. 17.1 responses, of course, are required for any underlying RFA responses that is not "an unqualified admission[.]" (Sep. Statement FI *passim*). Whether or not an admission is "unqualified" is a binary inquiry, so because the underlying RFA admission was qualified ("Admitted, although . . . ."), Defendants should be ordered to provide a further response to FI No. 17.1(b) re: RFA No. 78.

5. FI No. 17.1(b) re: RFA Nos. 83-86 and 88-89

Because the insufficient responses to FI No. 17.1(b) re: RFA Nos. 83-86 and 88-89 are expressly based on the "no higher tax" argument discussed in detail in the Plaintiffs' Motions and Section II.A. above, Plaintiffs request the Court order further response to FI No. 17.1(b) re: RFA Nos. 83-86 and 88-89 for the reasons previously stated as to Defendants'

responses to RFA Nos. 83-86 and 88-89.

6. FI No. 17.1(b) re: RFA Nos. 92-96 and 99 (Non-MJOP Response)

Defendants' argument concerning FI No. 17.1(b) re: RFA Nos. 92-96 and 99 is basically reiteration of the arguments already dismantled above in Section II.B.3. The Court need look no further than the relevant RFAs and the text of Defendants' responses to FI No. 17.1(b) re: RFA Nos. 92-96 and 99 to know that Defendants' responses were not "as complete and straightforward as the information reasonably available to the responding party permits[,]" meaning Defendants should be required to produce further responses to FI No. 17.1(b) re: RFA Nos. 92-96 and 99. Civ. Proc. Code § 2033.220(a).

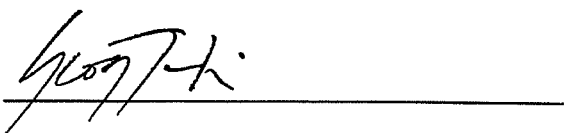
III. CONCLUSION

Defendants' opportunity to raise their "no higher tax" argument, as it relates to the disputed discovery responses, came and went long ago. Defendants' failure to timely obtain a protective order staying discovery pending resolution of the "no higher tax" argument precludes that argument from being raised now. Furthermore, the Opposition does not provide any evidence to substantively support Defendants' "no higher tax" argument, in stark contrast to Plaintiffs' extensive briefing on the issue. Indeed, the Opposition does not provide a compelling argument to excuse any of Defendants disputed discovery responses.

Because Defendants have failed to raise a legitimate argument to justify their non-compliance with the discovery propounded by Plaintiffs, the Court should grant the relief sought. Further, in an effort to avoid the substantial waste of time that Defendants' proposed MJOP represents, Plaintiffs respectfully request that, on or about April 24, 2015, the Court issue a tentative ruling on Plaintiffs' Motions so Defendants will have the chance to delay or abandon the proposed MJOP upon consideration of the tentative ruling. The issuance of a tentative ruling will not prejudice Defendants and it may prevent an entire round of unnecessary motion practice.

Dated: April 14, 2015

MICHEL & ASSOCIATES, P.C.



Scott M. Franklin, attorney for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

On April 14, 2015, the foregoing document(s) described as

REPLY IN SUPPORT OF MOTIONS TO COMPEL FURTHER RESPONSES TO: (1) REQUEST FOR ADMISSIONS, SET ONE; AND (2) FORM INTERROGATORIES, SET ONE, BOTH PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

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

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 14, 2015, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on April 14, 2015, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on April 14, 2015, at Long Beach, California.

X (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 3A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION

Plaintiffs and Petitioners,

vs.

KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller for the State of California, and DOES 1-10.

Defendants and Respondents.

CASE NO. 34-2013-80001667

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF PLAINTIFFS' REPLY (IN SUPPORT OF MOTIONS TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSIONS, SET ONE, AND FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY)

///

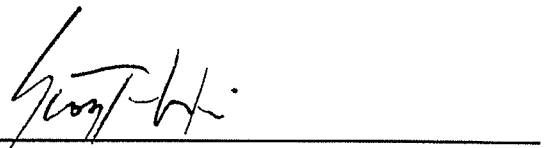
DECLARATION OF SCOTT M. FRANKLIN

I, Scott M. Franklin, declare:

1. I am an attorney at law admitted to practice before all courts of the State of California. I have personal knowledge of each matter and the facts stated herein as a result of my employment with Michel & Associates, P.C., attorneys for Plaintiffs/Petitioners ("Plaintiffs"), and if called upon and sworn as a witness, I could and would testify competently thereto.

2. A true and correct copy of the Legislative Analyst's analysis of Proposition 26 (2010 voter initiative), as included in the voter information materials prepared by the Office of the Attorney General for the state of California, is attached hereto as Exhibit A.

3. I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on April 14, 2015, at Long Beach, California.



Scott M. Franklin, declarant

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

On April 14, 2015, I served the foregoing document(s) described as

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF PLAINTIFFS' REPLY (IN SUPPORT OF MOTIONS TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSIONS, SET ONE, AND FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY)

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

Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 14,2015, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on April 14, 2015, at Long Beach, California.

__ (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance.
Executed on April 14, 2015, at Long Beach, California.

X (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 A

PROPOSITION

26 REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

OFFICIAL TITLE AND SUMMARY — PREPARED BY THE ATTORNEY GENERAL

REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Requires that certain state fees be approved by two-thirds vote of Legislature and certain local fees be approved by two-thirds of voters.
- Increases legislative vote requirement to two-thirds for certain tax measures, including those that do not result in a net increase in revenue, currently subject to majority vote.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Decreased state and local government revenues and spending due to the higher approval requirements for new revenues. The amount of the decrease would depend on future decisions by governing bodies and voters, but over time could total up to billions of dollars annually.
- **Additional state fiscal effects from repealing recent fee and tax laws: (1) increased transportation program spending and increased General Fund costs of $1 billion annually, and (2) unknown potential decrease in state revenues.**

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes—such as income, sales, and property taxes—are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are three broad categories of fees and charges:

- User fees—such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.
- Regulatory fees—such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.
- Property charges—such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

Figure 1

Approval Requirements: State and Local Taxes, Fees, and Charges

	State	Local
Tax	Two-thirds of each house of the Legislature for measures increasing state revenues.	• Two-thirds of local voters if the local government specifies how the funds will be used. • Majority of local voters if the local government does not specify how the funds will be used.
Fee	Majority of each house of the Legislature.	Generally, a majority of the governing body.
Property Charges	Majority of each house of the Legislature.	Generally, a majority of the governing body. Some also require approval by a majority of property owners or two-thirds of local voters.

PROP 26 REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

State law has different approval requirements regarding taxes, fees, and property charges. As Figure 1 shows, state or local governments usually can create or increase a fee or charge with a majority vote of the governing body (the Legislature, city council, county board of supervisors, etc.). In contrast, increasing tax revenues usually requires approval by two-thirds of each house of the state Legislature (for state proposals) or a vote of the people (for local proposals).

Disagreements Regarding Regulatory Fees. Over the years, there has been disagreement regarding the difference between regulatory fees and taxes, particularly when the money is raised to pay for a program of broad public benefit. In 1991, for example, the state began imposing a regulatory fee on businesses that made products containing lead. The state uses this money to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning. In court, the Sinclair Paint Company argued that this regulatory fee was a tax because: (1) the program provides a broad public benefit, not a benefit to the regulated business, and (2) the companies that pay the fee have no duties regarding the lead poisoning program other than payment of the fee.

In 1997, the California Supreme Court ruled that this charge on businesses was a regulatory fee, not a tax. The court said government may impose regulatory fees on companies that make contaminating products in order to help correct adverse health effects related to those products. Consequently, regulatory fees of this type can be created or increased by (1) a majority vote of each house of the Legislature or (2) a majority vote of a local governing body.

PROPOSAL

This measure expands the definition of a tax and a tax increase so that more proposals would require approval by two-thirds of the Legislature or by local voters. Figure 2 summarizes its main provisions.

Figure 2

Major Provisions of Proposition 26

✓ **Expands the Scope of What Is a State or Local Tax**

- Classifies as taxes some fees and charges that government currently may impose with a majority vote.
- As a result, more state revenue proposals would require approval by two-thirds of each house of the Legislature and more local revenue proposals would require local voter approval.

✓ **Raises the Approval Requirement for Some State Revenue Proposals**

- Requires a two-thirds vote of each house of the Legislature to approve laws that increase taxes on any taxpayer, even if the law's overall fiscal effect does not increase state revenues.

✓ **Repeals Recently Passed, Conflicting State Laws**

- Repeals recent state laws that conflict with this measure, unless they are approved again by two-thirds of each house of the Legislature. Repeal becomes effective in November 2011.

For text of Proposition 26, see page 114.

PROP 26 REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

ANALYSIS BY THE LEGISLATIVE ANALYST — **CONTINUED**

Definition of a State or Local Tax

Expands Definition. This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the higher approval requirements summarized in Figure 1. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. Figure 3 provides examples of some regulatory fees that could be considered taxes, in part or in whole, under the measure. This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payer. The state currently uses these types of regulatory fees to pay for most of its environmental programs.

Certain other fees and charges also could be considered to be taxes under the measure. For example, some business assessments could be considered to be taxes because government uses the assessment revenues to improve shopping districts (such as providing parking, street lighting, increased security, and marketing), rather than providing a direct and distinct service to the business owner.

Some Fees and Charges Are Not Affected. The change in the definition of taxes would not affect most user fees, property development charges, and property assessments. This is because these fees and charges generally comply with Proposition 26's requirements already, or are exempt from its provisions. In addition, most other fees or charges in existence at the time of the November 2, 2010 election would not be affected unless:

- The state or local government later increases or extends the fees or charges. (In this case, the state or local government would have to comply with the approval requirements of Proposition 26.)
- The fees or charges were created or increased by a state law—passed between January 1, 2010 and November 2, 2010—that conflicts with Proposition 26 (discussed further below).

Approval Requirement for State Tax Measures

Current Requirement. The State Constitution currently specifies that laws enacted "for the purpose

Figure 3

Regulatory Fees That Benefit the Public Broadly

Oil Recycling Fee

The state imposes a regulatory fee on oil manufacturers and uses the funds for:

- Public information and education programs.
- Payments to local used oil collection programs.
- Payment of recycling incentives.
- Research and demonstration projects.
- Inspections and enforcement of used-oil recycling facilities.

Hazardous Materials Fee

The state imposes a regulatory fee on businesses that treat, dispose of, or recycle hazardous waste and uses the funds for:

- Clean up of toxic waste sites.
- Promotion of pollution prevention.
- Evaluation of waste source reduction plans.
- Certification of new environmental technologies.

Fees on Alcohol Retailers

Some cities impose a fee on alcohol retailers and use the funds for:

- Code and law enforcement.
- Merchant education to reduce public nuisance problems associated with alcohol (such as violations of alcohol laws, violence, loitering, drug dealing, public drinking, and graffiti).

PROP 26 REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

of increasing revenues" must be approved by two-thirds of each house of the Legislature. Under current practice, a law that increases the amount of taxes charged to some taxpayers but offers an equal (or larger) reduction in taxes for other taxpayers has been viewed as not increasing revenues. As such, it can be approved by a majority vote of the Legislature.

New Approval Requirement. The measure specifies that state laws that result in *any* taxpayer paying a higher tax must be approved by two-thirds of each house of the Legislature.

State Laws in Conflict With Proposition 26

Repeal Requirement. Any state law adopted between January 1, 2010 and November 2, 2010 that conflicts with Proposition 26 would be repealed one year after the proposition is approved. This repeal would not take place, however, if two-thirds of each house of the Legislature passed the law again.

Recent Fuel Tax Law Changes. In the spring of 2010, the state increased fuel taxes paid by gasoline suppliers, but decreased other fuel taxes paid by gasoline retailers. Overall, these changes do not raise more state tax revenues, but they give the state greater spending flexibility over their use.

Using this flexibility, the state shifted about $1 billion of annual transportation bond costs from the state's General Fund to its fuel tax funds. (The General Fund is the state's main funding source for schools, universities, prisons, health, and social services programs.) This action decreases the amount of money available for transportation programs, but helps the state balance its General Fund budget. Because the Legislature approved this tax change with a majority vote in each house, this law would be repealed in November 2011—unless the Legislature approved the tax again with a two-thirds vote in each house.

Other Laws. At the time this analysis was prepared (early in the summer of 2010), the Legislature and Governor were considering many new laws and funding changes to address the state's major budget difficulties. In addition, parts of this measure would be subject to future interpretation by the courts. As a result, we cannot determine the full range of state laws that could be affected or repealed by the measure.

FISCAL EFFECTS

Approval Requirement Changes. By expanding the scope of what is considered a tax, the measure would make it more difficult for state and local governments to pass new laws that raise revenues. This change would affect many environmental, health, and other regulatory fees (similar to the ones in Figure 3), as well as some business assessments and other levies. New laws to create—or extend—these types of fees and charges would be subject to the higher approval requirements for taxes.

The fiscal effect of this change would depend on future actions by the Legislature, local governing boards, and local voters. If the increased voting requirements resulted in some proposals not being approved, government revenues would be lower than otherwise would have occurred. This, in turn, likely would result in comparable decreases in state spending.

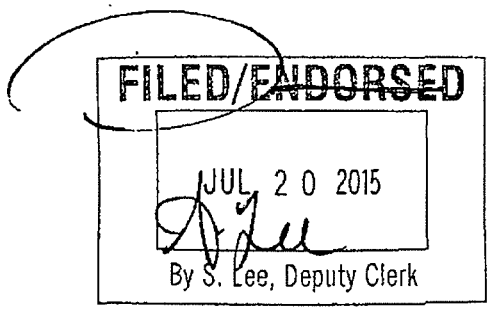
Given the range of fees and charges that would be subject to the higher approval threshold for taxes, the fiscal effect of this change could be major. Over time, we estimate that it could reduce government revenues and spending statewide by up to billions of dollars annually compared with what otherwise would have occurred.

Repeal of Conflicting Laws. Repealing conflicting state laws could have a variety of fiscal effects. For example, repealing the recent fuel tax laws would increase state General Fund costs by about $1 billion annually for about two decades and increase funds available for transportation programs by the same amount.

Because this measure could repeal laws passed *after* this analysis was prepared and some of the measure's provisions would be subject to future interpretation by the courts, we cannot estimate the full fiscal effect of this repeal provision. Given the nature of the proposals the state was considering in 2010, however, it is likely that repealing any adopted proposals would decrease state revenues (or in some cases increase state General Fund costs). Under this proposition, these fiscal effects could be avoided if the Legislature approves the laws again with a two-thirds vote of each house.

For text of Proposition 26, see page 114.

Exhibit 4



SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MID LAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION,

Plaintiffs and Petitioners,

v.

KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10,

Defendants and Respondents.

Case No. 34-2013-80001667

[~~PROPOSED~~] ORDER AFTER HEARING

Date: June 5, 2015
Time: 9:00 a.m.
Dept: 31
Judge: The Honorable Michael P. Kenny
Trial Date: None set
Action Filed: October 16, 2013

This matter came before the Court on June 5, 2015, at 9:00 a.m., for hearing on (1) defendants' motion for judgment on the pleadings; (2) plaintiffs' motion to compel further responses to requests for admissions; and (3) plaintiffs' motion to compel further responses to Form Interrogatory 17.1.

Scott M. Franklin of Michel & Associates, P.C. appeared on behalf of plaintiffs. Deputy Attorney General Anthony R. Hakl appeared on behalf of defendants.

Prior to the hearing the Court issued a Notice to Appear for Oral Argument, with questions. Having heard oral argument, and having considered the written submissions of the parties, for the reasons discussed more fully on the record during the hearing, IT IS HEREBY ORDERED that:

1. Defendants' motion for judgment on the pleadings is granted; as to the 1st cause of action. HAK

2. The first cause of action of the complaint for declaratory and injunctive relief and petition for writ of mandamus is dismissed without leave to amend on the grounds that it does not state facts sufficient to constitute a cause of action against moving defendants;

3. With respect to the second cause of action, and as indicated in the Court's questions issued before the hearing, that cause of action appears to plead two alternative claims: that SB 140 is an unlawful appropriation because SB 819 is an illegal tax under the California Constitution; and that, even if SB 819 is not an illegal tax, the DOJ defendants had no statutory authority to use DROS fee revenues on regulating the possession of firearms prior to January 1, 2012, the date that SB 819 went into effect. The first alternative claim of the second cause of action is dismissed without leave to amend, the Court having granted the motion for judgment on the pleadings and dismissed the first cause of action;

4. With respect to the second alternative claim of the second cause of action, and as discussed on the record during the hearing, the Court is inclined to construe the motion for judgment on the pleadings as a motion to strike and strike that claim. Nevertheless, the parties shall be afforded an opportunity to brief the motion to strike issue. Accordingly, on or before 8/7/15, each side may file a supplemental brief no longer than five pages addressing whether the Court should construe the motion for judgment on the pleadings as a motion to strike and strike the second alternative claim of the second cause of action.

5. Regarding plaintiffs' motion to compel further responses to requests for admissions, and the parties having met and conferred on this issue as directed by the Court at the hearing, defendants' position is that the motion should be denied as moot, the Court having granted the motion for judgment on the pleadings. Plaintiffs' position is that the motion is not moot. Accordingly, plaintiffs' motion to compel further responses to requests for admissions is submitted for decision by the Court on the briefs already filed.

6. The parties similarly disagree as to whether plaintiffs' motion to compel further responses to Form Interrogatory 17.1 regarding Request for Admissions Nos. 18, 19, 21, 22, 83-86, and 88-89 is moot. Defendants contend it is moot whereas plaintiffs maintain it is not moot. Accordingly, plaintiffs' motion to compel further responses to Form Interrogatory 17.1 regarding Request for Admissions Nos. 18, 19, 21, 22, 83-86, and 88-89 is also submitted for decision.

7. Finally, the parties agree that plaintiffs' motion to compel further responses to Form Interrogatory 17.1 regarding Request for Admissions Nos. 38, 58, 68, 78, 92-96 and 99 still needs to be resolved by the Court. Therefore, plaintiffs' motion to compel with respect to those responses is also submitted for decision.

IT IS SO ORDERED

Dated: 7/20/15

Michael P. Kenny
Superior Court Judge

Approved as to form:

Dated: June ____, 2015

Scott M. Franklin
Counsel for plaintiffs

Dated: ~~June~~ July 1, 2015

Anthony R. Hakl
Counsel for defendants

SA2013113332

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**
No.: **34-2013-80001667**

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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 2, 2015, I served the attached **[PROPOSED] ORDER AFTER HEARING** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Scott Franklin
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
E-mail Address: SFranklin@michellawyers.com

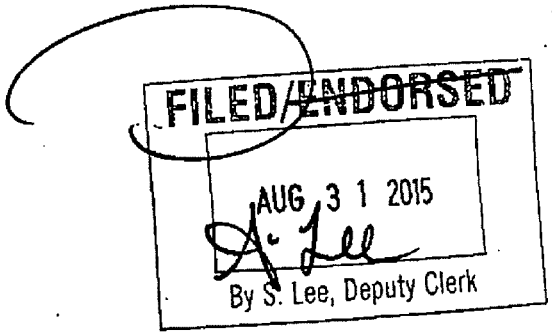
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 2, 2015, at Sacramento, California.

Tracie L. Campbell
Declarant

Tracie Campbell
Signature

SA2013113332
11925837.doc

Exhibit 5



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION,

Plaintiffs and Petitioners,

v.

KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10,

Defendants and Respondents.

Case No. 34-2013-80001667-CU-WM-GDS

RULING AFTER ADDITIONAL BRIEFS: MOTION FOR JUDGMENT ON THE PLEADINGS, MOTION TO COMPEL ADDITIONAL RESPONSES TO FORM INTERROGATORIES, AND MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS

This matter came on for hearing on June 5, 2015, for the above-referenced motions. The Court granted the motion for judgment on the pleadings in part, and ordered the parties to submit further briefing as to whether the Court should construe the motion for judgment on the pleadings as a motion to strike and strike the remaining portion of the second cause of action. The Court also ordered the parties to notify it as to whether the discovery motions were still at issue, or whether they had become moot as Respondents contended.

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In the Order after Hearing, the Court granted the motion for judgment on the pleadings as to the First Cause of Action, dismissing it without leave to amend. With respect to the Second Cause of Action, the Court granted the motion with regard to the first alternative claim that SB 140 is an unlawful appropriation because SB 819 is an illegal tax under the California Constitution. With regard to the second alternative claim of the Second Cause of Action (that the DOJ Defendants had no authority to use DROS fee revenues to regulate the possession of firearms prior to January 1, 2012, the date that SB 819 went into effect), the Court ordered the parties to brief the issue as to whether the Court should construe the motion for judgment on the pleadings as a motion to strike, and strike that claim. This further briefing was to be filed by August 7, 2015.

In the Order, the Court noted that the parties had met and conferred as to the motions to compel and were unable to reach a resolution as to whether some of the requests were now moot in light of the ruling on the motion for judgment on the pleadings. The Court received the parties' supplemental briefs on August 7, 2015, and has considered them in making the instant ruling.

Motion for Judgment on the Pleadings

The Court agrees with Petitioners that in light of the dismissal of the Proposition 26 claims, the Second Cause of Action is no longer uncertain. Pursuant to *Lilenthal & Fowler v. Super. Ct.*, (1993) 12 Cal.App.4th 1848, a demurrer is no longer proper based on the failure to separately state each cause of action. (*Id.* at 1855, FN 4.) As Respondents did not otherwise object to the remaining portion of the Second Cause of Action, the Court declines to strike those remaining portions.

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Motion to Compel Further Responses to Requests for Admissions, Set One

Petitioner's motion to compel further responses to requests for admissions concerns requests 83, 84, 85, 86, 88, and 89.

Respondent argues these discovery requests are now moot in light of the Court's ruling on the motion for judgment on the pleadings. The Court agrees. Consequently, the motion to compel further responses to these requests is denied.

Motion to Compel Further Responses to Form Interrogatory 17.1 regarding Request for Admissions.

Petitioner's motion to compel further responses to Form Interrogatory 17.1 concerns Petitioner's requests for admissions 18, 19, 21, 22, 38, 58, 68, 78, 83, 84, 85, 86, 88, 89, 92, 93, 94, 95, 96, and 99. As the Court has already ruled that those requests concerning Petitioner's contention that SB 819 is an illegal tax are moot, the Court denies the motion to compel as to the following requests for admissions: 18, 19, 21, 22, 83, 84, 85, 86, 88, and 89.

With regard to the remaining requests, the Court rules as follows:

No. 38 – Granted.

No. 58 – Granted.

No. 68 – Granted.

No. 78 – Denied.

No. 92 – Denied.

No. 93 – Denied.

No. 94 – Denied.

No. 95 – Denied.

No. 96 – Denied.

No. 99 – Denied.

Conclusion

Respondents shall provide further responses as indicated above to Petitioners within 15 days of the date of this ruling.

DATED: August 31, 2015

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING AFTER ADDITIONAL BRIEFS** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

SCOTT M. FRANKLIN, ESQ.
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

ANTHONY R. HAKL
Deputy Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Superior Court of California,
County of Sacramento

Dated: August 31, 2015

By: S. LEE
Deputy Clerk

Exhibit 6

C. D. Michel - S.B.N. 144258
Scott M. Franklin - S.B.N. 240254
Sean A. Brady - S.B.N. 262007
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Facsimile: 562-216-4445
Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION

Plaintiffs and Petitioners,

vs.

KAMALA HARRIS, in Her Official Capacity as Attorney General For the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY YEE, in her official capacity as State Controller, and DOES 1-10.

Defendants and Respondents.

CASE NO. 34-2013-80001667

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

INTRODUCTION

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

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

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

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

5. SB 819, effective January 2012, categorically expanded the scope of activities funded by the DROS Special Account (and specifically by DROS Fee revenues) to include general regulatory and enforcement activities related to the "possession" of firearms. These activities extend far beyond those reasonably related to the DROS program, the original purpose of which was to make sure those individuals seeking to purchase a firearm were not prohibited from doing so. Moreover, such activities had previously – and properly – been paid for out of the General

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[1] Defendants, being sued in their official capacity as heads of the DOJ, and DOJ being under Defendants' control, all references to "DOJ" herein should be construed as a reference to Defendants.

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

Fund.

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

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

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

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

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

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

12. And, because its authorization was based solely on the invalid adoption of SB 819, the Legislature's appropriation of $24 million from the DROS Special Account surplus to fund the Armed Prohibited Persons System (APPS) pursuant to SB 140 was and is an ongoing illegal

expenditure of state funds.

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

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

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

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

JURISDICTION & VENUE

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

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

PARTIES

I. Plaintiffs-Petitioners

19. All individual Plaintiffs are natural persons, citizens of the United States, and current residents of Sacramento County, California.

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

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

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

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

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

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

excessive DROS Fees that are used unlawfully by Defendants-Respondents for purposes other than the DROS program.

II. Defendants-Respondents

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

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

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

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

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

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OVERVIEW OF CALIFORNIA REGULATORY SCHEME

I. Regulating the Imposition of Taxes and Fees

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

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

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

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

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

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

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

II. Regulating Firearm Transfers

A. Licensed Dealer Requirement

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

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

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

B. The Dealer's Record of Sale (DROS) "Fee"

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

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

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

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

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

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

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

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

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

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

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

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

> All money received by the department pursuant to this article shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to any of the following:
>
> (a) This article;
>
> (b) Section 18910 [12305(f)-(g)];
>
> (c) Section 27555 [12072(f)(1)];
>
> (d) Subdivisions (d) and (e) of Section 27560 [12072(f)(2)];
>
> (e) Article 6 (commencing with Section 28450) [12083 (entirety)];
>
> (f) Section 31110 [12289.5];
>
> (g) Section 31115 [12289];
>
> (h) Subdivision (a) of Section 32020 12131(c)];
>
> (i) Section 32670 [12234];
>
> (j) Section 33320 [12099].

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

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

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

(2) the California FFL Check Program (Cal. Penal Code § 27555 [12072(f)(1)]);

(3) a public education program pertaining to importers of personal handguns (Cal. Penal Code § [27560(d)-(e)]) [12072(f)(2)(D)];

(4) the Centralized List of Exempted FFLs (Cal. Penal Code § 28450, *et seq.* [12083]);

(5) inspections of "Assault Weapon" Permit-Holders (Cal. Penal Code § 31110 [12289.5]);

(6) public education program regarding registration of "assault weapons" (Cal. Penal Code § 31115 [12289]);

(7) retesting of handguns certified as "not unsafe" (Cal. Penal Code § 32020(a) [12131(c)]);

(8) inspections of Machine Gun Permit-Holders (Cal. Penal Code § 32670 [12234]); and

(9) inspections of Short-Barreled Long Gun Permit-Holders (Cal. Penal Code § 33320 [12099]).

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

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

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

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

[6] DOJ Defendants deposit (and commingle) funds collected from some additional fees – for special firearm licensing and miscellaneous services (*see e.g.*, Cal. Penal Code §§ 30900-30905 [12285(a),(b)]), concealed weapon permit applications and Cal. Pen. Code § 26190(a)-(b) [12054]), "Assault Weapon" Permits – into the DROS Special Account. Plaintiffs estimate that

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

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

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

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

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

1. AB 161: Deleting specific prohibitions against using "DROS Fee" funds for other purposes

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

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

70-80% of the account consists of monies from the DROS Fee; Plaintiffs' efforts to ascertain a more definite figure are hampered by the DOJ's lack of accounting.

[7] *See* Sen. Comm. on Public Safety, Bill Analysis: Dealers Record of Sale Special Account - Expanding Authorized Use - Appropriation to Fund Firearms Trafficking Prevention Act of 2002, at 10 (July 8, 2003) *available at* http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0151-0200/ab_161_cfa_20030708_141850_sen_comm.html.

56. Nevertheless, in its final form as signed into law, AB 161 removed the prohibition on using DROS Fee revenues to "directly fund or as a loan to fund any program not specified" and, added section 28225(b)(11) [12076(e)(10)], allowing the DOJ to use funds collected from firearm transactions for any "regulatory and enforcement activit[y] related to the sale, purchase, loan, or transfer of firearms."

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

2. 11 CCR 4001: Raising the DROS Fee Amount

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

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

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

60. California Code of Regulations, title 11, section 4001 remained in effect without any attempts by DOJ to amend it to raise or lower the DROS Fee, until 2010 when the DOJ issued a notice of proposed rulemaking, stating its intent to *lower* the maximum fee allowed from $19 to

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

the pre-2004 emergency regulation amount of $14.

61. The 2010 initial statement of reasons concerning the proposed rulemaking intended to lower the DROS Fee indicated that "although the volume of DROS transactions has increased, the average time spent on each DROS, and thus the processing cost, has decreased."[9] It also noted that "[t]he proposed regulations [would] lower the current $19 DROS Fee to $14, *commensurate with the actual cost of processing a DROS.*" (emphasis added).[10]

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

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

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

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

65. In addition to the Legislature's express findings to the same effect, DOJ Defendants have admitted SB 819's purpose and effect is to use funds from the DROS Fee on activities unrelated to the DROS program: "To clear the [Armed and Prohibited Persons System] backlog of

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[9] Cal. Dept. of Justice, Initial Statement of Reasons concerning Proposed DROS Fee Regulations (2010), *available at* http://ag.ca.gov/firearms/regs/DROSisor.pdf.

[10] *Id.*

approximately 34,000 handguns, Attorney General Harris is the sponsor of Senate Bill 819, which would revise the Penal Code to *expand* the use of existing regulatory fees collected by gun dealers to allow the state [DOJ] to use fee revenue to pay for the APPS program." Press Release, Office of the Attorney General, Attorney General Kamala D. Harris Announces Seizure of 1,200 Guns from Mentally Unstable and Other Individuals (June 16, 2011) (emphasis added).

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

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

> (a) California is the first and only state in the nation to establish an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status.
>
> (b) The California Department of Justice (DOJ) is required to maintain an online database, which is currently known as the Armed Prohibited Persons System, otherwise known as APPS, which cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon.
>
> (c) The DOJ is further required to provide authorized law enforcement agencies with inquiry capabilities and investigative assistance to determine the prohibition status of a person of interest.
>
> (d) Each day, the list of armed prohibited persons in California grows by about 15 to 20 people. There are currently more than 18,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 34,000 handguns and 1,590 assault weapons. The illegal possession of these firearms presents a substantial danger to public safety.
>
> (e) Neither the DOJ nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.
>
> (f) A Dealer Record of Sale fee is imposed upon every sale or transfer of a firearm by a dealer in California. Existing law authorizes the DOJ to utilize these funds for firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to any provision listed in

> Section 16580 of the Penal Code, but not expressly for the enforcement activities related to possession.
>
> (g) *Rather than placing an additional burden on the taxpayers* of California to fund enhanced enforcement of the existing armed prohibited persons program, *it is the intent of the Legislature* in enacting this measure *to allow the DOJ to utilize the Dealer Record of Sale Account* for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System. S.B. 819, 2011 Leg., Reg. Sess. (Ca. 2011) (emphasis added).

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

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

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

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

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

January 1, 2012, on the "possession of firearms."

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

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

FIRST CAUSE OF ACTION
FOR DECLARATORY AND INJUNCTIVE RELIEF INVALIDITY OF APPROPRIATION OF PRE-EXISTING DROS FEE REVENUES TO ARMED PROHIBITED PERSON SYSTEM
California Code of Civil Procedure § 526a
(By All Plaintiffs Against DOJ Defendants)

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

74. Even if SB 819 is not an illegal tax under California's Constitution, DOJ Defendants did not have statutory authority to use DROS Fee revenues on regulating the "possession" of firearms before SB 819 went into effect on January 1, 2012. Therefore, at minimum, DOJ Defendants have no statutory authority to use any revenues collected from the DROS Fee before 2012 for activities relating to the "possession" of firearms.

75. Enforcing APPS programs relates solely to regulating individuals' "possession" of firearms. As such, any monies collected from the DROS Fee prior to SB 819 going into effect on January 1, 2012, cannot be used to fund the enforcement of APPS programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION:
WRIT OF MANDATE – REVIEW PROPER AMOUNT OF "DROS FEE"
(California Penal Code §§ 28225(a) [12076(e)] / 28225(b) [12076(e)])
(By All Plaintiffs / Petitioners Against DOJ Defendants)

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

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

91. On information and belief, DOJ Defendants have been charging the DROS Fee at the maximum amount statutorily allowed, without first determining whether that amount is "no more than is necessary to fund" the regulatory and enforcement activities for which they are statutorily permitted to use DROS Fee revenues.

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

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

94. Most, if not all, of the approximately $35 million in surplus revenues in the DROS

Special Account was generated by payers, including Plaintiffs, of the DROS Fee.

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

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

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

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

99. Further, even if this Court holds that the use of DROS Fee funds for APPS-based law enforcement activities is legal, and that the DROS Fee was being charged at a proper amount prior to the passage of SB 819, the expansion of the scope of "necessary" costs funded by the DROS Fee resulting from that new use constitutes a major change in circumstance that requires DOJ Defendants to reassess the amount being charged for the DROS Fee based on the DOJ Defendants' clear, present, and ministerial duty pursuant to California Penal Code sections 28225(a) [12076(e)] and 28225(b) [12076(e)] to determine "the amount necessary to fund" the activities enumerated at Penal Code section 28225(b)(1)-(11) [12076(e)(1)-(10)] and to only charge the DROS Fee at that amount.

100. In light of DOJ Defendants' duties to (1) perform a review to determine "the amount necessary to fund" the activities enumerated at Penal Code section 28225(b)(1)-(11) [12076(e)(1)-(10)] and to (2) charge the DROS Fee at that amount or less, DOJ Defendants' review of the relevant costs necessarily must include a determination of whether the use of DROS Fee funds for APPS-based law enforcement activities constitutes a tax. What is "necessary" to fund the activities referred to in the pre-SB 819 version of Penal Code section 28225 is different from what is "necessary" to fund "possession"-related law enforcement activities that are yet to be

specified, inasmuch as a higher level of scrutiny applies to levies purportedly incurred to fund regulatory activities (as opposed to costs paid for via funds collected for a tax).

SIXTH CAUSE OF ACTION:
FOR DECLARATORY AND INJUNCTIVE RELIEF
VALIDITY OF SENATE BILL 819/THE DROS FEE
Violation of California Const., Art. XIII, Sec. 1(b)
(By All Plaintiffs Against DOJ Defendants)

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

102. By expanding the activities for which DROS Fee revenues can be used to include regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is responsible to finance and shifting the responsibility for millions of dollars in law enforcement costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

103. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-called regulatory fee.

104. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under California law.

105. Property taxes must be assessed in proportion to the value of the property being taxed per California Constitution, article XIII, section 1(b).

106. On information and belief, DOJ has never attempted to determine whether the SB 819-created tax is, or could be, assessed in proportion to the value of the property being taxed.

107. On information and belief, the SB 819-created tax is not being proportionally assessed as required by California Constitution, article XIII, section 1(b).

108. SB 819 is void and unenforceable because it creates a property tax that does not meet the constitutional proportionality requirement that applies to property taxes.

109. An actual controversy exists between the parties hereto in that Plaintiffs believe that DOJ's use of DROS Fee funds for costs not resulting from the DROS process, purportedly pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant

to SB 819.

110. Plaintiffs desire a judicial determination of the rights and duties of the parties, including a declaration that SB 819 created an illegal tax under section 1(b) of article XIII of the California Constitution.

111. Plaintiffs have been and continuously are irreparably injured by DOJ's use of DROS Fee revenues for APPS-related law enforcement activities pursuant to SB 819, as Plaintiffs are being subjected to an illegal tax as a result thereof.

112. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing DROS Fee revenues for law enforcement activities related to the "possession" of firearms pursuant to SB 819.

SEVENTH CAUSE OF ACTION:
FOR DECLARATORY AND INJUNCTIVE RELIEF
VALIDITY OF SENATE BILL 819/THE DROS FEE
Violation of California Const., Art. XIII, Sec. 2
(By All Plaintiffs Against DOJ Defendants)

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

114. By expanding the activities for which DROS Fee revenues can be used to include regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is responsible to finance and shifting the responsibility for millions of dollars in law enforcement costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

115. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-called regulatory fee.

116. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under California law.

117. A two-thirds vote of the legislature is required to subject a specific type of personal property to differential taxation pursuant to California Constitution, article XIII, section 2.

118. The implementation of SB 819 resulted in the differential taxation of personal property (i.e., firearms).

119. SB 819 was not enacted by a two-thirds vote.

120. SB 819 is void and unenforceable because it created a differential tax that does not meet the constitutional two-thirds vote requirement that applies to the creation of a differential property tax.

121. An actual controversy exists between the parties hereto in that Plaintiffs believe that DOJ's use of DROS Fee funds for costs not resulting from the DROS process, purportedly pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant to SB 819.

122. Plaintiffs desire a judicial determination of the rights and duties of the parties, including a declaration as to whether SB 819 created an illegal tax under section 2 of article XIII of the California Constitution.

123. Plaintiffs have been and continuously are irreparably injured by DOJ's use of DROS Fee revenues for APPS-related law enforcement activities pursuant to SB 819, as Plaintiffs are being subjected to an illegal tax as a result thereof.

124. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing DROS Fee revenues for law enforcement activities related to the "possession" of firearms pursuant to SB 819.

EIGHTH CAUSE OF ACTION:
FOR DECLARATORY AND INJUNCTIVE RELIEF
VALIDITY OF SENATE BILL 819/THE DROS FEE
Violation of California Const., Art. XIII, Sec. 3
(By All Plaintiffs Against DOJ Defendants)

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

126. By expanding the activities for which DROS Fee revenues can be used to include regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is responsible to finance and shifting the responsibility for millions of dollars in law enforcement costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

127. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-

called regulatory fee.

128. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under California law.

129. "Household furnishings and personal effects not held or used in connection with a trade, profession, or business" are exempt from property taxation under California Constitution, article XIII, section 3(m).

130. Firearms "not held or used in connection with a trade, profession, or business" are within the category of "household furnishings and personal effects" and thus firearms purchased for non-commercial use are exempt from property taxation under California Constitution, article XIII, section 3(m).

131. SB 819 resulted in a tax on firearms, and because firearms are not to be taxed pursuant to the California Constitution, article XIII, section 3(m), SB 819 is void and unenforceable.

132. An actual controversy exists between the parties hereto in that Plaintiffs believe that DOJ's use of DROS Fee funds for costs not resulting from the DROS process, purportedly pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant to SB 819.

133. Plaintiffs desire a judicial determination of the rights and duties of the parties, including a declaration that SB 819 created an illegal tax under Section 3(m) of Article XIII of the California Constitution.

134. Plaintiffs have been and continuously are irreparably injured by DOJ's use of DROS Fee revenues for APPS-related law enforcement activities pursuant to SB 819.

135. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing DROS Fee revenues for law enforcement activities related to the "possession" of firearms pursuant to SB 819.

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NINTH CAUSE OF ACTION:
FOR DECLARATORY AND INJUNCTIVE RELIEF
Scope of Senate Bill 819's "Possession" Provision as Applied to Funds Collected under the Guise of the DROS Fee
(By All Plaintiffs Against DOJ Defendants)

136. All of the above paragraphs are re-alleged and incorporated herein by reference, and this cause of action is pleaded in the alternative to the other causes of action pleaded herein.

137. On information and belief, DOJ Defendants contend that, as a result of SB 819, Penal Code section 28225(c) was amended such that the DOJ can now use the DROS Fee to recoup costs of "firearms-related . . . enforcement . . . activities related to the . . . possession . . . of firearms" including, **but not limited to**, APPS-based law enforcement activities. Penal Code § 28225(c).

138. On information and belief, an actual controversy exists between the parties hereto in that Plaintiffs believe that SB 819, if it is valid at all, only authorized "the DOJ to utilize the Dealer Record of Sale Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System[,]" whereas DOJ Defendants contend SB 819 authorizes DOJ to spend DROS Special Account money on **any** "firearms-related . . . regulatory and enforcement . . . activities related to the . . . possession . . . of firearms[.]" Penal Code § 28225(c).

139. On information and belief, an actual controversy exists between the parties hereto in that Plaintiffs believe that SB 819 did not authorize DOJ to use DROS Special Account Funds to address the costs of APPS itself (as opposed to the costs of enforcement activities based on data created via APPS),but DOJ switched the funding source for APPS itself from the General Fund to the DROS Special Account in approximately 2011, based on the passage of SB 819.

140. DOJ continues to utilize DROS Fee revenues to fund APPS pursuant to an incorrect interpretation of SB 819, and declaratory relief on the scope of SB 819 is appropriate not only to end improper appropriations currently occurring, but to prevent a multiplicity of litigation concerning other costs alleged to be improperly appropriated based on an incorrect interpretation of the scope of SB 819.

141. Plaintiffs desire a judicial determination of the rights and duties of the parties, including a declaration that SB 819 does not authorize the appropriation of DROS Special

Account funds for some use other than APPS-based law enforcement activities.

142. Plaintiffs have been and continuously are irreparably injured by DROS Fee revenues being utilized for activities other than APPS-related law enforcement activities pursuant to SB 819, as Plaintiffs are being subjected to an illegal tax as a result thereof.

143. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing DROS Fee revenues for purposes unrelated to the DROS background check process or APPS-based law enforcement activities.

PRAYER

WHEREFORE PLAINTIFFS pray for relief as follows:

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

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

3) For a preliminary and permanent prohibitory injunction forbidding Defendant Controller and his agents, employees, officers, and representatives, from appropriating any funds from the DROS Special Account to DOJ Defendants pursuant to SB 819 or SB 140, limited to funds that were collected prior to Senate Bill 819 going into effect on January 1, 2012;

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

5) For a peremptory writ of mandate ordering Defendant State Controller and his agents, employees, officers, and representatives, to recoup any funds that Defendant State Controller has

already appropriated to DOJ Defendants pursuant to SB 140, as to funds that were collected prior to Senate Bill 819 going into effect on January 1, 2012;

6) For a peremptory writ of mandate ordering DOJ Defendants and their agents, employees, officers, and representatives, to return any and all funds they may have received pursuant to Senate Bill 140, as to funds that were collected prior to Senate Bill 819 going into effect on January 1, 2012.

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

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

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

10) For such other and further relief as the Court may be just and proper;

11) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII, section 1(b) of the California Constitution and is thus void;

12) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII, section 2 of the California Constitution and is thus void;

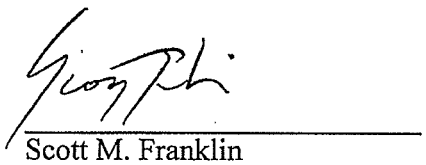
13) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII, section 3(m) of the California Constitution and is thus void; and

///

14) Alternatively, for a declaration confirming Senate Bill 819 authorizes DOJ to use DROS Special Account funds for nothing other than costs specifically incurred as the result of APPS-based law enforcement activities, and an injunction on spending based on such declaration.

Dated: December 30, 2015

MICHEL & ASSOCIATES, P.C.



Scott M. Franklin
Attorney for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

On December 30, 2015, the foregoing document(s) described as

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

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

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on December 30, 2015, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on December 30, 2015, at Long Beach, California.

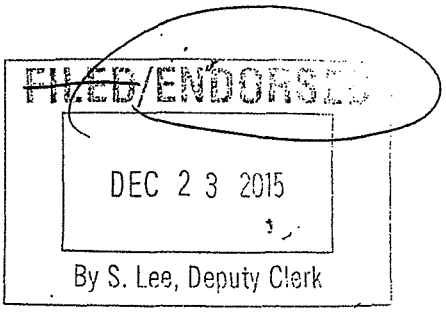
__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on December 30, 2015, at Long Beach, California.

X (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 7



SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, et al., Plaintiffs and Petitioners, vs. KAMALA HARRIS, et al., Defendants and Respondents.	**CASE NO. 34-2013-80001667** **~~[PROPOSED]~~ ORDER RE: PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT** Dept.: 31 Action filed: 10/16/2013

The Court issued a tentative ruling on Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and Calguns Shooting Sports Association's (collectively "Plaintiffs") Motion for Leave to File First Amended Complaint (the "Motion") on December 10, 2015. A Copy of that ruling is attached hereto as Exhibit 1. After considering all the papers and admissible evidence submitted by the parties in support of and in opposition to the Motion, and good cause appearing:

IT IS HEREBY ORDERED that the Motion is GRANTED as stated in Exhibit 1, which became a ruling of this Court in accordance with Local Rule 1.06(B).

IT IS SO ORDERED.

Date: 12/23/15

MICHAEL P. KENNY

Hon. Michael P. Kenny, Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME JUDGE	December 11, 2015, 9:00 a.m. HON. MICHAEL KENNY	DEPT. NO CLERK	31 S. LEE
DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, Plaintiffs and Petitioners, v. KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10, Defendants and Respondents.		Case No.: 34-2013-80001667	
Nature of Proceedings:	MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT		

The following shall constitute the Court's tentative ruling on the motion for leave to file first amended complaint, which is scheduled to be heard by the Court on Friday, December 11, 2015 at 9:00 a.m. in Department 31. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Any party desiring an official record of this proceeding shall make arrangements for reporting services with the Clerk of the Department where the matter will be heard not later than 4:30 p.m. on the day before the hearing. The fee is $30.00 for civil proceedings lasting under one hour, and $239.00 per half day of proceedings lasting more than one hour. (Local Rule 1.12(B) and Government Code § 68086.) Payment is due at the time of the hearing.

Background

Via order dated July 20, 2015, the Court granted Respondents' motion for judgment on the pleadings as to the first cause of action without leave to amend, on the grounds that it did not

state facts sufficient to constitute a cause of action. This cause of action was for declaratory and injunctive relief on the basis that SB 819 was a tax and its passage violated article XIII A, section 3, subdivision (a) of the California Constitution because it was not passed by two-thirds of all members of each house of the Legislature. Article XIII A, section 3, subdivision (a) provides,

> "Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed."

In their motion for judgment on the pleadings, Respondents successfully argued that SB 819 did not result in anyone paying a *higher* tax. This was because, prior to the enactment of SB 819, firearms purchasers paid a DROS fee of $19.00, which fee remained the same after the passage of SB 819. The language of Article XIII A, section 3, subdivision (a) was only concerned with the taxpayer paying a higher tax, and not with how the tax was being used, consequently the failure of SB 819 to raise the DROS fee amount was fatal to Petitioners' claims.

Pursuant to Code of Civil Procedure section 473(a)(1),

> "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code."

Generally the Court should allow amendments to operative pleadings. (*Mesler v. Bragg Mgmt. Co.* (1985) 39 Cal.3d 290, 296.) Even in cases of delay in moving to amend, it is "an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment." (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) In fact, it is "a rare case in which denial of leave to amend can be justified." (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428.)

In the instant motion for leave to file first amended complaint, Petitioners seek to substitute Betty Yee as State Controller in place of John Chiang as a Defendant/Respondent. Petitioners also seek to add an alternative theory to their sixth cause of action, and plead new seventh, eighth, ninth, and tenth causes of action. (Declaration of Scott M. Franklin, Exhibit 5.) Petitioners' allegations via the new causes of action can be summarized as follows:

> 7. Declaratory and injunctive relief, violation of California Constitution article XIII, sec. 1(b) – By expanding the activities for which DROS Fee revenues can be

used, SB 819 creates a property tax which must be assessed in proportion to the value of the property being taxed per article XIII, section 1(b) of the California Constitution. DOJ has never evaluated whether SB 819 is assessed in proportion to the value of the property being taxed, and the amount charged is not proportional, which violates article XIII, section 1(b).

8. Declaratory and injunctive relief, violation of California Constitution article XIII, sec. 2 – The DROS Fee revenue use expansion caused by SB 819 creates a tax, which requires a two-thirds vote of the legislature as a differential tax pursuant to article XIII, section 2 of the California Constitution. SB 819 was not enacted by a two-thirds vote, and consequently violates article XIII, section 2.

9. Declaratory and injunctive relief, violation of California Constitution article XIII, sec. 3 – The DROS Fee revenue use expansion caused by SB 819 creates a tax. "Household furnishings and personal effects not held or used in connection with a trade profession, or business" are exempt from property taxation under article XIII, section 3(m) of the California Constitution, and consequently firearms purchased for personal use must be exempt from the SB 819 property tax. As SB 819 violates article XIII, section 3(m), it is void and unenforceable.

10. Declaratory and injunctive relief, scope of the "possession provision" –DOJ contends that SB 819 allows it to use DROS fee revenue to recoup costs not limited to APPS-based law enforcement activities. DOJ's use of the DROS fee revenues in this expansive manner is a violation of SB 819.

Respondents oppose the motion for leave to amend on the basis that it is untimely and that granting the motion will prejudice the DOJ defendants.

Discussion

Timeliness

In dismissing the first cause of action, the Court did not make findings concerning any constitutional provisions other than article XIII A, section 3, subdivision (a). The entirety of the parties' arguments in connection with the motion for judgment on the pleadings focused on article XIII A, section 3, subdivision (a). Now, in opposing the motion for leave to amend, Respondents contend that the Court's order on the motion for judgment on the pleadings applied to *all* theories that SB 819 is an illegal tax. Consequently, Respondents contend, if Petitioners wanted to assert alternate constitutional violation allegations, they needed to show that they could properly do so as part of their opposition to the motion for judgment on the pleadings. This is incorrect.

The Court's order only denied leave to amend as to an allegation that SB 819 violates article XIII A, section 3, subdivision (a). This motion is not an attempt to cure the deficiencies of the first cause of action (and alternate theory of the second cause of action) but instead is a motion to amend in order to plead new theories of constitutional violation.

Respondents' argument that the motion is untimely is misplaced.[1]

Prejudice

Respondents also argue this litigation has already been through several iterations (starting in a separate matter in federal court that is now on appeal) and allowing amendment at this point would make it "highly unlikely this case will be resolved any time soon."

Any time a petition is amended it is likely to result in a delay of the resolution of a matter. However, Respondents have failed to cite to specific prejudice they will incur as a result of the amendment other than additional discovery and that "there would be no end in sight." (Opposition, p. 9.) Respondents do not cite to any case holding that amending a complaint two years after initiating a matter, and five months after the granting of a motion for judgment on the pleadings, is, by itself, sufficient prejudice to deny leave to amend.

Conclusion

The motion for leave to amend and file a first amended complaint is **GRANTED**. However, the Court will not deem the proffered first amended complaint as having been filed as of the date of this order. The proposed amended complaint improperly still contains the first cause of action and first alternate theory in the second cause of action, both of which were removed from the Petition/Complaint, without leave to amend, via order dated July 20, 2015. Although Petitioners have made reference to this fact via footnotes "11" and "12" this improperly leaves material which has been effectively stricken from the Petition/Complaint, resulting in a confusing operative pleading. Petitioner is ordered to remove the First Cause of Action and first alternate theory from the Second Cause of Action, and properly revise the Complaint.

Petitioners shall file the amended Petition/Complaint within 30 days of the date of this order. Respondents shall file an answer within 30 days of the filing of the Amended Petition.

//

In the event that this tentative ruling becomes the final ruling of the Court, in accordance with Local Rule 1.06, counsel for Petitioners is directed to prepare an order granting the motion and ordering an amended Complaint to be filed, and incorporating this ruling as an exhibit to the order; submit them to counsel for Respondents for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with Rule of Court 3.1312(b).

[1] Respondents do not argue that the proposed causes of action fail to state a claim; consequently, the Court does not address this issue.

Exhibit 8

KAMALA D. HARRIS
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STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
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Attorneys for Defendants and Respondents

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MID LAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION,

Plaintiffs and Petitioners,

v.

KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, JOHN CHIANG, in his official capacity as State Controller, and DOES 1-10,

Defendants and Respondents.

Case No. 34-2013-80001667

DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S AMENDED RESPONSES TO REQUESTS FOR ADMISSIONS (SET ONE)

PROPOUNDING PARTY:	**PLAINTIFFS**
RESPONDING PARTY:	**DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY**
SET NUMBER:	**ONE**

is compound. The request also requires referring to other documents in order to respond. The use of the phrases "review" and "analysis" here are vague and ambiguous.

Without waiving this objection, defendants respond as follows:

Admitted.

REQUEST FOR ADMISSION NO. 82:

Admit that, in 2010, CAL DOJ created a document that utilized specific cost data in evaluating whether $19.00 was appropriate for the DROS FEE.

RESPONSE TO REQUEST FOR ADMISSION NO. 82:

Defendants object to this request. The use of the phrase "specific cost data" here is vague and ambiguous. Without waiving this objection, defendants respond as follows:

Admitted.

REQUEST FOR ADMISSION NO. 83:

Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS place an unusual burden on the general public as to the illegal possession of firearms.

RESPONSE TO REQUEST FOR ADMISSION NO. 83:

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

On January 22, 2016, the foregoing document(s) described as

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF RENEWED MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

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

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on January 22, 2016, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on January 22, 2016, at Long Beach, California.

— (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on January 22, 2016, at Long Beach, California.

X (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