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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

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12 **DAVID GENTRY, JAMES PARKER,
13 MARK MID LAM, JAMES BASS, and
14 CALGUNS SHOOTING SPORTS
ASSOCIATION,**

15 Plaintiffs and Petitioners,

16 v.

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

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28 Defendants and
Respondents.

Case No. 34-2013-80001667

**DEFENDANTS' BRIEF REGARDING IN
CAMERA DISCOVERY PROCEEDING**

Date: None
Time: None
Dept: 31
Judge: The Honorable Michael P.
Kenny
Trial Date: None set
Action Filed: October 16, 2013

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ARGUMENT

I. EACH OF THE DOCUMENTS LISTED ON DEFENDANTS' PRIVILEGE LOG IS PROTECTED FROM DISCLOSURE UNDER THE DELIBERATIVE PROCESS PRIVILEGE.

“Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated. [Citation].” (*San Joaquin Local Agency Formation Common v. Superior Court* (2008) 162 Cal.App.4th 159, 170.) “The privilege rests on the policy of protecting the decision making processes of government agencies. [Citation].” (*Ibid.*) It prohibits discovery of both the agency’s reasoning and “what evidence the administrator relied upon in reaching a decision.” (*Guilbert v. Regents of the Univ. of Cal.* (1979) 93 Cal.App.3d 233, 246.)

“The key question in every case is whether the disclosure of materials would expose an agency’s decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.” (*San Joaquin Local Agency Formation Com’n, supra*, 162 Cal.App.4th at pp. 170-71.) Disclosure of the documents at issue here necessarily will reveal “the substance of conversations, discussions, debates, deliberations and like materials” and will discourage candid discussion within DOJ. (*Ibid.*)

Below, defendants explain why each of the documents at issue should not be disclosed.

A. Privilege Log items 1, 2 & 3

The items numbered 1, 2, and 3 on defendants’ privilege log are budget office reports. (Decl. of Dave Harper in Supp. of Defs.’ Brief Re In Camera Discovery Proceeding (“Harper Decl.”) ¶ 2.) Each document is dated more than 10 years ago and was located on a secure departmental computer hard drive housing a variety of historical documents. (*Ibid.*)

Each document is essentially an issue paper prepared by a DOJ budget analyst who is no longer employed by the Department. (Harper Decl. ¶ 2.) And each is an internal report, one that was most likely prepared for DOJ’s executive office in connection with the executive decision-

1 making process regarding the DOJ budget. (*Ibid.*) For example, the computer file name for one
2 of the reports (item 3 on the privilege log) includes the phrase “to Steve Coony,” who was Chief
3 Deputy Attorney General at the time the report was prepared. (*Ibid.*) As the contents of the
4 report show, they identify one or more budget issues affecting DOJ, contain detailed background
5 and analysis sections, offer a variety potential solutions, and make a series of recommendations to
6 departmental decision makers.

7 None of the reports appears to have been drafted for the public or otherwise released to the
8 public. Indeed, in places each of the reports refer to the internal, secure computer hard drive on
9 which the document is stored, a reference that would have no meaning to the public at large.
10 And appendices attached to the reports refer to personal information of employees, including
11 position numbers, classifications, employee names and job functions.

12 The budget reports are precisely the kind of documents that the deliberative process
13 privilege was intended to protect. Disclosure of the reports would chill the full and candid
14 assessment of departmental budget issues in general and similar issues affecting the Bureau of
15 Firearms in particular. Such an assessment necessarily depends on the honest consideration of a
16 variety of data and involves the open assessment of an array of options, all of which is intended to
17 support DOJ’s executive office and its departmental decisionmaking. The deliberative process
18 privilege guards against just this type of discovery.

19 **B. Privilege Log items 4 & 13**

20 Item 4 on the privilege log is a draft letter to a state legislator from DOJ’s Deputy Director
21 of Administration. (Harper Decl. ¶ 3.) The letter is obviously in draft form. It is not signed.
22 Nor is the addressee information complete. The author of the letter is still employed by DOJ, and
23 he has been unable to locate any final, signed copy of the letter. (*Ibid.*) Nor can the employee
24 say for certain that he in fact signed and sent the letter, the draft of which is dated approximately
25 six years ago. (*Ibid.*) The letter indicates that it is in response to an earlier letter to DOJ from the
26 relevant legislator. However, the draft letter is not a piece of correspondence subject to public
27 disclosure.

1 Similarly, item 13 is a document titled “DOJ Hearing Binder, FY 2005-06, Dealer Record
2 of Sale (DROS) Fee Increase.” The file name of the document on the internal computer hard
3 drive on which it was found contains the phrase “Prior Prior Analyst’s Work.” (Harper Decl.
4 ¶ 4.) The content of the document suggests that it was prepared for use at a legislative hearing,
5 most likely as notes to be used by a DOJ employee to answer questions at the hearing. (*Ibid.*)
6 Such notes are akin to attorney notes or an outline prepared by counsel to be used to answer
7 questions at oral argument, not a written document intended for public disclosure. Indeed, it is
8 unknown whether the substance of the notes was even communicated at any hearing; it is possible
9 that the notes were never used.

10 The draft letter listed as item 4 reflect the internal mental processes of DOJ staff as it
11 considered questions posed by an official from another branch of government and weighed
12 potential responses. The notes listed as item 13 similarly reflect internal mental processes. Thus,
13 the documents are protected by the deliberative process privilege.

14 **C. Privilege log item 7**

15 This item is a one-page draft chart reflecting a point-in-time fiscal analysis. (Harper Decl.
16 ¶ 5.) It is difficult to draw any meaningful conclusions about this document given the lack of
17 context. In any event, it was also located on the computer hard drive referenced above and its file
18 name contains the phrase “Prior Prior Analyst’s Work.” (*Ibid.*) This description indicates that it
19 is an internal (i.e., non-public) document prepared by a budget analyst who is no longer employed
20 by DOJ. (*Ibid.*) These details, along with the general content of the document suggest that the
21 analyst prepared the document to support DOJ as it considered how to proceed in connection with
22 certain funding issues. (*Ibid.*) The documents therefore reflect departmental mental processes
23 and are protected from disclosure.

24 **D. Privilege log item 8**

25 Item 8 on the privilege is similar to items 1, 2 and 3, discussed above. This document was
26 also located on the computer hard drive referenced above and its file name contains the phrases
27 “Prior Prior Analyst’s Work,” “Issue Paper,” and “Issue-Bullets.” (Harper Decl. ¶ 6.)
28 This description indicates that it is an internal document prepared by a budget analyst who is no

1 longer employed by DOJ. (*Ibid.*) These details, along with the general content of the document
2 and the fact that it is written in layperson's terms (as opposed to budget or financial language),
3 also strongly suggest that the analyst prepared the document for DOJ's executive office as an
4 executive summary or briefing document in support of the one of the above budget office reports.
5 (*Ibid.*) Thus, disclosure of the document would inappropriately reveal DOJ's mental processes in
6 violation of the deliberative process privilege.

7 **E. Privilege log items 9 & 10**

8 Similar to item 8, items 9 and 10 on the privilege log include, respectively, a short
9 description of the APPS program and a brief description of the Division of Firearms (as the
10 Bureau of Firearms was formerly known) and various budget "allotments." The content and
11 nature of these documents suggest that they were to be incorporated into a larger budget analysis,
12 such as one of the budget reports discussed above. (Harper Decl. ¶ 7.) The text in these
13 documents is very brief. But they reflect the mental impressions of a departmental analyst
14 working to support the executive office as it deliberated over certain budget decisions.

15 **F. Privilege log item 12**

16 This item consists of a series of typed notes with the heading "DROS Transaction Contract
17 with Verizon." It was located on an internal hard drive in a file named, in relevant part, "Verizon
18 Contract." (Harper Decl. ¶ 8.) Although the notes are brief, and apparently incomplete, they
19 discuss DOJ's DROS transaction contract with Verizon, the negotiation of that contract, and some
20 of the costs associated with that contract. The notes were most likely drafted by a budget analyst
21 who is no longer employed by DOJ. (*Ibid.*) These details indicate that the notes reflect mental
22 impressions of the department in connection with a business matter. Indeed, their relevance to
23 this case is not at all clear; defendants have identified them out of an abundance of caution due to
24 arguable references in the notes to one of the costs associated with DROS transactions. In any
25 event, disclosure of the notes would threaten DOJ's ability to effectively negotiate future
26 contracts in the best interests of the public. They are therefore protected by the deliberative
27 process privilege.
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EXHIBIT A

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Scott M. Franklin - S.B.N. 240254
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO
10

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

13 Plaintiffs and Petitioners,)
14

vs.)

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

19 Defendants and Respondents.)
20

CASE NO. 34-2013-80001667

STIPULATION AND JOINT
APPLICATION RE: EXPEDITED
DISPUTE RESOLUTION PROCEDURE
RE: DOCUMENTS WITHHELD UNDER
PRIVILEGE CLAIMS IN RESPONSE TO
PLAINTIFFS' REQUESTS FOR
PRODUCTION OF DOCUMENTS
(SET ONE), PROPOUNDED ON
DEFENDANTS KAMALA HARRIS AND
STEPHEN LINDLEY; [PROPOSED]
ORDER

Dept.: 31
Action filed: 10/16/2013

21
22 The parties to this Action, through their respective counsel, hereby stipulate and agree to
23 the following.

24 AVERMENTS

25 WHEREAS, Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James
26 Bass, and Calguns Shooting Sports Association (collectively "Plaintiffs") propounded Requests
27 for Production of Documents (Set One) on Defendants/Respondents Kamala Harris and Stephen
28 Lindley (collectively "Defendants") on May 14, 2014;

1 WHEREAS, Defendants provided responses to Requests for Production of Documents
2 (Set One) on August 15, 2014 (pursuant to an extension granted by Plaintiffs);

3 WHEREAS, between August 15, 2014, and the present, the parties meet and conferred
4 regarding, among other things, Plaintiffs' belief that the responses provided on August 15, 2014,
5 and the documents provided in addition thereto, were insufficient;

6 WHEREAS, the extensive attempt at resolving the dispute came to an end on February 4,
7 2015, when the parties the parties determined they were at an impasse as to whether Defendants
8 were properly withholding certain documents;

9 WHEREAS, the parties agree the attempt to resolve the dispute at issue is sufficient
10 grounds for the execution of a declaration pursuant to Code of Civil Procedure sections 2016.040
11 and 2031.310(b)(2).

12 WHEREAS, on February 4, 2015, counsel for Plaintiffs suggested the parties stipulate to
13 use a streamlined dispute resolution mechanism to resolve this matter if allowed by this Court,
14 and in response counsel for Defendants indicated Defendants would likely be amenable to the use
15 of such mechanism;

16 WHEREAS, on February 19, 2015, an assistant from Plaintiffs' counsel's office
17 confirmed with the clerk of this Court the Court would consider a streamlined dispute resolution
18 mechanism if submitted by way of a joint stipulation submitted by the parties;

19 WHEREAS, on April 2, 2015, an assistant from Plaintiffs' counsel's office confirmed
20 with the clerk of this Court the process to be used for the temporary lodging of confidential
21 documents for the purpose of in camera review; and

22 WHEREAS, the parties now desire to jointly propose a streamlined dispute resolution
23 mechanism that, when compared to the normal noticed motion procedure, will save costs and
24 time for the parties and the Court.

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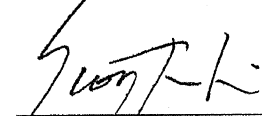
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private shipping equivalent, with the Stipulation for the return of the documents
being temporarily lodged with the Court as described herein.

SO STIPULATED.

Dated: April 16, 2015

MICHEL & ASSOCIATES, P.C.



Scott M. Franklin
Attorneys for the Plaintiffs/Petitioners

Dated: April 16, 2015

KAMAL D. HARRIS
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General

Anthony R. Hakl
Deputy Attorney General
Attorneys for Defendants/Respondents

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private shipping equivalent, with the Stipulation for the return of the documents
being temporarily lodged with the Court as described herein.

SO STIPULATED.

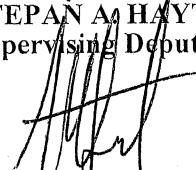
Dated: April 16, 2015

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin
Attorneys for the Plaintiffs/Petitioners

Dated: April 16, 2015

KAMAL D. HARRIS
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General



Anthony R. Hakl
Deputy Attorney General
Attorneys for Defendants/Respondents

1 ORDER

2 Based on the Stipulation of the parties dated April 16, 2015, the Court **GRANTS** the
3 parties' request to hear the currently pending discovery dispute pursuant to the expedited
4 procedure identified below in lieu of motion filed pursuant to Code of Civil Procedure section
5 2031.310(a)(3).

6 It is **ORDERED** that:

- 7 1. The documents submitted for in camera review on April 17, 2015, will be treated
8 as temporarily lodged with the Court for the purpose of in camera review only, and
9 will not be filed.
- 10 2. On or before May 4, 2015, Plaintiffs' counsel and Defendants' counsel shall each
11 file and serve (1) a proposed order and (2) a brief, not to exceed eight pages
12 (excluding declarations and exhibits, if any), supporting their clients' position
13 regarding whether the withheld documents should be released.
- 14 3. Each side may file a "reply" brief, not to exceed three pages (excluding
15 declarations and exhibits, if any), on or before May 11, 2015.
- 16 4. The matter shall be resolved by the Court without oral argument, and the order of
17 the Court issued pursuant to the Parties' stipulated expedited dispute resolution
18 will have the same force and effect as if issued upon a motion filed pursuant to
19 Code of Civil Procedure section 2031.310(a)(3).
- 20 5. Upon completion of the Court's in camera review of the documents lodged with
21 the Court, the Court will return such documents to Defendants via the self-
22 addressed envelope provided thereby.

23 **IT IS SO ORDERED.**

24
25 Date: _____

26 _____
27 Hon. Michael P. Kenny, Judge of the Superior Court
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

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

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

7 **STIPULATION AND JOINT APPLICATION RE: EXPEDITED DISPUTE**
8 **RESOLUTION PROCEDURE RE: DOCUMENTS WITHHELD UNDER PRIVILEGE**
9 **CLAIMS IN RESPONSE TO PLAINTIFFS' REQUESTS FOR PRODUCTION OF**
10 **DOCUMENTS (SET ONE), PROPOUNDED ON DEFENDANTS KAMALA HARRIS**
11 **AND STEPHEN LINDLEY; [PROPOSED] ORDER**

10 on the interested parties in this action by placing

11 the original

12 a true and correct copy

13 thereof enclosed in sealed envelope(s) addressed as follows:

14 Kamala D. Harris, Attorney General of California
15 Office of the Attorney General
16 Anthony Hakl, Deputy Attorney General
17 1300 I Street, Suite 1101
18 Sacramento, CA 95814

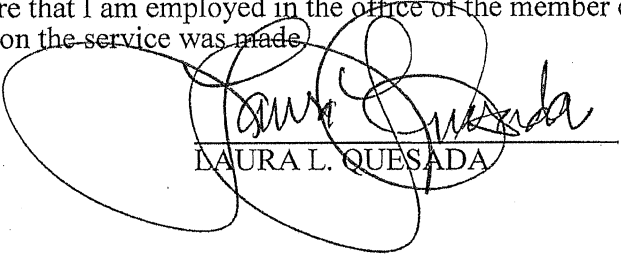
19 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
20 processing correspondence for mailing. Under the practice it would be deposited with the
21 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
22 California, in the ordinary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

26 X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
27 transmission. Said transmission was reported and completed without error.
28 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.

26 
27 LAURA L. QUESADA
28

DECLARATION OF SERVICE BY 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; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On May 4, 2015, I served the attached **DEFENDANTS' BRIEF REGARDING IN CAMERA DISCOVERY PROCEEDING** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 4, 2015, at Sacramento, California.

Tracie L. Campbell

Declarant



Signature