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GOSSC COURTHOUSE  
SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SACRAMENTO

13 DAVID GENTRY; JAMES PARKER;  
14 MARK MIDLAM; JAMES BASS; and  
15 CALGUNS SHOOTING SPORTS  
16 ASSOCIATION,

CASE NO. 34-2013-80001667

PLAINTIFFS' SUPPLEMENTAL BRIEF IN  
RESPONSE TO ORDER OF JULY 20, 2015

17 Plaintiffs and Petitioners,

18 vs.

19 KAMALA HARRIS, in Her Official  
20 Capacity as Attorney General for the State  
21 of California; STEPHEN LINDLEY, in His  
22 Official Capacity as Acting Chief for the  
23 California Department of Justice; JOHN  
24 CHIANG, in His Official Capacity as State  
25 Controller for the State of California; and  
26 DOES 1-10,

27 Defendants and Respondents.

28 **I. INTRODUCTION**

29 This Court's Order After Hearing, dated July 20, 2015 (the "Order"), states that the Court  
30 is inclined to construe Defendant Kamala Harris and Stephen Lindley's (collectively  
31 "Defendants") prior Motion for Judgment on the Pleadings as a motion to strike regarding the  
32 second alternative claim in the second cause of action (the "Claim") in Plaintiffs David Gentry,  
33 James Parker, Mark Midlam, James Bass, and Calguns Shooting Sports Association's  
34 (collectively "Plaintiffs") petition/complaint ("Complaint"). (Order at 2:22-24). The Order also  
35 states the Court is inclined to strike the Claim. (*Id.*)

1 Defendants have never briefed a substantive basis as to why the Claim should be stricken;  
2 Defendants' Motion for Judgment on the Pleadings, and the Reply filed in support thereof, are  
3 both completely silent on the issue. The only argument Defendants have put forward is inherently  
4 flawed and, in light of the Order, moot. Because there is no legitimate basis for the "motion," it  
5 should be denied.

## 6 II. PROCEDURAL HISTORY

7 Defendants' Motion for Judgment on the Pleadings ("MJOP") asked the Court to dismiss  
8 the second cause of action in Plaintiffs' Complaint based on the contention that the second cause  
9 of action failed to state a claim for relief under Proposition 26. (Defs.' Memo. in Supp. of Mot.  
10 for J. on the Pleadings at 1:10-16.) The Court, however, noticed that the portion of the Complaint  
11 denominated as the second cause of action actually included two legal theories. The Court  
12 identified both the theory based on Proposition 26, and another theory based on a claim that SB  
13 819 did not authorize the California Department of Justice to use fees collected prior to the  
14 enactment of SB 819 for the new uses purportedly authorized under SB 819. (Notice to Appear at  
15 Oral Arg. ["Notice to Appear"] at 1-2.) Accordingly, on the afternoon before the hearing of June  
16 5, 2015, the Court posed the following question to the parties: "[d]oes the motion for judgment on  
17 the pleadings on the second cause of action, which is the equivalent of a general demurrer, violate  
18 the principle that a demurrer does not lie to a portion of a cause of action?" (*Id.*)

19 At the hearing of June 5, 2015, Defendants' counsel argued, for the first time, that "there's  
20 a rule against pleading alternative claims in the same cause of action[.]" citing *Campbell v.*  
21 *Rayburn*, 129 Cal. App. 2d 232, 235 (1954), and *O'Hare v. Marine Elec. Co.*, 229 Cal. App. 2d  
22 33 (1964). (Transcript of Hearing of June 5, 2015 ["Transcript"] at 4:9-15.) In response, the Court  
23 indicated that it agreed with Defendants' position. (*Id.* at 4:9-18.) Nonetheless, the Order states  
24 that the parties are permitted to file supplemental briefing on the narrow issue of whether the  
25 Claim should be (1) subject to a motion to strike and (2) stricken. (Order at 2:22-28.) The Order  
26 also clearly states that the remainder of the second cause of action (i.e., the SB 819-based claim)  
27 had been dismissed. (Order at 2:14-21.)

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**III. ARGUMENT**

**A. Defendants' "Motion" Is Moot: the Alleged Impropriety No Longer Exists**

Even assuming Defendants are correct in arguing the existence of a rule against pleading alternative claims in the same cause of action (Transcript at 4:9-15), that rule cannot apply here. Plaintiffs' second cause of action now consists of a *single* claim; the Court dismissed the other allegations in the second cause of action via the Order. (Order at 2:14-21.) Because the alleged rule cannot apply to the second cause of action—which now consists solely of the Claim—Defendants' "motion" is moot and should be denied.

**B. Defendants' Authority Is Not on Point**

**1. The Rule Stated in *Campbell v. Rayburn* Is No Longer Good Law**

Defendants rely on a passage in *Campbell* that states the following: "the special demurrer was properly sustained because the complaint was defective in that two purported causes of action were not separately stated. (Code Civ. Proc., § 430; *Haddad v. McDowell*, 213 Cal. 690 [3 P.2d 550].)" *Campbell v. Rayburn*, 129 Cal. App. 2d 232, 235 (1954). Code of Civil Procedure section 430, however, was repealed and replaced by section 430.10 in 1972, which itself was amended in 1973 "to abolish as a ground for a demurrer that each cause of action is not separately stated." *Lilienthal & Fowler v. Super. Ct.*, 12 Cal. App. 4th 1848, 1855 n.4 (1993). In fact, *Lilienthal* stands for the proposition that two different causes of action *can* be plead in a single "count" of a complaint. See *Skrbina v. Fleming Cos.*, 45 Cal. App. 1353, 1364 (1996) (citing *Lilienthal*). Thus, inasmuch as there is no rule against pleading two causes of action together, Defendants' argument "that each legal theory should be pleaded in a separate cause of action" must fail.

**a. *Campbell, Haddad, and O'Hare* Are Factually Inapposite**

Furthermore, there is a major factual distinction between *Campbell, Haddad* (cited by *Campbell*), and *O'Hare*, on the one hand, and the instant matter, on the other. In *Campbell* and *O'Hare*, the plaintiffs were granted leave to amend after demurrers were granted, but they each failed to timely file an amended complaint in response thereto. *Campbell*, 129 Cal. App. 2d at 235; *O'Hare v. Marine Elec. Co.*, 229 Cal. App. 2d 33, 35 (1964). Thus, when the appellate courts considered their pleadings, the decision not to amend clearly forced the appellate courts to

1 "presume that the case[s had] been stated as strongly as can be done." *O'Hare*, 229 Cal. App. 2d  
2 at 35, 38; *Campbell*, 129 Cal. App. 2d at 235.

3 Similarly, in *Haddad*, the plaintiff failed to request leave to amend after a demurrer was  
4 granted against him. *Haddad v. McDowell*, 213 Cal. 690, 691 (1931). At the time the demurrer  
5 ruling was issued against Haddad, California law required that a plaintiff submit a request to the  
6 court if the plaintiff wanted to file an amended complaint after a demurrer was granted. *See*  
7 *Wennerholm v. Stanford Univ. Sch. of Med.*, 20 Cal. 2d 713, 719-20 (stating the rule relied on in  
8 *Haddad*, but then noting that the rule had been superceded by statute in 1939).

9 Clearly, *Campbell*, *O'Hare*, and *Haddad* are inapplicable hereto because they each  
10 concern a situation where a party failed to take the proper steps to amend a faulty complaint.  
11 Plaintiffs are prepared to file an amended complaint that splits the second cause of action into two  
12 distinct causes of action, unlike the plaintiffs in *Campbell*, *O'Hare*, and *Haddad*, making those  
13 cases inapplicable. Thus, if the Court finds that the rule expressed in *Campbell* should be applied  
14 herein, the Court should grant Plaintiffs leave to amend so they can amend the Complaint  
15 accordingly. *CLD Constr., Inc. v. City of San Ramon*, 120 Cal. App. 4th 1141, 1146-47 (2004)  
16 (stating that, in response to a motion to strike, "[i]t is generally an abuse of discretion to deny  
17 leave to amend" to correct a curable defect).

18 **2. Defendants Have Not Provided Any Argument as to Why the Claim Should**  
19 **Be Stricken Pursuant to *O'Hare v. Marine Elec. Co.***

20 Plaintiffs object to Defendants' attempt to rely on *O'Hare*, as Defendants have never  
21 provided a pinpoint cite or explanation as to why this case is purportedly relevant. Defendants'  
22 sole reference to this case was Defendants' counsel's statement of its name (without reporter  
23 information) during the hearing of June 5, 2015. (Transcript at 4:15.) Without any specific  
24 allegations to rely on, Plaintiffs are forced to speculate that *O'Hare* was cited for the proposition  
25 that, "in a proper case, the complaint could be subject to general demurrer for failure to state a  
26 cause of action." *See Rylaarsdam, et al., California Practice Guide: Civil Procedure Before Trial*  
27 *§§ 6:245 (The Rutter Group 2015) (citation omitted).*

28 In *O'Hare*, the plaintiff attempted to allege a breach of fiduciary duty owed by directors or

1 certain shareholders of a company. *O'Hare*, 229 Cal. App. at 37. O'Hare's complaint, however,  
2 employed the term "and/or" to such an extent that the complaint did not actually include an  
3 allegation that definitively identified the defendants as directors or shareholders. *Id.* Without an  
4 allegation that was elemental to the breach claims at issue (i.e., that defendants were in a class of  
5 people purportedly owing O'Hare a fiduciary duty), the *O'Hare* court correctly held that O'Hare's  
6 complaint did not state a cause of action against the named defendants. *Id.*

7 *O'Hare* is irrelevant hereto. Defendants have not argued, let alone proved, any specific  
8 theory as to why the Claim should be stricken for failing to state a cause of action.

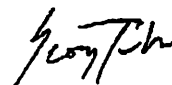
9 It would be patently unfair for the Court to now consider any argument that the Claim fails  
10 to state a cause of action. "An elementary and fundamental requirement of due process in any  
11 proceeding which is to be accorded finality is notice reasonably calculated, under all the  
12 circumstances, to apprise interested parties of the pendency of the action and afford them an  
13 opportunity to present their objections." *Edward W. v. Lamkins*, 99 Cal. App. 4th 516, 529 (2002).  
14 Defendants have not presented an argument that the Claim should be stricken pursuant to Code of  
15 Civil Procedure section 436, nor have Plaintiffs had the opportunity to respond to such argument.  
16 For that reason, if Defendants' supplemental brief includes argument as to whether the Claim fails  
17 to state a cause of action, Plaintiffs should be given a timely opportunity to respond thereto.

#### 18 IV. CONCLUSION

19 Defendants' "motion" should be denied for the reasons stated herein. If the Court grants  
20 the "motion," leave should be granted to all Plaintiffs to correct what is, at most, an easily curable  
21 defect.

22  
23 Dated: August 7, 2015

MICHEL & ASSOCIATES, P.C.

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26 Scott M. Franklin  
27 Attorneys for Plaintiffs  
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**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 August 7, 2015, the foregoing document(s) described as

**SUPPLEMENTAL BRIEF IN RESPONSE TO ORDER OF JULY 20, 2015**

on the interested parties in this action by placing

the original

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 August 7, 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 August 7, 2015, at Long Beach, California.

    **(PERSONAL SERVICE)** I caused such envelope to delivered by hand to the offices of the addressee.  
Executed on August 7, 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

**SUPPLEMENTAL BRIEF IN RESPONSE TO ORDER OF JULY 20, 2015**