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ODSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

By Fax

1 C. D. Michel – S.B.N. 144258
2 Scott M. Franklin – S.B.N. 240254
3 MICHEL & ASSOCIATES, P.C.
4 180 E. Ocean Boulevard, Suite 200
5 Long Beach, CA 90802
6 Telephone: 562-216-4444
7 Facsimile: 562-216-4445
8 Email: cmichel@michellawyers.com

Attorneys for Plaintiffs/Petitioners

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

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

13 Plaintiffs and Petitioners,

14 vs.

15 KAMALA HARRIS, in Her Official
16 Capacity as Attorney General for the State
17 of California; STEPHEN LINDLEY, in His
18 Official Capacity as Acting Chief for the
19 California Department of Justice, BETTY
20 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

JOINT STATEMENT OF THE PARTIES
REGARDING INSTRUCTIONS NOT TO
ANSWER DURING DEPOSITION OF
JESSICA R. DEVENCENZI; REQUEST
FOR INFORMAL DISCOVERY
CONFERENCE

Date: TBD
Time: TBD
Dept.: 31
Judge: Hon. Michael P. Kenny
Action filed: 10/16/13

21
22 The parties to the action hereby request that the Court set an informal discovery
23 conference with the next 45 days regarding several instructions not to answer that occurred
24 during the deposition of Jessica Devencenzi, a former employee of the Department of Justice. Ms.
25 Devencenzi was represented at deposition by counsel for Defendants herein. As is relevant
26 hereto, Ms. Devencenzi worked in the Department's Office of Legislative Affairs and was
27 responsible for certain tasks related to the Attorney General's sponsorship of Senate Bill 819; this
28 lawsuit was brought in response to the enactment of and the Department's reliance upon Senate

1 Bill 819.

2 Sections A, B, and C herein are Plaintiffs' and Defendants' statements as to whether or
3 not the questions at issue should be answered. Section D consists of the text of the questions in
4 dispute, and the specific grounds upon which an instruction not to answer was based. A true and
5 correct copy of the deposition transcript is also being lodged herewith should the Court desire to
6 look at the context in which the objections were raised.

7 **A. Plaintiffs' Opening Argument as to Why the Privilege(s) Claimed Are Inapplicable**

8 [I]nquiry into the mental processes of legislators is sharply restricted. It does not
9 follow that all [governmental] functionaries, or even the legislators themselves, are
10 categorically immune from discovery into their knowledge of objective facts and
11 circumstances where it may constitute or lead to admissible evidence. (See *City of*

12 *Santa Cruz v. Superior Court* (1995) 40 Cal.App.4th 1146, 1148[.]
13 *City of King City v. Cmty. Bank of Cent. Cal.*, 131 Cal. App. 4th 913, 931 (2005), *as modified on*
14 *denial of reh'g* (Sept. 1, 2005). The legislative, i.e., mental process, privilege ("Privilege")¹ does
15 not apply unless "the information sought . . . concerns the subjective motives and thought process
16 of legislators[.]" *Santa Cruz*, 40. Cal. App. 4th at 1153. The Privilege prevents the identification of
17 which specific evidence *was actually relied on* to make a specific decision (*Guilbert v. Regents of*
18 *Univ. of Cal.*, 93 Cal. App. 3d 233, 246 (1979). As cases before (*see supra* note 1) and after
19 *Guilbert* confirm, however, information submitted to a decision maker is *not* automatically
20 protected from disclosure simply because it was provided to a legislator. *King City*, at 131 Cal.
21 App. 4th at 931.

22 Here, all of the instructions not to answer rely on the Privilege, but the Privilege is
23 inapplicable for several reasons. First, as a general principal, there is a patent separation of
24 powers problem if the executive branch, i.e., the Department of Justice ("DOJ") can effectively
25 become part of the legislature, for privilege analysis, by working with a legislator on proposed
26 regulation. Cal. Const. art. III, § 3. That potential problem is especially disconcerting here,

27 ¹ The privilege is perhaps more accurately referred to as the mental process privilege,
28 because it protects from disclosure only information concerning "what material the
[decisionmaker] read *and* relied upon in reaching its determination[,] to the extent the[
party demanding disclosure] seek[s] to probe the mental process of the [decisionmaker.]"
See State of Cal. v. Super. Ct., 12 Cal. 3d 237, 258 (1958) (italics added).

1 because DOJ contends not only that its communications with the legislative branch are
2 privileged, but that the information *itself* is also privileged regardless of whether it was
3 communicated to a legislator. (See counsels' colloquy re: No. 1 below).

4 Second, the privilege only covers information concerning the "mental processes of
5 legislators *in enacting legislation*" (*Cnty. of Los Angeles v. Super. Ct.*, 13 Cal. 3d 721, 723 (1975)
6 (*italics added*), not communications between a legislative author and a bill sponsor. Surely the
7 Privilege was not intended to obfuscate the interactions between a legislative sponsor and the
8 legislator acting as the sponsor's proxy via bill authorship. *Cf.* Cal. Const. art. IV, § 22 ("It is the
9 right of the people to hold their legislators accountable.")

10 Third, DOJ's privilege claim fails because none of inquires at issue require disclosure of
11 whether the information provided to (former) Senator Mark Leno was considered by the Senator,
12 let alone whether it was "relied on" as a part of his mental process. *State of Cal.*, 12 Cal. 3d at
13 258 (stating Privilege applies to material "read and relied upon" by legislators.)

14 Fourth, DOJ has taken the position that the Privilege applies to information known or
15 generated in relation to Senate Bill 819, even if disclosing such information would not indicate
16 whether it had been read and/or relied on by Senator Leno. (*See supra* Nos. 1 & 13). Aside from
17 the fact that no case law exists to supports DOJ here, the position is plainly untenable: DOJ, or
18 any other agency could cloak information in the Privilege simply by meeting with a legislator
19 about potential legislation somehow related to the information the agency sought to protect.

20 DOJ argues herein that it has properly set the DROS fee, and that the DROS fee is
21 currently reasonable. The discovery sought is reasonably calculated to lead to admissible
22 evidence concerning, *iner alia*: (1) what information DOJ, and thus Senator Leno, provided to the
23 legislature—which in turn will illuminate the legislative intent behind SB 819 (Cause of Action
24 No. 9 herein),² and (2) whether DOJ's inaction regarding the amount being charged for the DROS
25 fee since 2004 is justified, and if not, what action(s) DOJ needs to take to remedy its inaction
26 (Cause of Action No. 5 herein). Code Civ. Proc. § 2017.010.

27
28 ² It is also relevant for estoppel purposes if DOJ attempts to argue herein a
different interpretation of SB 819 than what it publically claimed prior to its passage.

1 The Court should thus now indicate DOJ's objections would not be sustained on a motion
2 to compel.

3 **B. Defendants' Argument as to Why the Privilege(s) Claimed Are Applicable**

4 When a plaintiff challenges the validity of a statute, the separation of powers doctrine
5 generally prohibits discovery related to the potential considerations, influences, motivations, or
6 thought processes of those who passed the legislation. This broad prohibition, sometimes referred
7 to as the "legislative privilege," extends to the questioning of nonlegislators, such as Ms.
8 Devencenzi, about factors that may have led to the legislators' actions in connection with SB 819.

9 In *County of Los Angeles v. Superior Court* (1975) 13 Cal.3d 721, 723, a taxpayer
10 challenged the validity of a county ordinance, contending the board of supervisors adopted it in
11 response to a threatened illegal strike. The trial court had ordered county employees to answer
12 deposition questions "as to discussions of strikes or threats of strikes at executive sessions of the
13 Board of Supervisors." (*Ibid.*) The employees included nonlegislators – the director and deputy
14 director of the personnel department and executive officer-clerk of the board. (*Id.* at p. 724.)

15 The Supreme Court restrained enforcement of the order based on the "fundamental,
16 historically enshrined legal principle that precludes any judicially authorized inquiry into the
17 subjective motives or mental processes of legislators." (*County of Los Angeles*, 13 Cal.3d at p.
18 726.) The Court explained that the validity of a piece of legislation depends *not* on the
19 motivations of any legislator, but on what "may be disclosed on the face of the acts." (*Id.* at p.
20 726 [citation omitted].) Moreover, even if an "ulterior purpose" behind the ordinance could be
21 used to attack its validity, "the taxpayer still may not prove such ulterior purpose by requiring
22 legislators to testify about their reasoning process *or by questioning others about the factors*
23 *which may have led to the legislators' votes.*" (*Id.* at p. 729, italics added.)

24 In *Board of Supervisors v. Superior Court* (1995) 32 Cal.App.4th 1616, 1619, the court
25 precluded a plaintiff from discovering evidence about a board's decision to consolidate court-
26 related services in the sheriff's office, as opposed to the marshal's office. (*Ibid.*) The plaintiff, an
27 association of judges challenging the decision, had "sought discovery concerning whether the
28 supervisors ignored, or even considered," the advisory vote of local judges concerning the

1 consolidation. (*Ibid.*) The intended discovery included the deposition of the local sheriff, the
2 deposition of representatives of the local deputy sheriffs association, and a search for documents.
3 (*Id.* at pp. 1620-1621.) The court prohibited the discovery, explaining “[t]he judiciary confines
4 evaluation of a statute to the terms of the legislation itself and will eschew inquiry into what
5 motivated or influenced those who voted on the legislation.” (*Id.* at p. 1623.)

6 The court emphasized that the plaintiff could not “seek to circumvent the prohibition
7 against discovery of Board members’ thought processes by deposing others – such as [the sheriff]
8 – about communications with Board members.” (*Board of Supervisors*, 32 Cal.App.4th at p.
9 1626.) The plaintiffs had disclaimed any intention to discover “legislative thought processes”, but
10 only “whether the Board predetermined, before the hearing required by statute, to select the
11 sheriff to provide court-related services.” (*Id.* at pp. 1626-1627.) The court was not persuaded by
12 this attempted distinction: “To question others, such as [the sheriff], about the facts which may
13 have led to the legislators’ votes, merely constitutes an alternate method of finding out how and
14 when Board members arrived at their positions.” (*Id.* at p. 1627.) Additionally, “the attempt to
15 determine when a supervisor decided to vote a particular way is bound up in why that decision
16 was reached; once again, the inquiry goes to the thought processes.” (*Ibid.*)

17 Finally, in an action challenging a city’s adoption of a general plan, the court in *City of*
18 *Santa Cruz v. Superior Court* (1995) 40 Cal.App.4th 1146, 1148-1149 precluded the depositions
19 of two former city planning commissioners and a former planning director. A plaintiff
20 development company wanted to depose the former employees and ask whether city council
21 members had agreed to refuse certain alternative zoning proposals for the greenbelt properties at
22 issue. (*Id.* at p. 1148.) The court agreed that “discovery into the subjective motives or mental
23 processes of legislators” was forbidden, and that the proscription could not be “circumvented by
24 deposing others about the factors that may have led to the legislators’ votes.” (*City of Santa*
25 *Cruz*, 40 Cal.App.4th at p. 1148.) Nor was the court persuaded by the claim that the intended
26 deposition questions did not go to the legislator’ thoughts and motivations, but related to the
27 general plan approval “process,” whether “certain events” occurred, and so on. (*Id.* at p. 1156.)
28 These so-called procedural issues were intertwined with why the city adopted the plan it did.

1 (See *id.* at p. 1157.) Thus, what the plaintiff was “truly attempting to discover is when the council
2 members decided to designate the greenbelt properties as agricultural and whether they
3 maintained open minds at the time of the public hearings.” (*Ibid.*)

4 Here, the transcript of Ms. Devencenzi’s deposition shows that she was the legislative
5 advocate for the Department of Justice, the sponsor of SB 819, who participated in drafting the
6 bill and discussed it with its official author in the Senate and his staff prior to the Legislature
7 acting on it. She is analogous to the director, deputy director, and executive officer clerk (also
8 nonlegislators) who may have witnessed discussions of the board in *County of Los Angeles*, and
9 the sheriff and representatives of the deputy sheriffs association who may have been privy to the
10 events leading up to the legislative vote in *Board of Supervisors*. As a former employee of the
11 Department of Justice, she is also akin to the former city employees in *City of Santa Cruz* who
12 may have known information about the city council’s zoning decisions.

13 Plaintiffs have argued that these authorities are inapposite, claiming they are not
14 interested in Senator Leno’s “mental processes” or “why” he voted the way he did on SB 819.
15 Rather, as plaintiffs have couched it, they are merely interested in what “information” was
16 provided to Senator Leno and what “information” he may have circulated to the Legislature. This
17 Court should reject these attempts to recast the nature of the inquiries directed at Ms. Devencenzi.

18 Plaintiffs challenge the validity of SB 819. Their questions about what any legislator
19 knew and when he or she knew it are inherently “bound up” in why that legislator acted the way
20 he or she did. (*Board of Supervisors*, 32 Cal.App.4th at p. 1627; see *City of Santa Cruz*, 40
21 Cal.App.4th at p. 1157 [inquiries regarding “procedural irregularities” and “when” council
22 members made decision went to substance and were precluded].) While plaintiffs claim a narrow
23 intention of discovering objective “facts” or when and where certain “information” was passed
24 along, their inquiries are just an alternate method of questioning others about the factors which
25 may have led to the Legislature’s actions in connection with SB 819. Asking whether Senator
26 Leno knew “why” a particular word was chosen; whether he “inquire[d] as to why the proposed
27 language . . . was not more descriptive”; whether he and the Department discussed the “cause” of
28 the alleged surplus in the DROS fund; and even whether the Department and Senator discussed

1 the legal theory that “SB 819 could be characterized as a tax,” for example, are clearly inquiries
2 aimed at discovering any number of considerations or motivations of the Legislature.

3 Moreover, statements by sponsors to an individual legislator (as opposed to the
4 Legislature as a whole) – which is what plaintiffs seek here – are not cognizable legislative
5 history. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.
6 App. 4th 26, 36; see *In re Marriage of Siller* (1986) 187 Cal. App. 3d 36, 46 fn. 6 [finding
7 “documents from the sponsoring entity . . . are not cognizable indicia of legislative intent”].

8 Finally, to the extent plaintiffs argue defendants have waived any legislative privilege, the
9 deposition transcript shows that counsel timely objected to each question at issue. Moreover,
10 there can be no waiver of the separation of powers doctrine. Under controlling authority, any
11 answers Ms. Devencenzi might be able to provide to the questions are simply “irrelevant to the
12 judicial task” and “not the proper subject of discovery requests.” (See *Nadler v. Schwarzenegger*
13 (2006) 137 Cal.App.4th 1327, 1335-1337 [rejecting claim that legislative consultant (i.e.,
14 nonlegislator) waived privilege by offering declaration earlier in case].)¹

15 For these reasons, the Court should sustain the defendants’ deposition objections.

16 **C. Plaintiff’s Response to Defendants’ Argument**

17 Defendants’ argument is based on a false premise as it relates to the discovery at issue.
18 They claim that “[h]ere, it is undisputed that plaintiffs challenge the validity of SB 819, not just
19 its construction.” Pursuant to the Court’s suggestion, however, the parties are currently litigating
20 two causes of action: one concerning whether the DOJ has failed to meet its duty to set the DROS
21 fee at a reasonable amount (the Fifth Cause of Action), and one concerning *interpretation* of SB
22

23 ¹ *Nadler* involved a constitutional challenge to a legislative enactment, which
24 distinguishes it and the other cases discussed above from *King City v. Community Bank*
25 *of Cen. Calif.* (2005) 131 Cal.App.4th 913, which plaintiffs have relied on. *King City*
26 held that the general rule that courts may not inquire into subjective mental processes of
27 legislators is restricted to cases where the *validity* of a law is being challenged, and does
28 not prevent consultation of extrinsic evidence to *construe* the enactment. (131
Cal.App.4th at pp. 942, 944; see 7 Wilkin, Summary 10th Const Law § 149 (2005)
[summarizing limited holding in *King City*].) Here, it is undisputed that plaintiffs
challenge the validity of SB 819, not just its construction. Thus, the exception to the
general rule that applied in *King City* does not apply here.

1 819 (the Ninth Cause of Action). As explained *supra* in Section A, the discovery is sought in light
2 of those two issues, neither of which is a challenge to SB 819.

3 DOJ's claim that Ms. Devencenzi is analogous the then-current and former city or county
4 employees in *County of Los Angeles, Board of Supervisors*, and *City of Santa Cruz* is without
5 merit for several reasons. First, none of those cases concerned communications with a legislative
6 sponsor; they all concerned communications related to actual legislative decisionmaking. Second,
7 in all three cases (and *Nadler*), the potential sources of information were employed by the
8 governmental entity that made the challenged legislative decision *and* raised the privilege
9 objection. DOJ is presumably not claiming Ms. Devencenzi was, at the relevant time, employed
10 by the legislature. Indeed, the objection was not even made on behalf of Senator Leno (see
11 deposition at 29:19-23). Because Senator Leno holds the privilege and he has not raised a
12 privilege claim, the four cases cited by Defendants are inapt, and Defendants have thus failed to
13 meet their prima facie burden. *Citizens for Open Gov't v. City of Lodi*, 205 Cal. App. 4th 296,
14 306, 140 Cal. Rptr. 3d 459, 467 (2012).

15 Defendants never substantively address *City of King City*, which is fatal to their argument.
16 Instead, they try to get around *City of King City* by misinterpreting it so that it seems to not apply.
17 Defendants claim the *City of King City* court held that the mental process privilege is restricted to
18 cases "where the *validity* of a law is being challenged[;]" but they left out a critical
19 limitation—that the challenge is "based on the subjective motives or purposes of the legislators."
20 *City of King City*, 131 Cal. App. 4th at 942. So even if Plaintiffs herein were currently
21 challenging the validity of SB 819 (which they are not), nothing in the relevant complaint
22 challenges SB 819 based on claims of improper legislative motive. Because Defendants' failed to
23 effectively distinguish *City of King City*, it is binding and dooms their argument.

24 It is generally true that, as Defendants note, "documents from the sponsoring entity . . . are
25 not cognizable indicia of legislative intent." But what Defendants do not explain is that there are
26 two issues here than make the relevance of the foregoing proposition limited. First, only one of
27 the two causes of action currently at issue turns on legislative history. The Fifth Cause of Action
28 concerns DOJ's failure to properly set the DROS fee. Information related to that inquiry cannot

1 be hidden from review because it was (allegedly) part of DOJ's sponsorship of SB 819. Second,
2 as is made clear by *Stiller*, legislative history *does* include statements made by legislative sponsor
3 to the legislature. *Stiller*, 187 Cal. App. 3d at 46 fn. 6. Because the parties are only at the
4 discovery stage, and because discovery is not limited only to information that will itself be
5 admissible (see Code of Civil Procedure section 2017.010), the case law cited by Defendants on
6 this issue has little impact. This is especially true in this unique situation because the information
7 sought is likely to shed light on whether the DOJ should be equitably estopped from taking
8 certain positions herein that are completely opposite to the position it took as the sponsor of SB
9 819.

10 Finally, Plaintiff must reiterate the scope of Defendants' objection here: they do not
11 simply claim the legislative privilege applies to information communicated to or by Senator Leno
12 and his staff. Defendants claim that any information that Ms. Devencenzi knows because of her
13 work related to SB 819 is privileged, regardless of whether or not it was communicated to
14 Senator Leno's staff. (*See, e.g.*, the Devencenzi transcript at 84:22-85:5). There is no legal
15 authority for such position.

16 Because the Defendants do not have standing to bring a legislative privilege claim, and
17 because the privilege only applies to prevent exposing the information legislators actually rely on
18 in making their decisions (*State of Cal.*, 12 Cal. 3d at 258), the discovery sought does not run
19 afoul of the legislative privilege. Accordingly, Plaintiffs request the Court indicate it would allow
20 such discovery if sought via a motion to compel.

21 **D. Text of Relevant Questions and Instructions Not to Answer**

22 **1. 26:16-33:4**

23 [Plaintiffs' counsel MR. FRANKLIN] Do you remember anything about the
24 drafting process for this bill?

25 A. . . . Not really.

26 Q. . . . Do you remember that the actual text of Penal Code now 28225 was only
27 actually amended with one word the addition of the word "possession"?

28 A. . . . I do. And I'm sorry.

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Q. . . . No.

A. . . . I do.

Q. . . . Do you remember why that was?

A. . . . I do.

Q. . . . What was that?

A. . . . Can we take a break? Can I take a break, because I'm --

Q. . . . We're getting to that issue?

A. . . . Yes. I think we're moving into the legislative issue on communications.

[Defendants' Counsel] MR. HAKL: Yeah.

....

MR. HAKL: Yes. On the record. Having consulted with the witness, I do think it's squarely in the Legislative Privilege issue. To be sure, can I hear the question read back, please? (Record Read) MR. HAKL: So, as to the question why that was, I'll assert the Legislative Privilege that we talked about.

....

it's my understanding that based on these cases we have the ability to assert that privilege.

MR. FRANKLIN: "We" being who?

MR. HAKL: The Department of Justice.

MR. FRANKLIN: In what capacity? The capacity as the sponsor of the legislation or as an attorney advising a client or I mean an attorney advising the legislature? I just want to make sure I understand.

MR. HAKL: It's just not discoverable information.

....

[MR. FRANKLIN] pursuant to the discussion of counsel, at this time we're going to continue the deposition. It being understood that there's an instruction not to answer and that at this time the plaintiff is likely to take that up on a Motion to Compel, but we believe we can have further productive deposition today so we're

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going to do that.

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MR. FRANKLIN: I'm just trying to figure out the bounds of this objection that's being made.

MR. HAKL: I'm objecting to communications to and from our office and with Senator Leno regarding SB 19 -- SB 819.

MR. FRANKLIN: But then the underlying question wouldn't be part of the privilege which was concerning why things were drafted the way they were. That's not a communication to Senator Leno at all.

MR. HAKL: I stand on my objection.

2. 38:1-5

[MR. FRANKLIN] Did Senator Leno inquire as to why the proposed language of SB 819 amending Penal Code Section 28225 was not more descriptive?

MR. HAKL: Same objections and instruction not to answer.

3. 44:22-45:1

[MR. FANKLIN] Did you ever explain to the senator what the cause of the DROS surplus was?

MR. HAKL: Objection. Legislative and other privileges I have identified. Don't answer.

4. 45:3-8

[MR. FRANKLIN] In discussing the proposed legislation with Senator Leno, did you discuss how the proposed legislation would apply to future DROS Fund surpluses?

MR. HAKL: Same objection. Same instruction.

5. 46:17-21

[MR. FRANKLIN] Do you have any recollection of the department providing Senator Leno any data about the specifics of how the DROS fee amount is set?

MR. HAKL: Same objection about Legislative Privilege and instruction not to

1 answer.

2
3 6. 48:14-17

4 [MR. FRANKLIN] Did you discuss the 2010 rulemaking intended to lower the
5 DROS fee with Senator Leno?

6 MR. HAKL: Same objections. Same instruction.

7 7. 48:23-49:2

8 [MR. FRANKLIN] This is I think similar to a previous question, but I also believe
9 it's distinct. It will be quicker to just ask it than find it in the record. Did the
10 department provide Senator Leno any information about the actual cost of
11 processing a DROS application?

12 MR. HAKL: Same objection. Same instruction.

13 8. 55:12-24

14 [MR. FRANKLIN] Do you have any recollection of speaking with Senator Leno
15 concerning litigation related to the DROS fee?

16 MR. HAKL: Objection. Legislative Privilege and also the Attorney-Client Work
17 Product Privileges. I mean it's ongoing litigation in the office. Ms. Devencenzi is a
18 Deputy Attorney General.

19 MR. FRANKLIN: Yeah, my opinion on that really doesn't matter, because
20 there's an instruction not to answer.

21 MR. HAKL: Right.

22 9. 65:14-25

23 [MR. FRANKLIN] Do you recall providing Senator Leno with information about
24 the relationship referred to in this paragraph specifically at the language:

25 "A prospective gun owner pays a fee to determine whether he or she is eligible to
26 purchase a gun (background check), it makes sense that the fee should apply to
27 enforcement when those same individuals become "ineligible" due to criminal
28 behavior or mental illness." [citing Deposition Exhibit No. 7]

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MR. HAKL: Same objection about the legislative and other privileges and instruction not to answer.

10. 66:9-15

[MR. FRANKLIN] The next section is entitled "Isn't this bill just a gun tax?" Do you recall discussing with Senator Leno the possibility that SB 819 could be characterized as a tax?

MR. HAKL: Same objection. Same instruction not to answer.

11. 71:23-72:9

[MR. FRANKLIN] Okay. And then the last paragraph on the page and the last sentence in that paragraph states: "DROS fees have not been raised for 7 years and the fund will continue to run a surplus regardless of the passage of SB 819." Do you recall the department telling Senator Leno that the DROS Special Account would run a surplus regardless of the passage of SB 819?

MR. HAKL: Same objections about information provided to Senator Leno's office and same instruction not to answer.

12. 82:20-83:12

[MR. FRANKLIN] There's a sentence on the second page that states: "Their opposition flows² from their ongoing challenge in the Federal Court case of Bauer versus Kamala Harris regarding the state's right to charge the fee. They simply do not believe there should be any fee for registration or ownership." Do you see that statement?

A. . . . Yes.

Q. . . . Did the department provide that analysis to Senator Leno to the best of your recollection?

MR. HAKL: Objection. Based on the privileges we talked and also the -- I mean this is a reference to Bauer versus Harris which is ongoing litigation as well, um,

² This sentence refers to those who opposed Senate Bill 819 (Leno, 2011).

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so that's going to be Attorney-Client and Work Product Privilege as well and instruction not to answer.

13. 84:22-85:5

[MR. FRANKLIN] And was the department in contact with this consultant regarding information that was ultimately put in this report?

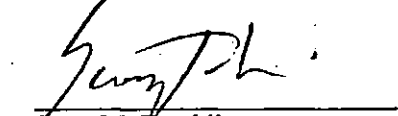
MR. HAKL: Yeah. I mean that's -- same objection in terms of the Legislative Privilege. I mean this is a staff and a legislature effectively.

MR. FRANKLIN: Right. And even though what I'm talking about are like specific facts that are in this document that's still coming under the privilege?

MR. HAKL: Yeah.

Dated: April 25, 2017

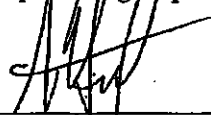
MICHEL & ASSOCIATES, P.C.



Scott M. Franklin
Attorneys for the Plaintiffs/Petitioners

Dated: April 25, 2017

XAVIER BECERRA³
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General



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

³ The parties respectfully request that the Court substitute Xavier Becerra, in his official capacity as Attorney General of the State of California, as defendant in this matter in the place of former Attorney General Kamala D. Harris. (Code Civ. Proc., § 368.5.)

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2011 APR 25 PM 5:24

CDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

1 C. D. Michel - S.B.N. 144258
2 Scott M. Franklin - S.B.N. 240254
3 Sean A. Brady - S.B.N. 262007
4 MICHEL & ASSOCIATES, P.C.
5 180 E. Ocean Boulevard, Suite 200
6 Long Beach, CA 90802
7 Telephone: 562-216-4444
8 Facsimile: 562-216-4445
9 Email: cmichel@michellawyers.com

Attorneys for Plaintiffs and Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

11 DAVID GENTRY, JAMES PARKER,) CASE NO. 34-2013-80001667
12 MARK MIDLAM, JAMES BASS, and)
13 CALGUNS SHOOTING SPORTS) **PROOF OF SERVICE**
14 ASSOCIATION,)

14 Plaintiffs and Petitioners,)

15 vs.)

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

22 Defendants and Respondents.)

Action filed: 10/16/13

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA
3 COUNTY OF SACRAMENTO

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

7 On April 25, 2017, I served the foregoing document(s) described as:

8 **JOINT STATEMENT OF THE PARTIES REGARDING INSTRUCTIONS NOT
9 TO ANSWER DURING DEPOSITION OF JESSICA R. DEVENCENZI; REQUEST
10 FOR INFORMAL DISCOVERY CONFERENCE**

11 **DEPOSITION TRANSCRIPT OF JESSICA RYAN DEVENCENZI HOLMES IN
12 SUPPORT OF JOINT STATEMENT OF THE PARTIES REGARDING
13 INSTRUCTIONS NOT TO ANSWER DURING DEPOSITION OF JESSICA R.
14 DEVENCENZI**

15 on the interested parties in this action by placing

16 [] the original
17 [X] a true and correct copy

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

19 Office of the Attorney General
20 Anthony Hakl, Deputy Attorney General
21 1300 I Street, Suite 1101
22 Sacramento, CA 95814
23 Anthony.Hakl@doj.ca.gov

24 *Attorney for Defendants and Respondents*

25 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
26 processing correspondence for mailing. Under the practice it would be deposited with the
27 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,
28 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 25, 2017, at Long Beach, California.

X (BY 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 25, 2017, at Long Beach, California.

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PROOF OF SERVICE

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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 PALMERIN