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SSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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

13 **DAVID GENTRY, JAMES PARKER,**
14 **MARK MID LAM, JAMES BASS, and**
15 **CALGUNS SHOOTING SPORTS**
ASSOCIATION,
16
17 Plaintiffs and Petitioners,

18 **XAVIER BECERRA, in his official capacity**
19 **as Attorney General for the State of**
20 **California; MARTHA SUPERNOR, in her**
21 **official capacity as Acting Director of the**
22 **California Department of Justice Bureau of**
23 **Firearms; BETTY T. YEE, in her official**
24 **capacity as State Controller, and DOES 1-**
25 **10,**
26
27 Defendants and Respondents.
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Case No. 34-2013-80001667
**SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY ADJUDICATION AS
TO THE FIFTH AND NINTH CAUSES
OF ACTION**

Date: August 4, 2017
Time: 9:00 a.m.
Dept: 31
Judge: The Honorable Michael P.
Kenny
Trial Date: None set
Action Filed: October 16, 2013

1 Defendants the Attorney General and the Acting Director of the Department's Bureau of
 2 Firearms submit this Separate Statement of Undisputed Material Facts in Support of Defendants'
 3 Motion for Summary Adjudication:

5 Moving Party's Undisputed Material Facts and Supporting Evidence	6 Opposing Party's Responses
7 No. 1: The Legislature first authorized DOJ to charge a DROS fee in 1982 and DOJ first set 8 the DROS fee at \$2.25. 9 Evidence: Stats. 1982, ch. 327, § 129, p. 1473; 10 Haki Decl., Ex. B [Bates no. AGIC007].	
11 No. 2: In 1991 the Department set the DROS 12 fee at \$14.00. 13 Evidence: Haki Decl., Ex. B [Bates no. 14 AGIC007].	
15 No. 3: In 1995 the Legislature capped the 16 DROS fee at \$14.00 subject to increases to 17 account for inflation. 18 Evidence: Stats. 1995, ch. 901, § 1, pp. 6883- 19 6884.	
20 No. 4: In 2004 DOJ raised the DROS fee to 21 \$19.00 – its current amount – to account for 22 inflation. 23 Evidence: Cal. Code. Regs. tit. 11, § 4001; 24 Haki Decl., Ex. E [<i>Bauer</i> Bates no. AG-00250].	
25 No. 5: Plaintiffs filed this suit on October, 16, 26 2013. 27 Evidence: Complaint for Declaratory and 28 Injunctive Relief and Petition for Writ of Mandamus.	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Responses
<p>No. 6: If the DROS fee were to be calculated in the manner plaintiffs contend, "it would cost a whole lot more money in order to operate that program which would be passed along to the DROS fee."</p> <p>Evidence: Depo. of Stephen Lindley ("Lindley Depo.") at 64:22-25.</p>	
<p>No. 7: In 2004, the Department engaged in a lengthy rulemaking process, as required by the law, resulting in the regulation setting the DROS fee at \$19.00, where it remains today.</p> <p>Evidence: Haki Decl., Ex. E.</p>	
<p>No. 8: Without the 2004 cost of living adjustment the Dealer's Record of Sale Special Account was projected to run out of the cash needed to support the firearms regulatory and enforcement programs mandated by law.</p> <p>Evidence: Haki Decl., Ex. E [<i>Bauer Bates</i> no. AG-00250].)</p>	
<p>No. 9: A series of 2004 reports (and draft reports) prepared by the Department's Budget Office reflect further analysis by the Department supporting the increase of the DROS fee to \$19.00.</p> <p>Evidence: Haki Decl., Ex. B.</p>	
<p>No. 10: The number of programs funded from DROS fee revenues (i.e., the costs specified in the statute) had grown before the Department revised the DROS fee rate in 2004 and has grown further since then.</p> <p>Evidence: <i>Compare</i> Stats. 1995, ch. 901, § 1, pp. 6883-6884 [the law in 1995] <i>with</i> former § 12076, as amended (Stats. 2003, ch. 754, § 2 [the law in effect as of the 2004 fee setting] <i>and with</i> § 28225 [effective today].</p>	

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Responses
<p>No. 11: In 1995 the Legislature enacted Senate Bill 670 and codified the \$14.00 figure that was later adjusted to \$19 in 2004. At that time (i.e., in 1995) the Legislature recognized the Department's explanation that \$14.00 was "sufficient to fund the existing authorized programs."</p> <p>Evidence: Assem. Com. on Appropriations, Analysis of Senate Bill No. 670 (1995–1996 Reg. Sess.) Aug. 23, 1995; Sen. Third Reading, Analysis of Senate Bill No. 670 (1995–1996 Reg. Sess.) Aug. 29, 1995.</p>	
<p>No. 12: The Department regularly monitors the number of firearms transactions in California; the amount of DROS fee revenues being generated; the condition of the Dealer's Record of Sale Special Account; the annual state budget process, particularly as it impacts the Department, and the resulting appropriations by the Legislature; each and every expenditure by the Department to ensure that it is authorized by law; and the anticipated future needs of the Department based on myriad policy and legal considerations.</p> <p>Evidence: See, e.g., Lindley Depo. at pp. 64:9-65:65-10; 72:3-73:15; 74:2-79:25 [Hakl Decl., Ex M]; Depo. of David Harper at pp. 54:14-55:17; 58:24-59:20; 60:6-61:24; 63:5-64:8; 65:2-67:23 [Hakl Decl., Ex N].</p>	
<p>No. 13: Chief Lindley has testified regarding APPS that "95% of the of the cases that we work would be system-generated cases," meaning that "[t]he APPS system generated the hit . . . identifying the person as being armed prohibited. Analysts confirm that, agents confirm that, and they go out into the field and investigate that individual."</p> <p>Evidence: Lindley Depo. at pp. 26:23-27:10.</p>	

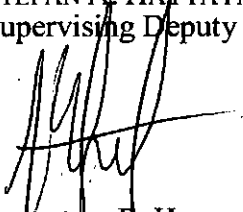
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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Responses
<p>No. 14: The “vast majority” of APPS enforcement efforts by the Department fall within a category of enforcement with which plaintiffs take no issue.</p> <p>Evidence: Lindley Depo. at p. 17:25.</p>	
<p>No. 15: With respect to the five percent of APPS cases plaintiffs challenge (i.e., cases that are not “true” APPS-list cases), Chief Lindley testified about a typical example. He explained that on occasion the Department might “get a call from a citizen, an ex-wife, sometimes, you know, family members about an individual who is now prohibited for one reason or another and that they have firearms that the department might not necessarily know about.” In that instance the Department has “a duty for public safety” to follow up on that call.</p> <p>Evidence: Lindley Depo. at p. 18:9-18.</p>	

Dated: June 13, 2017

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
STEPAN A. 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 June 13, 2017, I served the attached **SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION AS TO THE FIFTH AND NINTH CAUSES OF ACTION** 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:

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Sean A. Brady
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SBrady@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 June 13, 2017, at Sacramento, California.

Eileen A. Ennis
Declarant


Signature