

By Fax

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. D. Michel - S.B.N. 144258
Scott M. Franklin - S.B.N. 240254
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

Attorney for Plaintiffs/Petitioners

FILED
ENDORSED

2017 JUN 14 PM 12:06

GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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.

XAVIER BECCERA, in his 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 MOTION
FOR ADJUDICATION OF PLAINTIFFS'
FIFTH AND NINTH CAUSES OF ACTION
PURSUANT TO THE BIFURCATION
ORDER OF NOVEMBER 4, 2016**

Date: August 4, 2017
Time: 9:00 a.m.
Dept.: 31
Judge: Hon. Michael P. Kenny
Action filed: 10/16/13

1 **DECLARATION OF SCOTT M. FRANKLIN**

2 I, Scott M. Franklin, declare:

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

7 2. Exhibit 1 (GENT001-GENT005) is a true and correct copy of excerpts of the
8 response to the plaintiff's separate statement in the action *Bauer v. Harris*,
9 1:11-cv-01440-LJO-MJS (E.D. Cal.)

10 3. Exhibit 2 (GENT006-GENT027) is a true and correct copy of excerpts of
11 Defendants Attorney General
12 Kamala Harris and Bureau of Firearms Chief Stephen Lindley's Amended Responses to Requests
13 for Admissions (Set One).

14 4. Exhibit 3 (GENT028-GENT036) is a true and correct copy of excerpts of
15 Defendants Attorney General Kamala Harris and Bureau of Firearms Chief Stephen Lindley's
16 Amended Responses to Requests for Admissions (Set Two).

17 5. Exhibit 4 (GENT037-GENT047) is a true and correct copy of excerpts of
18 Defendants Attorney General Kamala Harris and Bureau of Firearms Chief Stephen Lindley's
19 Third Amended Responses to Form Interrogatories (Set One).

20 6. Exhibit 5 (GENT048-GENT052) is a true and correct copy of excerpts of
21 Defendant Kamala Harris and Stephen Lindley's Amended Responses to Form Interrogatories
22 (Set Three).

23 7. Exhibit 6 (GENT053-GENT057) is a true and correct copy of excerpts of
24 Defendants Attorney General Kamala Harris and Bureau of Firearms Chief Stephen Lindley's
25 Second Amended Responses to Special Interrogatories (Set Two).

26 8. Exhibit 7 (GENT058-GENT062) is a true and correct copy of excerpts of
27 Defendants Attorney General Kamala Harris and Bureau of Firearms Chief Stephen Lindley's
28 Third Amended Responses to Special Interrogatories (Set Three).

1 9. Exhibit 8 (GENT063-GENT065) is a true and correct copy of excerpts of
2 Defendants Attorney General Kamala Harris and Bureau of Firearms Chief Stephen Lindley's
3 Responses to Requests for Production of Documents (Set One).

4 10. Exhibit 9 (GENT066-GENT093) is a true and correct copy of excerpts of the
5 transcript of the Deposition of Stephen Lindley, such deposition being taken in this matter.

6 11. Exhibit 10 (GENT094-GENT106) is a true and correct copy of excerpts of the
7 transcript of the Deposition of Stephen Lindley, such deposition being taken in *Bauer v. Harris*.

8 12. Exhibit 11 (GENT107-GENT112) is a true and correct copy of excerpts of the
9 transcript of the Deposition of David S. Harper, such deposition being taken in this matter.

10 13. Exhibit 12 (GENT113-GENT117) is a true and correct copy of excerpts of the
11 transcript of the Deposition of Jessica Devencenzi, volume 1, such deposition being taken in this
12 matter.

13 14. Exhibit 13 (GENT118-GENT123) is a true and correct copy of excerpts of the
14 transcript of the Deposition of Jessica Devencenzi, volume 2, such deposition being taken in this
15 matter.

16 15. Exhibit 14 (GENT124) is a true and correct copy of an email from Jessica
17 Devencenzi to London Biggs dated February 16, 2011.

18 16. Exhibit 15 (GENT125-GENT127) is a true and correct copy of a document titled
19 "SB 819 (Leno) APPS Enforcement - Q & A" obtained from Senator Leno's file for SB 819 via
20 Legislative Intent Service.

21 17. Exhibit 16 (GENT128-GENT130) is a true and correct copy of a document titled
22 "Proposed Armed Prohibited Persons Legislation" obtained from Senator Leno's file for SB 819
23 via Legislative Intent Service.

24 18. Exhibit 17 (GENT131) is a true and correct copy of a letter from then-
25 Assemblyman Jim Nielsen to David Harper dated August 27, 2009.

26 19. Exhibit 18 (GENT132-GENT134) is a true and correct copy of a letter from David
27 Harper to then-assemblyman Jim Nielsen dated September 9, 2009.

28 20. Exhibit 19 (GENT135-GENT136) is a true and correct copy of an excerpt of the

1 Governor's 2011-2012 budget, available at

2 <http://www.ebudget.ca.gov/2011-12-EN/pdf/GovernorsBudget/0010/0820.pdf>.

3 21. Exhibit 20 (GENT137-GENT138) is a true and correct copy of an excerpt of the
4 Governor's 2011-2012 budget summary, available at

5 <http://www.ebudget.ca.gov/2011-12-EN/pdf/Enacted/BudgetSummary/LegislativeJudicialandExecutive.pdf>.

6
7 22. Exhibit 21 (GENT139-GENT143) is a true and correct copy of an excerpt of the
8 Governor's 2017-2018 budget, available at

9 <http://www.ebudget.ca.gov/budget/2017-18/#/ProgramDescriptions/0820/0>.

10 23. Exhibit 22 (GENT144-GENT146) is a true and correct copy of the version of
11 Senate Bill 819 that was published March 21, 2011.

12 24. Exhibit 23 (GENT147-GENT150) is a true and correct copy of the version of
13 Senate Bill 819 that was published April 14, 2011.

14 25. Exhibit 24 (GENT151-GENT153) is a true and correct copy of the version of
15 Senate Bill 819 that was adopted on October 9, 2011.

16 26. Exhibit 25 (GENT154) is a true and correct copy of an excerpt of the Salaries and
17 Wages Supplement in the Governor's 2017-2018 budget.

18 27. Exhibit 26 (GENT154A) is a true and correct transcription of a portion of the
19 Senate Public Safety Commission meeting held on April 26, 2011; a video of the relevant portion
20 of the hearing is available at

21 [http://senate.ca.gov/media-archive?title=&startdate=04%2F26%2F2011&enddate=04%2F26%2F](http://senate.ca.gov/media-archive?title=&startdate=04%2F26%2F2011&enddate=04%2F26%2F2011)
22 2011. (Plaintiffs believe the content is undisputed.)

23 28. Exhibit 27 (GENT155-GENT156) is a true and correct copy of an excerpt of
24 Senate Budget and Fiscal Review, Subcommittee No. 5's, report of March 10, 2016.

25 29. Exhibit 28 (AGIC: 007-019, 022-36, 48, 50; AGRFP: 000048-49, 000166-172,
26 0000174, 0000175-182, 000391-396, 000399-401 000419-422; and AGROG000016)

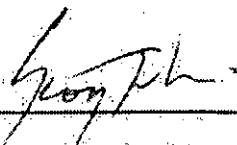
27 is a true and correct copy of a set of documents produced by Defendants in this action.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

30. On October 28, 2016, I participated in an informal discovery conference with the Court and opposing counsel, Anthony Hakl. During this conference, I expressed that Defendants had responded to Special Interrogatory No. 2, more than a year prior to the conference, with a promise to produce a supplemental response stating the "per transaction cost" of the so-called "DROS Process." In response, Mr. Hakl confirmed that Defendants were not going to provide the promised information.

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 June 13, 2017, at Long Beach, California.



Scott M. Franklin, Declarant

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I, Laura Palmerin, 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 Boulevard, Suite 200, Long Beach, California 90802.

7 On June 13, 2017, I served the foregoing document(s) described as

8 **DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION FOR**
9 **ADJUDICATION OF PLAINTIFFS' FIFTH AND NINTH CAUSES OF ACTION**
10 **PURSUANT TO THE BIFURCATION ORDER OF NOVEMBER 4, 2016**

11 on the interested parties in this action by placing

12 [] the original
13 [X] a true and correct copy

14 thereof by the following means, addressed as follows:

15 Office of the Attorney General
16 Anthony Hakl, Deputy Attorney General
17 1300 I Street, Suite 1101
18 Sacramento, CA 95814
19 Anthony.Hakl@doj.ca.gov

20 X **(BY OVERNIGHT MAIL)** As follows: I am "readily familiar" with the firm's practice of
21 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under
22 the practice it would be deposited with a facility regularly maintained by UPS/FED-EX
23 for receipt on the same day in the ordinary course of business. Such envelope was sealed
24 and placed for collection and delivery by UPS/FED-EX with delivery fees paid or
25 provided for in accordance with ordinary business practices.
26 Executed on June 13, 2017, at Long Beach, California.

27 X **(BY ELECTRONIC MAIL)** As follows: I served a true and correct copy by electronic
28 transmission. Said transmission was reported and completed without error.
Executed on June 13, 2017, 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.

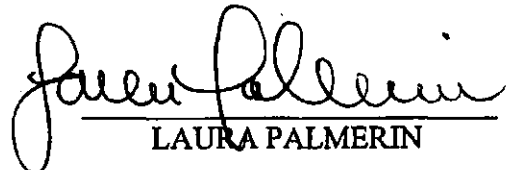

LAURA PALMERIN

EXHIBIT 1

1 KAMALA D. HARRIS
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 ANTHONY R. HAKL, State Bar No. 197335
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 322-9041
6 Fax: (916) 324-8835
E-mail: Anthony.Hakl@doj.ca.gov
7 *Attorneys for Defendants*

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11
12

13 **BARRY BAUER, STEPHEN**
WARKENTIN, NICOLE FERRY,
14 **LELAND ADLEY, JEFFREY HACKER,**
15 **NATIONAL RIFLE ASSOCIATION OF**
AMERICA, INC., CALIFORNIA RIFLE
16 **AND PISTOL ASSOCIATION**
FOUNDATION, HERB BAUER
17 **SPORTING GOODS, INC.,**

18 Plaintiffs,

19 v.

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

24 Defendants.

1:11-cv-01440-LJO-MJS

DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED FACTS

Date: February 26, 2015
Time: 8:30 a.m.
Dept.: 4, 7th Floor
Judge: Hon. Lawrence J. O'Neill
Trial Date: March 24, 2015
Action Filed: August 25, 2011

25 Defendants' Kamala D. Harris and Stephen Lindley responds as follows to Plaintiffs'

26 Statement of Undisputed Facts:
27
28

No.	Undisputed Fact	Supporting Evidence
1	To purchase a firearm in California, qualified individuals must pay a transaction fee known as a Dealer Record of Sale ("DROS") fee.	Undisputed.
2	A completed DROS includes information about the would-be purchaser ("applicant"), including name, date of birth, and driver's license number, as well as information about the firearm to be transferred, and the FFL handling the transaction.	Undisputed.
3	Once completed, the FFL must forward the DROS to the California Department of Justice's Bureau of Firearms via a secure internet site.	Undisputed.
4	Upon receipt of the DROS, the Bureau of Firearms reviews it to confirm that: (1) the DROS is filled out properly; (2) the firearm being transferred is legal to possess under California law; and (3) the firearm being transferred does not belong to someone other than the vendor. The firearm transfer is denied if the DROS does not meet all of these requirements.	Undisputed.
5	The primary purpose of this "DROS Process" is to ensure that people seeking to purchase firearms in California are not legally prohibited from possessing them.	Undisputed.
6	It is a crime punishable by up to a felony to possess a firearm as a prohibited person.	Undisputed.
7	The Department performs extensive "background checks" of all applicants.	Undisputed.
8	A firearm transfer is denied if the applicant is found to be prohibited by law from firearm possession.	Undisputed.
9	If a DROS is approved, the retailer is informed that the firearm can be released after California's ten-day waiting period has expired, unless an exception applies.	Undisputed.

10	Information linking the firearm being transferred to the applicant is also entered into the Department's Consolidated Firearms Information System ("CFIS").	Undisputed.
11	Prior to January 1, 2014, only handguns and "assault weapons" were registered into CFIS, non-"assault weapon" rifles and shotguns were not.	Disputed, but not material. While DROS information for non-"assault weapon" long guns was not retained prior to January 1, 2014, long guns information submitted via voluntary registration forms was entered into CFIS prior to January 1, 2014.
12	During 2013, the Department processed approximately 960,179 DROS applications.	Disputed, but not material. The evidence cited by plaintiffs states that during 2013, the Department "received" approximately 960,179 DROS applications.
13	Approximately 7,400-7,500 of the 960,179 DROS applications that occurred in 2013 were denials.	Disputed, but not material. The evidence cited by plaintiffs states that there were "7,371" denials.
14	The exact number of DROS applicants in 2013 (or any previous year) is unknown and likely unknowable.	Disputed, but not material. The number of DROS transactions in 2013 (for both handguns and long guns) was 960,179. (Decl. of Stephen Lindley in Opp'n to Pls.' Mot. for Summ. J., Exh. A.)
15	California confers discretion on the Department of Justice to impose the payment of a fee on firearm purchasers to qualify for receiving a firearm from an FFL.	Undisputed.
16	In 1990, the amount of the DROS Fee was \$4.25.	Undisputed.
17	In 1995, the legislature capped the DROS Fee at \$14.00, subject to the Consumer Price Index adjustment	Undisputed.
18	In 2004, the Department increased the cap on the DROS fee from \$14 to \$19 for the first handgun or any number of rifles or shotguns in a single transaction.	Undisputed.

1	19	The Penal Code provides that “[t]he [DROS] fee shall be no more than is necessary to fund” the activities listed in § 28225(b)(1)-(11).	Undisputed.
2			
3	20	The Department has not determined the actual or estimated costs of the activities listed in § 28225(b)(1)-(11) in establishing the current amount of the DROS Fee.	Disputed, but not material. The evidence cited by plaintiffs does not support this statement.
4			
5	21	The Department has charged the DROS Fee at \$19 since 2004.	Undisputed.
6			
7	22	The Department deposits DROS Fee monies in the “Dealers’ Record of Sale Special Account of the General Fund” (“DROS Special Account”).	Undisputed.
8			
9	23	DROS Fee revenues make up the vast majority of the money in the DROS Special Account.	Disputed, but not material. The evidence cited by plaintiffs does not support this statement. At page 9 of the cited document, there is a statement by a member of the Legislature that “background check fees . . . make up more than 80 % of the DROS account.”
10			
11			
12			
13			
14			
15	24	The DROS Special Account reserves were estimated at \$12.7 million for fiscal year 2013-2014.	Undisputed.
16			
17	25	An \$11.5 loan from the DROS Special Account was made to the General Fund in March 2013.	Undisputed.
18			
19	26	The \$11.5 loan made from the DROS Special Account to the General Fund in March 2013 has not been paid back in full.	Undisputed, although defendants are informed and believe that \$5 million of the loan is scheduled to be repaid this fiscal year, and the remaining \$6.5 million is proposed by the Governor for repayment in the 2015-16 fiscal year.
20			
21			
22	27	The DROS surplus grows about \$3 million annually.	Undisputed as of the date the cited document was published, which appears to be 2011.
23			
24	28	The Legislature has committed at least \$35.5 million from the DROS Special Account to fund activities other than the processing of DROS applications since March 2013.	Disputed, but not material. The evidence cited by plaintiffs states that the Legislature appropriated \$24 million.
25			
26			
27	29	The surplus in the DROS Special Account primarily consists of DROS Fee revenues.	Disputed, but not material. The evidence cited by plaintiffs does not support this statement.
28			

1	30	In 2010, then Attorney General Edmund Brown (now Governor) proposed a regulation to lower the DROS Fee cap back to \$14 to “commensurate with the actual costs of processing a DROS,” but it was not adopted.	Undisputed.
2			
3			
4			
5	31	The DROS Fee currently remains capped at \$19.	Undisputed.
6			
7	32	The Department of Justice is statutorily authorized to use revenues from the DROS Fee to fund various activities that are not at issue in this litigation.	Undisputed.
8			
9			
10	33	The Department of Justice is authorized to and does use DROS Fee revenues to fund “the estimated reasonable costs of [Department] firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms.”	Undisputed.
11			
12			
13			
14	34	Prior to January 1, 2012, Penal Code §28225(b)(11) did not provide for expenditure of DROS Fee revenues on regulations or enforcement activities related to the “possession” of firearms.	Undisputed.
15			
16			
17			
18	35	Prior to Fiscal Year 2012-2013, the Department’s activities concerning the mere possession of firearms were not paid for from the DROS Special Account.	Disputed, but not material. The cited Request for Admission and testimony state that prior to fiscal year 2012-2013, APPS-related activities were funded primarily with funds from the General Fund.
19			
20			
21	36	Prior to Fiscal Year 2012-2013, the Department’s activities concerning the mere possession of firearms were paid for mostly with money from the General Fund.	Disputed, but not material. The cited Request for Admission and testimony state that prior to fiscal year 2012-2013, APPS-related activities were funded primarily with funds from the General Fund.
22			
23			
24	37	In 2011, the Legislature passed, Senate Bill 819 (“SB819”), which added the word “possession” to section 28225(b)(11)’s list of activities DROS Fee revenues could fund.	Undisputed.
25			
26			
27			
28			

EXHIBIT 2

1 KAMALA D. HARRIS
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 ANTHONY R. HAKL, State Bar No. 197335
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 322-9041
6 Fax: (916) 324-8835
E-mail: Anthony.Hakl@doj.ca.gov
7 *Attorneys for Defendants and Respondents*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO
11

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

14 Plaintiffs and Petitioners,
15

16 v.

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

21 Defendants and Respondents.
22

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)**

23 **PROPOUNDING PARTY: PLAINTIFFS**

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

26 **SET NUMBER: ONE**
27
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

2 Admitted.

3 **REQUEST FOR ADMISSION NO. 4:**

4 Admit that prior to Fiscal Year 2012-2013, money from the DROS SPECIAL ACCOUNT
5 (as used herein, "DROS SPECIAL ACCOUNT" refers to the portion of the state's General Fund
6 wherein DROS FEE FUNDS are deposited) was used to fund some aspect of APPS.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

8 Admitted.

9 **REQUEST FOR ADMISSION NO. 5:**

10 Admit that a General Fund special account other than the DROS SPECIAL ACCOUNT
11 was the source of some funds used by APPS between 2005 and 2014 (inclusive).

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

13 Admitted.

14 **REQUEST FOR ADMISSION NO. 6:**

15 Admit that APPS has been funded by no source other than: 1) the GENERAL FUND (as
16 used herein, the term "GENERAL FUND" refers to the General Fund for the state of California,
17 excluding any special accounts that are normally considered to be within the General Fund) and
18 2) the DROS SPECIAL ACCOUNT.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

20 Denied.

21 **REQUEST FOR ADMISSION NO. 7:**

22 Admit that when deposited into the DROS SPECIAL ACCOUNT, money collected as
23 DROS FEES (as used herein, "DROS FEE(S)" refers to the charge collected pursuant to
24 SECTION 28225) is not segregated in any way from funds obtained from non-DROS FEE
25 sources.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

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

4 Admitted.

5 **REQUEST FOR ADMISSION NO. 8:**

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

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

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

11 Admitted.

12 **REQUEST FOR ADMISSION NO. 9:**

13 Admit that, for Fiscal Year 2013-2014, CAL DOJ spent more than \$6,000,000 on APPS
14 related law enforcement activities.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

16 Admitted.

17 **REQUEST FOR ADMISSION NO. 10:**

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

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

21 Denied.

22 **REQUEST FOR ADMISSION NO. 11:**

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

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

26 Admitted.

27

28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

2 Defendants object to this request. The phrases “costs arising from the implementation of
3 APPS” and “regulatory costs directly arising from performing background investigations as part
4 of the DROS PROCESS” are so ambiguous that the responding party cannot in good faith frame
5 an intelligent reply.

6 Additionally, the request is irrelevant, defendants having admitted that the use of DROS
7 funds does not operate as a tax. The request is also an improper use of the request for admission
8 procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof
9 when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423,
10 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue
11 implicated by this request becomes relevant, defendants will contest the issue at trial. The request
12 for admission device is not intended to provide a windfall to litigants in granting a substantive
13 victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223
14 Cal.App.4th 762, 783-784. Section 2033 is “calculated to compel admissions as to all things that
15 cannot reasonably be controverted” not to provide “gotcha,” after-the-fact penalties for pressing
16 issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61;
17 see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 [“Although the admissions procedure
18 is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did
19 not include issues as to which the parties might conceivably agree.”], superseded by statute on
20 another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64–
21 65.)

22 Without waiving this objection, defendants respond as follows:

23 Denied.

24 **REQUEST FOR ADMISSION NO. 27:**

25 Admit that is the position of CAL DOJ that Section 28225 does not place a duty on CAL
26 DOJ to consider whether the DROS FEE currently being charged is excessive.

27 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

28 Denied.

1 **REQUEST FOR ADMISSION NO. 28:**

2 Admit CAL DOJ does not have a protocol for determining when CAL DOJ should
3 examine whether the DROS FEE being charged is excessive.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

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

7 Denied.

8 **REQUEST FOR ADMISSION NO. 29:**

9 Admit that, within the last five years, CAL DOJ has publically expressed an opinion that
10 the DROS FEE of \$19.00, applicable to single gun transfers, was greater than necessary under
11 SECTION 28225.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

13 Denied.

14 **REQUEST FOR ADMISSION NO. 30:**

15 Admit that, within the last five years, CAL DOJ has publically expressed an opinion that a
16 DROS FEE of \$14.00 would cover the PER TRANSACTION COST (as used herein, "PER
17 TRANSACTION COST" refers to the average cost of performing a given transaction, including a
18 proportional share of overhead costs) of the DROS PROCESS.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

20 Denied.

21 **REQUEST FOR ADMISSION NO. 31:**

22 Admit that, within the last five years, CAL DOJ has not published any analysis as to the
23 propriety of the DROS FEE collected pursuant to SECTION 28225.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

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

27 Denied.

28

1 DROS FEE to ensure the DROS FEE FUNDS alone will cover both the costs of the DROS
2 PROCESS and the costs of APPS.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

4 Defendants object to this request as vague. As such, defendant is unable to admit or deny
5 the request. Without waiving this objection, defendants respond as follows:

6 Denied.

7 **REQUEST FOR ADMISSION NO. 37:**

8 Admit that the current DROS FEE was set, at least in part, to cover costs of APPS.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 38:**

12 Admit that the PER TRANSACTION COST of the DROS PROCESS is less than \$19.00.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

14 Denied.

15 **REQUEST FOR ADMISSION NO. 39:**

16 Admit that it is CAL DOJ's position that the word "possession" as used in SECTION
17 28225 refers to only illegal possession.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

19 Denied.

20 **REQUEST FOR ADMISSION NO. 40:**

21 Admit that it is CAL DOJ's position that SECTION 28225 provides a source of funding
22 for CAL DOJ to perform law enforcement activities related to the illegal possession of a firearm
23 by a person who has never participated in the DROS PROCESS.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

25 Admitted.

26 **REQUEST FOR ADMISSION NO. 41:**

27 Admit that it is CAL DOJ's position that SECTION 28225 does not provide a source of
28 funding for law enforcement activities related to the illegal possession of a firearm by a person

1 who has never participated in the DROS PROCESS.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 41:**

3 Defendants object to this request. The request is unduly repetitive in light of Request for
4 Admission No. 40 and defendants' response to it. Plaintiffs having asked Form Interrogatory No.
5 17.1 in connection with their requests for admissions, preparing a response to this request would
6 also impose an unfair burden on defendants.

7 Without waiving this objection, defendants respond as follows:

8 Denied.

9 **REQUEST FOR ADMISSION NO. 42:**

10 Admit that CAL DOJ is not aware of what the cost was for any given year, calendar,
11 fiscal, or otherwise, for "furnishing" information, such cost being that which is referred to in
12 SECTION 28225(b)(1).

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 42:**

14 Defendants object to this request. It is vague and overbroad in that it requests information
15 covering an unlimited period of time. Without waiving this objection, defendants respond as
16 follows:

17 Denied with respect to the period January 1, 2004, to the date of these responses.

18 **REQUEST FOR ADMISSION NO. 43:**

19 Admit that CAL DOJ is not aware of what the cost was for any given year, calendar,
20 fiscal, or otherwise, to meet CAL DOJ's obligations under paragraph (2) of subdivision (b) of
21 section 8100 of the Welfare and Institutions Code, such cost being that which is referred to in
22 SECTION 28225(b)(2)).

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 43:**

24 Defendants object to this request. It is vague and overbroad in that it requests information
25 covering an unlimited period of time. Without waiving this objection, defendants respond as
26 follows:

27 Denied with respect to the period January 1, 2004, to the date of these responses.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REQUEST FOR ADMISSION NO. 44:

Admit CAL DOJ has not been requested to provide funds to local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by section 8103 of the Welfare and Institutions Code, such costs being those that are referred to in SECTION 28225(b)(3)).

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Defendants object to this request. It is vague and overbroad in that it requests information covering an unlimited period of time. The request is not “separate and complete in and of itself,” contains subparts, and is compound. The request also requires referring to other documents in order to respond. It also requires reference to information not in the possession, custody and control of defendants. Finally, this request is based on an improper construction of Penal Code section 28225.

Without waiving this objection, defendants respond as follows:

Denied with respect to the period January 1, 2004, to the date of these responses.

REQUEST FOR ADMISSION NO. 45:

Admit that CAL DOJ is not aware of what amount it paid in total in any given year, calendar, fiscal, or otherwise, to local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by section 8103 of the Welfare and Institutions Code, such costs being those that are referred to in SECTION 28225(b)(3)).

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Defendants object to this request. It is vague and overbroad in that it requests information covering an unlimited period of time. The request is not “separate and complete in and of itself,” contains subparts, and is compound. The request also requires referring to other documents in order to respond. It also requires reference to information not in the possession, custody and control of defendants. Finally, this request is based on an improper construction of Penal Code section 28225.

1 Without waiving this objection, defendants respond as follows:

2 Denied with respect to the period January 1, 2004, to the date of these responses.

3 **REQUEST FOR ADMISSION NO. 46:**

4 Admit that CAL DOJ is unaware of a specific estimate having ever been made concerning
5 the "reasonable costs of the local mental health facilities for complying with the reporting
6 requirements imposed by paragraph (3) of subdivision (b)" of SECTION 282225. (Quotation
7 from SECTION 28225(c)).

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 46:**

9 Defendants object to this request. It is vague and overbroad in that it requests information
10 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
11 contains subparts, and is compound. The request also requires referring to other documents in
12 order to respond. It also requires reference to information not in the possession, custody and
13 control of defendants. Finally, this request is based on an improper construction of Penal Code
14 section 28225.

15 Without waiving this objection, defendants respond as follows:

16 Admitted with respect to the period January 1, 2004, to the date of these responses.

17 **REQUEST FOR ADMISSION NO. 47:**

18 Admit that CAL DOJ has not been requested to provide funds to the California
19 Department of State Hospitals for the costs resulting from the requirements imposed by section
20 8104 of the Welfare and Institutions Code, such costs being those that are referred to in
21 SECTION 28225(b)(4)).

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 47:**

23 Defendants object to this request. It is vague and overbroad in that it requests information
24 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
25 contains subparts, and is compound. The request also requires referring to other documents in
26 order to respond. It also requires reference to information not in the possession, custody and
27 control of defendants. Finally, this request is based on an improper construction of Penal Code
28 section 28225.

1 Without waiving this objection, defendants respond as follows:

2 Admitted with respect to the period January 1, 2004, to the date of these responses.

3 **REQUEST FOR ADMISSION NO. 48:**

4 Admit that CAL DOJ is not aware of what amount it paid in any given year, calendar,
5 fiscal, or otherwise, to the California Department of State Hospitals for the costs resulting from
6 the requirements imposed by section 8104 of the Welfare and Institutions Code, such costs being
7 those that are referred to in SECTION 28225(b)(4)).

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 48:**

9 Defendants object to this request. It is vague and overbroad in that it requests information
10 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
11 contains subparts, and is compound. The request also requires referring to other documents in
12 order to respond. It also requires reference to information not in the possession, custody and
13 control of defendants. Finally, this request is based on an improper construction of Penal Code
14 section 28225.

15 Without waiving this objection, defendants respond as follows:

16 Admitted with respect to the period January 1, 2004, to the date of these responses.

17 **REQUEST FOR ADMISSION NO. 49:**

18 Admit that CAL DOJ has not been requested to provide funds to a LOCAL MENTAL
19 HEALTH FACILITY (as used herein, "LOCAL MENTAL HEALTH FACILITY" and "LOCAL
20 MENTAL HEALTH FACILITIES refer to local mental hospitals, sanitariums, and mental
21 institutions) for state-mandated local costs resulting from the reporting requirements imposed by
22 section 8105 of the Welfare and Institutions Code, such costs being those that are referred to in
23 SECTION 28225(b)(5).

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 49:**

25 Defendants object to this request. It is vague and overbroad in that it requests information
26 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
27 contains subparts, and is compound. The request also requires referring to other documents in
28 order to respond. It also requires reference to information not in the possession, custody and

1 control of defendants. Finally, this request is based on an improper construction of Penal Code
2 section 28225.

3 Without waiving this objection, defendants respond as follows:

4 Denied with respect to the period January 1, 2004, to the date of these responses.

5 **REQUEST FOR ADMISSION NO. 50:**

6 Admit that CAL DOJ is not aware of what amount it paid in total for any given year,
7 calendar, fiscal, or otherwise, to LOCAL MENTAL HEALTH FACILITIES for state-mandated
8 local costs resulting from the reporting requirements imposed by section 8105 of the Welfare and
9 Institutions Code, such costs being those that are referred to in SECTION 28225(b)(5).

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 50:**

11 Defendants object to this request. It is vague and overbroad in that it requests information
12 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
13 contains subparts, and is compound. The request also requires referring to other documents in
14 order to respond. It also requires reference to information not in the possession, custody and
15 control of defendants. Finally, this request is based on an improper construction of Penal Code
16 section 28225.

17 Without waiving this objection, defendants respond as follows:

18 Denied with respect to the period January 1, 2004, to the date of these responses.

19 **REQUEST FOR ADMISSION NO. 51:**

20 Admit that CAL DOJ is not aware of a specific estimate having ever been made
21 concerning "reasonable costs of local mental hospitals, sanitariums, and institutions for
22 complying with the reporting requirements imposed by paragraph (5) of subdivision (b)" of
23 SECTION 28225. (Quotation from SECTION 28225(c)).

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 51:**

25 Defendants object to this request. It is vague and overbroad in that it requests information
26 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
27 contains subparts, and is compound. The request also requires referring to other documents in
28 order to respond. It also requires reference to information not in the possession, custody and

1 control of defendants. Finally, this request is based on an improper construction of Penal Code
2 section 28225.

3 Without waiving this objection, defendants respond as follows:

4 Admitted with respect to the period January 1, 2004, to the date of these responses.

5 **REQUEST FOR ADMISSION NO. 52:**

6 Admit that CAL DOJ has not been requested to provide funds to a local law enforcement
7 agency for state-mandated local costs resulting from the notification requirements set forth in
8 subdivision (a) of section 6385 of the Family Code, such costs being those that are referred to in
9 SECTION 28225(b)(6).

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 52:**

11 Defendants object to this request. It is vague and overbroad in that it requests information
12 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
13 contains subparts, and is compound. The request also requires referring to other documents in
14 order to respond. It also requires reference to information not in the possession, custody and
15 control of defendants. Finally, this request is based on an improper construction of Penal Code
16 section 28225.

17 Without waiving this objection, defendants respond as follows:

18 Admitted with respect to the period January 1, 2004, to the date of these responses.

19 **REQUEST FOR ADMISSION NO. 53:**

20 Admit that CAL DOJ is not aware of what amount it paid in total for any given year,
21 calendar, fiscal, or otherwise, to local law enforcement agencies for state-mandated local costs
22 resulting from the notification requirements set forth in subdivision (a) of section 6385 of the
23 Family Code, such costs being those that are referred to in SECTION 28225(b)(6).

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 53:**

25 Defendants object to this request. It is vague and overbroad in that it requests information
26 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
27 contains subparts, and is compound. The request also requires referring to other documents in
28 order to respond. It also requires reference to information not in the possession, custody and

1 control of defendants. Finally, this request is based on an improper construction of Penal Code
2 section 28225.

3 Without waiving this objection, defendants respond as follows:

4 Admitted with respect to the period January 1, 2004, to the date of these responses.

5 **REQUEST FOR ADMISSION NO. 54:**

6 Admit that CAL DOJ is unaware of a specific estimate having ever been made concerning
7 “reasonable costs of local law enforcement agencies for complying with the notification
8 requirements set forth in subdivision (a) of Section 6385 of the Family Code[.]” (Quotation from
9 SECTION 28225(c)).

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 54:**

11 Defendants object to this request. It is vague and overbroad in that it requests information
12 covering an unlimited period of time. The request is not “separate and complete in and of itself,”
13 contains subparts, and is compound. The request also requires referring to other documents in
14 order to respond. It also requires reference to information not in the possession, custody and
15 control of defendants. Finally, this request is based on an improper construction of Penal Code
16 section 28225.

17 Without waiving this objection, defendants respond as follows:

18 Admitted with respect to the period January 1, 2004, to the date of these responses.

19 **REQUEST FOR ADMISSION NO. 55:**

20 Admit CAL DOJ has not been requested to provide funds to a local law enforcement
21 agency for state-mandated local costs resulting from the notification requirements set forth in
22 subdivision (c) of section 8105 of the Welfare and Institutions Code, such costs being those that
23 are referred to in SECTION 28225(b)(7).

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 55:**

25 Defendants object to this request. It is vague and overbroad in that it requests information
26 covering an unlimited period of time. The request is not “separate and complete in and of itself,”
27 contains subparts, and is compound. The request also requires referring to other documents in
28 order to respond. It also requires reference to information not in the possession, custody and

1 control of defendants. Finally, this request is based on an improper construction of Penal Code
2 section 28225.

3 Without waiving this objection, defendants respond as follows:

4 Admitted with respect to the period January 1, 2004, to the date of these responses.

5 **REQUEST FOR ADMISSION NO. 56:**

6 Admit that CAL DOJ is not aware of what amount it paid in total for any given year,
7 calendar, fiscal, or otherwise, to local law enforcement agencies for state-mandated local costs
8 resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the
9 Welfare and Institutions Code, such costs being those that are referred to in SECTION
10 28225(b)(7).

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 56:**

12 Defendants object to this request. It is vague and overbroad in that it requests information
13 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
14 contains subparts, and is compound. The request also requires referring to other documents in
15 order to respond. It also requires reference to information not in the possession, custody and
16 control of defendants. Finally, this request is based on an improper construction of Penal Code
17 section 28225.

18 Without waiving this objection, defendants respond as follows:

19 Admitted with respect to the period January 1, 2004, to the date of these responses.

20 **REQUEST FOR ADMISSION NO. 57:**

21 Admit that CAL DOJ is unaware of a specific estimate having ever been made concerning
22 "reasonable costs of local law enforcement agencies for complying with the notification
23 requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code
24 imposed by paragraph (7) of subdivision (b)" of SECTION 28225. (Quotation from SECTION
25 28225(c)).

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 57:**

27 Defendants object to this request. It is vague and overbroad in that it requests information
28 covering an unlimited period of time. The request is not "separate and complete in and of itself,"

1 contains subparts, and is compound. The request also requires referring to other documents in
2 order to respond. It also requires reference to information not in the possession, custody and
3 control of defendants. Finally, this request is based on an improper construction of Penal Code
4 section 28225.

5 Without waiving this objection, defendants respond as follows:

6 Admitted with respect to the period January 1, 2004, to the date of these responses.

7 **REQUEST FOR ADMISSION NO. 58:**

8 Admit that CAL DOJ is not aware of what amount it paid in any given year, calendar,
9 fiscal, or otherwise, for actual costs associated with the electronic or telephonic transfer of
10 information pursuant to Penal Code section 28215, such costs being those that are referred to in
11 SECTION 28225(b)(8).

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 58:**

13 Defendants object to this request. It is vague and overbroad in that it requests information
14 covering an unlimited period of time. Without waiving this objection, defendants respond as
15 follows:

16 Denied with respect to the period January 1, 2004, to the date of these responses.

17 **REQUEST FOR ADMISSION NO. 59:**

18 Admit CAL DOJ has not been requested to provide funds to the Department of Food and
19 Agriculture for the costs resulting from the notification provisions set forth in section 5343.5 of
20 the Food and Agricultural Code, such costs being those that are referred to in SECTION
21 28225(b)(9).

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 59:**

23 Defendants object to this request. It is vague and overbroad in that it requests information
24 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
25 contains subparts, and is compound. The request also requires referring to other documents in
26 order to respond. It also requires reference to information not in the possession, custody and
27 control of defendants. Finally, this request is based on an improper construction of Penal Code
28 section 28225.

1 Without waiving this objection, defendants respond as follows:

2 Admitted with respect to the period January 1, 2004, to the date of these responses.

3 **REQUEST FOR ADMISSION NO. 60:**

4 Admit that CAL DOJ is not aware of what amount it paid in any given year, calendar,
5 fiscal, or otherwise, to the Department of Food and Agriculture for the costs resulting from the
6 notification provisions set forth in section 5343.5 of the Food and Agricultural Code, such costs
7 being those that are referred to in SECTION 28225(b)(9).

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 60:**

9 Defendants object to this request. It is vague and overbroad in that it requests information
10 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
11 contains subparts, and is compound. The request also requires referring to other documents in
12 order to respond. It also requires reference to information not in the possession, custody and
13 control of defendants. Finally, this request is based on an improper construction of Penal Code
14 section 28225.

15 Without waiving this objection, defendants respond as follows:

16 Admitted with respect to the period January 1, 2004, to the date of these responses.

17 **REQUEST FOR ADMISSION NO. 61:**

18 Admit that CAL DOJ is unaware of a specific estimate having ever been made concerning
19 "reasonable costs of the Department of Food and Agriculture for the costs resulting from the
20 notification provisions set forth in Section 5343.5 of the Food and Agricultural Code[.]" (Quoting
21 SECTION 28225(c)).

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 61:**

23 Defendants object to this request. It is vague and overbroad in that it requests information
24 covering an unlimited period of time. The request is not "separate and complete in and of itself,"
25 contains subparts, and is compound. The request also requires referring to other documents in
26 order to respond. It also requires reference to information not in the possession, custody and
27 control of defendants. Finally, this request is based on an improper construction of Penal Code
28 section 28225.

1 Without waiving this objection, defendants respond as follows:

2 Admitted with respect to the period January 1, 2004, to the date of these responses.

3 **REQUEST FOR ADMISSION NO. 62:**

4 Admit that CAL DOJ is not aware of what amount it paid in any given year, calendar,
5 fiscal, or otherwise, for costs associated with compliance with subdivisions (d) and (e) of Penal
6 Code section 27560, such costs being those that are referred to in SECTION 28225(b)(10).

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 62:**

8 Defendants object to this request. It is vague and overbroad in that it requests information
9 covering an unlimited period of time. Without waiving this objection, defendants respond as
10 follows:

11 Denied with respect to the period January 1, 2004, to the date of these responses..

12 **REQUEST FOR ADMISSION NO. 63:**

13 Admit that CAL DOJ is unaware of a specific estimate having ever been made concerning
14 "reasonable costs of [CAL DOJ] for the costs associated with subdivisions (d) and (e) of Section
15 27560[.]" (Quoting SECTION 28225(c)).

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 63:**

17 Defendants object to this request. It is vague and overbroad in that it requests information
18 covering an unlimited period of time. Without waiving this objection, defendants respond as
19 follows:

20 Denied with respect to the period January 1, 2004, to the date of these responses..

21 **REQUEST FOR ADMISSION NO. 64:**

22 Admit CAL DOJ is unaware of an amount actually paid in a given year, be it calendar,
23 fiscal, or otherwise, for any category of expense referred to in the final clause of SECTION
24 28225(c), i.e., "costs of department firearms-related regulatory and enforcement activities related
25 to the sale, purchase, possession, loan, or transfer of firearms pursuant to any provision listed in
26 Section 16580."

27
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 64:**

2 Defendants object to this request. It is vague and overbroad in that it requests information
3 covering an unlimited period of time. Without waiving this objection, defendants respond as
4 follows:

5 Denied with respect to the period January 1, 2004, to the date of these responses..

6 **REQUEST FOR ADMISSION NO. 65:**

7 Admit that CAL DOJ is unaware of a specific estimate having ever been made concerning
8 a costs identified in SECTION 28255(c), i.e., "reasonable costs of department firearms-related
9 regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of
10 firearms pursuant to any provision listed in Section 16580." (Quoting SECTION 28225(c)).

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 65:**

12 Defendants object to this request. It is vague and overbroad in that it requests information
13 covering an unlimited period of time. Without waiving this objection, defendants respond as
14 follows:

15 Denied with respect to the period January 1, 2004, to the date of these responses..

16 **REQUEST FOR ADMISSION NO. 66:**

17 Admit that CAL DOJ does not have a list stating what activities are within the class of
18 costs mentioned in SECTION 28225(b)(11), i.e., "CAL DOJ firearms-related regulatory and
19 enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms
20 pursuant to any provision listed in Penal Code section 16580."

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 66:**

22 Defendants object to this request. It is vague and overbroad in that it requests information
23 covering an unlimited period of time. Without waiving this objection, defendants respond as
24 follows:

25 Plaintiffs having clarified during the meet and confer process that this request is intended
26 to ask whether defendants are aware of the existence of a specific list (i.e., a document) of all of
27 the activities that fall within the purview of section 28225(b)(11), defendants admit that they are
28 unaware of any such discrete document. Of course, defendants are aware of their regulatory and

1 enforcement responsibilities as provided throughout the applicable statutes, regulations and case
2 law.

3 **REQUEST FOR ADMISSION NO. 67:**

4 Admit that CAL DOJ does have not a protocol for determining what activities fall within
5 the class of costs mentioned in Penal Code SECTION 28225(b)(11), i.e., "CAL DOJ firearms-
6 related regulatory and enforcement activities related to the sale, purchase, possession, loan, or
7 transfer of firearms pursuant to any provision listed in Penal Code section 16580."

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 67:**

9 Defendants object to this request. It is vague and overbroad in that it requests information
10 covering an unlimited period of time. The word "protocol" is also vague. Without waiving this
11 objection, defendants respond as follows:

12 Plaintiffs having clarified during the meet and confer process that this request is intended
13 to ask whether defendants are aware of the existence of a specific protocol for classifying all of
14 the activities that fall within the purview of section 28225(b)(11), defendants admit that they are
15 unaware of any such specific protocol as referenced by plaintiffs. As mentioned above, though,
16 defendants are aware of their regulatory and enforcement responsibilities as provided in the
17 applicable statutes, regulations and case law and defendants have lawfully discharged those
18 responsibilities.

19 **REQUEST FOR ADMISSION NO. 68:**

20 Admit that CAL DOJ is unaware of a calculation being performed after January 1, 2005,
21 to determine the sum of costs and estimated costs listed in SECTION 28225(c).

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 68:**

23 Defendant objects to this request. It incorporates Penal Code section 28225(c) by
24 reference. Thus, the request is not "separate and complete in and of itself," contains subparts, and
25 is compound. The request also requires referring to other documents in order to respond.

26 Denied with respect to the period January 1, 2004, to the date of these responses.
27
28

1 **REQUEST FOR ADMISSION NO. 69:**

2 Admit that CAL DOJ initiated a proposal in 2010 to amend California Code of
3 Regulations title 11, section 4001, to lower the \$19.00 single firearm transfer DROS FEE to
4 \$14.00.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 69:**

6 Admitted.

7 **REQUEST FOR ADMISSION NO. 70:**

8 Admit that, at the time of the PROPOSAL (as used herein, "PROPOSAL" refers to CAL
9 DOJ's proposal in 2010 to amend California Code of Regulations title 11, section 4001, which
10 would have lowered the \$19.00 single firearm transfer DROS FEE to \$14.00 if adopted), CAL
11 DOJ had made a determination, whether characterized as preliminary or not, that the \$19.00
12 single firearm transfer DROS FEE was higher than what was needed to cover both the costs of the
13 DROS PROCESS and maintain an acceptable level of reserve in the DROS SPECIAL
14 ACCOUNT.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 70:**

16 Denied.

17 **REQUEST FOR ADMISSION NO. 71:**

18 Admit that Defendant Kamala Harris made a request to CAL DOJ at some point between
19 January 2, 2010, and January 2, 2011 (inclusive), that CAL DOJ not adopt the PROPOSAL.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 71:**

21 Denied.

22 **REQUEST FOR ADMISSION NO. 72:**

23 Admit that at some point after January 3, 2011, Defendant Kamala Harris made a decision
24 that CAL DOJ would not adopt the PROPOSAL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 72:**

26 Denied.

27 **REQUEST FOR ADMISSION NO. 73:**

28 Admit that CAL DOJ did not adopt the PROPOSAL because CAL DOJ determined that a

1 DROS FEE of less than \$19.00 would not cover CAL DOJ's costs arising from the DROS
2 PROCESS.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 73:**

4 Denied.

5 **REQUEST FOR ADMISSION NO. 74:**

6 Admit that the PROPOSAL was not adopted because CAL DOJ determined that a DROS
7 FEE of less than \$19.00 would not both cover the costs of the DROS PROCESS and provide for
8 an acceptable level of reserve funding in the DROS SPECIAL ACCOUNT.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 74:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 75:**

12 Admit that the PROPOSAL was not adopted because CAL DOJ determined that a DROS
13 FEE of less than \$19.00 would not both cover all of the costs referred to in SECTION 28225 and
14 provide for an acceptable level of reserve funding in the DROS SPECIAL ACCOUNT.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 75:**

16 Denied.

17 **REQUEST FOR ADMISSION NO. 76:**

18 Admit that the DROS FEE of \$19.00 was set by CAL DOJ in November 2004.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 76:**

20 Admitted.

21 **REQUEST FOR ADMISSION NO. 77:**

22 Admit that the DROS FEE amount of \$19.00 has not changed since November 2004.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 77:**

24 Admitted.

25 **REQUEST FOR ADMISSION NO. 78:**

26 Admit that the current DROS FEE of \$19.00 was set by CAL DOJ based on a comparison
27 of the historical revenues going into, and expenditures coming out of, the DROS SPECIAL
28 ACCOUNT.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 78:**

2 Admitted, although that comparison was not the sole basis for setting the fee at \$19.00.

3 **REQUEST FOR ADMISSION NO. 79:**

4 Admit that, in 2004, CAL DOJ created a written document that utilized specific cost data
5 to provide an explanation as to why a \$19.00 DROS FEE was appropriate.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 79:**

7 Defendants object to this request. The use of the phrase "specific cost data" here is vague
8 and ambiguous. Defendants object to this request because it seeks information protected by the
9 executive privilege, official information privilege, and deliberative process privilege. Without
10 waiving this objection, defendants respond as follows:

11 Admitted.

12 **REQUEST FOR ADMISSION NO. 80:**

13 Admit that, in 2010, CAL DOJ completed a review of the revenues into and expenditures
14 out of the DROS SPECIAL ACCOUNT.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 80:**

16 Defendants object to this request because it seeks information protected by the attorney-
17 client privilege and work product doctrine. The use of the phrase "review" here is vague and
18 ambiguous. Without waiving this objection, defendants respond as follows:

19 Admitted.

20 **REQUEST FOR ADMISSION NO. 81:**

21 Admit that CAL DOJ' s 2010 review of the revenues into and expenditures out of the
22 DROS SPECIAL ACCOUNT included analysis regarding the costs referred to in SECTION
23 28225.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 81:**

25 Defendant objects to this request. It seeks information protected by the attorney-client
26 privilege and work product doctrine. It also incorporates Penal Code section 28225(c) by
27 reference. Thus, the request is not "separate and complete in and of itself," contains subparts, and
28

EXHIBIT 3

1 KAMALA D. HARRIS
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 ANTHONY R. HAKL, State Bar No. 197335
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 322-9041
6 Fax: (916) 324-8835
E-mail: Anthony.Hakl@doj.ca.gov
7 *Attorneys for Defendants and Respondents*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO
11

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
California Department of Justice, JOHN
CHIANG, in his official capacity as State
Controller, and DOES 1-10,**

21 Defendants and Respondents.
22

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 TWO)**

23 **PROPOUNDING PARTY: PLAINTIFFS**

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

26 **SET NUMBER: TWO**
27
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 123:**

2 Defendant objects to this request. It is based on a mischaracterization of Penal Code
3 section 28225, the provisions of which speak for themselves. The request is also an improper use
4 of the request for admission procedure. The purpose of that procedure is to expedite trials and to
5 eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior*
6 *Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) The
7 request for admission device is not intended to provide a windfall to litigants in granting a
8 substantive victory in the case by deeming material issues admitted. (*St. Mary v. Superior Court*
9 (2014) 223 Cal.App.4th 762, 783-784.) Section 2033 is “calculated to compel admissions as to
10 all things that cannot reasonably be controverted” not to provide “gotcha,” after-the-fact penalties
11 for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203
12 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 [“Although the
13 admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the
14 request at issue here did not include issues as to which the parties might conceivably agree.”],
15 superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994)
16 22 Cal.App.4th 60, 64–65.)

17 Without waiving this objection, defendants respond as follows:

18 Denied.

19 **REQUEST FOR ADMISSION NO. 124:**

20 Admit that, at the conclusion of the 2010 rulemaking regarding the possible reduction of
21 the DROS FEE from \$19.00 to \$14.00, CAL DOJ was of the opinion that the total amount
22 collected as a result of the \$19.00 DROS FEE was reasonably related to the total amount of costs
23 referred to in SECTION 28225 that were being incurred by CAL DOJ at the time.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 124:**

25 Defendants object to this request. The phrases “at the conclusion of the 2010 rulemaking”
26 and “being incurred by CAL DOJ at the time” are vague and ambiguous. The request is also
27 based on a mischaracterization of Penal Code section 28225, the provisions of which speak for
28 themselves. The request is also an improper use of the request for admission procedure. The

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

13 Without waiving this objection, defendants respond as follows:

14 Admitted.

15 **REQUEST FOR ADMISSION NO. 125:**

16 Admit that the 2010 rulemaking to lower the DROS FEE from \$19.00 to \$14.00 included
17 a proposal that CAL DOJ would consider the propriety of the amount of the DROS FEE on a
18 yearly basis.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 125:**

20 Admitted.

21 **REQUEST FOR ADMISSION NO. 126:**

22 Admit that the 2010 rulemaking to lower the DROS FEE from \$19.00 to \$14.00 was not
23 completed, at least in part, because CAL DOJ made a determination that yearly review of the
24 DROS FEE was not necessary.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 126:**

26 Defendants object to this request because it seeks information protected by the executive
27 privilege, official information privilege, and deliberative process privilege, as well as the
28 attorney-client privilege and work product doctrine.

1 Without waiving this objection, defendants respond as follows:

2 Denied.

3 **REQUEST FOR ADMISSION NO. 127:**

4 Admit that, at one point, the DROS SPECIAL ACCOUNT included \$11,500,000 that
5 CAL DOJ considered a surplus.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 127:**

7 Defendants object to this request. The word "surplus" is vague.

8 Without waiving this objection, defendants respond as follows:

9 Defendants admit that at one point the DROS special account included approximately \$10
10 million that was considered a surplus. Defendants otherwise deny this request.

11 **REQUEST FOR ADMISSION NO. 128:**

12 Admit the decision to not complete the 2010 rulemaking to lower the DROS FEE from
13 \$19.00 to \$14.00 was based in part on someone within CAL DOJ wanting to use DROS FEE
14 FUNDS for costs arising from APPS (as used herein, "APPS" refers to the Armed Prohibited
15 Persons System program, also known as Armed & Prohibited Persons System program or
16 California Armed and Prohibited Person Program, and, as appropriate, enforcement activities
17 based on the use of data derived from APPS, including but not limited to raids and investigations
18 of persons identified by APPS as potentially possessing one or more firearm illegally).

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 128:**

20 Defendants object to this request because it seeks information protected by the executive
21 privilege, official information privilege, and deliberative process privilege, as well as the
22 attorney-client privilege and work product doctrine.

23 Without waiving this objection, defendants respond as follows:

24 Admitted.

25 **REQUEST FOR ADMISSION NO. 129:**

26 Admit CAL DOJ's decision not to complete the 2010 rulemaking to lower the DROS FEE
27 from \$19.00 to \$14.00 was made prior to July 1, 2011.

28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 129:**

2 Denied.

3 **REQUEST FOR ADMISSION NO. 130:**

4 Admit that during CAL DOJ's rulemaking to raise the DROS FEE from \$14.00 to \$19.00,
5 CAL DOJ never calculated whether the funds collected solely as DROS FEE's were sufficient to
6 cover the costs referred to in SECTION 28225.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 130:**

8 Denied.

9 **REQUEST FOR ADMISSION NO. 131:**

10 Admit that in or about 2004, CAL DOJ estimated the DROS SPECIAL ACCOUNT
11 would run out of cash in Spring 2005.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 131:**

13 Admitted.

14 **REQUEST FOR ADMISSION NO. 132:**

15 Admit that, as to CAL DOJ's estimate that the DROS SPECIAL ACCOUNT would run
16 out of cash in Spring 2005, that estimate was not based, even in part, on a calculation applying
17 only the amount of DROS FEE FUNDS collected in a given time period to only the amount of
18 money spent during a given time period on costs identified in SECTION 28225.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 132:**

20 Defendants object to this request. The phrases "that estimate was not based, even in part,
21 on a calculation applying only the amount of DROS FEE FUNDS collected in a given time period
22 to only the amount of money spent during a given time period on costs identified in SECTION
23 28225" is so ambiguous that the responding party cannot in good faith frame an intelligent reply.
24 Defendants propose that the parties meet and confer regarding the substance of this request.

25 **REQUEST FOR ADMISSION NO. 133:**

26 Admit that, as to CAL DOJ's estimate that the DROS SPECIAL ACCOUNT would run
27 out of cash in Spring 2005, that estimate was primarily based on an assessment of the anticipated
28

1 revenue for the DROS SPECIAL ACCOUNT compared to the anticipated expenses to be paid
2 from the DROS SPECIAL ACCOUNT.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 133:**

4 Admitted.

5 **REQUEST FOR ADMISSION NO. 134:**

6 Admit that, prior to CAL DOJ's increase of the DROS FEE from \$14.00 to \$19.00, CAL
7 DOJ never publically released a statement identifying each of the DROS related processing costs
8 that CAL DOJ alleged to have totaled, per DROS application, \$19.00.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 134:**

10 Unable to admit or deny.

11 **REQUEST FOR ADMISSION NO. 135:**

12 Admit that the increase of the DROS FEE from \$14.00 to \$19.00 was based primarily on
13 an assessment of the condition of the DROS SPECIAL ACCOUNT.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 135:**

15 Defendants object to this request. The word "condition" is vague.

16 Without waiving this objection, defendants respond as follows:

17 Admitted.

18 **REQUEST FOR ADMISSION NO. 136:**

19 Admit that the increase of the DROS FEE from \$14.00 to \$19.00 was based primarily on
20 an assessment of the amount of money being obtained from the DROS FEE alone.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 136:**

22 Defendants object to this request. The phrase "was based primarily on an assessment of
23 the amount of money being obtained from the DROS FEE alone" is vague. Also, the request is
24 not "separate and complete in and of itself" because it appears to require reference to other
25 requests for admission to understand.

26 Without waiving this objection, defendants respond as follows:

27 Admitted.

1 **REQUEST FOR ADMISSION NO. 137:**

2 Admit CAL DOJ's 2004 plan to avoid running out of money in DROS SPECIAL
3 ACCOUNT was to increase multiple fees that, when paid, are deposited into the DROS
4 SPECIAL ACCOUNT.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 137:**

6 Denied.

7 **REQUEST FOR ADMISSION NO. 138:**

8 Admit CAL DOJ's 2004 plan to avoid running out of money in the DROS SPECIAL
9 ACCOUNT was to increase a single fee that when paid, was deposited into the DROS SPECIAL
10 ACCOUNT.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 138:**

12 Admitted.

13 **REQUEST FOR ADMISSION NO. 139:**

14 Admit CAL DOJ's 2004 plan to avoid running out of money in the DROS SPECIAL
15 ACCOUNT consisted solely of increasing the DROS FEE, which, when paid, was deposited into
16 the DROS SPECIAL ACCOUNT.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 139:**

18 Denied.

19 **REQUEST FOR ADMISSION NO. 140:**

20 Admit CAL DOJ cannot legally increase the DROS FEE to an amount the CAL DOJ
21 believes to be greater than necessary to fund the costs referred to in SECTION 28225.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 140:**

23 Defendant objects to this request. It is based on a mischaracterization of Penal Code
24 section 28225, the provisions of which speak for themselves.

25 Without waiving this objection, defendants respond as follows:

26 Admitted.

27

28

1 **REQUEST FOR ADMISSION NO. 141:**

2 Admit the California Consumer Price Index adjustment provision of SECTION 28225
3 (i.e., "except that the fee may be increased at a rate not to exceed any increase in the California
4 Consumer Price Index as compiled and reported by the Department of Industrial Relations") does
5 not apply unless CAL DOJ believes an amount greater than \$14.00 is necessary to fund the costs
6 referred to in Section 28225.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 141:**

8 Defendant objects to this request. It is based on a mischaracterization of Penal Code
9 section 28225, the provisions of which speak for themselves.

10 Without waiving this objection, defendants respond as follows:

11 Denied.

12 **REQUEST FOR ADMISSION NO. 142:**

13 Admit that it is CAL DOJ's opinion that, on average, money collected as DROS FEE
14 FUNDS constitute more than 75% of the money in the DROS SPECIAL ACCOUNT.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 142:**

16 Unable to admit or deny.

17 **REQUEST FOR ADMISSION NO. 143:**

18 Admit that money from fees other than the DROS FEE are used to pay for costs identified
19 in SECTION 28225.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 143:**

21 Unable to admit or deny.

22 **REQUEST FOR ADMISSION NO. 144:**

23 Admit that it is impossible to determine if a fee other than the DROS FEE is used to pay
24 for a cost identified in SECTION 28225.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 144:**

26 Admitted.
27
28

1 **REQUEST FOR ADMISSION NO. 145:**

2 Admit that it is the position of CAL DOJ that the DROS FEE is the only fee collected by
3 CAL DOJ that is statutorily authorized to be used to pay for the costs referred to in Penal Code
4 section 28225(b)(11).

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 145:**

6 Denied.

7 **REQUEST FOR ADMISSION NO. 146:**

8 Admit that it is the position of CAL DOJ that money in the DROS SPECIAL ACCOUNT
9 can legally be used to pay for the costs referred to in Penal Code section 28225(b)(11) regardless
10 of whether the money being used includes non-DROS FEE FUNDS, i.e., funds that were
11 deposited in the DROS SPECIAL ACCOUNT that were not collected in the form of a DROS
12 FEE.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 146:**

14 Admitted.

15 Dated: September 15, 2015

Respectfully Submitted,

16 KAMALA D. HARRIS
17 Attorney General of California
18 STEPAN A. HAYTAYAN
19 Supervising Deputy Attorney General

20 
21 ANTHONY R. HAKL
22 Deputy Attorney General
23 *Attorneys for Defendants and Respondents*

24 SA2013113332

25

26

27

28

EXHIBIT 4

1 KAMALA D. HARRIS
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 ANTHONY R. HAKL, State Bar No. 197335
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 322-9041
6 Fax: (916) 324-8835
E-mail: Anthony.Hakl@doj.ca.gov
7 *Attorneys for Defendants and Respondents*

7 JUL '16 PM 4:06

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO
11

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**
California Department of Justice, JOHN
CHIANG, in his official capacity as State
Controller, and DOES 1-10,

21 Defendants and Respondents.
22

Case No. 34-2013-80001667

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

23 **PROPOUNDING PARTY: PLAINTIFFS**

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

26 **SET NUMBER: ONE**
27
28

1 executive privileges. Finally, the interrogatory is unfairly burdensome. Plaintiffs have failed to
2 verify their petition for writ of mandate as required by the rules. In the absence of the required
3 verification, it is unfair to expect defendants to respond to Form Interrogatory 15.1.

4 Without waiving these objections, defendants recognize that plaintiffs have now verified
5 their pleading as required. Accordingly, defendants intend to file an amended answer as
6 authorized by the rules. The amended answer will supersede the general denial and therefore this
7 interrogatory.

8 **INTERROGATORY NO. 17.1:**

9 Is your response to each request for admission served with these interrogatories an
10 unqualified admission? If not, for each response that is not an unqualified admission;

11 (a) state the number of the request;

12 (b) state all facts upon which you base your response;

13 (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
14 knowledge of those facts; and

15 (d) Identify all DOCUMENTS and other tangible things that support your response and
16 state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT
17 or thing.

18 **RESPONSE TO INTERROGATORY NO. 17.1:**

19 Defendants object to this interrogatory. It is not full and complete in and of itself,
20 contains subparts, and is compound. The request also requires referring to other documents in
21 order to respond, namely the requests for admissions and responses thereto. Without waiving
22 these objections, defendants respond as follows:

23 No.

24 (a) **Request for Admission No. 1.**

25 (b) Prior to the enactment of SB 819, DOJ's position had been that section 28225 did
26 provide a source of funding to pay for costs related to the confiscation of unlawfully possessed
27 firearms. The enactment of SB 819 reinforced and confirmed DOJ's position in this regard.

28 (c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact

1 **(a) Request for Admission No. 26.**

2 (b) According to Penal Code section 28225, the DROS fee is designed to cover a number
3 of costs, as specified.

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

6 (d) Defendants have no additional documents to identify other than the documents
7 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
8 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
9 contact information is above.

10 **(a) Request for Admission No. 27.**

11 (b) Section 28225 does not speak in terms of any "duty," ministerial or otherwise.

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

14 (d) Defendants have no additional documents to identify other than the documents
15 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
16 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
17 contact information is above.

18 **(a) Request for Admission No. 28.**

19 (b) The Department of Justice periodically reviews the amount of monies in the DROS
20 fund and considers whether that amount will meet the Department's program needs.

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

23 (d) Defendants have no additional documents to identify other than the documents
24 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
25 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
26 contact information is above.

27 **(a) Request for Admission No. 29.**

28 (b) Defendants do not recall any such public expression of opinion.

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

3 (d) Defendants have no additional documents to identify other than the documents
4 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
5 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
6 contact information is above.

7 (a) Request for Admission No. 30.

8 (b) Defendants do not recall any such public expression of opinion.

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

11 (d) Defendants have no additional documents to identify other than the documents
12 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
13 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
14 contact information is above.

15 (a) Request for Admission No. 31.

16 (b) The Department compiled a rulemaking file in connection with the proposal in 2010 to
17 lower the DROS fee.

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

20 (d) Defendants have no additional documents to identify other than the documents
21 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
22 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
23 contact information is above.

24 (a) Request for Admission No. 32.

25 (b) During the specified period, the Department of Justice has considered the propriety,
26 amount and use of DROS fees. This consideration is reflected in the rulemaking file from 2010,
27 when the Department considered a proposal to lower the DROS fee. That file has been produced.
28 The Department has also considered the propriety, amount and use of DROS fees in consultation

1 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
2 contact information is above.

3 (a) **Request for Admission No. 37.**

4 (b) The DROS fee was set at \$19.00 in approximately 2004. The APPS program was
5 funded with General Fund monies until approximately 2011 (i.e., the passage of SB 819.)

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

8 (d) Defendants have no additional documents to identify other than the documents
9 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
10 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
11 contact information is above.

12 (a) **Request for Admission No. 38.**

13 (b) Defendants refer to their answer to Special Interrogatories Nos. 1 & 2, where
14 defendants address the issue of "per transaction cost."

15 In addition, defendants respond that they are unable to admit that the average cost to the
16 Department of a DROS transaction is less than \$19.00 because for fiscal year 2003-04 the
17 average cost was \$21.13, according to defendants' best estimate at this time. Defendants refer to
18 fiscal year 2003-04 in this regard because that was the fiscal year immediately preceding the
19 fiscal year the DROS fee was last increased (from \$14.00 to \$19.00).

20 The estimated figure of \$21.13 is the quotient of the following calculation: \$6,462,448 /
21 305,897. The amount of \$6,462,448 was the Department's actual year-end expenditures on the
22 Dealers' Record of Sale program in fiscal year 2003-04. (See AGRFP000359.) The number
23 305,897 is the approximate number of DROS transactions for all guns (including denials) during
24 fiscal year 2003-04.

25 Finally, the number of 305,897 is an approximation because DROS transactions are
26 actually tallied by calendar year, as opposed to fiscal year. Defendants calculated the number of
27 305,897 as follows: $((290,376 + 3,028) + (315,065 + 3,325) / 2)$. The calculation $290,376 +$
28 $3,028$ is the number of DROS transactions for all guns (including denials) in calendar year 2003

1 and the calculation 315,065 + 3,325 is the number of transactions (including denials) for calendar

2 year 2004. (See http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/dros_chart.pdf [last

3 visited Sept. 14, 2015].

4 (c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact

5 information is above.

6 (d) Defendants have no additional documents to identify other than the documents

7 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

8 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose

9 contact information is above.

10 (a) Request for Admission No. 39.

11 (b) The text of Penal Code section 28225 refers only to "possession" and makes no

12 distinction between "legal" or "illegal" possession.

13 (c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact

14 information is above.

15 (d) Defendants have no additional documents to identify other than the documents

16 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

17 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose

18 contact information is above.

19 (a) Request for Admission No. 41

20 (b) By its terms, section 28225 provides that moneys from the DROS special account,

21 including DROS fees, can be used for law enforcement activities related to the illegal possession

22 of firearms. Section 28225 does not pre-condition such use on having "participated in the DROS

23 PROCESS."

24 (c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact

25 information is above.

26 (d) Defendants have no additional documents to identify other than the documents

27 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

28 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose

1 contact information is above.

2 (a) **Request for Admission No. 42.**

3 (b) The Bureau of Firearms is aware of the amount of money necessary to fund its
4 program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs
5 (both regulatory and enforcement) are publicly available and are contained within the Governor's
6 annual budget. At this time, the Bureau is unaware of any calculation of the specific cost as
7 referenced in this request, although such cost may be calculable by reference to the appropriation
8 and expenditure information that has been produced in connection with this litigation and the
9 related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.)

10 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
11 counsel, whose contact information is above.

12 (d) Defendants have no additional documents to identify other than the documents
13 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
14 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
15 contact information is above.

16 (a) **Request for Admission No. 43.**

17 (b) The Bureau of Firearms is aware of the amount of money necessary to fund its
18 program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs
19 (both regulatory and enforcement) are publicly available and are contained within the Governor's
20 annual budget. At this time, the Bureau is unaware of any calculation of the specific cost as
21 referenced in this request, although such cost may be calculable by reference to the appropriation
22 and expenditure information that has been produced in connection with this litigation and the
23 related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.)

24 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
25 counsel, whose contact information is above.

26 (d) Defendants have no additional documents to identify other than the documents
27 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
28 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose

1 contact information is above.

2 (a) **Request for Admission No. 44.**

3 (b) DOJ has been requested to reimburse local mental health facilities for these reports,
4 but such reimbursements are not paid out of the DROS special account.

5 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
6 counsel, whose contact information is above .

7 (d) Defendants have no additional documents to identify other than the documents
8 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
9 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
10 contact information is above.

11 (a) **Request for Admission No. 45.**

12 (b) DOJ has been requested to reimburse local mental health facilities for these reports,
13 but such reimbursements are not paid out of the DROS special account.

14 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
15 counsel, whose contact information is above .

16 (d) Defendants have no additional documents to identify other than the documents
17 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
18 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
19 contact information is above.

20 (a) **Request for Admission No. 49.**

21 (b) DOJ has been requested to reimburse local mental health facilities for these reports,
22 but such reimbursements are not paid out of the DROS special account.

23 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
24 counsel, whose contact information is above .

25 (d) Defendants have no additional documents to identify other than the documents
26 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
27 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
28 contact information is above.

1 **(a) Request for Admission No. 50.**

2 (b) DOJ has been requested to reimburse local mental health facilities for these reports,
3 but such reimbursements are not paid out of the DROS special account.

4 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
5 counsel, whose contact information is above .

6 (d) Defendants have no additional documents to identify other than the documents
7 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
8 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
9 contact information is above.

10 **(a) Request for Admission No. 58.**

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

15 In addition, between approximately 1996 and January 1, 2014, the electronic transfer of
16 data referred to in Request for Admission No. 58 occurred pursuant to a contract between the
17 Department and a contractor (i.e., the Verizon corporation). According to a Budget Change
18 Proposal for fiscal year 2013-14, which defendants have already produced to plaintiffs, "[t]he
19 DOJ-BOF pays Verizon \$3.53 per transaction for their services. . . . Upon conclusion of the
20 contract, the DOJ-BOF will be bringing all DROS associated services in-house at an estimated
21 rate of \$0.83 per transaction." (See ACRFP000195.)

22 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
23 counsel, whose contact information is above.

24 (d) Defendants have no additional documents to identify other than the documents
25 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
26 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
27 contact information is above.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(a) Request for Admission No. 62.

(b) 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. At this time, the Bureau is unaware of any calculation of the specific cost as referenced in this request, although such cost may be calculable by reference to the appropriation and expenditure information that has been produced in connection with this litigation and the related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.)

(c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper 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. 63.

(b) 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. At this time, the Bureau is unaware of any calculation of the specific cost as referenced in this request, although such cost may be calculable by reference to the appropriation and expenditure information that has been produced in connection with this litigation and the related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.) .

(c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper 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.

1 **(a) Request for Admission No. 64.**

2 (b) The Bureau of Firearms is aware of the amount of money necessary to fund its
3 program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs
4 (both regulatory and enforcement) are publicly available and are contained within the Governor's
5 annual budget. At this time, the Bureau is unaware of any calculation of the specific cost as
6 referenced in this request, although such cost may be calculable by reference to the appropriation
7 and expenditure information that has been produced in connection with this litigation and the
8 related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.).

9 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
10 counsel, whose contact information is above.

11 (d) Defendants have no additional documents to identify other than the documents
12 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
13 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
14 contact information is above.

15 **(a) Request for Admission No. 65.**

16 (b) The Bureau of Firearms is aware of the amount of money necessary to fund its
17 program costs and meet its statutory obligations. The costs needed to fund the Bureau's programs
18 (both regulatory and enforcement) are publicly available and are contained within the Governor's
19 annual budget. At this time, the Bureau is unaware of any calculation of the specific cost as
20 referenced in this request, although such cost may be calculable by reference to the appropriation
21 and expenditure information that has been produced in connection with this litigation and the
22 related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.).

23 (c) Stephen Lindley; Dave Harper. Mr. Lindley and Mr. Harper can be contacted through
24 counsel, whose contact information is above.

25 (d) Defendants have no additional documents to identify other than the documents
26 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
27 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
28 contact information is above.

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KAMALA D. HARRIS
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
ANTHONY R. HAKL
Deputy Attorney General
State Bar No. 197335
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 322-9041
Facsimile: (916) 324-8835
*Attorneys for Defendants, Kamala Harris
and Stephen Lindley*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

Case No. 34-2013-80001667

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

Plaintiffs and Petitioners,

v.

**DEFENDANT KAMALA HARRIS AND
STEPHEN LINDLEY'S AMENDED
RESPONSES TO FORM
INTERROGATORIES, SET THREE
PROPOUNDED BY PLAINTIFF**

**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
CHLANG, in his official capacity as State
Controller, and DOES 1-10.,**

Defendants and
Respondents.

PROPOUNDING PARTY: Plaintiff David Gentry
RESPONDING PARTY: Defendants Kamala Harris and Stephen Lindley
SET NO.: THREE

1 **FORM INTERROGATORY NO. 1.1:**

2 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON**
3 who prepared or assisted in the preparation of the responses to these interrogatories. (*Do not*
4 *identify anyone who simply typed or reproduced the responses.*)

5 **RESPONSE TO FORM INTERROGATORY NO. 1.1:**

- 6 1. Anthony R. Hakl, Deputy Attorney General.
7 2. Kimberly J. Granger, Deputy Attorney General.
8 3. David Harper, Deputy Director, Division of Administration.
9 4. Stephen Lindley, Chief of the Bureau of Firearms.

10 Each of these employees of the California Department of Justice may be contacted through
11 counsel.

12 **FORM INTERROGATORY NO. 17.1:**

13 Is your response to each request for admission served with these interrogatories an
14 unqualified admission? If not, for each response that is not an unqualified admission:

- 15 (a) state the number of the request;
16 (b) state all facts upon which you base your response;
17 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have
18 knowledge of those facts; and

19 (d) identify all **DOCUMENTS** and other tangible things that support your response and
20 state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**
21 or thing.

22 **RESPONSE TO FORM INTERROGATORY NO. 17.1:**

23 Defendants object to this interrogatory. It is not full and complete in and of itself,
24 contains subparts, and is compound. The request also requires referring to other documents in
25 order to respond, namely the requests for admissions and responses thereto. Without waiving
26 these objections, defendants respond as follows:

27 No.
28

1 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
2 contact information is above.

3 (a) **Request for Admission No. 126.**

4 (b) Defendants do not recall such a determination having been made.

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

7 (d) Defendants have no additional documents to identify other than the documents
8 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

9 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
10 contact information is above.

11 (a) **Request for Admission No. 129.**

12 (b) The decision referred to did not become final until approximately October of 2011,
13 when SB 819 became law.

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

16 (d) Defendants have no additional documents to identify other than the documents
17 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

18 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
19 contact information is above.

20 (a) **Request for Admission No. 130.**

21 (b) In connection with the referenced rulemaking, defendants considered the amount of
22 revenue generated from the collection of DROS fees and the expenditures required to maintain
23 the relevant firearms programs as authorized by law.

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

26 (d) Defendants have no additional documents to identify other than the documents
27 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

28 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose

1 **(a) Request for Admission No. 141.**

2 (b) The plain language of Penal Code section 28225 does not contain such a provision.

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

5 (d) Defendants have no additional documents to identify other than the documents
6 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
7 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
8 contact information is above.

9 **(a) Request for Admission No. 142.**

10 (b) It is possible that at any given time DROS fee funds may constitute more than seventy-
11 five percent of the money in the DROS special account, but defendants cannot state as much with
12 certainty because of how the law requires various monies to be deposited and maintained in the
13 DROS special account.

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

16 (d) Defendants have no additional documents to identify other than the documents
17 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
18 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
19 contact information is above.

20 **(a) Request for Admission No. 143.**

21 (b) It is possible that such money may have been used for such costs, but defendants
22 cannot state as much with certainty because of how the law requires various monies to be
23 deposited and maintained in the DROS special account.

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

26 (d) Defendants have no additional documents to identify other than the documents
27 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
28 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose

1 contact information is above.

2 (a) Request for Admission No. 145.

3 (b) Under the applicable statutes, monies from various fees are deposited and maintained
4 in the DROS special account, and the Legislature appropriates money out of that account.

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

7 (d) Defendants have no additional documents to identify other than the documents
8 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
9 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
10 contact information is above.

11 Dated: September 15, 2015

Respectfully Submitted,

12 KAMALA D. HARRIS
13 Attorney General of California
14 STEPAN A. MAYTAYAN
15 Supervising Deputy Attorney General

16 ANTHONY R. HAKL
17 Deputy Attorney General
18 *Attorneys for Defendants Kamala Harris
19 and Stephen Lindley*

20 SA2013113332
21 11989316.doc

22
23
24
25
26
27
28

EXHIBIT 6

1 KAMALA D. HARRIS
 Attorney General of California
 2 STEPAN A. HAYTAYAN
 Supervising Deputy Attorney General
 3 ANTHONY R. HAKL, State Bar No. 197335
 Deputy Attorney General
 4 1300 I Street, Suite 125
 P.O. Box 944255
 5 Sacramento, CA 94244-2550
 Telephone: (916) 322-9041
 6 Fax: (916) 324-8835
 E-mail: Anthony.Hakl@doj.ca.gov
 7 *Attorneys for Defendants and Respondents*

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SACRAMENTO
 11

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**
California Department of Justice, JOHN
CHIANG, in his official capacity as State
Controller, and DOES 1-10,

21 Defendants and Respondents.
 22

Case No. 34-2013-80001667

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

23 **PROPOUNDING PARTY: PLAINTIFFS**

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

26 **SET NUMBER: TWO**
 27
 28

GENT053

1 **RESPONSES TO SPECIAL INTERROGATORIES**

2 **INTERROGATORY NO. 6:**

3 List every fee, by name (or code section if no name exists), that is deposited into the DROS
4 SPECIAL ACCOUNT (as used herein, "DROS SPECIAL ACCOUNT" refers to the portion of
5 the state's General Fund wherein DROS FEE FUNDS [as used herein, "DROS FEE FUNDS"
6 refers to funds collected pursuant to SECTION 28225 {as used herein, SECTION 28225 refers to
7 Penal Code section 28225, including the previous version of that section, which was located at
8 Penal Code section 12706(e)}] are deposited).

9 **RESPONSE TO INTERROGATORY NO. 6:**

10 Defendants object to this interrogatory. Defendants are informed and believe that a number
11 of fees are deposited into the DROS Special Account as specified by various statutes, which are a
12 matter of public record and equally accessible to plaintiffs. Thus, this "information is equally
13 available to the propounding party." (See Code Civ. Proc., § CCP § 2030.220, subd. (c); *Regency*
14 *Health Services, Inc. v. Superior Court* (1998) 64 Cal. App. 4th 1496, 1504; see also *Bunnell v.*
15 *Superior Court* (1967) 254 Cal. App. 2d 720, 723–724, [no duty to search out matters of public
16 record].) This interrogatory is also objectionable because it requires referring to other documents
17 in order to respond (i.e., it calls for defendants to conduct legal research for plaintiffs).

18 Without waiving this objection, defendants refer plaintiffs to Exhibit A attached hereto,
19 which is a "Bureau of Firearms Fee Schedule/Authorizations" chart listing at least some of the
20 fees deposited into the DROS Special Account. Defendants also represent that, as far as
21 defendants are aware, the various fees that are supposed to be deposited into the DROS Special
22 Account as specified by the statutes are in fact deposited into the DROS Special Account, and
23 only those fees are deposited there.

24 **INTERROGATORY NO. 7:**

25 State the name of the person or persons who made the decision that CAL DOJ (as used
26 herein, "CAL DOJ" refers to the California Department of Justice, including any subsidiary
27 entities therein) would not complete 2010 rulemaking to lower the DROS FEE (as used herein,
28

1 "DROS FEE(S)" refers to the charge collected pursuant to SECTION 28225) from \$19.00 to
2 \$14.00.

3 **RESPONSE TO INTERROGATORY NO. 7:**

4 Defendants object to this interrogatory to the extent it seeks information protected by the
5 attorney-client privilege, work product doctrine and the official information, law enforcement and
6 executive privileges.

7 Without waiving these objections, defendants respond as follows: Stephen Lindley, Chief
8 of the Bureau of Firearms.

9 **INTERROGATORY NO. 8:**

10 If no Government Code section 11347 notice concerning the 2010 rulemaking to lower the
11 DROS FEE from \$19.00 to \$14.00 was ever issued by CAL DOJ, please state the reason no such
12 notice was issued.

13 **RESPONSE TO INTERROGATORY NO. 8:**

14 Defendants object to this interrogatory. It is not full and complete in and of itself,
15 contains subparts, and is compound.

16 Without waiving these objections, defendants respond as follows: The referenced notice
17 of decision not to proceed with the proposed action was not required under the circumstances.
18 (See Gov. Code, §§ 11347 & 11346.4, subd. (b).) More specifically, the notice of proposed
19 action became ineffective pursuant to subdivision (b) of Government Code section 11346.4 (i.e.,
20 the adoption, amendment, or repeal of the regulation proposed in the notice was not completed
21 within one year).

22 **INTERROGATORY NO. 9:**

23 Provide the calculations, including explanation of what is represented by each piece of
24 data used in such calculations, that was relied on in making the 2002 claim that the "average
25 processing cost" for dealers' records of sale applications was \$15.09. (Though not required, it is
26 noted that this statement is made on AG-00102, which was produced with Defendants' initial
27 disclosures in the matter *Bauer v. Harris*, United States District Court for the Eastern District of
28 California, Case No. 1:11-cv-1440-LJO-MJS, and a copy thereof is attached hereto as Exhibit 1.)

1 **RESPONSE TO INTERROGATORY NO. 9:**

2 Defendants object to this interrogatory. It is not full and complete in and of itself,
3 contains subparts, and is compound. This interrogatory is also objectionable because it requires
4 referring to other documents in order to respond. Defendants also object to this interrogatory
5 because it seeks irrelevant information from a point in time more than 10 years ago, and any
6 challenge to the amount of the DROS fee as of 2002 is stale and barred due to the passage of
7 time.

8 Without waiving these objections, defendants respond as follows: After a diligent search
9 and reasonable inquiry, defendants have not been able to identify the requested data.

10 **INTERROGATORY NO. 10:**

11 Provide the calculations, including explanation of what is represented by each piece of
12 data used in calculations, that the following statement was based on, which was made in 2004:
13 “The proposed \$19 fee is commensurate with DOJ’s processing costs of \$19 per DROS.”
14 (Though not required, it is noted that this statement is made on AGRFP000399, which was
15 produced by Defendants in this case, and a copy thereof is attached hereto as Exhibit 2.)

16 **RESPONSE TO INTERROGATORY NO. 10:**

17 Defendants object to this interrogatory. It is not full and complete in and of itself,
18 contains subparts, and is compound. This interrogatory is also objectionable because it requires
19 referring to other documents in order to respond. Defendants also object to this interrogatory
20 because it seeks irrelevant information from a point in time more than 10 years ago, and any
21 challenge to the amount of the DROS fee set in 2004 is stale and barred due to the passage of
22 time.

23 Without waiving these objections, defendants respond as follows: After a diligent search
24 and reasonable inquiry, defendants have not been able to identify the requested data.

25 **INTERROGATORY NO. 11:**

26 Provide the calculations, including explanation of what is represented by each piece of
27 data used in such calculations, supporting the claim, made in 2010 that \$14.00 was
28 “commensurate with the actual cost of processing a DROS.” (Though not required, it is noted that

1 this statement is made on AG-00001, which was produced with Defendants' initial disclosures in
2 the matter of *Bauer v. Harris*, United States District Court for the Eastern District of California,
3 Case No. 1:11-cv-1440-LJO-MJS, and a copy thereof is attached hereto as Exhibit 3.)

4 **RESPONSE TO INTERROGATORY NO. 11:**

5 Defendants object to this interrogatory. It is not full and complete in and of itself,
6 contains subparts, and is compound. This interrogatory is also objectionable because it requires
7 referring to other documents in order to respond. Defendants also object to this interrogatory
8 because it seeks irrelevant information and is based on an apparent statement made in connection
9 with the promulgation of a regulation that ultimately did not occur. Indeed, any challenge to that
10 rulemaking process that occurred more than five years ago is stale and barred due to the passage
11 of time.

12 Without waiving these objections, defendants respond as follows: After a diligent search
13 and reasonable inquiry, defendants have not been able to identify the requested data.

14 **INTERROGATORY NO. 12:**

15 State the name of and contact information for each person who participated in the review of
16 "the revenues into and expenditures out of the DROS account" as part of CAL DOJ's 2010
17 rulemaking to reduce the DROS FEE from \$19.00 to \$14.00 (Though not required, it is noted that
18 this statement is made on AG-0001, which was produced with Defendants' initial disclosures in
19 the matter of *Bauer v. Harris*, United States District Court for the Eastern District of California,
20 Case No. 1:11-cv-1440-LJO-MJS).

21 **RESPONSE TO INTERROGATORY NO. 12:**

22 Defendants object to this interrogatory to the extent it seeks information protected by the
23 attorney-client privilege, work product doctrine and the official information, law enforcement and
24 executive privileges.

25 Without waiving these objections, defendants respond as follows: Stephen Lindley, Chief
26 of the Bureau of Firearms, and David Harper, Deputy Director of Administration. Both of these
27 individuals may be contacted through the undersigned counsel.

EXHIBIT 7

1 KAMALA D. HARRIS
 Attorney General of California
 2 STEPAN A. HAYTAYAN
 Supervising Deputy Attorney General
 3 ANTHONY R. HAKL
 Deputy Attorney General
 4 State Bar No. 197335
 1300 I Street, Suite 125
 5 P.O. Box 944255
 Sacramento, CA 94244-2550
 6 Telephone: (916) 322-9041
 Fax: (916) 324-8835
 7 E-mail: Anthony.Hakl@doj.ca.gov
Attorneys for Defendants and Respondents

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

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

**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 THIRD AMENDED
 RESPONSES TO SPECIAL
 INTERROGATORIES (SET THREE)**

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

1 **RESPONSES TO SPECIAL INTERROGATORIES**

2 **INTERROGATORY NO. 15:**

3 State how the "Y-T-D Expenditures" for "Civil Service-Permanent" of \$4,712,132.98,
4 stated on AGRFP000003, was calculated, including the position title (e.g., "Special Agent
5 Supervisor-Department of Justice[,] "Criminal Identification Specialist II[,] or "Temporary
6 Help" for each value that was utilized in such computation.

7 **RESPONSE TO INTERROGATORY NO. 15:**

8 The requested statement of calculation appears on the attached document numbered
9 AGROG000013.

10 **INTERROGATORY NO. 16:**

11 If DEFENDANTS (as sued herein, "DEFENDANTS" refers to Defendants Stephen Lindley
12 and Kamala Harris) contend that, as a general principle, it is not possible to identify whether a
13 portion of a CAL DOJ (as used herein, "CAL DOJ" refers to the California Department of
14 Justice, including the office of Attorney General, and all persons working for or at the direction of
15 the California Department of Justice) employee's salary was paid for out of the DROS SPECIAL
16 ACCOUNT (as used herein, "DROS SPECIAL ACCOUNT" refers to the portion of the state's
17 General Fund wherein DROS FEE [as used herein, "DROS FEE(S)" refers to the charge collected
18 pursuant to SECTION 28225] funds are deposited) in a given fiscal year, please explain such
19 contention.

20 **RESPONSE TO INTERROGATORY NO. 16:**

21 Defendants object to this interrogatory because it seeks irrelevant information. Defendants
22 also object to the misleading phrasing of the interrogatory, which does not completely and
23 accurately reflect State or Department funding and how employees are paid.

24 Without waiving this objection, defendants respond as follows: Defendants do not make
25 this contention at this time.

26 **INTERROGATORY NO. 17:**

27 State the total amount of DROS SPECIAL ACCOUNT funds spent on salary for attorneys,
28 limited to money expended during fiscal year 2013/2014.

1 **RESPONSE TO INTERROGATORY NO. 17:**

2 Defendants object to this interrogatory because it seeks irrelevant information.

3 Without waiving this objection, defendants respond as follows:

4 Approximately \$181,486.29. This figure includes salary and benefits.

5 **INTERROGATORY NO. 18:**

6 State the total amount of DROS SPECIAL ACCOUNT funds spent on salary for attorneys,
7 limited to money expended during fiscal year 2005/2006.

8 **RESPONSE TO INTERROGATORY NO. 18:**

9 Defendants object to this interrogatory because it seeks irrelevant information.

10 Without waiving this objection, defendants respond as follows:

11 Defendants are unable to state the requested total amount. After a diligent search and
12 reasonable inquiry, defendants have not located the relevant data. Defendants therefore are
13 informed and believe that the relevant data no longer exists.

14 **INTERROGATORY NO. 19:**

15 Explain CAL DOJ's current policy as to how the Department of Legal Services obtains
16 funding to cover the cost of providing lawyers when it provides lawyers to defend employees of
17 Bureau of Firearms (including predecessor r versions thereof, e.g., the Firearms Division),
18 including but not limited to when such representation is provided pursuant to Government Code
19 section 11040.

20 **RESPONSE TO INTERROGATORY NO. 19:**

21 Defendants object to this interrogatory because it seeks irrelevant information. Defendants
22 also object to the phrase "Department of Legal Services." There is no such Department.
23 Defendants also object to the vague and ambiguous phrase "obtains funding to cover the cost of
24 providing lawyers when it provides lawyers to defend employees of Bureau of Firearms."

25 Without waiving this objection, defendants respond as follows:

26 The Government Law Section, as part of the Department of Justice, works within the state
27 budget process to obtain the financial resources necessary to operate. The General Fund and the
28 Legal Services Revolving Fund provide those resources. To the extent additional resources are

1 **INTERROGATORY NO. 23b:**

2 Explain the meaning of, and any distinction(s) among, CAL DOJ Agency Codes 410, 420,
3 423; for the avoidance of doubt, these codes are used, at the least, as part of Position Numbers
4 (e.g., 419-510-7500-001) used by the CAL DOJ (see, e.g., AGI018).

5 **RESPONSE TO INTERROGATORY NO. 23b:**

6 Agency Code 419 concerns sworn positions; 423 concerns Bureau of Medical Fraud
7 positions; and 420 concerns all other positions. There is no Agency Code 410, which defendants
8 assume is a typographical error.

9 **INTERROGATORY NO. 24:**

10 State the total amount of expenditures attributed to tasks referred to in Penal Code
11 section 28225 for the fiscal year 2013-2014; to assist the responding parties, the type of
12 information sought hereby for fiscal year 2013-2014 was previously produced by CAL DOJ for
13 fiscal year 2001-2002 (as to section 28225's predecessor, section 12076(e), see AG-00097,
14 produced by the defendants in *Bauer v. Harris*, United States District Court for the Eastern
15 District of California, Case No. 1:11-cv-1440-LJO-MJS.)

16 **RESPONSE TO INTERROGATORY NO. 24:**

17 Defendants object to this interrogatory. It is not full and complete in and of itself, contains
18 subparts, and is compound. This interrogatory is also objectionable because it requires referring
19 to other documents in order to respond. The phrase "attributed to" is vague. It is not clear
20 whether plaintiffs seek information about expenditures that *DOJ* attributes to tasks referred to in
21 Penal Code section 28225 and/or expenditures that some other entity (i.e., the other entities
22 referred to in the statute) attributes to tasks referred to in Penal Code section 28225.

23 Without waiving these objections, and having met and conferred further with plaintiffs,
24 defendants respond as follows:

25 Defendants are unable to answer this interrogatory; however, defendants note that the
26 information previously produced by defendants for fiscal year 2001-2002 (i.e., the document
27 produced in the *Bauer* litigation and Bates numbered AG-00097) states a total amount of DROS
28

1 **RESPONSE TO INTERROGATORY NO. 27:**

2 Defendants object to this interrogatory. It is not full and complete in and of itself, contains
3 subparts, and is compound. This interrogatory is also objectionable because it requires referring
4 to other documents in order to respond. Perhaps most significantly, the phrase "accounting
5 designations" is vague and ambiguous and is not a phrase that is used on AGROG00012, which
6 plaintiffs refer to. Nor is AGROG00012 a copy of the most recent version of the relevant
7 document.

8 Without waiving these objections, defendants respond as follows:

9 After meeting and conferring with plaintiffs, defendants are unable to answer this
10 interrogatory. To explain, defendants did not use any "accounting designation" or other
11 descriptor during the relevant period to differentiate between program costs arising solely from
12 activities related to the possession of firearms, on the one hand, and costs arising solely from
13 activities *not* related to the possession of firearms, on the other hand. In other words, defendants
14 did not parse program costs in a "possession" versus "non-possession" fashion.

15 **INTERROGATORY NO. 28:**

16 List all accounting designations used by CAL DOJ during fiscal years 2010-2011 through
17 2013-2014, inclusive, for programs, services, and other activities that are funded from the DROS
18 SPECIAL ACCOUNT pursuant to Penal Code section 28225(b)(11), *limited to* designations
19 applicable to costs arising solely from CAL DOJ activities related to the possession of firearms.

20 **RESPONSE TO INTERROGATORY NO. 28:**

21 Defendants object to this interrogatory. It is not full and complete in and of itself, contains
22 subparts, and is compound. This interrogatory is also objectionable because it requires referring
23 to other documents in order to respond. Perhaps most significantly, the phrase "accounting
24 designations" is vague and ambiguous and is not a phrase that is used on AGROG00012, which
25 plaintiffs refer to. Nor is AGROG00012 a copy of the most recent version of the relevant
26 document.

27 Without waiving these objections, defendants respond as follows:
28

1 After meeting and conferring with plaintiffs, defendants are unable to answer this
2 interrogatory. To explain, defendants did not use any “accounting designation” or other
3 descriptor during the relevant period to differentiate between program costs arising solely from
4 activities related to the possession of firearms, on the one hand, and costs arising solely from
5 activities *not* related to the possession of firearms, on the other hand. In other words, defendants
6 did not parse program costs in a “possession” versus “non-possession” fashion.

7 **INTERROGATORY NO. 29:**

8 CAL DOJ’s Biennial Report of 2013-2014, at pages 18-19, refers to an “APPS case”
9 wherein “agents received an anonymous tip that an ex-felon was working as the manager and
10 firearms instructor at his family’s shooting range in Corona[;]” explain what made this scenario
11 an “APPS case[.]” including, but not limited to, how data from the Armed Prohibited Persons
12 System was used in this case.

13 **RESPONSE TO INTERROGATORY NO. 29:**

14 Defendants object to this interrogatory. It is irrelevant. It also seeks information protected
15 by the attorney-client privilege, work product doctrine and the official information, law
16 enforcement and executive privileges.

17 **INTERROGATORY NO. 30:**

18 CAL DOJ’s Biennial Report of 2013-2014, at pages 18-20, refers to and “APPS case”
19 wherein CAL DOJ “followed up on a possible ‘straw purchase[.]’” in November 2013, which led
20 to a search warrant being issued for the straw buyer’s residence, where contraband, accessible to
21 minor children, was found; explain what made this scenario an “APPS case[.]” including, but not
22 limited to, how data from the Armed Prohibited Persons System was used in this case.

23 **RESPONSE TO INTERROGATORY NO. 30:**

24 Defendants object to this interrogatory. It is irrelevant. It also seeks information protected
25 by the attorney-client privilege, work product doctrine and the official information, law
26 enforcement and executive privileges.

27
28

EXHIBIT 8

1 KAMALA D. HARRIS
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 ANTHONY R. HAKL, State Bar No. 197335
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 322-9041
6 Fax: (916) 324-8835
E-mail: Anthony.Hakl@doj.ca.gov
7 *Attorneys for Defendants and Respondents*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11
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
California Department of Justice, JOHN
CHIANG, in his official capacity as State
Controller, and DOES 1-10,**

21 Defendants and Respondents.
22

Case No. 34-2013-80001667

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

23 **PROPOUNDING PARTY:**

PLAINTIFFS

24 **RESPONDING PARTY:**

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

25
26 **SET NUMBER:**

ONE

27
28
Defendants Attorney General Kamala Harris and Bureau of Firearms Chief Stephen Lindley's
Responses to Requests for Production of Documents (Set One)
(34-2013-80001667)

GENT063

1 Without waiving these objections, defendants will comply with this request by producing
2 the relevant 2010 rulemaking file.

3 **REQUEST FOR PRODUCTION NO. 26:**

4 Each and every DOCUMENT referring to calculations utilized in the 2010
5 RULEMAKING PROCESS, excluding any DOCUMENT produced in response to a request
6 above.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

8 Defendants object to this request. It seeks information not relevant to the subject matter or
9 likely to lead to discovery of admissible evidence. It also seeks information protected by the
10 attorney-client privilege, work product doctrine and deliberative and executive process privileges.

11 **REQUEST FOR PRODUCTION NO. 27:**

12 The entire rulemaking file regarding the 2010 DROS RULEMAKING PROCESS,
13 excluding any DOCUMENT produced in response to a request above or in the matter *Bauer v.*
14 *Harris*, United States District Court for the Eastern District of California, Case No. 1:11-cv-1440-
15 LJO-MJS.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

17 Defendants object to this request. It seeks information not relevant to the subject matter
18 or likely to lead to discovery of admissible evidence.

19 Without waiving these objections, defendants will comply with this request by producing
20 the relevant 2010 rulemaking file.

21 **REQUEST FOR PRODUCTION NO. 28:**

22 Each and every DOCUMENT referring to cost calculations utilized in CAL DOJ' s
23 decision to set the DROS FEE at \$19.00, excluding any DOCUMENT produced in response to a
24 request above.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

26 Defendants object to this request. It seeks information not relevant to the subject matter
27

28

1 or likely to lead to discovery of admissible evidence. It also seeks information protected by the
2 attorney-client privilege, work product doctrine and deliberative and executive process privileges.

3 **REQUEST FOR PRODUCTION NO. 29:**

4 The entire rulemaking file regarding the rulemaking process completed in 2004 resulting
5 in the DROS FEE being set at \$19.00, excluding any DOCUMENT produced in response to a
6 request above or in the matter *Bauer v. Harris*, United States District Court for the Eastern
7 District of California, Case No. 1:11-cv-1440-LJO-MJS.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

9 Defendants object to this request. It seeks information not relevant to the subject matter
10 or likely to lead to discovery of admissible evidence.

11 Without waiving these objections, defendants respond as follows: After a diligent search
12 and reasonable inquiry, defendants have not located any responsive documents.

13 **REQUEST FOR PRODUCTION NO. 30:**

14 All DOCUMENTS wherein any aspect of the September 15, 2010, public hearing held as
15 part of the 2010 DROS RULEMAKING PROCESS is memorialized, including but not limited to
16 written notes, transcripts, emails, audio recording, or visual recordings, excluding any document
17 produced in response to a request above or in the matter *Bauer v. Harris*, United States District
18 Court for the Eastern District of California, Case No. 1 :11-cv-1440-LJO-MJS.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

20 Defendants object to this request. It seeks information not relevant to the subject matter
21 or likely to lead to discovery of admissible evidence.

22 Without waiving these objections, defendants will comply with this request by producing
23 the relevant 2010 rulemaking file.

24 **REQUEST FOR PRODUCTION NO. 31:**

25 Any written transcript, audio file, or other DOCUMENT that reflects statements made by
26 a CAL DOJ EMPLOYEE at a meeting open to the public, limited to statements concerning APPS
27

EXHIBIT 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

--o0o--

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

Plaintiffs and
Petitioners,

vs.

Case No. 34-2013-80001667

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.

DEPOSITION OF

STEPHEN J. LINDLEY

May 24, 2017

9:52 a.m.

1300 I Street
Sacramento, California

LAURIE D. LERDA, CSR No. 3649

1 I'm also referring to it as it existed in the
2 past when I believe it was numbered
3 Penal Code Section 12076.

4 Does that make sense?

5 A. Yes.

6 Q. Okay. I'm going to use the term 2005
7 rulemaking to refer to a rulemaking that increased
8 the DROS fee from \$14 to \$19.

9 Does that make sense?

10 A. Yeah. I thought it was 2004.

11 MR. HAKL: Yeah, that was my recollection,
12 too.

13 MR. FRANKLIN: I think it actually ended the
14 final -- it is not --

15 MR. HAKL: Material.

16 BY MR. FRANKLIN:

17 Q. -- going to be determinative here, but,
18 yeah, I think it started and mostly was in 2004, but
19 I think the final file was 2005.

20 So, in any event, either 2004 or 2005 you
21 would know what I was talking about when I said 2005
22 rulemaking?

23 A. Yes.

24 Q. Okay. And then I'm also going to use the
25 term 2010 rulemaking to refer to a proposed

1 rulemaking that would have reduced the DROS fee from
2 \$19 to \$14 had it been completed.

3 Does that make sense?

4 A. No.

5 Q. Okay.

6 A. Because I don't think there was an intent to
7 lower it to \$14. I think there was an intent to

8 lower it or to look at the prospects of lowering it
9 in 2010.

10 Q. Okay. So, setting off that part.

11 If I said 2010 rulemaking was the rulemaking
12 primarily I think in 2010 that was intended to reduce
13 the DROS fee, would that make sense to you?

14 A. Yes, sir.

15 Q. Just for context, it's probably going to be
16 helpful for you to tell us your title and position
17 within the department from let's say 2009 forward if
18 you could do that for us.

19 A. Before we get into that, do we want to talk
20 about the recent change in the last few months?

21 Q. Yeah, we can do it that way.

22 Start with that.

23 A. So, for the majority of 2009 I was the
24 Assistant Chief in the Bureau of Firearms.

25 In December of 2009 I became the

1 A. Yes.

2 Q. Do you believe you were involved in the
3 drafting of this section?

4 A. I at least reviewed it.

5 Q. Okay. If I could have you turn to page --
6 I'm sorry. It's the bottom of page 18 the line that
7 says: "Significant APPS cases include the
8 following:" Do you see that line?

9 A. Yes, sir.

10 Q. When you at least reviewed this document,
11 did you have an understanding of what the phrase
12 APPS cases was intended to mean?

13 A. I have my reference to what I believe APPS
14 means, yes.

15 Q. Okay. But specifically APPS cases that
16 phrase, do you have an understanding of what that
17 phrase means?

18 A. Yes.

19 Q. And what is that understanding?

20 A. So APPS cases are individuals who have been
21 identified as being prohibited and then identified as
22 having firearms. They're both armed and prohibited.

23 Q. And would those people have necessarily
24 appeared on the APPS list?

25 A. I would say a vast majority of them are

1 identified through the APPS system and then go
2 through our analytical work before the agents go out
3 into the field, but that's not the sole manner in
4 which people can be identified as being armed or
5 prohibited.

6 Q. Okay. So, not as to a specific case or
7 incident, but can you give me an example of an APPS
8 case that is not from the APPS list?

9 A. We get a call from a citizen, an ex-wife,
10 sometimes, you know, family members about an
11 individual who is now prohibited for one reason or
12 another and that they have firearms that the
13 department might not necessarily know about.

14 Q. And then the department in that instance
15 may take steps to determine if that person should
16 have the firearm removed from that person's
17 possession?

18 A. Yes. And we have a duty for public safety.

19 MR. FRANKLIN: I believe that's the only
20 question I have for that document.

21 And then this is going to be marked as
22 Exhibit 3. And I will represent it is a
23 press release that I obtained from the
24 Attorney General's Web site.

25 (Exhibit No. 3 was marked)

1 firearms possession?

2 MR. HAKL: Objection, vague, just in terms
3 of I think I know what you mean by APPS list and
4 non APPS list based on your view of, you know, the
5 case, but to the extent you can clarify that, I would
6 appreciate it.

7 MR. FRANKLIN: So, my view of an APPS list
8 case is someone who their name actually appears on
9 the APPS list and part of that is implicitly that
10 they are at least indicated on the APPS list to be in
11 possession of a firearm that they are not legally
12 able to possess, and then based on that information,
13 special agents investigate further and potentially
14 remove the property.

15 Contrary to that would be, for example, that
16 what Mr. Lindley testified to today about the
17 possibility of getting a report from a
18 domestic partner saying that this person is dangerous
19 and has a firearm. That's outside of the APPS list
20 system.

21 I hope that clarifies it.

22 MR. HAKL: Yeah, yeah. Thank you.

23 THE WITNESS: So, we don't have any
24 empirical data so that this would be a very
25 experienced estimate, but 95% of the cases that we

1 work would be system-generated cases.

2 BY MR. FRANKLIN:

3 Q. And just to clarify the record,
4 system-generated means?

5 A. The APPS system generated the hit --

6 Q. Uh-huh.

7 A. -- identifying the person as being armed
8 prohibited. Analysts confirm that, agents confirm
9 that, and they go out into the field and investigate
10 that individual.

11 Q. To the best of your knowledge after SB 819
12 became effective, do you know if the department has
13 used DROS Special Account money to reimburse local
14 law enforcement of APPS based activities?

15 A. We have not as of yet.

16 Q. Is that something that's on the horizon?

17 A. I believe in the 2016-17 state budget it
18 authorized the department \$5 million to
19 reimburse local law enforcement agencies for
20 their assistance to the Bureau of Firearms in
21 their APPS work.

22 The criteria for that has not been set yet.

23 Q. Does the department fund the cost of defense
24 attorneys out of the DROS Special Account?

25 MR. HAKL: Vague as to the phrase

1 The funding of attorneys from the
2 DROS Special Account is not limited to matters that
3 are directly related to the DROS fee?

4 A. I think you need to break that down a little
5 bit more. I'm pretty sure what you're referring to,
6 but not a hundred percent.

7 Q. I'll try to rephrase it.

8 Maybe an example is better and this is a
9 hypothetical. So, let's say, for example, that there
10 is a lawsuit challenging the department's activities
11 at gun shows investigatory activities at gun shows.

12 Would that be the kind of lawsuit that would
13 be funded out of the DROS Special Account defending
14 that lawsuit?

15 A. Yes.

16 Q. Okay. How many cases are you aware of where
17 the money from the DROS Special Account was used to
18 pay for the defense of a firearm-related matter?

19 A. I could not give you that number. A lot.

20 Q. Would you be comfortable in estimating?

21 You know, we normally do the -- you know,
22 set the range. Would you say it's over 25?

23 A. I think you'd have to look at in what time
24 frame.

25 Q. Let's say the time frame that I gave which I

1 think was from 2009.

2 MR. HAKL: If you can. I mean he's entitled
3 to your best estimate.

4 THE WITNESS: Yeah.

5 MR. FRANKLIN: Yeah.

6 THE WITNESS: I would estimate around 50.

7 BY MR. FRANKLIN:

8 Q. This is similar to a previous question.

9 Is there a specific protocol for determining
10 whether or not a case is considered a firearm-related
11 case in this context?

12 A. If you can just make it a little bit clearer
13 for me.

14 Q. Okay. So, we've been discussing about how
15 the defense of some firearm-related cases are funded
16 from the DROS Special Account.

17 And my question is:

18 Is there a particular way in which the
19 department determines a new case that is brought
20 whether or not it is firearms-related and should be
21 funded out of the DROS Special Account versus is not?

22 A. Maybe this seems a simple answer, but if it
23 deals with the Bureau of Firearms for the most part
24 we're funded through the, you know, the DROS account
25 and two other funds so it would -- it would be paid

1 Q. So, do you have any understanding as to how
2 much DROS Special Account money has been spent
3 defending firearm-related litigation in say the last
4 ten years?

5 A. Off the top of my head I don't. That's --
6 we probably have that documented someplace.

7 Q. Do you think it's reasonable to estimate
8 it's, you know, somewhere in the millions?

9 A. It's in the millions.

10 Q. You say that definitively.

11 A. Yes.

12 MR. HAKL: You guys bring a lot of lawsuits.

13 BY MR. FRANKLIN:

14 Q. I don't know who guys you're referring to.
15 Do you have an understanding as to whether
16 or not there's a way, a specific way for someone
17 reviewing department financial records to calculate
18 how much DROS Special Account money is spent on
19 attorneys in a given year?

20 A. Yes.

21 Q. Can you explain to me how that would be
22 done?

23 A. So there would be at least two ways.

24 The bureau has different line items in each
25 of our what we call our cost codes.

1 Q. So, for example, would work on SB 819 by the
2 Office of Legislative Affairs have been paid for
3 through the DROS Special Account?

4 A. Work by the attorneys in our leg office?

5 Q. Yes.

6 A. No. Should not have been.

7 Q. Okay. So, and I think I understand the
8 distinction. So, is it correct to say that outside
9 of the Office of Legislative Affairs there are
10 employees within the department who worked on
11 legislation and their time was paid for out of the
12 DROS Special Account?

13 A. So, I'll explain that a little bit.

14 Two entities that draw money out of the DROS
15 account is the Bureau of Firearms and our CJIS
16 Division.

17 So, if there's a legislation that comes
18 through, we have to produce a bill analysis for
19 both entities or both bureau and the division.

20 So, in the Bureau of Firearms we have staff
21 that would work on that and analyze the impact to the
22 department as it relates to the Bureau of Firearms
23 and their work is paid for out of the DROS account.

24 Q. Okay. And that's on the bureau side?

25 A. That would be --

1 So, I'm going to ask another question which
2 will further help me answer that and that is:

3 You recall we've talked earlier today about
4 the distinction I've made about what I consider to be
5 APPS list cases and other cases that may be similar
6 but don't directly derive from the APPS list.

7 You recall that distinction?

8 A. Yes.

9 Q. Okay. So, the issue we were just discussing
10 about how things are coded between the what I've
11 identified as the APPS list cases and the similar but
12 not so defined other cases, would there be any
13 distinction in recordkeeping about one versus the
14 other?

15 A. No.

16 Q. Okay. So, I reserve the right to think
17 about this a little bit more off the record, but I
18 suspect that's going to resolve some of this issue,
19 because until this moment right now I didn't know
20 that that was the case.

21 Borrow this.

22 So, one of the topics that you were
23 designated as Person Most Knowledgeable or Qualified
24 on was topic 16.

25 And what we were looking for on that is an

1 through the specific costs identified in
2 Penal Code Section 28225 and utilizing data as to
3 each one of those costs to generate the amount that's
4 going to be charged for the DROS fee.

5 So, the question is:

6 Does the department look at specific cost
7 amounts for the items listed in Penal Code 28225 when
8 it sets the DROS fee?

9 A. The DROS fee has been -- has already been
10 set since 2004.

11 Q. Right.

12 A. So it's not like we're reexamining it every
13 single year to increase it.

14 Q. How often does the department reexamine the
15 DROS fee -- the amount being charged for the DROS fee
16 rather?

17 A. I think it's as we look at the amount of
18 money that's coming in and amount of expenditures
19 going out, if we believe that \$19 fee is going to
20 cover those expenditures. And for the last 13 years
21 it has, even though the amount of work that we do has
22 probably quadrupled since then.

23 If you look at the size of the bureau back
24 in 2004 and you look at the size of the bureau now,
25 we've done an excellent job in maintaining that \$19

1 MR. FRANKLIN: Well, okay. So --

2 MR. HAKL: I mean he's -- he's -- he sounds
3 like he's doing the best that he can to me. I mean
4 your question gets back -- I think a good way to go
5 is this macro versus micro, even though that's vague,
6 but that's kind of how you approached it with
7 Mr. Harper I think.

8 MR. FRANKLIN: Right.

9 Well, I certainly don't agree with your
10 characterization and I do think that the responses
11 we're getting are not in line with the question.

12 I can literally go through 28225 and we can
13 look at every one of those costs and I can ask, you
14 know, at the last time the fee was considered did you
15 consider this. I think that's counterproductive, but
16 if that's what I have to do to find out the answer to
17 this question, I'll do it.

18 MR. HAKL: I just -- I just don't think
19 you're listening to his answers.

20 MR. FRANKLIN: I am listening to his
21 answers.

22 MR. HAKL: Okay.

23 MR. FRANKLIN: And what I'm hearing is an
24 answer that is not going to the question I ask.

25 My understanding is that the department

1 figures out the DROS fee or whether or not to change
2 it or analyzes it on whatever basis based on a macro
3 level review that is consists of basically three
4 elements: The current amount of money in the DROS
5 Special Account; the anticipated expenditures that
6 will be funded from the DROS Special Account; and
7 the anticipated revenues that will be going into the
8 DROS Special Account.

9 If Mr. Lindley tells me that that is
10 effectively an accurate description of how the
11 DROS fee is analyzed in the department, we're done
12 here. That question is resolved.

13 MR. HAKL: I'm not sure you asked him that.

14 BY MR. FRANKLIN:

15 Q. Well, I will ask it now.

16 A. Well, I've already answered that, but, yes,
17 we look at it at a macro level.

18 We take considerations of the other
19 expenditures that could come out of DROS for not
20 only, you know, Bureau of Firearms but CJIS, but we
21 don't get down into the fine, you know, the fine,
22 you know, nitty-gritty of that. And if we did, it
23 would cost a whole lot more money in order to operate
24 that program which would be passed along to the
25 DROS fee.

1 Q. No. No.

2 What I'm asking is:

3 Does the process only consider whether the
4 amount is sufficient to meet needs or does the
5 process also consider whether or not the amount at
6 any given time is well beyond what is anticipated to
7 be needed?

8 A. We have considered that in the past in the
9 2010 fee decrease regulation.

10 Q. Right. We'll definitely get there.

11 But I just want to make sure I understand
12 the policy now, because it will help when we set this
13 defined term, you know.

14 And, again, open to you suggesting one.

15 But the way I see it is that the department
16 does some kind of analysis to figure out whether or
17 not the currently charged DROS fee is either
18 insufficient or vastly more than is anticipated to be
19 needed to provide funding for the operations that are
20 funded out of the special account.

21 So I've said all that. I'm trying to get a
22 workable term here. Is there a workable term that
23 you can see for that concept?

24 A. So, I think we have more of a discussion
25 than maybe a term.

1 When we look at the costs associated with
2 that are going to be paid out of the DROS fee, that's
3 a lot of different costs.

4 We also have two other fee sources as well.

5 So, when we're just looking at the \$19 fee,
6 is that sufficient in order to cover costs. We also
7 have to have somewhat of a backup with that.

8 So, looking at if a catastrophe happens, we
9 need at least six months to a year of funding in the
10 DROS account in order to pay for even if we have to
11 start laying employees off, we have to go through a
12 certain state process. So is there going to be
13 funding there. So we always need somewhat of a
14 surplus.

15 Then you look at future anticipated cost.
16 IT costs, for instance. The DROS system itself was
17 last built in 1996. So, one of the examples of that
18 is look at your iPhone. Was that around in 1996? It
19 was not. So, we're using 1996 technology. We're
20 actually using probably 1994 or 1993 technology
21 because that's when the system was started.

22 So, we have to also anticipate future costs
23 that maybe are five or ten years down the road and do
24 we have sufficient funds in order to save up for
25 those changes or whose going to pay for those

1 changes. So that's part of the analysis.

2 At one time part of the analysis was we
3 thought we had an excessive amount in there and that
4 led to the 2010 rulemaking process. So it is a
5 consideration. Is it a consideration every year for
6 reduction, no, because we're not in that place in the
7 DROS surplus account or in the fee structure.

8 We've done a lot of things over the years in
9 order to cut costs associated with that process so we
10 don't have to raise the fee.

11 Recently I believe it was two thousand
12 and -- 2014 when long gun retention came into effect.
13 We also reduced the amount of fees that are being
14 paid for multiple gun purchases.

15 So, prior to that date if you purchased
16 three or four rifles at one time, you paid a DROS fee
17 for each one of those rifles for one background
18 check.

19 Now we just charge for one background check
20 for multiple firearms. That's a savings to the
21 gun owners or other prospective gun owners and that
22 has impacted our DROS account, because we're losing
23 about 10 percent of revenue generation on an annual
24 basis since then.

25 So those are all the things that go into

1 we've gotten from the court.

2 Were you involved in the 2010 rulemaking?

3 A. Yes.

4 Q. When did you first become involved in that?

5 A. Since its inception.

6 Q. Do you remember approximately when that
7 was?

8 A. No.

9 I remember Dave Harper, myself, at that time
10 Chief Will Cid, maybe a couple other people, we had a
11 discussion about a letter that the department
12 received from then Assembly Member Jim Nielsen about
13 the surplus in the DROS account.

14 Q. Okay. That was actually one of my next
15 questions. So, is it fair to state that
16 Assemblyman Nielsen -- then Assemblyman Nielsen's
17 inquiry about the DROS surplus was at least one of
18 the factors in moving forward on the 2010 rulemaking?

19 A. I think that started any discussion and
20 examination of the DROS fee, yes.

21 Q. Approximate -- so I believe the letter is
22 2009. But does that -- fall 2009.

23 Does that roughly sound like the right time
24 frame for the communication you were discussing?

25 A. Yes. I can't give you a month, but within a

1 BY MR. FRANKLIN:

2 Q. Maybe I'm going to state it this way.

3 At the time of the commencement of the
4 2010 rulemaking discussion, you were the highest
5 level person in the Bureau of Firearms?

6 A. I was either the highest level or the second
7 highest.

8 Q. Okay. And ultimately the bureau did
9 institute a rulemaking on the potential reduction of
10 the DROS fee, correct?

11 A. I would use a different term.
12 We went through the process.

13 Q. And was that largely based on what
14 Senator Nielsen had identified?

15 A. I wouldn't say largely based.
16 I mean he focused our attention on it and
17 then we put attention towards the issue and it was
18 decided by the administration at the time to look
19 into the merits of reducing the fee.

20 Q. Okay. The reason I'm trying to make sure I
21 got all the players -- I have all the players here is
22 my memory is that -- well, my memory and my note in
23 front of me is that in the Bauer matter you had
24 mentioned that you were instructed to do it. And I
25 didn't know if you meant you were instructed by the

1 Senate -- the assemblyman or if you meant you were
2 instructed by someone in your chain of command.

3 A. It would have been in my chain of command
4 here at the department. We don't have to take the
5 instructions from the legislators, although, we take
6 their opinions and their guidance there.

7 So, Senator Nielsen, to use a euphemism, he
8 pushed the, you know, the cart kind of down the hill,
9 and then it gained speed from there.

10 MR. FRANKLIN: Okay. So, I'm going to
11 introduce this just to establish a date.

12 I don't think I even have any questions,
13 unless you think it's not an accurate copy.

14 (Exhibit No. 6 was marked)

15 BY MR. FRANKLIN:

16 Q. So, if I understand this document correctly,
17 this would be the opening document for what I refer
18 to as the 2010 rulemaking.

19 Is that a correct understanding?

20 A. But it doesn't have any signatures here so
21 it usually has signatures.

22 Q. Okay.

23 A. But so you're just referring to the
24 July 9th.

25 Q. Either 9th or 23rd. I don't -- I guess the

1 Rulemaking if I understand it correctly basically has
2 two proposals in it.

3 One is to reduce the DROS fee and the other
4 is to set up a DROS fee review process.

5 Is that a fair characterization?

6 A. Yes. But there was a reason that we were
7 dropping it to \$14.

8 Q. Okay. What was the reason?

9 A. We were going to I guess for lack of a
10 better term "burn off" some of the surplus by
11 putting the program into deficit and thereby taking
12 money out of the DROS surplus in order to pay for
13 operating costs. So we get the DROS surplus down to
14 an agreed upon six months to one year operating
15 amount and then after that set the fee what would be
16 commensurate with an annual operation of a budget
17 and the fee structure.

18 Q. So, let me make sure I understand this.

19 Was the \$14 amount in the scenario you just
20 laid out, was the \$14 amount a temporary amount to as
21 you say "burn off" surplus or was it the amount to be
22 in place after the surplus was burned off?

23 A. We would have to see.

24 So, what we needed to look at and I think it
25 was in the part of the letter from senator or, I'm

1 Do you have an understanding as to why this
2 Final Statement of Reasons would be in the rulemaking
3 file?

4 A. No.

5 Q. Is it your understanding that a "Final
6 Statement of Reasons" is normally issued after the
7 department has made a final decision to adopt a
8 regulation?

9 A. That sounds reasonable, but I don't know
10 that for sure.

11 Q. That's all I have for that document.

12 Do you know if this rulemaking was ever sent
13 to the Office of Administrative Law?

14 A. I don't believe that it was.

15 Q. Do you know why it was not sent to the
16 Office of Administrative Law?

17 A. I know there was a transition between the
18 two administrations from the Attorney General Brown
19 Administration and Attorney General Harris
20 Administration and it was left for the Harris
21 Administration to review.

22 MR. HAKL: I mean No. 6, Exhibit No. 6 is
23 stamped by OAL.

24 MR. FRANKLIN: I mean we're already -- I
25 think we're already beyond the question.

1 MR. HAKL: Right.

2 MR. FRANKLIN: So, I don't have any other
3 OAL questions for him.

4 MR. HAKL: Right. Okay.

5 I mean having -- I mean --

6 MR. FRANKLIN: I think we're beyond it.

7 MR. HAKL: Okay.

8 THE WITNESS: But still I mean there's no
9 signatures on this from --

10 MR. FRANKLIN: So, yeah. I'm just -- I'm
11 working with what is available to me.

12 MR. HAKL: No. I'm just trying to --

13 MR. FRANKLIN: Well, I don't have any other
14 OAL questions.

15 MR. HAKL: All right.

16 BY MR. FRANKLIN:

17 Q. Okay. So we were talking about the change
18 in leadership at the department.

19 After the change in leadership what happened
20 to the 2010 rulemaking?

21 A. It was never adopted obviously.

22 Q. Was there a decision not to adopt it?

23 A. I'm assuming there was because it wasn't.
24 But that decision was made well beyond my grade.

25 Q. Do you have an understanding as to why the

1 rulemaking was not adopted?

2 A. From hearsay.

3 Q. It's still relevant in a deposition.

4 A. They wanted to move forward. There was a
5 number -- not many people liked the idea of reducing
6 the DROS fee for one reason or another. There were
7 ideas about using the surplus DROS fee in order to
8 pay for APPS enforcement and that's the way the
9 administration wanted to go.

10 Q. When you were working on the 2010
11 rulemaking, SB 819 came to your attention?

12 A. No. 819 didn't start until 2011.

13 This rulemaking process that we're working
14 on was in 2010.

15 Q. Right.

16 So, in my mind the process was ongoing until
17 it was abandoned or whatever term you want to use to
18 signify that the rulemaking was definitively not
19 going to be adopted.

20 So, did you cease having any
21 responsibilities as to the 2010 rulemaking before
22 your work on SB 819 started?

23 MR. HAKL: Vague.

24 I don't understand the question, but you may
25 answer it.

1 Q. And so is it fair to state in the rulemaking
2 that the department concluded that at the time,
3 because I understand these things change over time,
4 the bracket was that \$14 appeared to be more than was
5 currently required but at the same time leaving it at
6 \$14 forever was likely to be insufficient?

7 A. And that's what we stated that we're going
8 to need the ability in order to increase decrease
9 over time based on revenue generation from one year
10 and some of our predictions for revenue in the next
11 subsequent years.

12 Q. During the 2010 rulemaking were there any
13 like recorded calculations performed about how --
14 whether or not a surplus would continue to grow under
15 a \$19 DROS fee?

16 A. I don't know if there was any calculations,
17 but we saw the \$19 fee structure that the -- that
18 there was additional surplus at the end of every
19 fiscal year.

20 MR. FRANKLIN: We'll go off the record.

21 (Whereupon, a brief recess was taken)

22 BY MR. FRANKLIN:

23 Q. Do you recall if the department chose to
24 delay making a final decision on the 2010 rulemaking
25 until after the November 2010 election?

1 A. I know that they wanted -- because of the
2 transition, they didn't want to do something that was
3 going to affect the next administration and that was
4 done on a variety of different issues.

5 Q. This probably overlaps a little bit with
6 something you said previously, but do you know what
7 the process was for the department's decision to
8 abandon for lack of a better term the 2010
9 rulemaking?

10 A. I think they wanted to use the funds for
11 other reasons in conjunction with legislation
12 proposed by Senator Leno.

13 Q. Do you know if there was ever any public
14 explanation from the department regarding the end of
15 that 2010 rulemaking process?

16 A. I don't know that.

17 Q. And then there's a second part of the
18 proposed rulemaking regarding the annual review of
19 the DROS Special Account.

20 Do you remember any separate discussion
21 about why that part of the rulemaking would be
22 abandoned?

23 A. I mean the entire rulemaking package was --
24 did not move forward so...

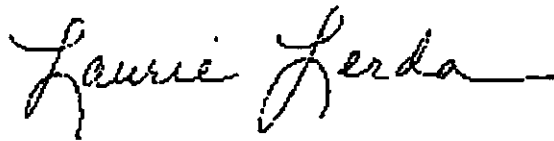
25 Q. The reason I'm asking is because I could at

1 REPORTER'S CERTIFICATION

2
3 I, Laurie D. Lerda, a Certified Shorthand
4 Reporter in and for the State of California, do
5 hereby certify:

6
7 That the foregoing witness was by me duly sworn;
8 that the deposition was then taken before me at the
9 time and place herein set forth; that the testimony
10 and proceedings were reported stenographically by me
11 and later transcribed into typewriting under my
12 direction; that the foregoing is a true record of the
13 testimony and proceedings taken at that time.

14
15 IN WITNESS WHEREOF, I have subscribed my name
16 this 1st day of June, 2017.

17
18 

19
20 Laurie D. Lerda, CSR No. 3649

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO BRANCH COURTHOUSE

BARRY BAUER, STEPHEN
WARKENTIN, NICOLE FERRY,
LELAND ADLEY, JEFFREY HACKER,
NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., CALIFORNIA
RIFLE AND PISTOL ASSOCIATION
FOUNDATION, HERB BAUER
SPORTING GOODS, INC.,

Plaintiffs,

vs. Case No.
1:11-cv-01440-LJO-MJS

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.

DEPOSITION OF
STEPHEN J. LINDLEY

February 21, 2014

10:38 a.m.

1300 I Street

Sacramento, California

Daniel E. Blair, CSR No. 4388

1 level.

2 Q. BY MR. FRANKLIN: Well, okay. Let me ask you
3 this question: In terms of the implementation of APPS,
4 who above you would have the ability to make policy
5 determinations?

6 A. Who also has the ability to make policy
7 determinations?

8 Q. That's right.

9 A. My union supervisor, Greg (inaudible) Wallace,
10 our Chief Deputy Attorney General, Nathan Barankin, and
11 the Attorney General herself.

12 Q. Could you put an estimate, a percentage, on how
13 much of your workload is related to APPS?

14 A. Not trying to be difficult. On a daily basis
15 or just, say, on a monthly basis or a yearly basis?
16 Because it kind of changes from --

17 Q. Okay. Well, that's --

18 A. Some days it's a hundred percent, some days
19 it's, you know, five percent.

20 Q. That's a fair response. Let's say on a monthly
21 basis.

22 A. 25 percent, give or take.

23 Q. Is there any aspect, particular aspect of
24 overseeing APPS that stands out in your mind as being
25 the one that requires the most work from you?

1 A. In July or in April?

2 Q. When you started the job. So in July.

3 A. Yes.

4 Q. Was participation in the APPS program something
5 you considered as a positive in terms of taking this new
6 position?

7 A. Yes.

8 Q. Was it specifically something you were
9 interested in doing, that is, working on APPS
10 enforcement?

11 A. It was one of.

12 Q. What was it about working on APPS enforcement
13 that made it of interest to you?

14 A. Proactive, gives a direct public safety
15 benefit.

16 Q. Shifting gears a little bit, the APPS -- APPS
17 is handled separately from firearm purchase background
18 checks; is that right? They're handled by different
19 groups within the Bureau of Firearms?

20 A. They are handled by different units, yes.

21 Q. Just as a general question of nomenclature, is
22 the smallest division term utilized at the Bureau of

23 Firearms a unit?

24 A. I would say team.

25 Q. And then unit would be above that?

1 Q. Would you think it's safe to say there was less
2 than ten?

3 A. Yes.

4 Q. And would it be possible to approximate how
5 many people would be on average on an SB 950 team?

6 A. Again, that would vary depending on the
7 geography.

8 Q. Okay. So, for example, would you have more
9 people on a team in an area that had more population
10 density?

11 A. That would be a logical reference, but . . .

12 Q. No, didn't work that way? Okay.

13 Do you know if the SB 950 units, did they have
14 any type of accounting line item that was just for them?

15 A. Don't know at the time.

16 Q. Would they be -- would members of the SB 950
17 units, would they be -- well, strike that.

18 Based on your understanding, what -- now I have
19 to remember if we're talking about 2000 -- pre-2006,
20 this is all pre-board or Bureau going into the
21 department of -- the law enforcement.

22 A. You have --

23 Q. So . . .

24 A. You have a couple of things there.

25 Q. Yeah.

1 A. One, it was a division, not a bureau.

2 Q. Right.

3 A. I wasn't here.

4 Q. Right.

5 A. And any enforcement of whether it's SB 950 or

6 APPS was a general fund process back then.

7 Q. And that is where I was going with that. It

8 was a general fund process.

9 And then the people who were actually
10 performing as part of the SB 950 units, generally
11 speaking, who would -- what -- who would they be
12 reporting to?

13 MS. GRANGER: Objection. Vague.

14 THE WITNESS: I'm not quite following you on
15 that -- on that one again.

16 Q. BY MR. FRANKLIN: So at this time we have the
17 firearms division; is that right?

18 A. Yes.

19 Q. And the firearms division had -- did it have
20 sub-entities below it, as part of it, I should say?

21 A. There's not much structural change between the
22 division and the Bureau.

23 Q. Okay.

24 A. The main two or the main few changes is it's
25 not a stand-alone division. At that time, there was

1 during that time frame, it was a general fund.

2 Q. Is it your understanding that prior to 2013,
3 all costs regarding the maintenance and use of the APPS
4 database were funded out of the general fund?

5 MS. GRANGER: Objection. Vague as to
6 maintenance and use.

7 You can answer, if you understand.

8 THE WITNESS: Well, I don't think it's an
9 accurate statement.

10 Q. BY MR. FRANKLIN: Okay. Can you identify what
11 is not accurate?

12 A. I believe it was sometime in 2012 is when the
13 governor switched the funding source of APPS from
14 general fund to special fund under DROS.

15 Q. Okay. Was that switch that you just referred
16 to, was that a switch that was legislative?

17 A. It either was a legislative bill that -- I
18 believe that was Senate Bill 809 under Senator Leno,
19 that made some changes to the Penal Code to authorize
20 the use of DROS funding for firearm enforcement. And
21 then the governor himself -- I don't know the political
22 mechanism behind that -- made that switch sometime in
23 2012.

24 Q. Okay. So let's assume that it happened in
25 2012. Prior to 2012, was the -- well, strike that.

1 Prior to 2012, were costs related to APPS

2 addressed with general fund money?

3 A. Yes.

4 Q. Is it your understanding that in that same

5 situation I just described, they, the APPS costs, were

6 funded solely with general fund money?

7 A. I believe so, yes.

8 Q. So I guess the flip side of that is prior to

9 2012, was the performance of APPS-related enforcement

10 funded in any part with the DROS fee money?

11 A. Not to my knowledge.

12 Q. So my understanding was that that change that

13 we were just discussing, the switch, actually happened

14 in 2013. But I don't want to hold up the deposition in

15 any way, because it doesn't matter whether or not it was

16 2012 or 2013. So I'm going to assume for the purpose of

17 the deposition that it is in fact 2012. Does that make

18 sense?

19 A. I believe it was -- the change was for fiscal

20 year '12-13 --

21 Q. Okay.

22 A. -- which implemented it July 1st --

23 Q. Okay.

24 A. -- of 2012.

25 Q. So we'll assume that's what it is.

1 been discussing, in the APPS context, do they provide
2 any services regarding overseeing of the database
3 specifically?

4 A. Yes and no. Criminal Identification
5 Specialists, like we said, the ones that are up here in
6 Sacramento, they're the ones that work the triggering
7 events. The intelligence specialists are oftentimes in
8 the field offices, and they assist the Agents in
9 preparing cases to go work. Once an individual is
10 identified as someone that we want to make contact with,
11 we still have a lot of followup to do beforehand to
12 ensure the safety of our Agents, the public and the
13 individual we're going to be contacting, so that we know
14 as much about them as possible.

15 Q. Okay. The next line refers to Special Agent
16 DOJ. Is that a position within the Bureau that would
17 provide APPS-related services?

18 A. Yes.

19 Q. What services would a Special Agent provide?

20 A. They are our front-line Agents that are going
21 out working APPS cases.

22 Q. Do Special Agents do investigatory work prior
23 to contacts?

24 A. Yes.

25 Q. And do they work with Criminal ID Specialists

1 A. At that time, I brought in the retired chief,
2 Will Cid, to help out on that. We also had one of our
3 field reps, Jeff Amador, and our non-sworn Assistant
4 Chief, Steve Buford. B-u-f-o-r-d.

5 Q. Do you recall if the rule-making on the
6 proposed reduction of the DROS fee ever occurred?

7 A. It did not.

8 Q. Do you know why?

9 A. During the public hearing comments, both in
10 person and written, everyone thought it was a bad idea
11 for various reasons.

12 Q. And so, to the best of your knowledge, the
13 reason that rule-making didn't occur is because the
14 public was against it?

15 A. Everyone who made a comment.

16 Q. Okay. That's a fair clarification.

17 So to the best of your memory, the reason the
18 rule-making we're talking about didn't occur is because
19 everyone who expressed an opinion on it from the public
20 was against it?

21 MS. GRANGER: Objection to the extent that it
22 misstates his testimony. But you can --

23 THE WITNESS: I was trying to -- I mean, I
24 don't remember anybody saying anything differently. I
25 mean, for different reasons, people did not like the

1 processing it.

2 Q. Okay. What would the job title be of a person
3 who is doing the analysis you just mentioned?

4 A. Would be a CIS I, CIS II or CIS III.

5 MS. GRANGER: What does CIS stand for?

6 THE WITNESS: It would be a Criminal
7 Identification Specialist.

8 MR. FRANKLIN: Good point. Thank you.

9 THE WITNESS: I, II, III is just the level of
10 their classification, based on their experience and
11 knowledge.

12 Q. BY MR. FRANKLIN: Uh-huh. Perhaps this is
13 obvious: Why is there a human review at this point?

14 A. I'm not a computer programmer, so I don't know
15 if I can talk about the different algorithms, but from
16 what I can tell, there's no real artificial intelligence
17 system out there that can run all the different checks
18 that we can.

19 Q. Is it fair to say that the Bureau does not rely
20 solely on the computer system to verify whether or not a
21 person should be on the APPS list?

22 A. That's why we call it a hit. It's a hit. So
23 on any given day, we might get between 200 and a
24 thousand triggering events; maybe only 30 or 40 people
25 out of those actually go into the system. And don't

1 quote me on the numbers.

2 Q. No, no, I'm just -- the point you were making,
3 and I think effectively, if I understood correctly, is
4 that only a small percentage of triggering events
5 actually turn out to be someone who should be on the
6 APPS list?

7 A. Correct.

8 Q. Do you know if any quality control has ever
9 been performed on the computer-only portion of the
10 cross-checking?

11 MS. GRANGER: Objection to the extent it goes
12 beyond the scope of this lawsuit.

13 You can answer.

14 THE WITNESS: What do you mean by quality
15 control? Of the system itself?

16 Q. BY MR. FRANKLIN: After-the-fact verification
17 that the system was working in the way it was intended.

18 A. Well, I think we have quality control every
19 time that the system identifies somebody, you know, our
20 analysts confirm it. And Agents go out there and do
21 indeed get the guns out of somebody who is prohibited.

22 Q. When the CIS employee gets a queue as you've
23 described, what do they do with the information in that
24 queue?

25 A. They pull the triggering event and attempt to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION ERRATA SHEET

Our Assignment No. 88497

Case Caption: Bauer, et al vs. Harris, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the 17 day of MARCH, 2014.

Stephen J. Lindley

DEPOSITION ERRATA SHEET

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page No. 17 Line No. 15 Change to: towards a
certain prohibition.

Reason for change: grammatical

Page No. 25 Line No. 11 Change to: operations
for a particular geographical region.

Reason for change: grammatical

Page No. 28 Line No. 9 Change to: I was a Special
Agent Supervisor assigned to the

Reason for change: Correct title

Page No. 31 Line No. 9 Change to: My Director,
Larry (inaudible) Wallace

Reason for change: Correct name

Page No. 83 Line No. 13 Change to: Special Agents
and mentor new supervisors,

Reason for change: Correct job duties

Page No. 83 Line No. 14 Change to: Mentor new
agents or for new job

Reason for change: correct job duties

Page No. 103 Line No. 17 Change to: as the process
went further, they needed documentation of

Reason for change: grammatical

SIGNATURE: _____

DATE: 02/17/14

Stephen J. Lindley

DEPOSITION ERRATA SHEET

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page No. 119 Line No. 16 Change to: money, I take
that as a bit of a personal offense,

Reason for change: grammatical

Page No. 124 Line No. 2 Change to: Will Cid, to
help out on that. We also had one of our

Reason for change: correct spelling of name

Page No. 163 Line No. 10 Change to: That's my
preferred way for doing it. But

Reason for change: grammatical

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____

DATE: 02.17.14

Stephen J. Lindley

EXHIBIT 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

--o0o--

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

Plaintiffs and
Petitioners,

vs.

Case No. 34-2013-80001667

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.

_____ /

DEPOSITION OF
DAVID SCOTT HARPER

January 30, 2017

8:46 a.m.

1300 I Street
Sacramento, California

LAURIE D. LERDA, CSR No. 3649

1 as a review of the fee. What I would say is on a
2 regular basis my budget unit we're constantly
3 reviewing the expenditures within the DROS Fund.

4 We're constantly evaluating the revenues
5 that are being generated within the DROS Fund and
6 we're trying to ensure that the fund stays in
7 balance; that the department doesn't illegally
8 overspend their appropriation from the legislature,
9 and if we start to identify potentials of funding
10 shortfalls in the future then we may have discussions
11 on how to solve that potential shortfall and those
12 discussions could, you know, include, you know, the
13 possibility of raising the fee.

14 BY MR. FRANKLIN:

15 Q. And that discussion is done on a macro
16 level; that is to say, it's the total amount of
17 revenue going in to the DROS Special Account and the
18 total amount of expenditure coming from the
19 DROS Special Account?

20 A. That's correct. We don't distinguish
21 between the individual fees that we spoke about and
22 what they support versus what the DROS Fund supports
23 in the context of the operations of the
24 Bureau of Firearms.

25 Q. So then that consideration in terms of

1 Q. In your experience and in your role at
2 DAS if -- strike that.

3 Does -- has DAS ever undertaken an analysis
4 of figuring out the actual cost to processing a
5 DROS?

6 A. Not since I've been here.

7 Q. Are you aware of anyone in the department
8 undertaking that type of analysis?

9 A. No.

10 MR. HAKL: I'm going to belatedly object.

11 Just I know it's on the document, but actual
12 cost of processing a DROS I'm not sure what that
13 means.

14 BY MR. FRANKLIN:

15 Q. Okay. So, just to close this out.

16 You don't have any opinion as to where this
17 conclusion about the \$14 being commensurate with the
18 actual cost of processing a DROS what data that
19 conclusion was based on?

20 Let me restate the question.

21 Were you aware of any information that
22 supports the contention here that \$14 would be
23 commensurate with the actual cost of processing a
24 DROS?

25 A. No.

1 (Exhibit No. 10 was marked)

2 BY MR. FRANKLIN:

3 Q. And I think a skim will probably be
4 sufficient.

5 Do you believe you were involved in making
6 this -- creating this document?

7 A. I've never seen this document before.

8 Q. That's all we have for that.

9 Am I correct in understanding that at
10 some point during the rulemaking process you and
11 Stephen Lindley worked together on reviewing
12 expenditures into or money going into and coming out
13 of the DROS account as it relates to that
14 rulemaking?

15 A. I don't recall a review as it relates to the
16 rulemaking, but Chief Lindley and I have reviewed
17 revenues and expenditures in the DROS Fund for a
18 number of years. I can't tell you that we did one
19 specifically related to this rulemaking. I can't
20 recall one.

21 Q. And it's that same macro level review that
22 we discussed previously, correct?

23 A. Yes. Yes.

24 Q. So, just to clarify the record.

25 Other than a macro level review, you're not

1 aware of any other review of the DROS Special Account
2 as it relates to the 2010 rulemaking?

3 MR. HAKL: I'm going to object to macro just
4 because that's the word that you introduced to the
5 record and it's vague and argumentative.

6 BY MR. FRANKLIN:

7 Q. If you have a more succinct way of referring
8 to that analysis of using expenditures -- total
9 expenditures going in and total expenditures going
10 out that analysis process I'm happy to use it.
11 That's just a concept that I think is most quickly
12 explained with the word "macro".

13 A. I would use "general" as opposed to "macro".

14 Q. Okay.

15 A. But I mean I understand the context of the
16 meaning when you use macro.

17 So, a specific more detailed analysis with
18 respect to the rulemaking, no.

19 Q. Okay. Do you have any recollection as to

20 \$14 as compared to \$19 being chosen as an amount
21 commensurate with the cost of processing DROS
22 applications?

23 A. Not in the context of the rulemaking
24 process. What strikes me is the \$14 seems to be the
25 amount that exists in statute, and prior to the

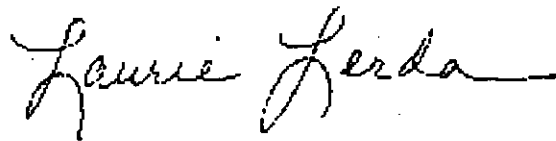
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATION

I, Laurie D. Lerda, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 7th day of February, 2017.



Laurie D. Lerda, CSR No. 3649

EXHIBIT 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

--oOo--

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

Plaintiffs and
Petitioners,

vs.

Case No. 34-2013-80001667

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.

DEPOSITION OF

JESSICA R. DEVENCENZI HOLMES

January 30, 2017

2:58 p.m.

1300 I Street
Sacramento, California

LAURIE D. LERDA, CSR No. 3649

1 became Senate Bill 819 and its relationship to those
2 proposed regulations?

3 A. No.

4 Q. Did you ever inquire -- well, strike that.

5 At the time SB -- before SB 819 became law,
6 did you know that the rulemaking process had started
7 on the DROS fee reduction?

8 MR. HAKL: Objection. Vague as to time.

9 Did you say at or before?

10 BY MR. FRANKLIN:

11 Q. I said before.

12 So, I didn't put a date on it, because I
13 think it was enacted October 9th, 2011.

14 Before October 9th, 2011, were you aware of
15 the rulemaking to reduce the DROS fee?

16 A. Yes. But -- yes.

17 But I thought it was my understanding that
18 that had occurred before the bill was introduced, but
19 maybe I have my timelines misunderstood.

20 Q. Your understanding was that it had been
21 introduced before the bill?

22 A. Yes. The rule -- all the rulemaking had
23 been done prior to the bill but...

24 Q. And was it your understanding that that
25 rulemaking was completed?

1 A. No.

2 Q. Your understanding it was open?

3 A. I -- almost abandoned I think but...

4 Q. Okay.

5 MR. HAKL: I see you -- Ms. Devencenzi, I
6 see you shrugging your shoulders and sort of like
7 eking out answers.

8 THE WITNESS: Yeah.

9 MR. HAKL: To the extent -- I mean you
10 should -- if you recall the answers, you should give
11 the information, but if your -- and he's entitled --
12 you're entitled to, you know, your best recollection
13 and your estimates and those kind of things, but,
14 you know, answer the questions asked as best you can.

15 But if you can't, you can't.

16 THE WITNESS: Okay.

17 BY MR. FRANKLIN:

18 Q. Did anyone ever provide to you any
19 explanation as to why the department would be
20 pursuing SB 819 and a DROS fee reduction at the same
21 time?

22 A. No.

23 Q. Okay. I think we're getting back to that
24 question we had some confusion on.

25 At some point do you believe you did a draft

1 of the proposed legislation?

2 A. Yes. I would have drafted.

3 Q. Do you believe you were the first person to
4 attempt to draft it in the department?

5 A. I don't remember.

6 Q. If I understood correctly, because firearms
7 was one of your areas that you would work in, it
8 would be the normal process that a bill like SB 819
9 which is a firearms-related bill would have been
10 drafted by you?

11 A. I typically drafted legislation.

12 Q. Do you remember anything about the drafting
13 process for this bill?

14 A. Not really.

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

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

19 Q. No.

20 A. I do.

21 Q. Do you remember why that was?

22 A. I do.

23 Q. What was that?

24 A. Can we take a break?

25 Can I take a break, because I'm --

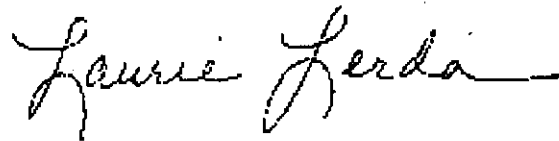
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATION

I, Laurie D. Lerda, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 7th day of February, 2017.



Laurie D. Lerda, CSR No. 3649

EXHIBIT 13

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF SACRAMENTO

3 ---o0o---

4 DAVID GENTRY, JAMES
5 PARKER, MARK MIDLAM,
6 JAMES BASS, and CALGUNS
7 SHOOTING SPORTS
8 ASSOCIATION,

9 Plaintiffs and
10 Petitioners,

11 vs.

12 Case No. 34-2013-80001667

13 KAMALA HARRIS, in Her
14 Official Capacity as
15 Attorney General for the
16 State of California;
17 STEPHEN LINDLEY, in His
18 Official Capacity as
19 Acting Chief for the
20 California Department of
21 Justice, BETTY YEE, in
22 Her Official Capacity as
23 State Controller for the
24 State of California and
25 DOES 1-10,

Defendants and
Respondents.

DEPOSITION OF

JESSICA R. DEVENCENZI HOLMES
Volume 2
Pages 97 through 134

May 24, 2017

8:41 a.m.

1300 I Street
Sacramento, California

LAURIE D. LERDA, CSR No. 3649

1 time ago.

2 Q. Do you recall there being discussions within
3 the department about whether or not adding the word
4 "possession" in and of itself just that word to
5 Section 28225 was sufficient to express the
6 legislative change that the department wanted via
7 SB 819?

8 A. I don't remember specific discussions, but
9 we certainly would have talked about whether it
10 addressed the department's -- whether it was a
11 sufficient clarification of the law.

12 Q. And do you remember any comments from within
13 the department that it was not a sufficient method to
14 address what the department was looking for via
15 SB 819?

16 A. Not that I recall.

17 Q. I think you answered this during your last
18 session. I'm just asking it again to set the
19 context.

20 Did you have a particular understanding of
21 what the department's goal was in being a sponsor of
22 SB 819?

23 A. Yes.

24 Q. And what was that goal?

25 A. It was to utilize the DROS fund for

1 the DROS fee via a regulation?

2 A. Yes.

3 Q. In the context of SB 819, did anyone at the
4 department tell you why the department was sponsoring
5 SB 819 instead of lowering the DROS fee?

6 A. Sorry. That question's a little bit
7 strange. Can you rephrase it?

8 Q. I can.

9 So, at the time you were working on SB 819,
10 did you know that there was a rulemaking that was
11 pending to reduce the DROS fee?

12 A. Yes.

13 Q. And did you have any understanding of the
14 interaction between those two issues; those two
15 issues being SB 819 and the rulemaking to reduce the
16 DROS fee?

17 A. Not really. I know that the rulemaking was
18 met with a lot of opposition and that the new
19 administration came in with a priority of clearing
20 that APPS backlog so...

21 I don't know if that answers your question,
22 but that's what I know.

23 Q. It does.

24 And as to the opposition, can you explain to
25 me what you mean by that?

1 that typical practice is that we would draft
2 legislation.

3 Q. Uh-huh.

4 A. With this bill I don't remember if there was
5 a draft out there. I think I testified to that
6 earlier.

7 Q. Uh-huh.

8 A. And then the final word being added to the
9 code section that final version of the legislation
10 was not something that I drafted.

11 Q. Okay.

12 A. At least the changes to the penal code.

13 Q. So, based on your best memory there was some
14 version of the bill drafted before it went to
15 Irwin Nowick?

16 A. I don't know. I don't remember.

17 Q. Okay.

18 A. Typically we -- typically we would have
19 drafted something. I think that's what I said
20 previously.

21 Q. My memory is that you said not that you
22 remember doing it, but based on the scope of your
23 work areas, one of which was firearm issues, it would
24 have been likely that you drafted it.

25 A. Yeah.

1 Q. Is that correct?

2 A. Yeah. Well, I likely would have drafted
3 something. I don't recall drafting anything. I
4 don't recall what it said --

5 Q. Sure.

6 A. -- if I did.

7 Q. I was just clarifying for the record,
8 because you were shaking your head or nodding your
9 head up-and-down, but I don't know that the reporter
10 got it.

11 MR. HAKL: It's as clear as mud.

12 BY MR. FRANKLIN:

13 Q. Do you have any recollection of anyone in
14 the department talking about the DROS fee reduction
15 rulemaking as it related to SB 819?

16 A. Not really.

17 Q. So, for example, you don't recall anyone
18 saying something along the lines of the rulemaking
19 was on hold until SB 819 got an up or down vote?

20 A. I don't recall anything like that.

21 Q. Were you ever provided access to data
22 regarding the cost of processing DROS applications?

23 A. No.

24 Q. Okay. I'm going to show you a document that
25 we already noticed. And I fully understand based on

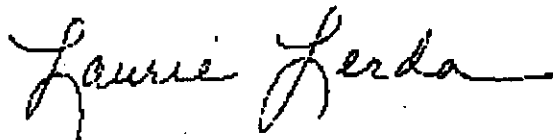
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATION

I, Laurie D. Lerda, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 31st day of May, 2017.



Laurie D. Lerda, CSR No. 3649

EXHIBIT 14

Biggs, London

From: Jessica Devencenzi <Jessica.Devencenzi@doj.ca.gov>
Sent: Wednesday, February 16, 2011 1:58 PM
To: Biggs, London
Cc: Marc LeForestier
Subject: Proposed Armed Prohibited Persons Legislation

London,

Thank you for your help with this. Here are some talking points:

This legislation **will not** increase the gun fees, expand the number of people who are subject to having their firearms confiscated, or place any additional limitations on an individual's right to own firearms.

This legislation **will** help to ensure that individuals who cannot legally possess firearms (felons and the mentally ill), do not have them--including the 18,000 armed prohibited individuals currently in California, that may have as many as 34,000 handguns and 1,590 assault weapons.

DOJ maintains the Armed Prohibited Person System (APPS), which cross-references people who can no longer possess firearms (felons, mentally ill, etc.) against gun licenses. Local authorities are then alerted to this fact so that the guns may be collected. APPS is funded through the Dealer Record of Sale Account (DROS), as specified in Penal Code 12076. Penal Code 12076, however, does not allow DOJ to use money from the DROS account to actually go out and confiscate these guns.

DROS draws its funding from the \$14.00 fee charged by dealers for every gun sold in California. As of January 31, 2011, DROS had a \$14,815,000.00 surplus. Late last week the Governor borrowed from DROS and it now has a \$3,300,000.00 surplus. The DROS fund, however, constantly has money from guns sales deposited.

DOJ would use approximately \$1,500,000.00 to \$2,500,000.00 from the fund to clear the backlog by compensating local jurisdictions, on a per transaction basis, for firearms confiscated from individuals on the APPS list and by providing additional funding to DOJ task forces to conduct sweeps of individuals on the APPS list.

The ongoing expense would be approximately \$1,000,000.00 a year to fund additional positions at DOJ to ensure the investigation of people on the APPS list.

DOJ has discussed the issue with prominent gun rights advocates. They report there is universal agreement that APPS enforcement needs to be funded. Funding for APPS plays into gun rights advocates view that the gun laws on the books are adequate, but need to be enforced; and they acknowledge this. While there is resistance (of varying levels of intensity) to using the DROS fund for this purpose, everyone we have spoken to has committed to a good faith dialogue on how best to fund the program.

We have not discussed the issue with law enforcement as yet, but are confident it would be strongly supported.

Jessica R. Devencenzi
Deputy Attorney General
Office of Legislative Affairs
Office of the Attorney General

LEGISLATIVE INTENT SERVICE (800) 666-1917



EXHIBIT 15

SB 819 (Leno) APPS Enforcement – Q & A

Why is the DROS account appropriate for funding enforcement of the APPS program?

Existing law authorizes DOJ to utilize DROS funds for *all 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 regulatory and enforcement activities related to *possession*. The Penal Code sections governing the Armed Prohibited Persons system are specifically referenced in section 16580 of the Penal Code. Given this, it is likely that DOJ can currently utilize these funds for the enforcement of APPS. This legislation simply clarifies that DOJ has the authority to ask for DROS funds through the normal budget process specifically for the enforcement of APPS.

Is there money in the DROS account to fund this legislation?

There is currently a \$5,500,000.00 surplus in the DROS account, which is enough to cover the (1) \$945,000 for five ongoing additional Special Agent positions to assist other DOJ Special Agents in investigating APPS offenders, and to assist local law enforcement agencies in training, setting up, and investigating local APPS offender sweeps throughout the State; and, (2) a one-time allotment of \$500,000 in funding to DOJ taskforces. These allocations will need to be requested and processed as a Budget Change Proposal (BCP) through the regular budget process.

What is the DROS fee currently?

\$19.00.

DOJ had a large surplus in the DROS fund, why wasn't the DROS fee reduced?

DOJ attempted to reduce the DROS fee last year from \$19.00 to \$14.00 and was met with opposition. In fact, in response to the regulations proposed one of the firearms groups called for an audit and opposed the reduction to \$14.00 on the grounds that they believe it should be reduced even further.

When was the DROS fee last raised?

Seven years ago.

Could this legislation lead to an increase in the DROS fee?

The DROS fund currently operates with a sufficient surplus to absorb the ongoing costs that will be requested in next year's BCP (\$985,000) without raising the DROS fee.

However, even if this were to become necessary in the future, DOJ would need to go through the regulatory process to change that fee.

Why has DOJ been resistant to an audit of the DROS fund?

DOJ has not been resistant to an audit and would do one if the Legislature requested one.

What is DOJ currently doing to enforce APPS?

DOJ currently funds APPS enforcement out of the general fund. They have only 20 agents doing this critical work, statewide. This legislation will give the Department of Justice the additional resources it needs to make a significant reduction in the number of illegally possessed firearms.

Why should firearms owners have to pay for APPS enforcement?

It is in everyone's interest to ensure that firearms are not in the possession of prohibited persons. However, law-abiding firearms owners have a particularly strong interest in this to help avoid gun ownership from becoming strongly associated with the random acts of deranged individuals. Moreover, the purpose of the bill is to strengthen enforcement of existing guns laws. A prospective gun owner pays a fee to determine whether he or she is eligible to purchase a gun (background check), it makes sense that the fee should apply to enforcement when those same individuals become "ineligible" due to criminal behavior or mental illness. Accordingly, there is a very close nexus between the DROS fund and the bill's intended purpose. Moreover, the bill is aligned with gun advocates' stated interest in heightened enforcement of existing gun laws and the alternative would be to place this additional burden on the tax payer at large.

Isn't this bill just a gun tax?

No. A tax is levied upon people for general purposes. A regulatory fee is assessed in connection with a person's participation in a regulated activity. However, it is permissible to enact a fee "for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public." (California Assn. of Prof. Scientists v. Dept. of Fish and Game (2000) 79 Cal. App.4th 935, 950.) Given this, utilizing DROS funds to ensure that felons and the mentally ill do not have firearms, seems to fall squarely within a regulatory purpose of the DROS fund.

This is analogous to fishing licensing fees for field enforcement activities by the Department of Fish and Game.

Plus, this bill does not raise any fee or make an appropriation. The bill simply gives DOJ the authority to request funding from this account through the normal budget process.



The bill only changes one word in the statute. Isn't adding the word 'possession' overly broad and ambiguous?

We added declarations and findings to make it clear that the bill is intended to address the APPS enforcement issue. The statute that governs the funding of enforcement related regulatory activities from the DROS account is specific and states that the activity must be related to the "sale, purchase, loan, or transfer" of a firearm. Given that APPS enforcement is not an activity specifically relating to the sale, purchase, loan or transfer of a firearm, the word 'possession' was necessary to allow DOJ to ask permission through the normal budget process to use these funds.

(Our sponsor is willing to amend the bill to say that the funds are specifically for APPS enforcement in the codified section of the bill, in contrast to simply the findings, but only if it gets us Republican support.)

Won't this bill just drain the DROS account?

No. This bill will not result in a draining of the DROS Fund. All funding for APPS enforcement must be approved through a Budget Change Proposal through the regular budget process.

Will this bill result in increased DROS fees?

No. This bill will not result in increased DROS fees. DROS fees can only be increased through the normal regulation process with a public comment period and sign off by the Attorney General. 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.



EXHIBIT 16

Biggs, London

From: Jessica Devencenzi <Jessica.Devencenzi@doj.ca.gov>
Sent: Wednesday, February 16, 2011 1:58 PM
To: Biggs, London
Cc: Marc LeForestier
Subject: Proposed Armed Prohibited Persons Legislation

London,

Thank you for your help with this. Here are some talking points:

This legislation **will not** increase the gun fees, expand the number of people who are subject to having their firearms confiscated, or place any additional limitations on an individual's right to own firearms.

This legislation **will** help to ensure that individuals who cannot legally possess firearms (felons and the mentally ill), do not have them—including the 18,000 armed prohibited individuals currently in California, that may have as many as 34,000 handguns and 1,590 assault weapons.

DOJ maintains the Armed Prohibited Person System (APPS), which cross-references people who can no longer possess firearms (felons, mentally ill, etc.) against gun licenses. Local authorities are then alerted to this fact so that the guns may be collected. APPS is funded through the Dealer Record of Sale Account (DROS), as specified in Penal Code 12076. Penal Code 12076, however, does not allow DOJ to use money from the DROS account to actually go out and confiscate these guns.

DROS draws its funding from the \$14.00 fee charged by dealers for every gun sold in California. As of January 31, 2011, DROS had a \$14,815,000.00 surplus. Late last week the Governor borrowed from DROS and it now has a \$3,300,000.00 surplus. The DROS fund, however, constantly has money from guns sales deposited.

DOJ would use approximately \$1,500,000.00 to \$2,500,000.00 from the fund to clear the backlog by compensating local jurisdictions, on a per transaction basis, for firearms confiscated from individuals on the APPS list and by providing additional funding to DOJ task forces to conduct sweeps of individuals on the APPS list.

The ongoing expense would be approximately \$1,000,000.00 a year to fund additional positions at DOJ to ensure the investigation of people on the APPS list.

DOJ has discussed the issue with prominent gun rights advocates. They report there is universal agreement that APPS enforcement needs to be funded. Funding for APPS plays into gun rights advocates view that the gun laws on the books are adequate, but need to be enforced; and they acknowledge this. While there is resistance (of varying levels of intensity) to using the DROS fund for this purpose, everyone we have spoken to has committed to a good faith dialogue on how best to fund the program.

We have not discussed the issue with law enforcement as yet, but are confident it would be strongly supported.

Jessica R. Devencenzi
Deputy Attorney General
Office of Legislative Affairs
Office of the Attorney General

LEGISLATIVE INTENT SERVICE (800) 666-1917



PROPOSED ARMED PROHIBITED PERSONS LEGISLATION

SPONSORED BY ATTORNEY GENERAL
KAMALA D. HARRIS

SUMMARY

This legislation would enhance the State's ability to ensure that individuals who cannot legally possess a firearm, in particular the mentally ill and convicted felons, do not have them in their possession.

PROBLEM

When Roy Perez shot and killed three people in Baldwin Park, his name was in the State's Armed Prohibited Person System (APPS). The Baldwin Park police were not checking APPS. And, even after this tragedy, due to lack of staff and resources, they still rarely access the system. This highlights the problem facing local jurisdictions—no resources to confiscate firearms from dangerous individuals who cannot legally possess them.

The California Department of Justice (DOJ) maintains APPS, an online database, to cross-reference persons who have ownership or possession of a firearm, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from having a firearm.

Authorized law enforcement agencies have access to APPS. DOJ populates

APPS with all handgun and assault weapon owners across the state and matches them against criminal history records to determine who might fall into a prohibited status. When a match is found, the system automatically raises a flag. In theory, local agencies and DOJ would then confiscate the weapons. When local agencies confiscate weapons, notice is sent to DOJ so that the individual can be removed from the list.

APPS is funded through an account that holds the fees charged by dealers for each firearm purchase. This is called the Dealer Record of Sale (DROS) account. Penal Code section 12076 allows the Department of Justice to use this account to fund the components of the on-line APPS program. Penal Code section 12076, however, does not fund DOJ or local agencies to confiscate unlawfully possessed firearms.

There are currently more than 18,000 armed prohibited people statewide, including convicted felons. 30 to 35 percent of prohibited people have been adjudicated mentally ill. Armed prohibited people are believed to hold up to 34,101 handguns and 1,590 assault weapons. Every day there are an additional 15 to 20 individuals added to APPS. Despite their best efforts, local and State law enforcement agencies do not have the funding or resources to keep up with this influx.



SOLUTION

This bill will add a subdivision to California Penal Code section 12076 to allow DOJ to use the DROS account to work with local agencies to ensure enforcement of all aspects of APPS, including the confiscation of weapons.

This subdivision will allow DOJ to:

1. Provide local law enforcement agencies with training on the APPS computer-based program;
2. Provide additional funding to DOJ taskforces to conduct sweeps of individuals on the APPS list;
3. Compensate local jurisdictions, on a per transaction basis, for firearms confiscated from individuals on the APPS list; and,
4. Fund additional positions within DOJ to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm.

This subdivision **will not** increase the amount of the DROS fee, or expand the number of people who are subject to having their firearms confiscated.

PRIOR LEGISLATION

AB 950 (Brulte, of 2001) required DOJ to develop and implement the "Armed Prohibited Persons File," to identify persons who have assault weapons or other firearms on or after January 1, 1991, as indicated by the DOJ Automated Firearms System, and who fall within a class that is prohibited from possessing firearms.

SPONSOR/SUPPORTERS

Sponsor: The California Attorney General
Support: None on file.
Opposition: None on file.

CONTACT

Jessica R. Devencenzi
Deputy Attorney General
State of California Department of Justice
Office of Legislative Affairs
(916) 322-6104
(916) 322-2630 FAX
Jessica.Devencenzi@doj.ca.gov



EXHIBIT 17

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0002
(916) 319-2002
FAX (916) 319-2102

DISTRICT OFFICE
280 HEMSTED DRIVE, SUITE 110
REDDING, CA 96002
(530) 223-6300
FAX (530) 223-6737

EMAIL
assemblymember.nielsen@assembly.ca.gov

Assembly California Legislature



JIM NIELSEN
ASSEMBLY MEMBER, SECOND DISTRICT

COMMITTEES
VICE CHAIR, APPROPRIATIONS
JUDICIARY
REVENUE AND TAXATION
RULES

August 27, 2009

Dave Harper
Deputy Director, DAS
Department of Justice
P.O. Box 944255
Sacramento 94244-2550

Dear Mr. Harper:

Thank you for your response to my earlier communication concerning the status of the Dealers Record of Sale Account of the General Fund (DROS).

Your response, however, has raised concerns relative to the size of the reported Reserve for Economic Uncertainties (surplus).

You have reported a surplus for the 2008-2009 fiscal year of \$8.348 million. Total revenues reported for the same period are \$11.301 million and total expenditures are \$11.496 million. Thus, the reported surplus is 73.86% of the year's total revenue, and 72.62% of the year's total expenditures.

Generally, state agencies maintain a surplus of 5%. You have reported a surplus that exceeds this amount by almost fifteen times.

California Penal Code section 12076 provides that the amount of the DROS fee charged to firearms buyers "...shall be no more than is necessary...." to fund specified costs.

If the Department of Justice has been following the fiscal procedures normal for other state agencies, or if it followed the mandates of Penal Code Section 12076, it could not have accumulated such a large surplus.

Please provide to me in writing by not later than 5:00 p.m. Wednesday September 2, 2009, the answers to the following questions: 1) Why was the surplus in the DROS Account allowed to become so large?, 2) What is the Department's justification for retaining such a huge surplus in view of Penal Code Section 12076 and the practices of other state agencies of maintaining a surplus of only 5%?, 3) Why does the Department think such a large surplus is necessary?, and 4) Why should the Department be allowed to keep such a large surplus in the DROS Account?

Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in black ink that reads "Jim Nielsen". The signature is written in a cursive style and is positioned above the typed name.

Jim Nielsen
Assemblyman, 2d District

GENT131

EXHIBIT 18



1300 I STREET
SACRAMENTO, CA 95814
Telephone: 916-322-2332
Fax: 916-324-5033
E-Mail Address: dave.harper@doj.ca.gov

September 2, 2009

The Honorable Jim Nielsen
California State Assembly
State Capitol, Room 6031
Sacramento, CA 95814

Dear Assembly Member Nielsen:

Thank you for the August 27, 2009, letter requesting additional information on the estimated fund balance (surplus) in the Dealers' Record of Sale Special Account of the General Fund (DROS) as of June 30, 2009.

Before answering your questions, I would like to update the data previously reported to you now that the 2008-09 fiscal year has come to a close. Based on year-end revenue and expenditure data, including prior year adjustments made by the State Controller, we now project a June 30, 2009, surplus of \$10.5 million in the DROS.

Generally, your letter requests additional or clarifying information related to the growing surplus in the DROS. By way of this letter, I will offer answers to your specific questions:

(1) *"Why was the surplus in the DROS Account allowed to become so large?"*

The primary reason is three-fold. In the January 2009 Governor's Budget, we projected 2008-09 fiscal year revenue of \$11.3 million and program expenditures of \$11.7 million. With the previous year's balance, there was a projected DROS surplus of \$7.8 million. Additionally, the program was facing one-time cost pressures for two information technology projects which were to be funded from the surplus.

Based on actual year-end data, we collected \$12.6 million in revenue, spent \$10.8 million of our appropriation, and eliminated the need for one of the information technology projects. The combined effect of these actions, together with prior year adjustments made by the State Controller has increased the DROS surplus to \$10.5 million.

I would point out that the department has worked very hard during the tenure of Attorney General Brown to reduce costs by operating more efficiently. In fact, the department has

generated approximately \$3.3 million of DROS savings in the last three fiscal years. However, one of the short-term consequences of these actions has been to increase the surplus.

(2) *"What is the Department's justification for retaining such a huge surplus in view of Penal Code section 12076 and practices of other state agencies of maintaining a surplus of only 5%?"*

As you point out, Penal Code section 12076 provides that the amount of the DROS fee charged to firearms buyers "...shall be no more than is necessary..." to fund specified costs. Our challenge is to forecast future program needs based on an analysis of historical revenue and expenditure trends in order to ensure that any fee level is sufficient and consistent with this code section.

As noted in response to your first question above, the January 2009 Governor's Budget projected 2008-09 fiscal year revenue of \$11.3 million and expenditures of \$11.7 million, creating an operating deficit of \$400,000 that was supported by the surplus. Nothing at that time suggested the current fee level was excessive or inconsistent with statute.

The second part of your question infers that other state agencies maintain a standard surplus of 5%. While I agree that maintaining an adequate reserve is necessary as a hedge against unanticipated revenue decline or cost increases, I do not believe that using a 5% standard is appropriate in every instance. In the case of the DROS, we budget to maintain a 6-month operating reserve. Our reasoning is centered on the length of time it generally takes a governmental program to downsize its workforce when revenues decline unexpectedly. Given that the program's annual baseline program expenditures are approximately \$10 million, we believe that a \$5 million surplus is both appropriate and consistent with statute.

(3) *"Why does the Department think such a large surplus is necessary?"*

I apologize if my earlier correspondence to you conveyed a belief that the growing surplus is necessary. In fact, we are currently exploring numerous administrative and statutory options to reduce the surplus. Unfortunately, these options are being considered in conjunction with the development of the 2010-11 Governor's Budget, and pursuant to Budget Letter 09-23, we are unable to discuss these options publicly at this point in time.

(4) *"Why should the Department be allowed to keep such a large surplus in the DROS Account?"*

As I mentioned in my previous answer, we are currently exploring options to reduce the current and projected surplus in the DROS.

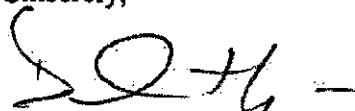
The Honorable Jim Nielsen

September 2, 2009

Page 3

I trust that this letter answers your questions. Should we decide to pursue statutory changes to reduce the surplus, I welcome an opportunity to meet with you to discuss the specifics of any proposal. I am available at 916-322-2332 to respond to any additional inquiries you may have.

Sincerely,



Dave Harper, Deputy Director
Division of Administrative Support

For EDMUND G. BROWN JR.
Attorney General

cc: Sue Johnsrud, Director
Division of Administrative Support
George Anderson, Director
Division of Law Enforcement
Wil Cid, Bureau Chief
Bureau of Firearms

GENT134

EXHIBIT 19

0820 Department of Justice

The constitutional office of the Attorney general, as chief law officer of the state, has the responsibility to see that the laws of the California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice.

The Department of Justice is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissioners and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil laws; and assist district attorneys in the administration of justice. The Department also coordinates efforts to address the statewide narcotic enforcement problem; assists local law enforcement in the investigation and analysis of crimes; provides person and property identification and information services to criminal justice agencies; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

Since department programs drive the need for infrastructure investment, each department has a related capital outlay program to support this need. For the specifics on the Department of Justice's Capital Outlay Program see "Infrastructure Overview."

3-YR EXPENDITURES AND PERSONNEL YEARS

	Personnel Years			Expenditures		
	2009-10	2010-11	2011-12	2009-10*	2010-11*	2011-12*
11.01 Directorate and Administration	916.8	965.4	965.0	\$83,126	\$84,410	\$87,952
11.02 Distributed Directorate and Administration	-	-	-	-83,126	-84,410	-87,952
20 Legal Services	1,454.0	1,495.2	1,495.2	316,701	334,565	368,497
50 Law Enforcement	1,271.8	1,397.4	1,397.1	221,500	238,308	250,571
60 California Justice Information Services	1,036.4	1,139.3	1,139.3	143,224	152,068	156,587
TOTALS, POSITIONS AND EXPENDITURES (All Programs)	4,679.0	4,997.3	4,996.6	\$681,425	\$724,941	\$775,655
FUNDING				2009-10*	2010-11*	2011-12*
0001 General Fund				\$316,963	\$291,824	\$254,971
0012 Attorney General Antitrust Account				994	2,114	2,263
0017 Fingerprint Fees Account				60,371	65,559	68,015
0032 Firearm Safety Account				311	335	339
0044 Motor Vehicle Account, State Transportation Fund				23,690	24,146	24,709
0142 Department of Justice Sexual Habitual Offender Fund				1,829	2,127	2,245
0158 Travel Seller Fund				1,328	1,384	1,401
0214 Restitution Fund				5,188	5,215	5,214
0256 Sexual Predator Public Information Account				113	171	171
0367 Indian Gaming Special Distribution Fund				13,265	13,873	14,359
0378 False Claims Act Fund				7,948	10,289	10,889
0460 Dealers' Record of Sale Special Account				9,121	10,709	11,279
0566 Department of Justice Child Abuse Fund				322	372	377
0567 Gambling Control Fund				6,493	7,312	7,706
0569 Gambling Control Fines and Penalties Account				37	47	48
0641 Domestic Violence Restraining Order Reimbursement Fund				1,918	1,918	1,018
0890 Federal Trust Fund				34,796	30,284	34,034
0942 Special Deposit Fund				1,558	2,458	2,740
0995 Reimbursements				35,025	42,378	45,140
1008 Firearms Safety and Enforcement Special Fund				3,077	3,201	3,353
3016 Missing Persons DNA Data Base Fund				3,291	3,333	3,354
3053 Public Rights Law Enforcement Special Fund				1,281	5,412	5,858
3061 Ratepayer Relief Fund				4,616	-	-
3086 DNA Identification Fund				21,145	74,166	78,913
3087 Unfair Competition Law Fund				2,621	9,424	9,925
3088 Registry of Charitable Trusts Fund				2,778	2,882	2,933
9731 Legal Services Revolving Fund				119,063	111,782	181,311

* Dollars in thousands, except in Salary Range.

0820 Department of Justice - Continued

1 State Operations	Positions/Personnel Years			Expenditures		
	2009-10	2010-11	2011-12	2009-10*	2010-11*	2011-12*
Staff Benefits	-	-	-	122,594	159,664	133,055
Totals, Personal Services	4,679.0	4,997.3	4,996.6	\$472,944	\$493,662	\$500,807
OPERATING EXPENSES AND EQUIPMENT				\$201,680	\$224,478	\$268,947
TOTALS, POSITIONS AND EXPENDITURES, ALL FUNDS (State Operations)				\$674,624	\$718,140	\$769,754

2 Local Assistance	Expenditures		
	2009-10*	2010-11*	2011-12*
Grants and Subventions	\$6,801	\$6,801	\$5,901
TOTALS, EXPENDITURES, ALL FUNDS (Local Assistance)	\$6,801	\$6,801	\$5,901

DETAIL OF APPROPRIATIONS AND ADJUSTMENTS

1 STATE OPERATIONS	2009-10*	2010-11*	2011-12*
0001 General Fund			
APPROPRIATIONS			
001 Budget Act appropriation as amended by Chapter 1, Statutes of 2009, Fourth Extraordinary Session	\$345,933	-	-
Allocation for contingencies or emergencies	400	-	-
Adjustment per Section 3.60	264	-	-
Reduction per Section 3.90	-10,700	-	-
Adjustment per Section 4.04	-3,082	-	-
Adjustment per Section 3.55	-468	-	-
Transfer from Item 8640-001-0001	195	-	-
001 Budget Act appropriation	-	\$300,121	\$253,471
Allocation for employee compensation	-	425	-
Adjustment per Section 3.60	-	4,935	-
Reduction per Control Section 3.91	-	-13,852	-
Transfer from Item 8640-001-0001	-	195	-
003 Budget Act appropriation (Lease-Revenue)	4,102	-	-
Adjustment per Section 4.30	-3,588	-	-
015 Budget Act appropriation	-	-	1,500
Totals Available	\$333,056	\$291,824	\$254,971
Unexpended balance, estimated savings	-16,093	-	-
TOTALS, EXPENDITURES	\$316,963	\$291,824	\$254,971
0012 Attorney General Antitrust Account			
APPROPRIATIONS			
001 Budget Act appropriation	\$1,342	\$2,220	\$2,263
Allocation for employee compensation	-	1	-
Adjustment per Section 3.60	2	33	-
Reduction per Control Section 3.91	-	-140	-
Adjustment per Section 3.55	-1	-	-
Totals Available	\$1,343	\$2,114	\$2,263
Unexpended balance, estimated savings	-349	-	-
TOTALS, EXPENDITURES	\$994	\$2,114	\$2,263
0017 Fingerprint Fees Account			
APPROPRIATIONS			

* Dollars in thousands, except in Salary Range.

EXHIBIT 20

LEGISLATIVE, JUDICIAL, AND EXECUTIVE

Governmental entities classified under the Legislative, Judicial, and Executive section are either established as independent entities under the California Constitution or are departments that operate outside the agency structure. Constitutionally established bodies include the Legislature, the Judicial Branch, Governor's Office, and Constitutional Officers.

The 2011 Budget Act includes total funding of more than \$9 billion for all programs included in this area.

JUDICIAL BRANCH

The Judicial Branch consists of the state-level judiciary which includes the Supreme Court, the Courts of Appeal, the Administrative Office of the Courts, and 58 superior courts.

ADOPTED SOLUTIONS

- Courts Reduction—A reduction of \$350 million to the court system. A portion of this reduction will be offset by a variety of fund shifts, the use of reserve balances, and expenditure delays.

CALIFORNIA EMERGENCY MANAGEMENT AGENCY

The principal objective of the California Emergency Management Agency (Cal EMA) is to reduce vulnerability to hazards and crimes through emergency management and criminal justice:

ADOPTED SOLUTIONS

- California Disaster Assistance Act Payments—An ongoing reduction of \$20 million related to an adjustment of projected future disaster payment liabilities.

DEPARTMENT OF JUSTICE

As chief law officer of the state, the Attorney General has the responsibility to see that the laws of California are uniformly and adequately enforced through the programs of the Department of Justice.

ADOPTED SOLUTIONS

- Eliminate General Fund from the Division of Law Enforcement—A reduction of \$36.8 million beginning in 2011-12, and \$71.5 million in 2012-13 and ongoing. General Fund resources have been maintained for the forensic laboratory program, the Armed Prohibited Persons Program, and investigation teams to assist the Department's legal services division.
- Quest Settlement—A one-time transfer of \$20 million from the False Claims Act Fund to the General Fund resulting from the whistleblower settlement reached by the Attorney General against Quest Diagnostics.

EXHIBIT 21

Welcome to California 's

2017-18

Governor 's Budget

RELEASED ON JANUARY 10, 2017

0820 Department of Justice

Program Descriptions

0435 - LEGAL SERVICES

Legal Services is organized into three elements: (1) Civil Law, (2) Criminal Law, and (3) Public Rights.

Civil Law represents the State of California and its officers, agencies, departments, boards, commissions, and employees in civil matters. It provides advice to these clients, defends cases brought against them and prosecutes cases to vindicate state interests. Deputy Attorneys General in Civil Law are responsible for managing and litigating cases before administrative tribunals, and in both state and federal courts at the trial level and on appeal, including appeals before the United States and California Supreme Courts. Deputies work in one of eight sections: Business and Tax; Correctional Law;

Employment and Administrative Mandates; Government Law; Health, Education and Welfare; Health Quality Enforcement; Licensing; or Tort and Condemnation.

Criminal Law represents the state in criminal matters before the Appellate and Supreme courts. Criminal Law also fulfills the Attorney General's responsibilities of assisting district attorneys in cases for which they are recused, conducts criminal investigations, represents the Governor, Board of Parole Hearings, and California Department of Corrections and Rehabilitation in state and federal habeas corpus cases and appeals, and other proceedings relating to parole decisions and conditions of confinement in the state prisons and defends state and federal habeas corpus matters. Additional responsibilities include enforcing the Political Reform Act, advising the Governor on extradition matters, investigating and prosecuting Medi-Cal provider fraud, investigating and prosecuting the abuse or neglect of elder and dependent adults residing in long-term health care facilities, and investigating, prosecuting, and coordinating litigation involving white-collar crime, high-tech/computer/privacy crime, financial crimes against the elderly, human trafficking, environmental crimes, and public corruption.

Public Rights protects and preserves the public interest by providing legal services to state agencies and Constitutional Officers and by bringing actions in the name of the Attorney General to protect the public. Public Rights provides specialized services in the following areas: Civil Rights Enforcement (including Underground Economy and the Bureau of Children's Justice); Charitable Trusts (including the Registry of Charitable Trusts); Natural Resources Law; Corporate Fraud (including False Claims, Energy and Corporate Responsibility); Indian and Gaming Law; Environment Law; Land Law; Consumer Law (including Sellers of Travel and Privacy Enforcement and Protection); Antitrust Law; and Tobacco Litigation Enforcement.

0440 - LAW ENFORCEMENT

The Division of Law Enforcement is organized into five elements: (1) Bureau of Firearms, (2) Bureau of Forensic Services, (3) Bureau of Gambling Control, (4) Bureau of Investigation, and (5) the Office of

the Director.

The Bureau of Firearms provides oversight, enforcement, education, and regulation of California's firearms/dangerous weapon laws by conducting firearms eligibility background checks and administering over thirty different state-mandated firearms-related programs. The Bureau conducts firearms dealer and manufacturer inspections and provides training as needed. Special Agents conduct investigations on armed and prohibited persons and other investigations resulting in the seizure of weapons. Agents also conduct firearms investigations to prevent illegal gun trafficking at in-state and out-of-state gun shows in accordance with state and federal law.

The Bureau of Forensic Services (BFS) provides evaluation and analysis of physical evidence, including crime scene investigation and expert court testimony to federal, state and local law enforcement agencies, district attorneys, and courts, by operating 11 specialized laboratories that serve 46 counties as well as a forensic training facility. BFS maintains the state DNA laboratory database which compiles DNA profiles of sex and violent offenders and felony arrestees.

The Bureau of Gambling Control regulates legal gambling activities in California to ensure gambling is conducted honestly and is free from criminal and corruptive elements. This is accomplished by investigating the qualifications of individuals and business entities who apply for state gambling licenses and monitoring the conduct of these licensees to ensure compliance with the Gambling Control Act. Furthermore, the Bureau conducts criminal investigations in, on or about Tribal casinos and California cardrooms. The Bureau also regulates Tribal gaming to ensure that each Tribe is in compliance with all aspects of the negotiated gaming compact.

The Bureau of Investigation is the premiere investigative agency that is responsible for exploiting and dismantling criminal organizations, as well as assisting with the prosecution of serious criminal offenses which present a significant and multi-jurisdictional threat to California. The Bureau prioritizes investigations related to transnational criminal organizations involved in gangs and human trafficking, as well as cases involving environmental crimes, public

corruption, major fraud, underground economy, and high-technology crimes. In addition, the Bureau serves a principal role in providing leadership, coordination, and support to law enforcement through multi-agency drug, gang and major crimes task forces statewide.

The Office of the Director enhances public safety by providing training, technical, and administrative support to the investigative, regulatory and forensic components of the Division of Law Enforcement and other criminal justice agencies. The Office serves as the policy-making and oversight body for its four operational bureaus.

0445 - CALIFORNIA JUSTICE INFORMATION SERVICES

The California Justice Information Services Division provides criminal justice intelligence, information, and identification services to law enforcement, regulatory agencies, and the public. Four major functional areas carry out these primary services: 1) The Bureau of Criminal Identification & Investigative Services consolidates the identification, investigative, and field services functions, providing information and technical assistance on manual and automated systems including the fingerprint identification system and the violent crime information system; 2) The Bureau of Criminal Information and Analysis consolidates the functions related to the authorization, release, and use of criminal offender record information for law enforcement investigatory and regulatory purposes; 3) The Hawkins Data Center operates the Criminal Justice Information System and the California Law Enforcement Telecommunications System; and 4) the Operations Support Program provides business resumption planning and administrative support and oversight.

9900 - DIRECTORATE AND ADMINISTRATION

The Directorate and the Administration Division of the Department of Justice consists of the Division of Administrative Support and the Attorney General's Executive Office. The executive office maintains overall direction and administration over the diverse programs and projects of the department, including the Equal Employment Rights and Resolution Office, the Office of Program Review and Audits, the Opinions Unit, the Solicitor General's Unit, the Office of Legislative

Affairs, the Office of Communications and the Public Inquiry Unit. In addition, the Division of Administrative Support provides support functions essential to the department's operations, including fiscal, personnel, and specialized services such as legal secretarial support, litigation support, and legal case management services.

EXHIBIT 22

Introduced by Senator Leno

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 819, as amended, Leno. ~~Crimes: eyewitness identification.~~
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.

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.

Existing law requires the Attorney General to keep various identifying information on file of persons confined to penal institutions including fingerprints, measurements, and criminal histories.

This bill would state that it is the intent of the Legislature to later amend into this bill provisions that would require law enforcement to study and consider new policies to ensure proper eyewitness identification procedures.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 28225 of the Penal Code is amended to
2 read:

3 28225. (a) The Department of Justice may require the dealer
4 to charge each firearm purchaser a fee not to exceed fourteen
5 dollars (\$14), except that the fee may be increased at a rate not to
6 exceed any increase in the California Consumer Price Index as
7 compiled and reported by the Department of Industrial Relations.

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

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

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

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

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

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

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

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

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

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

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

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

5 (c) The fee established pursuant to this section shall not exceed
6 the sum of the actual processing costs of the department, the
7 estimated reasonable costs of the local mental health facilities for
8 complying with the reporting requirements imposed by paragraph
9 (3) of subdivision (b), the costs of the State Department of Mental
10 Health for complying with the requirements imposed by paragraph
11 (4) of subdivision (b), the estimated reasonable costs of local
12 mental hospitals, sanitariums, and institutions for complying with
13 the reporting requirements imposed by paragraph (5) of subdivision
14 (b), the estimated reasonable costs of local law enforcement
15 agencies for complying with the notification requirements set forth
16 in subdivision (a) of Section 6385 of the Family Code, the
17 estimated reasonable costs of local law enforcement agencies for
18 complying with the notification requirements set forth in
19 subdivision (c) of Section 8105 of the Welfare and Institutions
20 Code imposed by paragraph (7) of subdivision (b), the estimated
21 reasonable costs of the Department of Food and Agriculture for
22 the costs resulting from the notification provisions set forth in
23 Section 5343.5 of the Food and Agricultural Code, the estimated
24 reasonable costs of the department for the costs associated with
25 subdivisions (d) and (e) of Section 27560, and the estimated
26 reasonable costs of department firearms-related regulatory and
27 enforcement activities related to the sale, purchase, *possession*,
28 loan, or transfer of firearms pursuant to any provision listed in
29 Section 16580.

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

34 ~~SECTION 1. It is the intent of the Legislature to later amend~~
35 ~~into this bill provisions that would require law enforcement~~
36 ~~officials to study and consider the adoption of new policies and~~
37 ~~procedures to ensure that eyewitness identification procedures~~
38 ~~minimize the chance of misidentifying a suspect.~~

O

EXHIBIT 23

AMENDED IN SENATE APRIL 14, 2011
AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 819

Introduced by Senator Leno

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 819, as amended, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

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

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

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

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

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

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

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

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

38 SECTION 1.

39 SEC. 2. Section 28225 of the Penal Code is amended to read:

1 28225. (a) The Department of Justice may require the dealer
2 to charge each firearm purchaser a fee not to exceed fourteen
3 dollars (\$14), except that the fee may be increased at a rate not to
4 exceed any increase in the California Consumer Price Index as
5 compiled and reported by the Department of Industrial Relations.

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) The fee established pursuant to this section shall not exceed
2 the sum of the actual processing costs of the department, the
3 estimated reasonable costs of the local mental health facilities for
4 complying with the reporting requirements imposed by paragraph
5 (3) of subdivision (b), the costs of the State Department of Mental
6 Health for complying with the requirements imposed by paragraph
7 (4) of subdivision (b), the estimated reasonable costs of local
8 mental hospitals, sanitariums, and institutions for complying with
9 the reporting requirements imposed by paragraph (5) of subdivision
10 (b), the estimated reasonable costs of local law enforcement
11 agencies for complying with the notification requirements set forth
12 in subdivision (a) of Section 6385 of the Family Code, the
13 estimated reasonable costs of local law enforcement agencies for
14 complying with the notification requirements set forth in
15 subdivision (c) of Section 8105 of the Welfare and Institutions
16 Code imposed by paragraph (7) of subdivision (b), the estimated
17 reasonable costs of the Department of Food and Agriculture for
18 the costs resulting from the notification provisions set forth in
19 Section 5343.5 of the Food and Agricultural Code, the estimated
20 reasonable costs of the department for the costs associated with
21 subdivisions (d) and (e) of Section 27560, and the estimated
22 reasonable costs of department firearms-related regulatory and
23 enforcement activities related to the sale, purchase, possession,
24 loan, or transfer of firearms pursuant to any provision listed in
25 Section 16580.
26 (d) Where the electronic or telephonic transfer of applicant
27 information is used, the department shall establish a system to be
28 used for the submission of the fees described in this section to the
29 department.

O

EXHIBIT 24

Senate Bill No. 819

CHAPTER 743

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

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 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.

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.

O

EXHIBIT 25

ORGANIZATIONAL UNIT Classification	NUMBER OF POSITIONS			EXPENDITURES		
	Filled 2015-16	Authorized 2016-17	Proposed 2017-18	Actual 2015-16 (Salary Range)	Estimated 2016-17	Proposed 2017-18
Special Agent Supvr-DOJ	4.2	6.0	6.0	6,103-8,477	634,074	634,837
DOJ Administrator I	1.0	1.0	1.0	5,311-6,601	68,877	72,323
Field Rep DOJ	1.1	1.0	1.0	4,655-5,786	69,432	69,432
Criminal ID Spec III	0.8	1.0	1.0	3,921-4,870	55,704	57,828
Criminal Intelligence Spec III	1.0	1.0	1.0	3,860-4,795	57,540	57,540
Special Agent DOJ	19.3	39.0	39.0	3,852-7,713	3,360,279	3,446,203
Criminal ID Spec II	10.8	12.0	12.0	3,527-4,365	603,677	608,822
Program Techn III	0.6	1.0	1.0	3,085-3,864	38,252	40,164
Criminal ID Spec I	1.4	2.0	2.0	2,963-3,633	82,724	84,684
Criminal Intelligence Spec I	0.7	1.0	1.0	2,963-3,633	43,596	43,596
Program Techn	0.3	-	-	2,384-3,203	-	-
Temporary Help	6.5	1.0	1.0	(416,768)	90,000	90,000
Overtime	-	-	-	(1,053,266)	769,000	769,000
Totals, Armed Prohibited	48.7	67.0	67.0	\$4,803,164	\$5,998,643	\$6,099,917
Gun Show:						
Special Agent-In-Charge DOJ	1.0	1.0	1.0	7,705-9,626	113,137	116,712
Special Agent Supvr-DOJ	1.0	1.0	1.0	6,103-8,477	108,010	108,010
Special Agent DOJ	0.7	2.0	2.0	3,852-7,713	92,448	92,448
Overtime	-	-	-	(222,125)	122,000	122,000
Totals, Gun Show	2.7	4.0	4.0	\$511,277	\$435,595	\$439,170
Bureau of Firearms-Admin:						
Overtime	-	-	-	-	41,000	41,000
Totals, Bureau of Firearms-Admin	-	-	-	-	\$41,000	\$41,000
Armed & Prohibited Persons (APPS) Backlog:						
Special Agent Supvr-DOJ	4.3	-	-	6,103-8,477	-	-
Special Agent DOJ	16.1	-	-	3,852-7,713	-	-
Criminal Intelligence Spec I	1.7	-	-	2,963-3,633	-	-
Office Techn-Typing	1.9	-	-	2,809-3,515	-	-
Temporary Help	2.2	-	-	(204,278)	-	-
Overtime	-	-	-	(1,525,895)	-	-
Totals, APPS Backlog	26.2	-	-	\$3,665,893	-	-
Totals, Bureau of Firearms	190.8	201.4	201.4	\$16,740,013	\$14,222,366	\$14,451,021
Totals, Division of Law Enforcement	927.1	1,104.2	1,104.2	\$79,317,580	\$86,808,708	\$87,745,952
California Justice Information Services						
Hawkins Data Center:						
Tech Support Bureau:						
C.E.A. B	1.3	1.0	1.0	8,985-10,703	145,344	145,344
Data Processing Manager IV	5.9	5.0	5.0	8,182-9,756	563,315	566,472
Data Processing Manager III	7.0	8.0	8.0	7,442-8,872	833,755	839,689
Systems Software Spec III-Supvry	4.0	4.0	4.0	6,708-8,817	423,216	423,216
C.E.A. A	-	1.0	1.0	6,453-9,277	77,436	77,436
Systems Software Spec III-Tech	18.7	25.0	25.0	6,388-8,396	2,385,513	2,416,933
Sr Info Systems Analyst-Supvr	2.6	1.0	1.0	6,116-8,039	96,468	96,468
Data Processing Manager II	14.6	17.0	17.0	6,115-8,038	1,605,924	1,615,572
Systems Software Spec II-Supvry	0.3	1.0	1.0	6,105-8,027	89,184	93,516
Sr Info Systems Analyst-Spec	8.5	10.0	10.0	5,824-7,655	836,520	863,887
Sr Programmer Analyst-Spec	21.5	24.0	24.0	5,824-7,655	2,014,448	2,046,049
Systems Software Spec II-Tech	23.5	29.0	29.0	5,814-7,642	2,532,789	2,563,460
Staff Info Systems Analyst-Supvr	1.0	1.0	1.0	5,560-7,311	86,938	88,743
Staff Info Systems Analyst-Spec	27.2	33.0	33.0	5,295-6,963	2,513,406	2,557,424

EXHIBIT 26

California State Senate

Senate Public Safety Committee, Part 2

April 26, 2011

Web Link: <http://senate.ca.gov/media-archive?title=&startdate=04%2F26%2F2011&enddate=04%2F26%2F2011>

Senator Mark Leno at 53:00-53:15

“the attorney general brought us this bill”

Attorney General Kamala Harris at 58:00-58:20

“what we seek to do is this DROS fund in a way that can supplement the work that we want to do out of the Department of Justice to support local law enforcement in going after those folks who are on this list”

[Plaintiff believes the contents of this audio are undisputed.]

EXHIBIT 27

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 10, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Consultant: Julie Salley-Gray

<u>Item</u>	<u>Department</u>		<u>Page</u>
		Vote-Only Items	
0250	Judicial Branch		
Item 1	Trial Court Security (non-sheriff)		2
0820	Department of Justice		
Item 1	Criminal Justice Reporting (AB 71)		2
Item 2	Bureau of Gambling Control Training		2
		Discussion Items	
0820	Department of Justice		
Issue 1	Armed Prohibited Persons System		3
Issue 2	Fraud and Elder Abuse Enforcement Enhancement		12
Issue 3	Major League Sporting Event Raffles Program		13
0250	Judicial Branch		
Issue 1	Trial Court Augmentation and On-going Trial Court Shortfall		16
Issue 2	Court Innovations Grant Program		20
Issue 3	Rate Increase for Appellate Attorneys		21
Issue 4	Language Access		23
8140	Office of the State Public Defender		
Issue 1	Defense Services for Condemned Inmates		24
0280	Commission on Judicial Performance		
Issue 1	Increased Workload		25

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling (916) 651-1505. Requests should be made one week in advance whenever possible.

**Armed Prohibited Persons
Workload History**

Fiscal Year	Armed and Prohibited Persons Identified	APPS Investigations Processed
2007-08	8,044	1,620
2008-09	11,997	1,590
2009-10	15,812	1,763
2010-11	17,606	1,700
2011-12	18,668	1,716
2012-13	21,252	2,772
2013-14	22,780	4,156
2014-15	17,479	7,573

To address the workload resources required to both reduce the growing backlog, and actively investigate incoming cases in a timely fashion, the Legislature passed SB 140, (Leno), Chapter 2, Statutes of 2013. SB 140 provided DOJ with \$24 million from the Dealer's Record of Sale (DROS) account in order to increase regulatory and enforcement capacity within DOJ's Bureau of Firearms. The resources financed in SB 140 were provided on a three-year limited-term basis, which, according to the DOJ, was adequate time to significantly reduce or eliminate the overall number of armed and prohibited persons in the backlog. Ongoing cases could be managed with resources within DOJ's Bureau of Firearms. Additionally, the measure included reporting requirements due annually to the Joint Legislative Budget Committee.

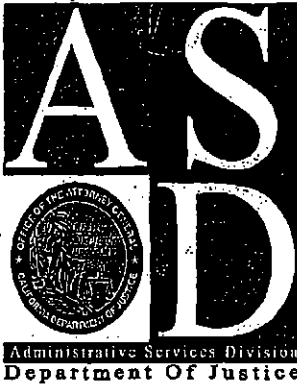
During the 2015 budget hearing process last spring, the Legislature expressed concern that half-way through the three years, the department had spent 40 percent of the \$24 million, and the backlog had only been reduced by approximately 3,770. In addition, the Bureau of Firearms had hired 45 agents, as of the date of their update, but had only retained 18 agents. Of the agents that left the bureau, the vast majority went to other agent positions in DOJ. It is unclear what caused this staff retention issue, whether it was due to the fact that the new positions were limited-term or that more senior agents were permitted to transfer. As a result, some SB 140 funding that was intended to directly address the APPS backlog was instead used to conduct background checks, provide training and to equip newly hired who agents subsequently left the bureau.

2015 Budget Actions. The 2015 Budget Act provided DOJ's Bureau of Firearms with 22 additional permanent positions dedicated to APPS investigations and required that they be funded utilizing existing resources. In addition, supplemental reporting language required DOJ to provide the Legislature, no later than January 10, 2016, an update on the department's progress on addressing the backlog in the APPS program and hiring and retaining investigators in the firearms bureau.

DOJ APPS Backlog Supplemental Report. The Senate Bill 140 Supplemental Report of the 2015-16 Budget Package submitted by DOJ notes that as of December 31, 2015, the department had addressed a combined total of 33,264 prohibited persons in the APPS database since July 1, 2013. However, as of the end of December 2015, 12,691 people remained of the 21,249 person backlog identified on January 1, 2014. DOJ has committed to eliminating the entire backlog by December 2016. However, given their current pace, it is unclear how they will achieve that goal in the next 11 months.

EXHIBIT 28

Building A Foundation For Success



Budget Office
Dealer Record of Sale (DROS) Fund Shortfall
 May 28, 2004.

Issue

Currently expenditures exceed revenues in the Dealers Record Of Sale (DROS) Special Fund by \$1,298,000 per year. Unless either revenues go up or expenditures go down the DROS Fund will run out of money by the end of fiscal year 2005-06.

Background

The Division of Firearms, though it was not it's own division at the time, began processing firearm information in the 1930s. Background checks for firearm purchasers began in 1973. At the time there was no direct charge for the service, the General Fund paid for the program. Then the DROS fee and fund was started in 1982 through Chapter 327, Statutes of 1982. The fee was initially established at \$2.25 for the typical handgun background check. Below is a chart showing the initial DROS fee and the adjustment in every year that it went up. In 1991 the DROS fee went to \$14 and has stayed at that level ever since.

History of DROS Fee Increase

1982 = \$2.25	1983 = \$2.50	1984 = \$3.00	1986 = \$3.50	1988 = \$4.00	1989 = \$4.25	1990 = \$7.50	August 1991 = \$10.00	December 1991 = \$14.00
------------------	------------------	------------------	------------------	------------------	------------------	------------------	-----------------------------	-------------------------------

The other component that affects DROS revenue is handgun sales volume. Handgun sales volume peaked in Fiscal Year (FY) 1999-00 at 470,754 applications requested. This figure declined to 335,908 by FY 2003-04, a 29% drop in three years. This trend is easy to see from the chart below.

History of handgun application volume

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
Dealers' Record of Sale (DROS)	392,948	470,754	365,717	359,110	335,908

The decline in gun sales has substantially impacted the DROS revenues, it's balance and it's reserves. If this trend was to continue without remedy, the fund will go bankrupt by the end of FY 2004-05 as seen in the following fund condition statement.

0460 Dealer Record of Sale Special Account	2002-03	2003-04	2004-05	2005-06
BEGINNING BALANCE	3,818	2,243	1,113	104
Revenues:	6,747	7,127	7,427	7,427
Transfers In from other Funds:	160	168		
Totals, Resources	10,725	9,538	8,540	7,531
Expenditures	8,482	8,425	8,436	8,436
ENDING BALANCE	2,243	1,113	104	-905

Between un-funded mandated programs, increasing workload per application and inflation, the declining number of applications has not translated to decreased expenditures. The following is a sample of the programs that Firearms has been required to manage without additional funding.

- **Law Enforcement Gun Releases** - law enforcement agencies submit a request to Firearms Division to do firearms eligibility checks on confiscated guns (i.e., stolen, safekeeping, arrest) before they are returned to the owner. This is done to ensure that guns are not being released to prohibited individuals. Firearms Division conducts approximately 7,000 law enforcement gun release eligibility checks annually at no charge. Approx cost to DROS Fund: \$175,000 annually = 2 CIS II, 1 PT II.
- **DROS Enforcement Activities** - began in 1999 when the Firearms Division was established to provide firearms expertise and training to law enforcement agencies and firearms dealers. Approx cost to DROS Fund: \$254,000 annually = 1 Special Agent Supervisor and 1 Special Agent.
- **AB 2080** - would require that any Federal Firearms License holder who transfers firearms within California to also comply with all California requirements relative to gun dealer licensing. Due to DROS Fund condition, this has not yet been implemented. If implemented, approx cost to DROS Fund: \$548,000 one-time for database development and \$50,000 ongoing = 1 CIS II.
- **DAG Legal Support** - began in 1999 when the Firearms Division was established to provide legal counsel in numerous firearms related court cases. The Firearms FASA Fund provides \$60,000 to support this position with the remaining coming from DROS. Approx cost to DROS Fund: \$100,000 annually = 1 DAG III.

See appendix A for a list of all the changes since 1991 that now has to be checked before a firearms background check can be cleared.

The primary program has gone through some changes that are contributing to the inability to reduce costs. Two issues are driving this situation.

- According to the Firearms division, in the last three years, the Criminal Justice Information Systems (CJIS) Division has stopped supporting certain flag fields in the database that allowed FD staff to eliminate many background files as not needing review.

Background checks are performed based on name. So many searches produce many files that may be the person FD staff are trying to check. FD staff then checks all the possible files to make a determination of suitability of gun ownership. Previously, FD staff could identify files entered relative to a fingerprint background check performed for employment reasons versus a file entered for a criminal conviction. The files related to employment would be ignored and all effort focused on the criminal files. Now that the flags have been removed FD staff must review every file returned on every application which is about 90,000 applications per year.

- As the population in California grows, the number of hits on any given search also increases. With the state population approaching 36 Million, there are far more Smiths, Jones and Garcias living in the state than there were 12 years ago when the fee was established. This effect is apparent with respect to less common names as well.

Discussion

There are three basic ways to solve the DROS Fund deficit problem: reduce expenditures or increase revenue either through a rate increase or an application volume increase. Below is a sensitivity analysis table illustrating a few potential outcomes. The left column shows potential cost cutting goals. The \$0 (a) represents no change in spending, \$351,000 (b) represents positions in CJIS that are paid by DROS but could be moved to the Fingerprint Fees Account (FFA), and the \$1,298,000 (c) would be cutting DROS expenditures to the present revenue level. The top row represents the effect of a fee change. The \$0 column addresses the effect of maintaining the DROS fee at the present level of \$14, the \$3 column reflects the effect of increasing the DROS fee \$3 to \$17 and similarly the \$5 column reflects the effect of increasing the DROS fee \$5 to \$19. Each coordinate box contains two numbers. The top number represents remaining expenditures in excess of revenue given the Cost Cutting and Revenue Increase options chosen. The bottom number represents the required increase in DROS applications to raise revenue to a level then equal to the expenditure expectation. For example, if you assume DOJ will redirect the DROS positions to the FFA, thereby producing a savings of \$351,000 per year, and that DOJ raises the DROS fee to the level of \$17, you could conclude that revenue would rise to exceed the now lowered expenditures by \$58,000 and the required increase in DROS applications would be 0, because revenues now exceed expenses.

$$\text{Formula} = \frac{\text{Remaining Deficit}}{\text{Apps needed to} = 0}$$

	Revenue Increase	\$0 (DROS fee remains at \$14)	\$3 (DROS fee-increased to \$17)	\$5 (DROS fee-increased of \$19)
Cost Cutting				
\$0 (a)		\$1,298,000 92,714	\$293,000 17,235	\$377,000 surplus 0
\$351,000 (b)		\$947,000 67,642	\$58,000 surplus 0	\$728,000 surplus 0
\$1,298,000 ©		\$0 0	\$1,005,000 surplus 0	\$1,675,000 surplus 0

Cutting Expenditures

Expenditures to DROS may be cut in two ways. First, as mentioned above, there are 5.0 positions DROS funded in CJIS, costing \$351,000. DROS is a dubious funding source for these positions. While they may somewhat contribute to the goals of the DROS program, an overwhelming majority of their time is spent on non-DROS workload. If the funding source of these positions were switched to FFA, DROS would see the savings. The second means to cut expenditures would be to reduce DROS funding in FD. Unless additional funding was brought in from another source, this would increase the backlog on DROS applications and the division may not be able to meet all of its legal obligations.

Increasing Revenue

The DROS fund has not had a Cost of Living Increase (COLA) since 1991. Increasing the DROS fee from \$14 to \$19 would bring in an extra \$1,675,000 in to the fund based upon the current number of DROS transaction (335,000 transactions x \$5 extra revenue=\$1,675,000). This extra revenue would solve all of DROS's financial worries for years to come and allow the fund to slightly increase its reserves. The table immediately below shows how much the DROS fee would have been if the COLA's had been implemented overtime, the second table is a revised fund condition statement based on the increased rate and revenue.

DROS Fee with a 3% COLA added every year since 1991

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Fee	14	14.42	14.85	15.29	15.76	16.23	16.72	17.22	17.73	18.27	18.81	19.38
\$												

DROS FUND Condition if the fee was raised from \$14 to \$19 in 2004-05

0460 Dealer Record of Sale Special Account	2002-03	2003-04	2004-05	2005-06
BEGINNING BALANCE	3,818	2,243	1,113	1,779
Revenues:	6,747	7,127	9,102	9,102
Transfers In from other Funds:	160	168		
Totals, Resources	10,725	9,538	10,215	10,881
Expenditures	8,482	8,425	8,436	8,436
ENDING BALANCE	2,243	1,113	1,779	2,445

Solutions

Solution # 1 – Implement the COLA and raise the DROS fee from \$14 to \$19 and not cut any expenditures. This will be the least painful solution for the Firearms Division. If the fee is raised as of July 1, 2004 the fund will not run out of money and will actually start building up it's reserves. There will not need to be any cuts with this solution.

Solution # 2 – Move CJIS positions that are funded out of DROS and into the Fingerprint Fee Account. The following are positions that are controlled by CJIS that do very little if any DROS related work and yet they are billed to the DROS Fund: CIS I 420-732-8462-001, PT II 420,795,9928-001, PT II 420-795-9928-003, Field Rep 420-732-8519-006 and Field Rep 420-732-8519-004. By shifting these positions it would save the DROS Fund \$351,000 per year. Currently the DROS Fund brings in \$7,127,000 and has expenditures of \$8,425,000 that is a difference of \$1,298,000. That \$1,298,000 deficit could be reduced to \$947,000 (\$1,298,000 minus \$351,000 = \$947,000) if the CJIS positions are shifted out of DROS funding. Then the Firearms Division would need to cut its program by \$947,000 for the DROS Fund to become stable. This solution will not generate any surplus and will only work if gun sales remain stable and expenditures stay the same.

Solution # 3 – Increase the DROS fee from \$14 to \$17 instead of the COLA level of \$19. If gun sales remain the same then that small increase would bring in an extra \$1,005,000 per year and that increase along with a cut to either Firearms or CJIS of \$293,000 would stabilize the FUND for now and stop the DROS fund from depleting its reserves.

Solution # 4 – Do nothing. Expect that DROS applications will rise to a level to support the current level of expenditures. If this does not happen, the DROS Fund will be bankrupt in FY 2005-06.

Solution # 5 – Pursue a combination of the above 4 options. Essentially, this is a combination of hard technical cuts to the program, or redirection of expenditures to other funds, but allows for us to expect that gun sales will not remain this low indefinitely.

Recommendation

Solution # 5.

(File Location: I:\Budgets\Firearms\Issue Paper\DROS SHORTFALL.doc)

For more information on this report or other issues, contact Robert Sharp, Budget Office, at 916/323-5346 or robert.sharp@doj.ca.gov.

APPENDIX A

ADDITIONAL DROS PROHIBITING CATEGORIES POST (Resulting in Increased Number of Eligibility Reviews)

THE FOLLOWING FIREARM PROHIBITING MISDEMEANORS WERE ADDED:

PENAL CODE SECTIONS:

1991	1994	1995	2000
136.5	273.5	71	422
140	273.6	76	136.1
171b	646.9	148(d)	
171c		186.28	
171d		246	
240		417.1	
241		417.6	
242		12023	
243		12040	
244.5		12072(b)	
245		12072(g)(3)	
246.3			
247			
417			
417.2			
626.9			
12034(b) or (d)			
12100(a)			
12320			
12590			

1991

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE
WARDS OF JUVENILE COURT FOR WIC 707(b) OFFENSE

PRIVATE PARTY TRANSFERS ARE NOW REQUIRED TO GO THRU DEALER
AND HAVE DOJ BACKGROUND CHECK COMPLETED (NEW LEGISLATION)

1993

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON PEACE
OFFICERS (NEW LEGISLATION)

APPENDIX A

1994

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE
WARDS OF JUVENILE COURT FOR PC 1203.073(b) OFFENSE

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON SECURITY
GUARDS (NEW LEGISLATION)

1995

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE
WARDS OF JUVENILE COURT FOR PC 12071(c)(1) OFFENSE
FEDERAL BRADY PROHIBITIONS ADDED (NICS)

1998

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON PAWN
REDEMPTIONS AND CONSIGNMENT SALES/RETURNS (NICS)

NEW FIREARM PROHIBITION: MISDEMEANOR DRUG OFFENSES

REQUIRED TO CHECK INS STATUS, MENTAL DEFECTIVES, OUT OF STATE
WARRANTS, DENIAL NOTIFICATION (NICS)

2000

DOJ REQUIRED TO CONTACT LOCALS TO CONFIRM FIREARMS
PROHIBITING RESTRAINING ORDERS (POLICY)

2002

DOJ REQUIRED TO CONDUCT NICS ICE CHECKS (NICS)

DOJ REQUIRED TO CONDUCT ARMED PROHIBITED TRACKING. INCL
CHECKING AFS ON DENIALS, UPDATING CAPS, NOTIFYING AGENTS (NEW
LEGISLATION)

2003

DOJ REQUIRED TO NOTIFY THE DA OF FIREARM DENIALS (AG DECISION)

APPENDIX A

2004

NEW FIREARM PROHIBITION: ELDER ABUSE RESTRAINING ORDERS (NEW LEGISLATION)

DOJ REQUIRED TO CHECK VIOLENT GANG AND TERRORISM FILE (VGTOF) ON FIREARM ELIGIBILITY CHECKS (NICS)

DOJ REQUIRED TO CONDUCT PERSONAL FIREARM ELIGIBILITY CHECKS (NEW LEGISLATION)

APPENDIX B

DEALER'S RECORD OF SALE (DROS) REGISTER HISTORY (Revised June 1, 2003)

This summary highlights several major change in California firearms laws that affected firearm purchase transactions and dealer licensure requirements over the past several decades.

- 1909 - Penal Code required dealers to keep a register of pistol and revolver purchasers and to make the register open to the inspection of any peace officer.
- 1923 - Laws regulating and controlling pistol and revolver possession, sales and use were passed. Pistols and revolvers could not be delivered to purchasers on the day of sale, and a copy of the register was transmitted to the local law enforcement agency.
- 1931 - The laws were amended to provide both the local law enforcement agency and the Department of Justice (DOJ) with a copy of the register and again prohibited delivery on the day of sale.
- 1953 - Passage of the Dangerous Weapons' Control Laws extended the waiting period to 3 days as a "cooling off" period. DOJ notified local law enforcement agencies of purchasers who were "potentially prohibited," and the agencies would confiscate the weapons from purchasers.
- 1965 - Laws amended to extend the waiting period to 5 days, and DOJ continued to notify local law enforcement agencies of potentially prohibited purchasers.
- 1972 - DOJ, for the first time, was required to notify dealers of prohibited purchasers, but was unable to stop delivery due to retention of the five-day waiting period.
- 1975 - Waiting period extended to 15 days to give DOJ time to determine if purchasers were prohibited and to notify dealers to stop sales.
- 1991 - Rifle/Shotguns require 15-day wait and purchaser clearance for the first time. Prohibited categories were expanded. Requires all private party transactions to be processed by a licensed dealer.
- 1992 - Penal Code section 12071 was amended to require firearms dealers to obtain a Certificate of Eligibility (COE) (cost \$73.00 initial and \$17.00 annual renewal) from DOJ by undergoing a firearms eligibility background check.
- 1994 - Purchasers of handguns are required to obtain a Basic Firearm Safety Certificate prior to taking possession of a handgun.
- 1995 - The DOJ Centralized List (CL) of Firearms Dealers was enacted into law. Firearms Dealers had to be established on the CL (cost \$85.00 per year per store

APPENDIX B

location) to be able to obtain DROS registers and/or submit them to DOJ for background check processing.

- 1997 - The old process of dealers mailing completed DROS registers to DOJ for processing was replaced with a new electronic/telephonic firearms eligibility background check process. The waiting period for both handguns and long guns was reduced to 10 days.
- 1998 - The DROS process was amended to include the Federal National Instant Criminal (NICS) background check requirements and the California DOJ was established as the state's NICS Point of Contact (POC). Also, pawn and consignment transactions were incorporated into the DROS process.
- 2000 - (a). State (and Federal) law was amended to limited purchasers/transferees of handguns to 1-handgun per 30 day period. {12072(a) (9) PC} (b). 2nd Assault Weapon law enacted- identifying by characteristics on firearms {12276.1 PC}
- 2001 - Unsafe Handgun law- New law required the DOJ to certify laboratories to test handguns to be sold/manufactured in California. Effective January 1, 2001, only those handguns that had successfully passed required testing could be sold/transferred/manufactured within the state. {12125 PC}
- 2002 - Safety Device law- New law required that all firearms sold/transferred/manufactured within the state must be accompanied by a DOJ certified firearms safety device. The DOJ certified laboratories to test firearms safety devices and certified only those devices that had successfully passed required testing.
- 2003 - (a) Handgun Safety Certificate- purchasers of handguns must meet new safety training requirements and obtain a "Handgun Safety Certificate" prior to purchasing a handgun. Implementation of the HSC repealed and replaced the BFSC requirements that were established in 1994. {12800 PC}
(b) Handgun Demonstration- purchasers of handguns must perform safe handling demo. (12071b)
(c) Internet Automated DROS process initiated. The firearm recipient's identification number, name, and date of birth must be obtained by swiping the recipient's CA ID or DL card through a magnetic card stripe reader.
(d) Thumb print required on all DROS.
(e) No handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indication that he or she is a California resident.
(f) CALDOJ implemented a new federal requirement to require U.S. Citizenship information on the DROS as a result of a federal mandate issued by the U.S. Attorney General. The new requirement was implemented as a homeland security precaution in the wake of the 911 terrorist attacks on the U.S.

APPENDIX C

FIREARMS DIVISION AND CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION DROS FUNDED POSITIONS

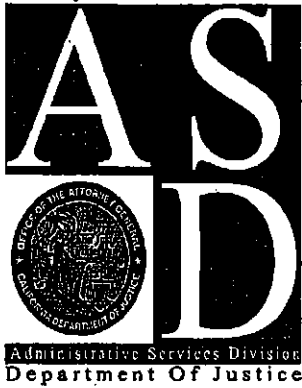
POSITION NUMBER	CLASSIFICATION	EMPLOYEE	FUNCTION
FIREARMS DIVISION ADMIN.			
419 510 7500 001	Director	[REDACTED]	Administration - Executive
420 510 5706 001	Deputy Attorney General III (.5)	[REDACTED]	Administration - Executive
420 510 5731 001	Research Analyst II	[REDACTED]	Administration - Budget
420 510 1247 003	Executive Secretary (.5)	[REDACTED]	Administration - Executive
420 510 1247 002	Executive Secretary (.5)	[REDACTED]	Administration - Executive
420-510-4870-901	Student Assistant	[REDACTED]	Administration - Executive
420 510 1470 002	Associate Info Systems Analyst	[REDACTED]	Administration - Legislation
420 510 5157 001	Associate Govt Program Analyst	[REDACTED]	Administration - Personnel
420 510 5157 002	Staff Services Analyst	[REDACTED]	Administration - Procurement
FIREARMS DIVISION ENFORCEMENT			
419 510 8681 001	Assistant Bureau Chief	[REDACTED]	Administration - Executive
419 510 8523 001	Special Agent In Charge	VACANT	Enforcement
420 510 1550 001	Property Controller I (.8)	VACANT (Advertised)	Enforcement
419 510 8482 901	Retired Annuitant Special Agent	[REDACTED]	Enforcement
419 510 8482 901	Retired Annuitant Special Agent	[REDACTED]	Enforcement
420 510 1176 001	Secretary	[REDACTED]	Enforcement
419 510 8482 002	Special Agent	VACANT	Enforcement
419 510 8524 001	Special Agent Supervisor	[REDACTED]	Enforcement
419 510 8524 003	Special Agent Supervisor	VACANT	Enforcement
419 510 8524 002	Special Agent Supervisor	VACANT	Enforcement
FIREARMS DIVISION (BROADWAY STAFF)			
420 510 4799 001	Dept of Justice Administrator III	[REDACTED]	Administration - Program
420 510 1181 002	Word Processing Technician	[REDACTED]	Administration - Program
420 510 4797 004	Dept of Justice Administrator I	[REDACTED]	Firearms Clearance
420 510 8439 001	Criminal Ident Specialist III	[REDACTED]	Automated Firearms
420 510 8436 003	Criminal Ident & Intel Supervisor	[REDACTED]	Denial Review
420 510 8456 013	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 005	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 016	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 008	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 014	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 011	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 007	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 010	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 003	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 009	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8456 002	Criminal Ident Specialist II	[REDACTED]	Denial Review
420 510 8454 003	Criminal Ident Specialist III	[REDACTED]	Denial Review
420 510 9927 008	Program Technician	[REDACTED]	Denial Review
420 510 9927 010	Program Technician	[REDACTED]	Denial Review
420 510 9927 003	Program Technician	[REDACTED]	Denial Review

APPENDIX C

FIREARMS DIVISION AND CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION DROS FUNDED POSITIONS

POSITION NUMBER	CLASSIFICATION	EMPLOYEE	FUNCTION
FIREARMS DIVISION ADMIN.			
420 510 9928 006	Program Technician II	[REDACTED]	Dental Review
420 510 9928 009	Program Technician II	[REDACTED]	Dental Review
420 510 1379 001	Office Assistant (G)	VACANT	Mental Health
420 510 9927 006	Program Technician	[REDACTED]	Mental Health
420 510 9927 004	Program Technician	[REDACTED]	Mental Health
420 510 9928 002	Program Technician II	[REDACTED]	Mental Health
420 510 9928 005	Program Technician II	[REDACTED]	Mental Health
420 510 9928 003	Program Technician II	[REDACTED]	Mental Health
420-510-9927-901	Retired Annuitant Program Tech	[REDACTED]	Mental Health
420 510 9925 002	Supv Program Technician II	[REDACTED]	Mental Health
420 510 9927 001	Program Technician	[REDACTED]	Processing Resolution
420 510 9927 005	Program Technician	[REDACTED]	Processing Resolution
420 510 9927 007	Program Technician	[REDACTED]	Processing Resolution
420 510 9927 011	Program Technician	[REDACTED]	Processing Resolution
420 510 9925 001	Supv Program Technician II	[REDACTED]	Processing Resolution
420 510 4797 003	Dept of Justice Administrator I	[REDACTED]	Information Services
420 510 8519 006	Field Representative	[REDACTED]	Dealer Inspection
420 510 8519 001	Field Representative	[REDACTED]	Dealer Inspection
420 510 8519 007	Field Representative	[REDACTED]	Dealer Inspection
420 510 8519 011	Field Representative	VACANT	Dealer Inspection
420 510 8519 002	Field Representative	[REDACTED]	Dealer Inspection
420 510 5393 008	Associate Govt Program Analyst	[REDACTED]	Information Services
420 510 5157 007	Staff Services Analyst	[REDACTED]	Information Services
420 510 5157 008	Staff Services Analyst	[REDACTED]	Information Services

Building A Foundation For Success



Budget Office
Dealer Record of Sale (DROS) Cash Flow Problem
December 16, 2004

Issue

DROS has run out of cash and as of December 14 has a **(-\$894,000)** negative balance. Currently expenditures exceed revenues in the Dealers Record Of Sale (DROS) Special Fund by \$346,000 per year. The recent \$5 increase on DROS transactions should correct this problem over time as revenues rise but DROS has no operating cash.

Background

The other component that affects DROS revenue is handgun sales volume. Handgun sales volume peaked in Fiscal Year (FY) 1999-00 at 470,754 applications requested. This figure declined to 300,638 by FY 2003-04; a 37% drop in three years. This trend is easy to see from the chart below.

History of handgun application volume

	FY	FY	FY	FY	FY	FY
APPLICATIONS	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Dealers' Record of Sale (DROS)	392,948	470,754	365,717	359,110	335,908	300,638

The decline in gun sales has substantially impacted the DROS revenues, it's balance and it's reserves. If this trend was to continue without remedy, the fund will go bankrupt by the end of FY 2004-05 as seen in the following fund condition statement.

0460 Dealer Record of Sale Special Account	2002-03	2003-04	2004-05	2005-06
BEGINNING BALANCE	3,818	1,962	149	-197
Revenues:	6,466	6,252	7,852	7,852
Transfers In from other Funds:	160	173		
Totals, Resources	10,444	8,387	8,001	7,655
Expenditures	8,482	8,238	8,198	8,667
ENDING BALANCE	1,962	149	-197	-1,012

Between un-funded mandated programs, increasing workload per application and inflation, the declining number of applications has not translated to decreased expenditures. The following is a sample of the programs that Firearms has been required to manage without additional funding.

- **Law Enforcement Gun Releases** - law enforcement agencies submit a request to Firearms Division to do firearms eligibility checks on confiscated guns (i.e., stolen, safekeeping, arrest) before they are returned to the owner. This is done to ensure that guns are not being released to prohibited individuals. Firearms Division conducts approximately 7,000 law enforcement gun release eligibility checks annually at no charge. Approx cost to DROS Fund: \$175,000 annually = 2 CIS II, 1 PT II.
- **DROS Enforcement Activities** - began in 1999 when the Firearms Division was established to provide firearms expertise and training to law enforcement agencies and firearms dealers. Approx cost to DROS Fund: \$254,000 annually = 1 Special Agent Supervisor and 1 Special Agent.
- **AB 2080** - would require that any Federal Firearms License holder who transfers firearms within California to also comply with all California requirements relative to gun dealer licensing. Due to DROS Fund condition, this has not yet been implemented. If implemented, approx cost to DROS Fund: \$548,000 one-time for database development and \$50,000 ongoing = 1 CIS II.
- **DAG Legal Support** - began in 1999 when the Firearms Division was established to provide legal counsel in numerous firearms related court cases. The Firearms FASA Fund provides \$60,000 to support this position with the remaining coming from DROS. Approx cost to DROS Fund: \$100,000 annually = 1 DAG III.

See appendix A for a list of all the changes since 1991 that now has to be checked before a firearms background check can be cleared.

Discussion

Without a cash balance DROS cannot pay for Firearms or CJIS expenditures. As revenue comes into DROS expenditures are paid but DOJ's General Fund is covering the outstanding expenditures. Even with the fee increase it will take time for DROS to build up its reserves since it is already has an **\$894,000** negative cash balance.

The Walmart settlement will cover \$800,000 of the deficit but without establishing some permanent cuts DROS may never build up its reserves since expenditures of \$8,198,000 still exceed projected revenues of \$7,852,000 (2003-04 revenue of \$6,252,000 plus \$1,600,000 (\$5 fee increase on 320,000 transactions equals \$1,600,000)). The current year expenditures include a voluntary savings from Firearms of almost \$400,000. It appears that DROS will not build up the reserves in the current year.

During Fiscal Year (FY) 2005-06, DROS is projected to have \$8,667,000 in expenditures and have revenue of \$7,852,000. This will put the fund in a deficit of \$815,000.

Cutting Expenditures

For Firearms and CJIS to maintain current combined authority spending levels of \$8,667,000 then there has to be 365,000 DROS transactions per year plus the other fees that the DROS Fund collects revenue for like special permits. If Firearms projects 320,000 transactions per year then expenditures need to be reduced to \$7,852,000.

Increased Revenue

The recent increase in the DROS fee from \$14 to \$19 will bring in an extra \$1,600,000 in to the fund based upon the current number of projected DROS transaction (320,000 transactions x \$5 extra revenue=\$1,600,000). Unfortunately that only brings projected revenues up to \$7,852,000

The California Pistol and Rifle Association (CPRA) is asking the LAO to review the recent fee increase and how we had the right to implement all the previous COLA's. The table below shows how much the DROS fee would have been if the COLA's had been implemented overtime.

DROS Fee with a 3% COLA added every year since 1991

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Fee	14	14.42	14.85	15.29	15.76	16.23	16.72	17.22	17.73	18.27	18.81	19.38
\$												

Solutions

DROS expenditures need to be permanently cut by \$800,000 to allow DROS to become solvent.

(File Location: I:\Budgets\Firearms\Issue Paper\DROS Cash flow problem .doc)

For more information on this report or other issues, contact Robert Sharp, Budget Office, at 916/323-5346 or robert.sharp@doj.ca.gov.

APPENDIX A

ADDITIONAL DROS PROHIBITING CATEGORIES POST (Resulting in Increased Number of Eligibility Reviews)

THE FOLLOWING FIREARM PROHIBITING MISDEMEANORS WERE ADDED:

PENAL CODE SECTIONS:

1991	1994	1995	2000
136.5	273.5	71	422
140	273.6	76	136.1
171b	646.9	148(d)	
171c		186.28	
171d		246	
240		417.1	
241		417.6	
242		12023	
243		12040	
244.5		12072(b)	
245		12072(g)(3)	
246.3			
247			
417			
417.2			
626.9			
12034(b) or (d)			
12100(a)			
12320			
12590			

1991

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE
WARDS OF JUVENILE COURT FOR WIC 707(b) OFFENSE

PRIVATE PARTY TRANSFERS ARE NOW REQUIRED TO GO THRU DEALER
AND HAVE DOJ BACKGROUND CHECK COMPLETED (NEW LEGISLATION)

1993

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON PEACE
OFFICERS (NEW LEGISLATION)

APPENDIX A

1994

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE
WARDS OF JUVENILE COURT FOR PC 1203.073(b) OFFENSE

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON SECURITY
GUARDS (NEW LEGISLATION)

1995

NEW FIREARM PROHIBITION - PERSONS UNDER 30 WHO WERE MADE
WARDS OF JUVENILE COURT FOR PC 12071(c)(1) OFFENSE
FEDERAL BRADY PROHIBITIONS ADDED (NICS)

1998

DOJ REQUIRED TO CONDUCT FIREARM ELIGIBILITY CHECKS ON PAWN
REDEMPTIONS AND CONSIGNMENT SALES/RETURNS (NICS)

NEW FIREARM PROHIBITION: MISDEMEANOR DRUG OFFENSES

REQUIRED TO CHECK INS STATUS, MENTAL DEFECTIVES, OUT OF STATE
WARRANTS, DENIAL NOTIFICATION (NICS)

2000

DOJ REQUIRED TO CONTACT LOCALS TO CONFIRM FIREARMS
PROHIBITING RESTRAINING ORDERS (POLICY)

2002

DOJ REQUIRED TO CONDUCT NICS ICE CHECKS (NICS)

DOJ REQUIRED TO CONDUCT ARMED PROHIBITED TRACKING. INCL
CHECKING AFS ON DENIALS, UPDATING CAPS, NOTIFYING AGENTS (NEW
LEGISLATION)

2003

DOJ REQUIRED TO NOTIFY THE DA OF FIREARM DENIALS (AG DECISION)

APPENDIX A

2004

NEW FIREARM PROHIBITION: ELDER ABUSE RESTRAINING ORDERS (NEW LEGISLATION)

DOJ REQUIRED TO CHECK VIOLENT GANG AND TERRORISM FILE (VGTOF) ON FIREARM ELIGIBILITY CHECKS (NICS)

DOJ REQUIRED TO CONDUCT PERSONAL FIREARM ELIGIBILITY CHECKS (NEW LEGISLATION)

APPENDIX B

DEALER'S RECORD OF SALE (DROS) REGISTER HISTORY (Revised June 1, 2003)

This summary highlights several major change in California firearms laws that affected firearm purchase transactions and dealer licensure requirements over the past several decades.

- 1909 - Penal Code required dealers to keep a register of pistol and revolver purchasers and to make the register open to the inspection of any peace officer.
- 1923 - Laws regulating and controlling pistol and revolver possession, sales and use were passed. Pistols and revolvers could not be delivered to purchasers on the day of sale, and a copy of the register was transmitted to the local law enforcement agency.
- 1931 - The laws were amended to provide both the local law enforcement agency and the Department of Justice (DOJ) with a copy of the register and again prohibited delivery on the day of sale.
- 1953 - Passage of the Dangerous Weapons' Control Laws extended the waiting period to 3 days as a "cooling off" period. DOJ notified local law enforcement agencies of purchasers who were "potentially prohibited," and the agencies would confiscate the weapons from purchasers.
- 1965 - Laws amended to extend the waiting period to 5 days, and DOJ continued to notify local law enforcement agencies of potentially prohibited purchasers.
- 1972 - DOJ, for the first time, was required to notify dealers of prohibited purchasers, but was unable to stop delivery due to retention of the five-day waiting period.
- 1975 - Waiting period extended to 15 days to give DOJ time to determine if purchasers were prohibited and to notify dealers to stop sales.
- 1991 - Rifle/Shotguns require 15-day wait and purchaser clearance for the first time. Prohibited categories were expanded. Requires all private party transactions to be processed by a licensed dealer.
- 1992 - Penal Code section 12071 was amended to require firearms dealers to obtain a Certificate of Eligibility (COE) (cost \$73.00 initial and \$17.00 annual renewal) from DOJ by undergoing a firearms eligibility background check.
- 1994 - Purchasers of handguns are required to obtain a Basic Firearm Safety Certificate prior to taking possession of a handgun.
- 1995 - The DOJ Centralized List (CL) of Firearms Dealers was enacted into law. Firearms Dealers had to be established on the CL (cost \$85.00 per year per store

APPENDIX B

location) to be able to obtain DROS registers and/or submit them to DOJ for background check processing.

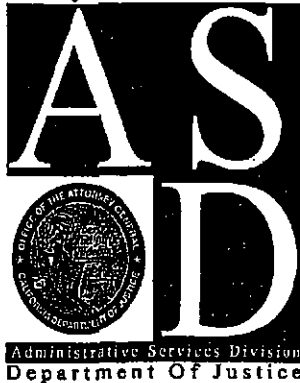
- 1997 - The old process of dealers mailing completed DROS registers to DOJ for processing was replaced with a new electronic/telephonic firearms eligibility background check process. The waiting period for both handguns and long guns was reduced to 10 days.
- 1998 - The DROS process was amended to include the Federal National Instant Criminal (NICS) background check requirements and the California DOJ was established as the state's NICS Point of Contact (POC). Also, pawn and consignment transactions were incorporated into the DROS process.
- 2000 - (a). State (and Federal) law was amended to limited purchasers/transferees of handguns to 1-handgun per 30 day period. {12072(a) (9) PC} (b). 2nd Assault Weapon law enacted- identifying by characteristics on firearms {12276.1 PC}
- 2001 - Unsafe Handgun law- New law required the DOJ to certify laboratories to test handguns to be sold/manufactured in California. Effective January 1, 2001, only those handguns that had successfully passed required testing could be sold/transferred/manufactured within the state. {12125 PC}
- 2002 - Safety Device law- New law required that all firearms sold/transferred/manufactured within the state must be accompanied by a DOJ certified firearms safety device. The DOJ certified laboratories to test firearms safety devices and certified only those devices that had successfully passed required testing.
- 2003 - (a) Handgun Safety Certificate- purchasers of handguns must meet new safety training requirements and obtain a "Handgun Safety Certificate" prior to purchasing a handgun. Implementation of the HSC repealed and replaced the BFSC requirements that were established in 1994. {12800 PC}
(b) Handgun Demonstration- purchasers of handguns must perform safe handling demo. (12071b)
(c) Internet Automated DROS process initiated. The firearm recipient's identification number, name, and date of birth must be obtained by swiping the recipient's CA ID or DL card through a magnetic card stripe reader.
(d) Thumb print required on all DROS.
(e) No handgun may be delivered unless the purchaser, transferee, or person being loaned the firearm presents documentation indication that he or she is a California resident.
(f) CALDOJ implemented a new federal requirement to require U.S. Citizenship information on the DROS as a result of a federal mandate issued by the U.S. Attorney General. The new requirement was implemented as a homeland security precaution in the wake of the 911 terrorist attacks on the U.S.

APPENDIX B

Document No. 3

**4-page Budget Office report (plus appendix)
regarding DROS fund**

Building A Foundation For Success



Budget Office

Dealer Record of Sale (DROS) Cash Flow Problem

January 19, 2005

Issue

Due to a decline in gun sales and relatively static costs to run the Dealer Record of Sales (DROS) program, the DROS Account is in effect bankrupt. While there is still cash in the DROS Account today, the balance remaining in the fund is small and is more than offset by charges being held by the Accounting Office, which should be applied against the fund. If all appropriate charges were applied against the account, the balance would be -\$894,000.

Background

The primary source of revenue for the DROS fund is the fee for the background check required to be completed prior to a person being authorized to purchase a handgun. The number of requests for this check has been falling steadily since Fiscal Year (FY) 1999-00. Handgun sales volume peaked in Fiscal Year (FY) 1999-00 at 470,754 applications requested. This figure then declined to 300,638 by FY 2003-04, a 37% drop over three years. This trend is shown in the chart below.

History of handgun application volume

	FY	FY	FY	FY	FY	FY
APPLICATIONS	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Dealers' Record of Sale (DROS)	392,948	470,754	365,717	359,110	335,908	300,638

The decline in gun sales has negatively impacted DROS revenues, and in turn the DROS fund balance. However expenditures have declined nominally. Given these two trends, and assuming these trends will continue without remedy, the fund will go bankrupt by the end of FY 2004-05 as seen in the following fund condition statement.

0460 Dealer Record of Sale Special Account	2002-03	2003-04	2004-05	2005-06
BEGINNING BALANCE	3,818	1,962	149	-197
Revenues:	6,466	6,252	7,852	7,852
Transfers In from other Funds:	160	173		
Totals, Resources	10,444	8,387	8,001	7,655
Expenditures	8,482	8,238	8,198	8,667

ENDING BALANCE

1,962 149 -197 -1,012

Between unfunded programs, increasing workload per application and inflation, the declining number of applications has not translated to decreased expenditures. The following is a sample of the programs that Firearms has been required to manage without additional funding.

- **Law Enforcement Gun Releases** - law enforcement agencies submit a request to Firearms Division to do firearms eligibility checks on confiscated guns (i.e., stolen, safekeeping, arrest) before they are returned to the owner. This is done to ensure that guns are not being released to prohibited individuals. Firearms Division conducts approximately 7,000 law enforcement gun release eligibility checks annually at no charge. Approximate cost to DROS Account: \$175,000 annually = 2 CIS II, 1 PT II.
- **DROS Enforcement Activities** - began in 1999 when the Firearms Division was established to provide firearms expertise and training to law enforcement agencies and firearms dealers. Approximate cost to DROS Account: \$254,000 annually = 1 Special Agent Supervisor and 1 Special Agent.
- **AB 2080** - would require that any Federal Firearms License holder who transfers firearms within California to also comply with all California requirements relative to gun dealer licensing. Due to the DROS Account condition, this has not yet been implemented. If implemented, approx cost to DROS Fund: \$548,000 one-time for database development and \$50,000 ongoing = 1 CIS II.
- **DAG Legal Support** - began in 1999 when the Firearms Division was established to provide legal counsel in numerous firearms related court cases. The Firearms FASA Fund provides \$60,000 to support this position with the remaining funding coming from DROS. Approximate cost to DROS Fund: \$100,000 annually = 1 DAG III.

See Appendix A for a list of all the changes since 1991 that now has to be checked before a firearms background check can be cleared.

Discussion

There are several factors that may improve the DROS fund condition. The pending Walmart settlement could result in as much as \$2,000,000 being available to bolster the DROS fund balance, though not all may be available to spend immediately. The DROS fee increase will increase revenue into the DROS fund. Cost reductions will help balance the flow of cash.

Wal-Mart: The Wal-Mart settlement will bring an \$2,000,000 in new one-time funds to DROS. \$800,000 of the settlement will be deposited directly into DROS to pay for investigative and attorney costs. It is not clear whether some of this amount of this may not be due the Division of Civil Law for representing California in this case. The remaining \$1,200,000 is for future monitoring of Wal-Mart with the option, in the event Wal-Mart stops selling firearms, to spend the remaining money to develop and implement a system to validate the age of ammunition

purchasers. It is not clear that any existing operations would fall under intended use of these funds.

DROS Fee Increase: The DROS fee increase from \$14 to \$19 is expected to bring in an additional \$1,600,000 annually based on 320,000 transactions per year. DROS revenue in FY 2003-04 was approximately \$7,852,000; consequently, the forecast FY 2004-05 DROS revenue forecast is \$8,198,000. The current year expenditures include a voluntary savings from Firearms of almost \$400,000. It appears that DROS will not build up the reserves in the current year. At this point DROS revenues have not reflected the November increase do to the two-month lag.

The California Pistol and Rifle Association (CPRA) may file (according to Firearms Division no suit has been filed at this time) a suit claiming DOJ could have only raised the DROS fee by the latest years Consumer Price Index (CPI) which would reduce the DROS fee increase from \$5.00 to \$0.42. This would clearly decimate our ability to sustain this fund given existing expenditure levels. Similarly, any reduction in this increase will negatively affect fund sustainability.

Appendix A. details two potential outcomes: (1) The Base Case assumes DOJ gets only what we are fairly certain will come our way and (2) Scenario 1 offers a slightly rosier picture with DOJ receiving an additional approximately \$300,000 from DROS and DROS expenditures being reduced approximately \$1,200,000 annually. Note the Base Case indicates the fund cannot balance this year, and even Scenario 1 brings the fund to barely balance. That means DOJ will have to come up with General Fund to fill the cash gap. Additional attention to new Firearms Divisions expenditures now will help ensure this fund does not require \$2.6 million General Fund at the end of this FY to balance.

Cutting Expenditures

For Firearms and CJIS to maintain current combined authority spending levels of \$8,667,000 then there has to be 365,000 DROS transactions per year plus the other fees that the DROS Fund collects revenue for like special permits. If Firearms projects 320,000 transactions per year then expenditures need to be reduced to \$7,852,000.

Solutions

- (1) DOJ should enforce strict spending restrictions from the DROS fund now to avoid immediate and future attention being drawn to the fact that we have depleted this fund to insolvency. No new expenditures should be allowed and immediate cost reductions should be implemented. Without these actions, the DROS fund could require as much as \$2.6 million to balance this year.
- (2) Have the Firearms Division make a permanent cut of \$1.6 million and the Criminal Justice Information System make a permanent cut of \$1 million through a negative Finance Letter.
- (3) Do Nothing.

Budget Office Recommendations

(1) DOJ should enforce strict spending restrictions from the DROS fund now to avoid immediate and future attention being drawn to the fact that we have depleted this fund to insolvency. No new expenditures should be allowed and immediate cost reductions should be implemented. Without these actions, the DROS fund could require as much as \$2.6 million to balance this year.

(File Location: I:\Budgets\Firearms\Issue Paper\DROS Cash flow problem to Steve Coony .doc)

For more information on this report or other issues, contact Robert Sharp, Budget Office, at 916/323-5346 or robert.sharp@doj.ca.gov.

APPENDIX A

DROS Cash Position Estimate

	Base Case	Scenario 1
Actual Cash Balance as of 12/14/04	629,000	
Add: Revenue received, but not posted by Controller	106,000	
Less: Costs not PFA'd due to insufficient funds	1,629,000	
Estimated Cash Position	(894,000)	
Add: Certain Walmart money	800,000	
Less: ProRata	175,000	
Subtotal	(269,000)	
Expected Total Revenue	7,852,000	8,149,000
Expected Total Expenditures (FD)	6,517,300	6,319,300
Expected Total Expenditures (CJIS)	1,658,000	1,658,000
Total Expected Year-End Cash	(592,300)	902,700
Monthly savings required to balance by 6/30/05	(84,614)	128,957
Less: Need for fund balance (3 months)	2,043,825	2,043,825
Grand Total Cash	(2,636,125)	(1,141,125)
Monthly savings to have a \$1,000,000 by 6/30/05	(227,471)	(13,900)
Monthly savings to have a \$2,043,825 by 6/30/06	(138,743)	(60,059)
Add: Uncertain Walmart money	1,200,000	1,200,000
Potential Grand Total Cash	(1,436,125)	58,875

DROS ISSUE

- At current levels of revenue and expenditures the DROS Fund will run out of money and be in a deficit of \$905,000 by the end of FY 2005-06.
- Expenditures have remained stable over the last three years, while gun sales and the related revenue have dropped 29% over the last three years.
- DROS reserves have been dropping at a rate of \$1.1 million a year for the last two years.
- The DROS fee has not been increased since December of 1991.
- If the DROS fee had implemented a COLA every year since 1991, then the fee today would be over \$20.
- Raising the DROS fee to \$19 will solve the problem and allow the fund to build up its reserves.
- Cutting DROS expenditures by \$1.3 million will solve the problem and allow the fund to stabilize.
- Cutting DROS expenditures will solve the fund's problem but will create a backlog on DROS applications and may make it so that the Firearms Division is not able to meet all of its legal obligations.

Armed Prohibited

The Armed Prohibited unit under the Bureau of Firearms maintains an online database known as the Prohibited Armed Persons File. The file cross-references persons who have possession of a firearm on or after January 1, 1991, and which ones fall within a class of persons who are prohibited from owning or possessing a firearm.

The unit consists of 42.0 positions with a budget of \$4,770,823.00 in General Fund in FY 10/11.

INITIAL STATEMENT OF REASONS

Specific purpose of the regulations

The purpose of these regulations 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 regulations lower the current \$19 DROS fee to \$14, 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.

Factual basis

DOJ is statutorily authorized to charge a fee to cover its costs for processing Dealer's Records of Sale (DROS). The fees are collected by firearms dealers, from firearm purchasers/transferees and are subsequently submitted to DOJ.

The current DROS fee was set back in November 2004 at \$19, which at the time was believed to be sufficient to cover the cost of the program and maintained an acceptable level of reserve in the DROS account. The estimate of \$19 was based on reviewing the totals from previous year's firearm sales and calculations of anticipated sales within the state. DOJ recently completed a review of the revenues into and expenditures out of the DROS account, and the total number of firearm sales between 2007 and present date. The analysis revealed that the projected gun sale amounts relied upon back in 2004 to set the DROS fee at \$19, were much lower than the actual total of gun sales realized.

Over the past three fiscal years there has been a 30 percent increase in DROS volume. In fiscal year (FY) 06/07 DOJ processed 367,494 DROS compared to 479,772 DROS processed in FY 08/09. The "economy of scale" dictates that the processing cost per DROS decreases as the volume increases. Going back even further, a comparison between FY 03/04 and FY 08/09 reveals a 60 percent increase in DROS volume which demonstrates the extreme volatility in the firearms market and DROS processing costs. 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. For example, the Los Angeles riots contributed to an increase in DROS volume to 559,608 in 1992 and a record level of 642,197 the following year. In comparison, in calendar year 2003 the DROS volume dipped to an all-time low of 290,376.

In processing a DROS, DOJ must conduct a Basic Firearms Eligibility Check (BFEC) to ensure that subjects are not prohibited from owning/possessing firearms pursuant to Penal Code sections 12021 and 12021.1, Welfare and Institutions Code sections 8100 and 8103, and Title 18 of the United States Code, section 922, subdivision (t). Depending on various factors, a BFEC may be processed programmatically by the Consolidated Firearms Information System (CFIS) or it may require a more time consuming manual review which is conducted by BOF staff. The percentage of DROS that require a manual review has decreased slightly in recent years due to minor system/program enhancements. Consequently, within the past three fiscal years, although the volume of DROS transactions has increased, the average time spent on each DROS, and thus the processing cost, has decreased. Based on the increased level of gun sales, achieved savings in conducting firearms eligibility background checks, and the increases in the revenue reserves

within the DROS account, DOJ is proposing to reduce the DROS fee from \$19 to \$14. The proposed fee reduction will begin reducing the revenue level in the DROS account and more closely align the program's cost with its revenue source in the future.

Because of the aforementioned volatility in firearm sales and DROS volume from year to year, the process proposed by DOJ for the administrative adjustment of the DROS fee, would require the department to review its DROS revenues and DROS-related expenses at the end of each fiscal year to determine whether it is necessary to adjust the DROS fee. By November 1, 2010 and by November 1st each year thereafter, the department shall publish its determination on the DOJ public website. If the department determines it is necessary to administratively adjust the DROS fee, the department shall provide notice of the amount and date of the adjustment at least 30 days before the adjustment takes effect to all interested parties.

Technical, theoretical, and/or empirical study, report or documents

DOJ did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of the amended regulations.

Specific technologies and new equipment

These regulations do not mandate the use of specific technologies or new equipment.

Reasonable Alternatives to the Regulations and the Agency's Reasons for Rejecting Them

No other reasonable alternatives were presented to or considered by DOJ that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome.

Reasonable Alternatives to the Proposed Regulatory Action That Would Lessen Any Adverse Impact on Small Businesses and the Agency's Reasons for Rejecting Them

DOJ finds that the proposed regulations would not have an adverse impact on small businesses.

Evidence Supporting Finding of No Significant Adverse Economic Impact on Any Business

DOJ determined the proposed regulations will not have a significant adverse economic impact. On the contrary, the proposed regulations may have a positive economic impact on firearms dealers in the form of increased firearm sales due to the \$5 decrease in the DROS fee.

Department of Justice, Bureau of Firearms

PUBLIC HEARING

September 15, 2010

Mr. Wilfredo Cid:

Good morning. It's about 9:02 a.m. The California DOJ - Bureau of Firearms welcomes you to today's hearing on proposed regulations that will reduce the Dealer Record of Sales fees. I'm Wilfredo Cid from the Bureau of Firearms and I will be the DOJ's hearing officer during today's proceedings. I will be assisted by Bureau of Firearms Assistant Chief Steve Buford to my right, along with the Bureau of Firearms Manager Sherry Carter who's out in the audience, Jeff Amador who's sitting to my left who will be our official timekeeper for today's hearing.

Let me begin with a few housekeeping items. We will be taking a brief five-minute break near the top of every hour to allow our staff to change the tapes and the DVDs, which are being used to record today's hearing. If needed, we will take a lunch break around noon. For your convenience, just outside the auditorium to the right is the snack shop that's open to the public. For restrooms, proceed past the snack shop and turn right down the corridor. I believe they may be closed on the first floor so you may have to go to the second floor. Please note that for security reasons if you leave the room you will have to go through the metal detectors upon your return, which are being manned by CHP officers at the front.

For the record, it's Wednesday, September 15, 2010, it's about 9:03 a.m. Today's hearing being videotaped as part of the official record. This is a quasi-legislative hearing in which the department is carrying out a mandated rule-making function as authorized by the California Legislature. Pursuant to the Administrative Procedures Act, the purpose of this hearing is to receive public comment pertaining to the proposed regulation. Therefore we ask that speakers limit the scope of their comments to the proposed regulation. During today's hearing, the department does not intend to answer questions or otherwise engage in dialogue for the record in response to oral comments. Prior to the adoption of the proposed

regulations, the department will consider all relevant comments and recommendations presented orally or in writing. A summary of each relevant comment or recommendation and the department's response will be included in the final statement of reasons submitted to the Office of Administrative Law, known as OAL. A copy of the final statement of reasons and notification of any changes made to the proposed regulations will be posted on the Bureau of Firearms website in the future. Included in the package that will be sent to OAL will be a complete copy of the official video recording made of today's hearing, which will capture all comments made by speakers at the podium. As such, no other video recording by members of the audience is necessary or will be allowed.

Additionally, we ask that while the hearing is in session, you turn your cell phones or other device off or set it to silent or mute as to not interfere with the video recording of this hearing or become a distraction for the speakers.

As you came in, you should have received a package, which includes a green form, a white written comment form, and a blue speaker form. If you would like to receive a copy of the final statement of reasons by U.S. mail, please complete one of the green forms. The white written comment form is provided for your convenience if you want to submit written comments in place of, or in addition to, oral comments. Both forms can be dropped in the gray box on the table located at the back of the room. You may also drop off your completed written comment form at the south entrance of the DOJ building located at 4949 Broadway. We'll accept those forms up to 5:00 p.m. today.

If you wish to make an oral presentation, please complete one of the blue forms and give it to the DOJ staff standing by the podium. Either Sherry, Jamie, if you can raise your hands if you're here. Great. Speakers will be called in the order the speaker form was received and while one person is actually speaking, we will ask that the next speaker wait on deck. There are some seats along the table just to the right of the podium.

Oral comments will be limited to five-minutes to assist the speakers, Jeff Amador will hold up a yellow card to let people know, after approximately four and a half minutes, to alert the speaker that he or

she has 30 seconds left. Because of the five-minute limit, we encourage speakers to avoid repeating earlier comments. If you agree with comments made by prior speakers, you may simply state that fact and add any new information you believe is important. After everyone has had an opportunity to make their original five- minute presentation, speakers will be invited to return to the podium to add any additional comments. When it is your turn to speak, please begin by stating your name, the name of your agency.

Additionally we have a digital camera available that can be used by our Bureau of Firearms staff to take pictures of any props or any exhibits that you would like to include as part of the final rule-making file which will be submitted to the Office of Administrative Law. If you have that, then you can contact Sherry in the back and she'll be able to help you with that. Members of the press, if you haven't done so already, and you're here in the room, please sign in the back and we have a package for you as well.

Okay, do we have any speakers? Okay. We have another 5 or so minutes and if not, we will go into recess. Any speakers in the audience that would like to make a comment? Okay. I think we have one.

Public testifier from the Legal Community Against Violence (LCAV):

Hello, my name is Ben Van Houten on behalf of Legal Community Against Violence.

Mr. Cid:

Okay, Good morning.

Mr. Van Houten:

We have some written comments that we submitted last night via e-mail and I have a copy as well to provide today. But briefly speaking, LCAV opposes the proposed fee reduction as both unnecessary and imprudent given the volatility of the firearms sales market and the broader financial challenges facing California today. I think the initial statement of reasons acknowledges the volatility of the firearms market and the DROS volume is extremely difficult to predict and we agree with that. We saw the spike in firearms and ammunition sales in late 2008 and in 2009 and we understand the available evidence suggests that has already peaked and is now beginning a decline. In any event, the market demand for DROS transfers does change from year to year. By significantly reducing limiting fee revenue, the

proposed regulations would limit the abilities of this and future Attorneys General to implement and support programs that are funded by the fee.

The DROS fee is not merely intended to offset the costs of conducting a background check pursuant to Penal Code section 12076 and AB161 of 2003. The fee funds the Department of Justice for the costs associated with regulatory and enforcement activities related to the sales, purchase, and transfer of firearms. The Department of Justice has used DROS funds for important – for a variety of important enforcement activities and we are concerned about that limiting the fee and getting the volatility in the sales market might be jeopardizing the ability to fund and implement future enforcement measures.

Additionally, given the dire state of the California financial climate today, it seems imprudent to cut off or limit a source of revenue that has provided the Department of Justice with a good amount of funds, so much so that they have, the Department has been able to accrue a substantial reserve. We think that's a prudent reserve and we're worried that the reductions in the fee would jeopardize the ability to maintain such a reserve for use in times of crisis. The benefits of the boom in firearm sales that were identified in the initial statement of reasons, the economies of scale, the ability to go through this reserve, will fade as the number of firearm sales draws down, but the challenge to prevent gun violence will remain. So, we are strongly opposed to the reduction.

Mr. Cid:

Thank you sir for your comments. It is part of the record. Anything else you'd like to add? Okay, thank you. Okay, any other speakers in the audience? Okay. There are no other speakers in the audience. We will be in a break until, let's say, 9:30.

Okay, it's 9:31. We're back on the record. The hearing is back open and I believe we have another speaker that just came in that would like to speak. Mr. Nick Wilcox.

Mr. Wilcox:

Good morning. For the record my name is Nick Wilcox. I'm here to speak in opposition to the proposed regulations. I have written comments that I would like to submit at this time.

Mr. Cid:

Just give them to ... thank you.

Mr. Wilcox:

Thank you very much. This hearing is being held to consider the draft regulations to reduce the DROS fees from \$19 to \$14. I understand that part of the rationale for doing this is that there is a large surplus in the DROS fund, which we're aware of. I believe it is currently about \$18 million. And it has gone up considerably in the last four years.

We feel that there are two primary reasons for this growth in the DROS special account. One of course is that gun sales have increased rather strikingly, particularly in the last few years, and it's an episodic sort of thing – they go up and down, up and down for reasons that are partially inexplicable and partly because of the political climate at the present time. There seems to be a climate of fear and gun sales go up. Gun sales also went up after 9/11 and after the botulism attacks in Washington D.C., but I'm not quite sure how guns would have prevented or been able to rectify the botulism attacks.

(The following section is filled with inaudible gaps [00:13:07] to [00:13:58].)

The DROS fees have been used for many purposes – obviously they were used for providing background checks but they are used for many other law enforcement and regulatory activities. And we believe this is an appropriate use of the DROS fund. We believe this large surplus in the DROS fund should be used to hire more agents so that we can more vigorously enforce the laws we have on the books.

The gun lobby frequently states that we don't want more gun laws – we simply need to enforce existing laws. We disagree that we don't need more guns laws; we think we do need some but we agree with them we need to vigorously enforce existing laws and, therefore, we believe this \$18 million surplus should be used for exactly that purpose.

In these hard economic times, local law enforcement agencies are being subjected to all kinds of negative economic pressures, we're having to layoff staff, detectives are having to do beat duty and all

kinds of other things. DOJ is in the fortunate position of having some surplus funds and we believe that these surplus funds should be used to supplement local law enforcement activities.

A great example of this would be the Armed and Prohibited Persons System Program, or the APPS Program. Currently, we understand that APPS is not being vigorously enforced at the local level. DOJ has been engaging in a number of APPS sweeps and other things with great success,.....because of the budget circumstances, we do not believe that it's likely that local law enforcement will be able to step up their enforcement of an APPS program. Therefore, we believe that some of this money should be used to enforce the APPS Program. So, we would argue that the DOJ should petition the Legislature to appropriate some of these DROS funds to fully support the APPS program. So with that, we have submitted our comments, and we will be happy to answer any questions, if you have them. Thank you very much.

Mr. Cid:

Okay any other speakers in the audience? Okay. I don't see any. We will be in recess until 10:15. Okay, it's 10:20, we're back in session. Any other comments, any other speakers? Okay. I don't have any other speakers waiting so with that, we'll be recessed til 11:00 a.m. Okay, It's 11:01 a.m., I will open again, the session's open. Any other speakers? Okay. Having seeing none, I will recess 'til noon. I will open again and at that point if there's no other speakers, we'll be adjourned for the day. Thank you. Okay it's about 11:59. Any other speakers, any more comments? Okay. There are none present in the audience. Before we close this public hearing, if there's anybody in the audience that would like to make any other oral comments this is your last chance. Again, there's nobody here. It's now 12:00 and I want to thank everybody who showed up. And I also want to remind anybody who's here that would like to submit additional comments after this hearing's over, we will accept those comments up to 5:00 p.m. today. The comments can be dropped off at 4949 Broadway at the security booth in the south side entrance, or they can be emailed to Jeff.Amador@doj.ca.gov before 5:00 p.m. And with that, this hearing is closed. Thank you.

END OF HEARING

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

There is no information to be updated. All of the information provided in the Initial Statement of Reasons is accurate and current. Section 4001 "DROS Fees" was adopted as originally proposed.

SUMMARY OF COMMENTS AND DOJ RESPONSES

See Section 14 - Spreadsheet which summarizes the comments received during the 45-day comment period and DOJ's responses to those comments.

ALTERNATIVES DETERMINATION

The Department has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

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.

DROSPP000175

DROS Fee Regulations Public Comments and DOJ Responses

#	Organization	Commenter	Subject	Comment	DOJ Response
9	The Calguns Foundation	Jason Davis	Fee Reduction Insufficient	While the Calguns Foundation, Inc. supports the reduction in fees, its findings reveal that the reduction is insufficient to bring the fees within the Statutory Guidelines. Additionally, the DOJ has no itemized accounting of the DROS program funds. Without an itemized accounting of the criteria necessary to determine the proper DROS fee pursuant to Penal Code section 12076, any fee schedule set is speculative and will be made without the authority to do so, since Penal Code section 12076 prohibits the DOJ from charging more than necessary to implement and administrate the requisite DROS Programs. As such, the Proposed Regulations fail to have the requisite authority necessary for passage pursuant to Government Code section 11349.1.	The Department disagrees with the comment. The Department's authority to promulgate regulations establishing the DROS fee is not encumbant upon an itemized accounting of the DROS program funds.
10	The Calguns Foundation	Jason Davis	Wants Detailed Accounting of DROS Expenses	<p>THE \$14 FEE REMAINS BEYOND THE STATUTORY AUTHORITY OF THE DOJ</p> <p>A proposed regulation satisfies the requirement of "authority" if a provision of law permits or obligates the agency to adopt, amend, or repeal a regulation. (Govt Code 11349(b).) The Department of Justice's authority to charge fees to recover the costs for DROS funded programs is limited by the provisions of Penal Code 12076(e) and (f). Both of these provisions limit what the DOJ can collect to only the amount necessary to fund the specific tasks. Thus, in order to determine the appropriate sum that can be charged as the fee, the DOJ must account for the costs of each category of information referenced in Penal Code section 12076 and included in the total costs.</p> <p>Unfortunately, the DOJ has not been able to provide such an accounting – and is therefore unable to substantiate the proposed \$14 fee. On July 27, 2010, Brandon Combs submitted a Public Records Act request for information pertaining to an accounting for each of the categories that the proposed fee is purportedly based upon. (Exhibit A.) In response, after several conversations with representatives of the bureau of Firearms, Mr. Combs was informed that no such accounting exists. And, his request was therefore modified to obtain information currently available, namely:</p> <ol style="list-style-type: none"> 1. The DROS fund total budget for years 2000-2010; 2. The amount of DROS sales for years 2000-2010 (the number of DROS transactions for long-guns and shotguns and the amount of DROS transactions for handguns); 3. The amount deposited into the DROS fund for years 2000 -2010 (i.e. DROS revenue); 4. A list of services that are provided by the DOJ/BOF using DROS monies; and 5. A list of the statutory/regulatory authority for the fees charged/services provided. <p style="text-align: right;">On August 10, 2010, the DOJ responded to Mr. Combs' request by providing: (1) a chart that provides a summary of the DROS budget, total revenue, expenditures, and DROS transactions for the last ten fiscal years, and (2) A chart that provides the list of services that are provided by the DOJ that are supported by the DROS funds, as well as a listing of any associated fees and statutory references. (Exhibit B.)</p> <p>In sum, the DOJ was unable to provide an accounting of the DROS funds, as necessary to establish the fee schedule permitted penal Code section 12076. Further, based upon the materials provided, it appears as though the DOJ is or has been comingling the DROS account funds for use with activities beyond those statutorily authorized.</p> <p>In researching the matter further, information from the California Department of Finance indicates that there has been an ongoing surplus of funds in the DROS account. (Exhibit C.) When considered in conjunction with the information provided by the DOJ, this leads to the conclusion that the existing fees, as well as the proposed \$14.00 fee, are beyond that statutorily authorized. As such, the Calguns Foundation opposes the fee of \$14.00 on the basis that the information obtained from the DOJ cannot support a claim that the amount necessary to perform the services required by the DOJ is \$14.00 and the surplus of funds suggests that the proposed amount is insufficiently reduced. In fact, because the DOJ is unable to provide an itemized accounting of each of the programs that the total fee is based upon, we request an audit of the use of the DROS funds to establish the appropriate fee to bring the DOJ into compliance with the requirements of Penal Code section 12076.</p>	The Department disagrees with the comment. The Department's authority to promulgate regulations establishing the DROS fee is not encumbant upon an itemized accounting of the DROS program funds.
11	The Calguns Foundation	Jason Davis	Method of Determining Fee Not Specified and Lacks Detailed Accounting of DROS Expenses	<p>THE PROPOSED 11 C.C.R.4001(b) EXCEEDS THE DOJ'S AUTHORITY</p> <p>The Calguns Foundation opposes proposed 11 C.C.R. section 4001(b) to the extent that it authorizes the DOJ to annually set a fee without having a proper accounting from which to determine a proper fee -as required by Penal Code section 12076. Penal Code section 12076 sets forth the guidelines upon which the DOJ may raise fees. (See footnotes 1 and 2.) The Proposed Section 4001(b), however, states only one restriction, that the "fees 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." Nothing in the proposed Section 4001(b) provides guidance as to how the proper fee is to be determined; nor does it mandate an accounting of the specified Penal Code 12076 programs -a requisite to the determination of the appropriate fee. As such, any regulation permitting a fee adjustment based upon pure speculation as to what the actual costs are is beyond the statutory authority of Penal Code section 12076.</p>	The Department disagrees with the comment. Penal Code section 12076 does not require any particular accounting method in determining the appropriate fee. The Department uses standard accounting methods in determining the fee but is not required to identify them in the regulations.
12	The Calguns Foundation	Jason Davis	Fee Reduction Insufficient and Lacks Detailed Accounting of DROS Expenses	The Proposed regulation does not reduce the fee to the sufficient amount given the current surplus in the DROS funds accounts. Further, any setting of fees without an itemized accounting of the costs of implementing and maintaining the various DROS Programs necessary to determine the appropriate fees pursuant to Penal Code 12076 is mere speculation and not authorized by the Penal Code. As such, The Calguns Foundation requests an audit of the programs funded by the DROS fees to determine the actual costs and the appropriate fee schedule.	The Department disagrees with the comment. The Department's authority to promulgate regulations establishing the DROS fee is not encumbant upon an itemized accounting of the DROS program funds.

DROS Fee Regulations Public Comments and DOJ Responses

#	Organization	Commenter	Subject	Comment	DOJ Response
13	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Matte	General	<p>The CA Chapters of the Brady Campaign to Prevent Gun Violence strongly opposes a reduction in DROS fees. The DROS fee is charged by the California DOJ to purchasers of firearms. Licensed firearm dealers collect these fees from purchasers for the Department of Justice. The fees reimburse the Department for expenses incurred related to the DROS process, including conducting the background check of prospective firearm purchasers. DROS fees monies are deposited in the Dealers' Record of Sale Special Account of the General Fund and are available, upon appropriation by the Legislature, for expenditure by the department to offset specified costs. Assembly Bill 161, which was sponsored by the DOJ and carried by current Senate President Pro Tempore Darrell Steinberg, was enacted into law in 2003. The bill clarified and expanded the use of DROS fees for enforcement programs beyond the DROS process. AB 161 provides that fees may also be used to fund "firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms."</p> <p>In 2004, the DROS fee was raised from \$14 to \$19 in order to fund needed DOJ enforcement programs, including inspections of gun shows and gun dealers. The DROS Special Account has grown from approximately \$4.0 million in 2002-03 to approximately \$18 million in 2010. However, in 2007, the DROS account remained at \$4.0 million. In the last three years, significant reserves have accrued in the DROS Special Account due to the high number of firearm sales and lower DROS processing costs. During this same period, DOJ has not significantly increased the number of DOJ agents to implement firearm-related enforcement programs.</p>	The Department acknowledges the comment and general accuracy of the facts presented. However, the Department believes it has a sufficient and reasonable number of agents to conduct firearm-related activities.
14	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Matte	DROS Fund Supports Programs	<p>II Specific Comments</p> <p>Comment: Adoption of Regulations should not change the expanded use of DROS funds as clarified by AB 161. The intent of AB 161 was quite clear. The former Attorney General, in the Senate Committee on Public Safety Bill Analysis for the bill, states: <i>Because of enforcement activities funded by the state legislature from the Dealers' Record of Sale Special Account (DROS), and funding sources added over the last 24 months, CA has gone from almost no enforcement of firearms laws relating to sales, transfers, purchase or loans of firearms to having investigated a wide number of firearm dealers, criminally prohibited individuals and illegal firearm possessors and sellers. The DOJ has identified more than 1000 law violations by firearm dealers and investigated more 500 illegal firearm possessions by individuals who have purchased guns in CA but fell into prohibited category. In addition, we have discovered 2,600 illegally prohibited firearm and other dangerous weapons transactions and seized those weapons as a result. Unfortunately, because of a recent legislative counsel opinion, the Department of Justice feels strongly that clarification of enforcement activity and the use of the DROS account to fund it is of extreme importance. And... Attorney General Lockyer feels it is of utmost importance that the DOJ work to enforce California's landmark firearms laws to ensure that those who are prohibited from possessing or purchasing firearms do not gain illegal access to guns. Furthermore, he believes, as the code states, that the Department must monitor gun commerce in the state to ensure that all laws relating to firearms sales, gun standards and prohibitions be strictly enforced. Finally, he feels that it is important that those laws be enforced by fees paid directly by those who engage in gun commerce in CA (gun dealers, purchasers and transferees) under the 12000 series of the Penal Code. In enacting AB 161, both the legislature and Governor agreed that the DROS fees can and should be used for firearm enforcement activities beyond the simple performance of background checks in the DROS process. However, the "Initial Statement of Reasons" for the proposed regulations states that, "The proposed regulation lowers the current \$19 DROS fee to \$14, commensurate with the actual cost of processing a DROS." And, "The proposed fee reduction will begin reducing the revenue level in the DROS account and more closely align the program's cost with its revenue source in the future." There is no mention of the firearms-related regulatory and enforcement activities funded by DROS as allowed by AB 161. According to the "Initial Statement of Reasons", it appears that once the reserves are expended, there would be no funding for future needed enforcement programs. The actual proposed regulations are vague on this point. Is it not clear if "DROS-related expenses" refers only to expenses incurred from administering the DROS process or if it also includes other firearm-related enforcement programs funded by DROS. "DROS-related expenses" needs to be defined in the final regulations to include current and potentially new DROS funded firearm-related regulatory and enforcement activities. Accordingly, the final Regulations should clearly state that the needs of current and potentially new DROS funded firearm-related regulatory and enforcement activities must also be considered when adjusting the DROS fees.</i></p>	The Department disagrees with the comment. The proposed regulations would not change the use of funds specified in 12076(e) pursuant to AB 161 (2003), specified in 12076(e). Not only is it unnecessary to re-state the law, doing so would result in OAL rejection of the proposed regulations for not meeting the "nonduplication standard".

ASRFP000177

DROS Fee Regulations Public Comments and DOJ Responses

#	Organization	Commenter	Subject	Comment	DOJ Response
18	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Maite	Volatility of Sales	Comment: DROS fees should not be reduced because the account balance is highly dependant on fluctuating firearm sales volume. Firearm sales and transfers have increased since 2003, with a significant jump in sales in years 2008 and 2009. The resulting increased DROS volume has resulted in significant additions to the DROS fund. Many consider the recent spike in gun sales to be a result of fears surrounding the election of President Obama, current politics, and economic uncertainty. As recently as 2003, gun sales were the lowest that they have been since 1987. It should not be assumed that the DROS volume will continue at this high level. In fact, the number of firearm sales is already declining. Firearm sales data through August 31, 2010 must be compiled and considered. Although the large number of firearm sales reduces DOJ's cost per DROS transaction due to economy of scale, the high numbers increase the need for firearm-related enforcement activities. The California Brady Campaign Chapters consider the reduction in DROS fees because of the current spike in gun sales to not be prudent at this time. Since future DROS fee increases are tied to the CA Consumer Price Index, which dropped between 2008 and 2009, the proposed reduction could cause a drop in firearm-related enforcement programs once the reserve is depleted.	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.

AGRFP000178

DROS Fee Regulations Public Comments and DOJ Responses

#	Organization	Commenter	Subject	Comment	DOJ Response
18	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Matte	DROS Fund Supports Programs	<p>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:</p> <ol style="list-style-type: none"> 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 cid 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. <p>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.</p> <p>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.</p> <p>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.</p>	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.

AGRF000179

DROS Fee Regulations Public Comments and DOJ Responses

#	Organization	Commenter	Subject	Comment	DOJ Response
17	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Maite	Cost of firearm-related enforcement programs should be borne by the purchasers of firearms	<p>Comment: Cost of firearm-related enforcement programs should be borne by the purchasers of firearms.</p> <p>In 2006, 3,253 people died from firearm-related injuries in California and 4,305 others were treated for non-fatal gunshot wounds. Records kept by the Federal Bureau of Investigation show that in 2006, 68% of all murders nationwide were committed with a firearm. In California, the percentage is even higher with firearms used in 72.4% of the homicides. Firearm were also used in 64% of the robberies and 19.9 % of the aggravated assaults committed in California in 2007. Between 2005 and 2009, the California DOJ designated 84,123 firearms as crime guns in the Automated Firearm System database.</p> <p>Gun violence imposes enormous cost on our society. Medical costs related to gun violence have been estimated at \$2.3 billion annually, half of which are borne by American taxpayers. Another study, using 1997 figures and factoring together all the direct and indirect medical, legal and societal costs, estimated that the annual cost of gun violence in our nation to \$100 billion. In California, the total cost of firearm-related murders and hospital admitted-firearm assaults in 2005 was \$841,377,000, including lost taxes, medical care, emergency transport, police services and criminal justice costs. The majority of these costs are borne by taxpayers in California.</p> <p>The Senate Committee on Public Safety bill analysis for AB 161 states:</p> <p>Current state enforcement of alcohol, tobacco, hunting, fishing and prescription drug laws are just a few of the state enforcement areas where users/purchasers fund state regulatory and enforcement activity. In fact, 33% of fish and game licensing fees (or \$31.4 million) go towards conservation education and enforcement. The purchase of a firearm is a discretionary act. Similar to the other activities that require state enforcement, the cost of enforcement programs should be borne by the purchaser. Moreover, the cost of firearms, particularly handguns, has greatly increased in the last decade due to safety standards now in place and the current DROS fee has become an increasingly small percentage of the total price of a gun. Before adopting these proposed regulations, an analysis of the DROS fee as a percentage of the total cost of guns sold, including all models of handguns on the current roster of handguns certified for sale, in CA should be conducted.</p>	The Department disagrees with the comment. Pursuant to California law, the DROS fee is determined by the cost of specified programs, not the total cost of guns sold as recommended by the comment.
18	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Maite	Reserve Needed	<p>Comment: The requirement for a minimum reserve should be stipulated in the proposed regulations.</p> <p>The current DROS Account balance is approximately \$18 million. As previously stated, this large reserve has been created by both a spike in firearm sales and DOJ's decision to not seek appropriation of these funds for firearm-related enforcement purposes. Were the proposed DROS fees reduction to go into effect, the reserve amount could be depleted over a period of time. Widely accepted practices for managing programs and funds include the maintenance of a reserve fund. The proposed regulations include no provisions for ensuring a minimum reserve balance. A required reserved amount should be established and if the fund balance drops below the reserve amount, then an increase in DROS fees should be automatically triggered.</p>	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. The Department does not think it is necessary for the regulations to include provisions establishing a specific reserve amount.
19	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Maite	DROS Fund Supports Programs	<p>Comment: A reduction in DROS fees at this time would hinder the next Attorney General and local law enforcement agencies on needed firearm-related enforcement activities. Both major candidates for Attorney General in the November 2010 elections have stated their intent to vigorously enforce state laws. Therefore, one can assume that firearm-related enforcement will be a priority for both candidates. The timing of the proposed reductions would restrict firearm-related enforcement activities by the next Attorney General. Additionally, since local law enforcement agencies have been forced to make drastic cuts due to the economy, DOJ will need to increase assistance to local law enforcement agencies. The DROS Funds could staff agents and other personnel to help local law enforcement agencies with firearm-related enforcement activities such as the APPS Program. Now is not the time to reduce the DROS fee.</p>	The Department disagrees with the comment. Funds from the DROS fee may only be used for specific purposes delineated in Penal Code section 12076.
20	The California Chapters of the Brady Campaign to Prevent Gun Violence	Amanda Wilcox, Nick Wilcox, Dallas Stout, Brian Maite	General	<p>The California Chapters of the Brady Campaign to Prevent Gun Violence strongly opposes the current effort to reduce DROS fees. While on its face, an 18 million dollar balance seems excessively large, the CA Brady Campaign believes this large sum is due to 1) the recent increase in gun sales and 2) DOJ's decision to not seek the appropriation of funds for needed firearm-related enforcement purposes. Thank you for the opportunity to comment on the proposed DROS fee regulations.</p>	The Department acknowledges the comment. However, the comment does not request any particular change to the proposed regulations.
21	Violence Prevention Coalition of Orange County	Dallas Stout, Debra Stout, Mary Leigh Blek	General	<p>The Violence Prevention Coalition of Orange County (VPCOC), established in 1996, is a countywide affiliation of businesses, community organizations, public and private agencies and individuals seeking to promote violence prevention through a public health approach. As our organization seeks to prevent violence, we must strongly oppose any reduction in DROS fees.</p>	The Department acknowledges the comment. However, the comment does not request any particular change to the proposed regulations.

12/15/2010 10:18:00

DROS Fee Regulations Public Comments and DOJ Responses

#	Organization	Commenter	Subject	Comment	DOJ Response
22	Violence Prevention Coalition of Orange County	Dallas Stout, Debra Stout, Mary Leigh Blek	DROS Fund Supports Programs	There is much that needs to be accomplished in CA to further reduce the tragic toll of gun deaths and injuries in our state together with making sure that our firearms are not trafficked to other states and countries. The reserve and current funds from DROS fees are an important resource from which to draw upon to help remedy our tragic record of 7,500 yearly gun injuries and deaths that flow from firearms. These funds could be used for, but not limited to, hiring and supervising more staff to trace guns used in crime, investigate multiple purchasers of guns, audit and inspect all gun dealers on a yearly basis. Staff could implement the successful program that was piloted in Los Angeles to send letters to new gun buyers about their duties and responsibilities as gun owners during the waiting period. All records are in need to be recorded into the CFIS - such as mental health records. Life is precious and when resources around the state are becoming less available for prevention efforts, it is unwise and poor public policy to reduce available funding that has great potential for saving lives. The VPCOC respectfully requests that the current DROS fees not be reduced.	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 Department is not authorized to use DROS funds to implement a program to notify new gun buyers of their duties and responsibilities as gun owners as recommended by the commenter. Furthermore, given the state's current fiscal crisis, it is unlikely the Department would be granted an increase in its spending authority to hire additional staff for existing enforcement activities such as dealer inspections.
23	Youth ALIVE!	Anne Marks	DROS Fund Supports Programs	On behalf of Youth ALIVE!, I write to express opposition to the proposed DROS fee reduction, which would reduce the DROS fee from \$19 to \$14. The mission of Youth ALIVE! is to build youth leadership and prevent youth violence in CA. Gun violence is an unfortunate reality for the young people in our community. In our work, we strive to de-normalize gun violence through education and intervention programs. Every day, we go to local hospitals and work directly with youth who are gunshot victims, and help them try to put their lives back together again. Each year, over 7,500 people are shot by firearms in CA. Nearly half of these victims die from their injuries. Revenue from the DROS fee can be used prevent this level of lost life and provide a safe environment for the people of CA. DROS revenue is a resource with the power to create opportunities to remove crime guns from our communities and to save lives. The Initial Statement of Reason states that firearm sales are cyclical in nature. By preserving the current DROS fee structure, we will ensure that CA is well prepared to address gun violence at any time.	The Department disagrees with the comment. Funds from the DROS fee may only be used for specific purposes delineated in Penal Code section 12076.
24	N/A	Joe Sedford	No Authority For Administrative Adjustment	I object to the proposed regulations. They let the DOJ raise the fee without amending the regulations. So a person that looks in the CCR for the DROS fee would see a wrong fee. The DOJ can't replace the OAL rulemaking process with its "administrative adjustment" method. The unauthorized "administrative adjustment" proposed by the Dept of Justice would violate the APA. I'd expect the Attorney General of California to know the laws of the state so I'm not sure if these regulations display incompetence or an attempt to ignore laws the Attorney General is aware of.	The Department disagrees with the comment. We believe we have authority to establish the process by which the Department determines the appropriate DROS fee and raises/lowers the fee based on the determination. The process proposed by the Department includes notifying all CA firearms and other interested persons of any fee adjustments as well as posting the DROS fee on the DOJ website.
25	N/A	Joe Sedford	Wrong Section Cited	Section 4001(a) wrongly says the fees are for "submitting" a DROS pursuant to 12076(f) and (i). 12076(f) is not the section that authorizes the fee gun purchasers are required to pay to gun dealers who then pass it along to the Justice Department. The section that does that is 12076(e). Notice that subsection 12076(e) mentions a fee the dealer "charges" the purchaser. Unlike 12076(f) this subsection also mentions the various costs that make up the DROS fee. Subsection 12076(e) does not say the fee is for "submission" of a DROS as 12076(f)(1)(B) does because gun purchasers submit their DROS to dealers not the Dept. of Justice. These regulations wrongly state the fee is for "submitting" a DROS to the DOJ. They should refer to the fee in 12076(e) and remove "submitting". Thank you for your consideration.	The Department disagrees with the comment. Penal Code section 12076, subdivision (f)(1)(B) states that the Department may charge a fee "for the actual processing cost associated with the submission of a Dealers' Record of Sale..." The citation to the Penal Code that is referenced in the regulations and use of the term "submitting" are correct and not errors.

AGRF000181

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME Justice	CONTACT PERSON Erica Goerzen	TELEPHONE NUMBER (916) 322-0908
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Dealer's Record of Sale (DROS) fees		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input checked="" type="checkbox"/> c. Impacts jobs or occupations | <input checked="" type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) _____

(If any box in items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: 1526 Describe the types of businesses (include nonprofits.): firearm dealers

Enter the number or percentage of total businesses impacted that are small businesses: unknown

3. Enter the number of businesses that will be created: None eliminated: None

Explain: The proposed regulations will not result in the creation nor elimination of businesses.

4. Indicate the geographic extent of impacts: Statewide Local or regional (List areas.): _____

5. Enter the number of jobs created: None or eliminated: None Describe the types of jobs or occupations impacted: The proposed regulations will not result in the creation nor elimination of jobs.

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes No If yes, explain briefly: _____

B. ESTIMATED COSTS (include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ N/A

- | | | |
|--|-------------------------------------|-------------------|
| a. Initial costs for a small business: \$ <u>N/A</u> | Annual ongoing costs: \$ <u>N/A</u> | Years: <u>N/A</u> |
| b. Initial costs for a typical business: \$ <u>N/A</u> | Annual ongoing costs: \$ <u>N/A</u> | Years: <u>N/A</u> |
| c. Initial costs for an individual: \$ <u>N/A</u> | Annual ongoing costs: \$ <u>N/A</u> | Years: <u>N/A</u> |

d. Describe other economic costs that may occur: The regulations establish legislatively mandated fees to cover DOJ's processing costs. No additional costs will be incurred in compliance with the regulations.

Finding of Emergency

Penal Code Section 12076(f) provides the Department of Justice (DOJ) the statutory authority to charge \$14 per Dealer Record of Sale (DROS) transaction to reimburse DOJ for costs specified in statute. This section also allows for adjustment of the fee at a rate not to exceed any increase in the California Consumer Price Index (CCPI) (See Figure 1).

Additionally, fees specified under Penal Code Sections 13511.5, 832.15, 12071 and 12054, and Business and Professions Code Section 7583.26 also need to be raised immediately to cover the cost of meeting these statutorily mandated programs. Revenue from these fees is deposited into the Dealer Record of Sale Special Account.

The DROS fee of \$14 has not been raised since 1991. Despite the gradual decline in revenue and a steady increase in workload, DOJ has continued to provide consistent and quality service to the public, law enforcement and firearms dealers through economies of scale. However, given the decrease in revenue discussed later, the DOJ is projecting to run out of cash in the Dealer Record of Sale Special Account in the Spring of 2005, based on first quarter revenue and expenditure information. Only an immediate fee increase can avert the Dealer Record of Sale Special Account from being exhausted in the Spring of 2005.

To avert a potential public safety emergency due to DROS funded programs either being shutdown or slowed down, it is imperative that these emergency regulations to increase the DROS fee be adopted immediately.

AUTHORITY AND REFERENCE

These proposed emergency regulations amend section 948.1 of Chapter 1 of Division 1 Attorney General, and adopt Chapter 1 of Division 5. Firearms Regulations, and the following new sections: 4001, 4002, 4003, 4004, 4005 and 4006, to the California Code of Regulations. The Department of Justice adopts these regulations pursuant to: Penal Code (PC) sections 832.15(c); 12054(a); 12071(a)(5); 12076(f,i,j); 13511.5; and Business and Professions Code (B & PC) section 7583.26(a). These regulations are referenced in: PC sections 832.15; 12054; 12071; 12071.1; 12072; 12076; 12078; 12083; 12084; 12086; 12289; 13511.5; and Health and Safety Code section 12101; and B & PC section 7583.26.

Therefore, the Department of Justice hereby finds that an adoption on an emergency basis of Chapter 1 of Division 5 of Title 11 and amendment of Chapter 13 of Division 1 of Title 11 is necessary in order to preserve the public peace, health and safety, and the general welfare. The effective date of these emergency regulations is November 1, 2004. The specific facts showing the need for immediate action are:

DOJ's Firearms Division (FD) is authorized to conduct a Basic Firearms Eligibility Check (BFEC) to insure that subjects are not prohibited from owning/possessing firearms pursuant to Penal Code Sections 12021 and 12021.1, Welfare and Institutions Code Sections 8100 and 8103, and Title 18 United States Code, Section 922(t) for various firearms related applicant processes. These programs/processes include:

- DROS Pistol Check
 - DROS Rifle or Shotgun
 - Multiple Handgun DROS purchase
 - Curio and Relic Firearms
 - Firearms Ownership
 - Operation of Law
 - New Resident Handgun Report
 - POST Certification
 - Peace Officer Candidates
 - Security Guard Firearms Card (2-year)
 - Certificate of Eligibility
 - Carry Concealed Weapon
-
- These programs/processes, as approved by the Legislature, protect the public and law enforcement officers by ensuring that firearms purchased/obtained/possessed do not fall into the hands of criminals or other individuals deemed unsuitable to possess firearms due to their proclivity to misuse them to the harm of themselves or the general public. As an example in 2003, as a result of the current DROS checks in place, 1,774 rifles and 1,254 handguns purchases were prevented from getting into the hands of convicted felons (1,298 felony denials), individuals with restraining orders and those with a mental illness. Specifically, the basis for denial included:
 - 345 individuals convicted on drug offenses;
 - 21 individuals convicted of a sex crime;
 - 90 individuals convicted of burglary;
 - 22 individuals convicted of robbery;
 - 190 individual with restraining orders placed on them;
 - 299 individuals held under Welfare and Institutions Code Sections 5150, 5250, 5260, 5270.17 and 8103 (Danger to themselves or others-often those with suicide attempts in their past and/or a mental illness)

- As referenced above, Penal Code Section 12076(f) provides the Department of Justice (DOJ) the statutory authority for adjustment of the DROS fee at a rate not to exceed any increase in the CCPI. Figure 1 demonstrates what the fee would be if it is adjusted for the CCPI:

Figure 1.

	1991				1992				1993			
	Current CPI	Minus prev CPI	Index point chng.	% change	Current CPI	Index point chng.	% change	Current CPI	Index point chng.	% change		
	136.7	131.5	5.2	4.0	141.4	4.7	3.4	144.7	3.3	2.3		
DROS Fee	\$ 14.00			\$ 0.55	\$ 14.55		\$ 0.50	\$ 15.05		\$ 0.35		
	1994				1995				1996			
	Current CPI		Index point chng.	% change	Current CPI	Index point chng.	% change	Current CPI	Index point chng.	% change		
	146.6		1.9	1.3	149.1	2.5	1.7	152	2.9	1.9		
DROS Fee	\$ 15.41			\$ 0.20	\$ 15.61		\$ 0.27	\$ 15.87		\$ 0.31		
	1997				1998				1999			
	Current CPI		Index point chng.	% change	Current CPI	Index point chng.	% change	Current CPI	Index point chng.	% change		
	155		3	2.0	157.6	2.6	1.7	162.2	4.6	2.9		
DROS Fee	\$ 16.18			\$ 0.32	\$ 16.50		\$ 0.28	\$ 16.78		\$ 0.49		
	2000				2001				2002			
	Current CPI		Index point chng.	% change	Current CPI	Index point chng.	% change	Current CPI	Index point chng.	% change		
	188.1		5.9	3.6	174.7	6.6	3.9	179	4.3	2.5		
DROS Fee	\$ 17.27			\$ 0.63	\$ 17.90		\$ 0.70	\$ 18.60		\$ 0.46		
	2008				2004				2004 FEE W/CPI			
	Current CPI		Index point chng.	% change	Current CPI	Index point chng.	% change					
	184		5	2.8	188	4	2.2					
DROS Fee	\$ 19.06			\$ 0.53	\$ 19.59		\$ 0.43	\$ 20.02				

- Although the department is authorized under Penal Code Section 12076(f) to adjust the DROS fee by up to \$20 due to the rise in the CCPI, the department is adopting fee increases only up to a level to cover actual costs as specified in statute.
- For 13 years, the DOJ has been able to efficiently provide services mandated under California Penal Code Sections while maintaining the DROS fee at the \$14 level. However, the DROS fund over the past several years has experienced a dramatic decrease in revenue (Figure 2) due to a gradual decrease in the number of firearm purchases (Figure 3).

Figure 2

	1999/00	2000/01	2001/02	2002/03	2003/04
DROS Revenue per Governor's Budget (in thousands)	\$ 8,835	\$ 8,084	\$ 7,371	\$ 6,907	\$ 6,625

Figure 3

FISCAL YEAR	1999/00	2000/01	2001/02	2002/03	2003/04
TOTAL RECEIVED (All Transactions)	470,754	365,717	359,110	335,898	300,638

- This reduction in volume of transactions has not meant a decrease in the workload handled by the Firearms Division. Workload per transaction has increased as a result of the addition of new state/federal firearm prohibition categories and watch list partly resultant from September 11, 2001 terrorist attacks. Also, the amount of manual reviews needed to ensure a complete and competent analysis also increased as result of a boom in the number of applicant records maintained on file in the Departments criminal history system which often match/hit against an applicant BFEC inquiry. In FY 2000-01 of the 365,717 DROS transactions, 275,568 required a full review (75%). That compares to FY 2003-04, where of the 300,638 DROS transactions, 297,363 required a full review (99%). As a result, although the volume of DROS transactions has decreased over time, the time spent on average per transaction has increased.
- Additionally, the number of Mental Health Report (Welfare and Institutions Code Sections 8103 and 8105) submitted to DOJ has increased dramatically. In FY 1998-99, DOJ received 25,205 reports; in FY 2003-04 DOJ received 137,608. The department is required to process these reports within 24 hours of receipt to ensure that prohibited firearms purchases are intercepted. Also, to ensure firearms laws are enforced, the department began issuing reports to local district attorneys offices on prohibited individuals who attempted to purchase a firearm.
- Even in the face of decreasing revenue and increasing workload, over the past several years the Firearms Division has reduced costs while maintaining existing service levels. In FY 2003-04, the Firearms Division reduced operating costs by \$789,000 and in FY 2004-05, permanently reduced operating costs by \$570,000.

Despite DOJ's efforts to reduce costs and maintain the same level of service, the Dealer Record of Sale Special Account will run out of cash in the Spring of 2005. Reducing

expenditures any further is not a viable option and will either 1) force the DOJ to significantly reduce DROS funded programs which could cause large backlogs in transactions and increase the chance for firearms to fall into the hands of convicted felons and those with a mental illness; and would result in individuals not being able to purchase or obtain firearms critically needed for employment and personal protection. The level of funding available would dictate the number of Basic Firearms Eligibility Background Check the department would be able to perform. Absent a Basic Firearms Eligibility Background Check, these individuals would be unable to purchase or transfer firearms critical to their individual circumstances; or 2) shut down some statutorily mandated programs to ensure others remain operational. This alternative could force the department to focus its resources on continuing checks on firearms transactions, but shutting down other programs such as Assault Weapons Registration or Dangerous Weapons Licensing. Either of these scenarios will likely occur without an immediate increase in the fees specified in this emergency filing to the detriment of the health, safety and welfare of California's citizens and law enforcement officers.

Title 11, Division 1, Chapter 13

Article 4. Certificate of Eligibility

984.1. Fees. As authorized pursuant to subdivision (a) of section 12071 of the Penal Code, the Firearms Division fees for certificate of eligibility are as follows:

(a) Fee for initial application: \$22 Each application for a Certificate of Eligibility shall be accompanied by appropriate fees or the application will be returned immediately to the applicant unprocessed.

(b) Fee for renewal application: \$22 The appropriate fees are as follows:

(1) ~~Initial Application:~~

~~Basic processing fee is \$17.00 plus a \$32.00 fingerprint card processing fee.~~

(2) ~~Renewal Application:~~

~~Basic Processing fee is \$17.00.~~

Note: Authority cited: Sections ~~12070~~, 12071 and ~~12071.1~~, Penal Code. Reference: Sections ~~12070~~, 12071, and 12071.1, 12086, Penal Code and section 12101, Health and Safety Code.

Title 11, Division 5, Chapter 1. Firearms Division Fees

4001. DROS Fees. As authorized pursuant to subdivisions (f) and (i) of section 12076 of the Penal Code, the Firearms Division fees for Dealers' Records of Sale (DROS) are as follows:

(a) (1) DROS fee for a single handgun: \$19

(2) DROS fee for each additional handgun submitted at the same time as first DROS: \$15

(b) DROS fee for one or more rifles or shotguns: \$19

Note: Authority cited: Section 12076, Penal Code. Reference: Sections 12072, 12076, 12083, 12084, and 12289, Penal Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Existing law mandates that the Attorney General charge fees commensurate with the cost of processing various licenses, reports, certifications and firearm (purchase, loan, sale or transfer) transactions. The proposed emergency regulations are needed to enable the Department of Justice (DOJ) to continue funding these important programs.

Section 948.1. Fees.

Current statutory language authorizes DOJ to charge a fee sufficient to administer the Certificate of Eligibility (COE) program. The proposed amendment raises the current \$17 fee to \$22, sufficient to administer DOJ's processing costs of \$22 per COE.

Section 4001. DROS Fees.

Current statutory language authorizes DOJ to charge a DROS fee sufficient to reimburse its processing costs, not to exceed \$14. However, the statutes provide the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index. The proposed emergency regulation raises the current \$14 DROS fee to \$19. The proposed \$19 fee is commensurate with DOJ's processing costs of \$19 per DROS, and does not exceed increases in the California Consumer Price Index which equate to \$20.02 per DROS.

Section 4002. Miscellaneous Report Fees.

Current statutory language authorizes DOJ to charge a fee for the actual costs associated with the preparation, processing and filing of various firearms related forms and reports, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index. The proposed emergency regulation raises these current \$14 fees to \$19. The proposed \$19 fees are commensurate with DOJ's processing costs of \$19 per report or firearm, and do not exceed increases in the California Consumer Price Index which equate to \$20.02 per report or firearm.

Section 4003. POST Certification Fees.

Current statutory language authorizes DOJ to charge a fee to cover the costs associated with determining whether a POST candidate is prohibited from possessing a firearm. The proposed amendment raises the current \$14 fee to \$19, sufficient to administer DOJ's processing costs of \$19 per POST firearms eligibility certification.

Section 4004. Peace Officer Candidate Firearms Clearance Fees.

Current statutory language authorizes DOJ to charge a fee to cover the costs associated with determining whether a peace officer candidate is prohibited from possessing a firearm. The proposed amendment raises the current \$14 fee to \$19, sufficient to administer DOJ's processing costs of \$19 per peace officer candidate firearms clearance.

Section 4005. Security Guard Firearm Clearance Fees.

Current statutory language provides that DOJ may charge a fee sufficient to reimburse DOJ's costs for furnishing firearm eligibility information upon submission of a Security Guard Firearm Card application/renewal. The proposed amendment raises the current \$28 fee to \$38, sufficient to administer DOJ's processing costs of \$38 per security guard firearms clearance.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW (continued)

Section 4006. CCW Fees.

Current statutory language authorizes DOJ to charge a fee sufficient to reimburse DOJ's costs for furnishing firearm eligibility information upon submission of an application or renewal of a firearm license to carry a concealed weapon. However, the statutes provide the fee may be increased at a rate not to exceed cost of living adjustments. The proposed emergency regulation does the following:

CCW Type	Current Fee	Proposed Fee	Actual Processing Cost	Actual CPI Equivalent
Employment	\$17	\$22	\$22	\$24.03
Citizen	\$34	\$44	\$44	\$48.61
Judicial	\$51	\$66	\$66	\$72.91
Peace Officer	\$68	\$88	\$88	\$97.22

DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

1. Fiscal impact on public agencies: None.
2. Cost to any local agency or school district for which 17500-17630 require reimbursement: None.
3. Other non-discretionary cost or savings imposed upon local agencies: None.
4. Cost or savings to any state agency: None.
5. Cost or savings in federal funding to the state: None
6. Cost impact on private persons or directly affected businesses: Fee increases will have a cost impact on individuals seeking to obtain for the first time, or renew, various licenses, permits, and certifications issued by the Department of Justice, as well as a cost impact on persons acquiring a firearm(s). The fee increases do not exceed DOJ's respective processing costs and do not exceed the respective increases in the California Consumer Price Index. No cost impact on directly affected businesses has been identified.
7. Significant adverse effect on business including the ability of California businesses to compete with businesses in other States: None.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW (continued)

8. Significant effect on housing costs: None.
9. Alternatives considered: The DOJ has determined that no alternative (funding source) has been identified as being available to maintain these necessary programs.
10. Local Mandate Determination: DOJ has determined that these emergency regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

In accordance with Government Code Section 11346.3, the following are required responses as State agencies proposing to adopt or amend any administrative regulations shall assess whether and to what extent it will affect the following:

- (a) The creation or elimination of jobs within the State of California: Minimal, if any.
- (b) The creation of new businesses or the elimination of existing businesses with the State of California: Minimal, if any.
- (c) The expansion of businesses currently doing business with the State of California: Minimal, if any.

INITIAL STATEMENT OF REASONS

Section 948.1. Fees.

Specific purpose of the regulation

The purpose of amending this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing Certificate of Eligibility (COE) applications. The proposed amendment raises the current \$17 fee to \$22, sufficient to cover the Firearms Division's processing costs of \$22 per COE. Due to a change in the applicant fingerprint card process, the Firearms Division no longer collects the fingerprint card processing fee as part of the COE application process. Rather, prior to submitting a COE application to the Firearms Division, the applicant must submit fingerprint impressions independently at a DOJ-approved Live Scan station, at which time the applicant must pay the respective fingerprint processing fees as statutorily authorized. Accordingly, the amended regulation reflects only the Firearms Division fee.

Section 4001. DROS Fees.

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of processing a Dealer's Record of Sale (DROS). The proposed regulation raises the current \$14 DROS fee to \$19. The \$19 fee is sufficient to cover the Firearms Division's processing costs of \$19 per DROS, and does not exceed increases in the California Consumer Price Index (CCPI) that equate to \$20.02 per DROS.

Section 4002. Miscellaneous Report Fees.

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fees are commensurate with the actual cost of processing of various firearms related forms and reports. The proposed regulation raises the current \$14 fees to \$19. The \$19 fees are sufficient to cover the Firearms Division's processing costs of \$19 per report or firearm, and do not exceed increases in the California Consumer Price Index which equate to \$20.02 per report or firearm.

Section 4003. POST Certification Fees.

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for POST candidates. The proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per POST firearms eligibility certification.

Section 4004. Peace Officer Candidate Firearms Clearance Fees.

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for peace officer candidates. The proposed regulation raises the current \$14 fee to \$19, sufficient to cover the Firearms Division's processing costs of \$19 per peace officer candidate firearms clearance.

Section 4005. Security Guard Firearms Clearance Fees.

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for Security Guard Firearm Card applications. The proposed regulation raises the current \$28 fee to \$38, sufficient to administer Firearms Division's processing costs of \$38 per security guard firearms clearance.

Section 4006. CCW Fees.

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Firearms Division fee is commensurate with the actual cost of furnishing firearm eligibility information for carry a concealed weapon (CCW) license applications. The proposed regulation raises the current initial permit application fees ranging from \$17-\$68 to \$22-\$88. The proposed fees are sufficient to cover the Firearms Division's processing costs of \$22-\$88 and do not exceed increases in the California Consumer Price Index which equate to \$24.03-\$97.22.

Section 4007. Tear Gas Permit Application Fees.

Specific purpose of the regulation

The purpose of this regulation is to ensure that the Department of Justice fee is commensurate with the actual cost of processing tear gas permit applications. The proposed regulation raises the initial permit application fee from \$177 to \$229 and the annual renewal fee from \$43 to \$61. The proposed fees are sufficient to cover the DOJ's processing costs of \$229 (initial) and \$61 (renewal) and do not exceed increases in the California Consumer Price Index which equate to \$252.92 and \$61.44.

Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007

Factual basis

The Firearms Division of the Department of Justice (DOJ) is authorized to charge statutorily mandated fees to cover its processing costs for processing Dealer's Records of Sale (DROS) and other firearms related reports, clearances, and licenses specified in Penal Code Sections, 832.15, 12054, 12071, 12076, 12423, 12424, and 13511.5, and Business and Professions Code Section

7583.26. Four of the fee increases (sections 4001, 4002, 4006, 4007) are additionally constrained to rates not exceeding increases in the California Consumer Price Index (CCPI). In all cases, the Firearms Division is adopting fee increases only as needed to cover actual costs.

In processing these reports, licenses, etc., the Firearms Division must conduct a Basic Firearms Eligibility Check (BFEC) to insure that subjects are not prohibited from owning/possessing firearms pursuant to Penal Code Sections 12021 and 12021.1, Welfare and Institutions Code Sections 8100 and 8103, and Title 18 United States Code, Section 922(t). Workload related to conducting a BFEC has increased as a result of the addition of new state/federal firearm prohibition categories and watch list partly resultant from September 11, 2001 terrorist attacks. Also, the volume of manual reviews needed to ensure a complete and competent analysis also increased as result of a boom in the number of applicant records maintained on file in the DOJ criminal history system which often match/hit against an applicant BFEC inquiry. For example, in FY 2000-01 of the 365,717 DROS transactions, 275,568 required a full review (75%). That compares to FY 2003-04, where of the 300,638 DROS transactions, 297,363 required a full review (99%). As a result, although the volume of DROS transactions has slowly decreased, the average time spent on each transaction has increased.

Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007
Technical, theoretical, and/or empirical study, report or documents

The California Consumer Price Index (CCPI) was used to ensure the fee increases in sections 4001, 4002, 4006, and 4007 do not exceed statutory limits based on increases in the CCPI. The CCPI information is available on the Division of Labor Statistics and Research website at http://www.dir.ca.gov/dlsr/statistics_research.html.

Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007
Specific technologies and new equipment

These regulations do not mandate the use of specific technologies or new equipment.

Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007
Reasonable Alternatives to the Regulation and the Agency's Reasons for Rejecting Them.

No other reasonable alternatives were presented to or considered by the Firearms Division that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome. The alternative of lower fees than those currently proposed was considered but rejected by the Firearms Division because it would require a reduction and/or elimination of services.

Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007
Reasonable Alternatives to the Proposed Regulatory Action That Would Lessen Any Adverse Impact on Small Businesses and the Agency's Reasons for Rejecting Them.

The alternative of lower fees than those currently proposed was considered but rejected by the Firearms Division because it would require a reduction and/or elimination of services. The Department finds that the proposed regulation would not have an adverse impact on small businesses. Therefore, no such alternatives were identified and rejected.

Sections 948.1, 4001, 4002, 4003, 4004, 4005, 4006, and 4007

Evidence Supporting Finding of No Significant Adverse Economic Impact on Any Business.

The Firearms Division determined the proposed regulations will not have a significant adverse economic impact because the fees are only a tiny fraction of the total overhead costs of running a business. The proposed DROS fee increase in Section 4001 would be the most likely to have an adverse impact on business (gun dealers) because of the potential reduction in firearm sales. However, a person who intends to buy even the least expensive firearm is not likely to be dissuaded from making the purchase because of the \$5 increase in DROS fees. Consequently, the Firearms Division believes the DROS fee increase will not cause any significant reduction in firearm sales. Furthermore, because the Firearms Division is statutorily mandated to assess fees sufficient to reimburse its costs, any potential adverse impact is the result of the statutes and not the regulations.

Data provided by OHR, employee state service as of June, 2014.

BUREAU OF FIREARMS- ADMINISTRATION

C.E.A.	419-510-7500-003	Administration - Executive
AST BUR CH D/LE DJ	419-510-8681-003	Administration - Executive
AST BUR CHIEF	420-510-8680-001	Administration - Program
STAFF SVS MANGER I	420-510-4800-001	Administration - Program
STAFF SVS MANGER I	420-510-4800-003	Administration - Program
AS INFO SYS AN/SP	420-510-1470-004	Administration - Infor. Tech.
ASO GOVRL PROG ANL	420-510-5393-007	Administration - Budget
ASO GOVRL PROG ANL	420-510-5393-009	Administration - Legislation
ASO GOVRL PROG ANL	420-510-5393-008	Administration - Regulations
STAFF SER AN (GEN)	420-510-5157-008	Administration - Personnel
STAFF SER AN (GEN)	420-510-5157-019	Administration - Procurement

BUREAU OF FIREARMS- ENFORCEMENT

SPEC AGENT IC D/J	419-505-8523-002	Enforcement
SPEC AGENT IC D/J	419-823-8523-002	Enforcement
SPEC AGENT SUP D/J	419-505-8524-005	Enforcement
SPEC AGENT SUP D/J	419-505-8524-010	Enforcement
SPEC AGENT SUP D/J	419-510-8524-002	Enforcement
SPEC AGENT SUP D/J	419-510-8524-007	Enforcement
SPEC AGENT SUP D/J	419-510-8524-008	Enforcement
SPEC AGENT SUP D/J	419-823-8524-003	Enforcement
SPEC AGENT SUP D/J	419-930-8524-600	Enforcement
SPEC AGENT SUP D/J	419-930-8524-601	Enforcement
SPEC AGENT SUP D/J	419-930-8524-602	Enforcement
SPEC AGENT SUP D/J	419-930-8524-603	Enforcement
SPEC AGENT SUP D/J	419-930-8524-604	Enforcement
CRIMINAL ID SPEC I	420-505-8462-005	Enforcement
CRIMINAL ID SPEC I	420-505-8462-006	Enforcement
CRIMINAL ID SPEC I	420-510-8462-003	Enforcement
CRIML INTG SPEC I	420-930-8443-601	Enforcement
CRIML INTG SPEC I	420-930-8443-602	Enforcement
CRIML INTG SPEC I	420-930-8443-603	Enforcement
CRIML INTG SPEC I	420-930-8443-604	Enforcement
CRIML INTG SPEC I	420-930-8443-605	Enforcement
CRIML ITG SPEC III	420-505-8439-003	Enforcement
OFF TECH (TYPING)	420-510-1139-005	Enforcement
OFF TECH (TYPING)	420-930-1139-600	Enforcement
OFF TECH (TYPING)	420-930-1139-602	Enforcement
PROP CONT II	420-510-1549-001	Enforcement
PROP CONT II	420-510-1549-003	Enforcement