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GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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C. D. Michel - S.B.N. 144258
Scott M. Franklin - S.B.N. 240254
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorney for Plaintiffs/Petitioners

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

**PLAINTIFFS' EVIDENCE IN OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY ADJUDICATION:
DECLARATION OF SCOTT M. FRANKLIN
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY ADJUDICATION**

[Filed concurrently with the Memorandum of
Points and Authorities in Support Thereof; and
Plaintiffs' Separate Statement in Opposition to
Defendants' Motion for Summary Adjudication]

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 (AGRFP000380, AGFRP00390) is a true and correct copy of excerpts of
8 the rulemaking file produced by Defendants herein concerning the increase of the Dealers' Record
9 of Sale Fee from \$14.00 to \$19.00.

10 3. Exhibit 2 (GENT157-GENT159) is a true and correct copy of excerpts of the
11 transcript of the Deposition of Stephen Lindley, such deposition being taken in this matter.

12 4. Exhibit 3 (GENT160-GENT162) is a true and correct copy of excerpts of the
13 transcript of the Deposition of David S. Harper, such deposition being taken in this matter.

14 5. Exhibit 4 (GENT163-GENT164) is a true and correct copy of a memo found in
15 Senator Mark Leno's unrestricted files regarding Senate Bill ("SB") 819 (Leno, 2011).

16 6. Exhibit 5 (GENT165-GENT167) is a true and correct copy of a publicly available
17 letter that then-Attorney General Kamala Harris sent to the legislature concerning the fact that the
18 \$24 million allocation of DROS Special Account funds obtained as a result of SB 819 was not
19 sufficient to support the Department's ongoing law enforcement activities performed and funded
20 pursuant to SB 819 (or the Department's interpretation thereof).

21 I declare under penalty of perjury under the laws of California that the foregoing is true
22 and correct, and that this Declaration was executed on June 30, 2017, at Long Beach, California.

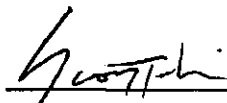
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25 _____
26 Scott M. Franklin, Declarant
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EXHIBIT 1

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW

In re:

DEPARTMENT OF JUSTICE

REGULATORY ACTION:

Adopt sections 4001, 4002, 4003, 4004, 4005, 4006

Amend sections 984.1

NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE

Government Code Section 11349.6

OAL File No. 05-0301-04 C

This Certificate of Compliance adopts and amends fees for the Dealer Record of Sale (DROS) account. (Previous OAL file # 04-1025-01E)

OAL approves this regulatory action pursuant to section 11349.1 of the Government Code.

DATE: 04/11/05



KATHLEEN EDDY
Staff Counsel

for: WILLIAM L. GAUSEWITZ
Director

Original : Bill Lockyer, Attorney General

cc: Mike Small

STATE OF CALIFORNIA - OFFICE OF ADMINISTRATIVE LAW
EMERGENCY (See instructions on reverse)
NOTICE PUBLICATION REGULATORY ACTION SUBMISSION

For use by Secretary of State only

STD. 400 (REV. 4-99)

NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 01-1025-01E
For use by Office of Administrative Law (OAL) only		
2004 OCT 25 AM 10:31 OFFICE OF ADMINISTRATIVE LAW		2004 NOV -1 PM 2:09 Kevin Shelley KEVIN SHELLEY SECRETARY OF STATE
NOTICE		REGULATIONS
AGENCY WITH RULEMAKING AUTHORITY Department of Justice Firearms Division		AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER ()	FAX NUMBER (Optional) ()
OAL USE ONLY		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Firearms Division Fees	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

SECTION(S) AFFECTED (List all section number(s) individually)	ADOPT Division 5, Chapter 1, sections 4001, 4002, 4003, 4004, 4005 and 4006
	AMEND Division 1, Chapter 13, section 984.1
TITLE(S) 11	REPEAL

3. TYPE OF FILING

Regular Rulemaking (Gov. Code, § 11346)
 Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4)
 Emergency (Gov. Code, § 11346.1(b))
 Emergency Readopt (Gov. Code, § 11346.1(h))
 Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)
 Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above.
 Print Only
 Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
 Other (specify)

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

5. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code, §§ 11343.4, 11346.1(d))
 Effective 30th day after filing with Secretary of State
 Effective on filing with Secretary of State
 Effective other (Specify) **November 1, 2004**

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
 Department of Finance (Form STD. 399) (SAM §666D)
 Fair Political Practices Commission
 State Fire Marshal
 Other (Specify)

7. CONTACT PERSON Jeff Amador	TELEPHONE NUMBER (916) 227-3661	FAX NUMBER (Optional) (916) 227-3700	E-MAIL ADDRESS (Optional) jeff.amador@doj.ca.gov
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I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10.25.04
TYPED NAME AND TITLE OF SIGNATORY Steve Coony, Chief Deputy for Administration and Policy	

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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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 BY MR. FRANKLIN:

2 Q. After Senate Bill 819 became law, did the
3 way in which the amount of the DROS fee is analyzed
4 by the department change in any way?

5 A. I think you have to talk about time frame.
6 Initially, no, it did not.

7 Q. And then after initially?

8 A. Yes. Because there's now a cost associated
9 from the Armed Prohibitive Person System that are
10 being paid for out of the DROS fee.

11 Q. And as of yet that hasn't led to an
12 increase in the DROS fee?

13 A. Not as of yet, no.

14 Q. Based on your understanding of how the
15 DROS fee is to be calculated at this point in time,
16 is it possible that the DROS fee could be increased
17 due to the costs of APPS-based law enforcement?

18 A. I would say it a different way.

19 I wouldn't just blame it on the cost of
20 APPS enforcement, but the last time it was -- the
21 DROS fee was raised was, you know, 13 years ago. So,
22 costs have increased since then over the department
23 including the bureau.

24 So, unless there's another revenue source
25 that comes in, eventually all fees will be increased

1 including the DROS fee.

2 When that happens I have no idea.

3 Q. So, is it fair to state that the amount of
4 the money being spent on APPS-based law enforcement
5 activities is a consideration when the department
6 analyzes the propriety of the DROS fee being
7 charged?

8 A. I would use a different word than propriety.
9 But is that a calculation in the costs that
10 is covered by the DROS fee, yes.

11 Q. And that's new at some point after
12 Senate Bill 819 became law, correct?

13 A. Not necessarily.
14 So we had an APPS program before 819.
15 819 just allowed the expansion of that fee
16 to cover possession that deals a lot with the APPS
17 program. And, yes, it's covered under that.

18 Some of that change in the budget was done
19 at the Governor's level not at the department level.

20 And then recently other parts of the
21 APPS program had been moved in part to other
22 funding sources besides DROS.

23 Q. Well, since SB 819 became law, does the
24 department consider anything about the specific
25 individuals paying the DROS fee when looking at what

EXHIBIT 3

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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DAVID GENTRY, JAMES
PARKER, MARK MIDLAM,
JAMES BASS, and CALGUNS
SHOOTING SPORTS
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Plaintiffs and
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Case No. 34-2013-80001667

KAMALA HARRIS, in Her
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Attorney General for the
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Official Capacity as
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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 going to raise the fee \$5, provide all that money for
2 more enforcement. That's not something we would do.

3 We could raise the fee theoretically.

4 That doesn't mean we're going to get
5 additional spending authority to spend that extra
6 revenue. So, the two kind of are hand-in-hand.

7 Conversely, if there's an initiative to
8 expand enforcement in the APPS program say an
9 internal initiative by the Attorney General, we may
10 be able to redirect agents from other programs into
11 the APPS program provided we can create the savings
12 elsewhere in the DROS Fund from our existing
13 appropriation to fund those expanded enforcement
14 activities.

15 So, there's no one answer to your question.

16 It's simply what do you want to achieve, and
17 then knowing what you want to achieve, what is
18 the I'm not going to say what is the best, what are
19 the options to achieve that.

20 And the options may be what are the quickest
21 options. What are the best long-term options.

22 It's -- so there's a lot of factors that go into
23 determining something like that like what you asked.

24 BY MR. FRANKLIN:

25 Q. So, I'll try and make a more simple

1 question. Assuming all other revenue and expenditure
2 amounts are consistent, if the department has an
3 increase in costs related to APPS-based law
4 enforcement, is it your understanding that the
5 department could increase the amount of the fee
6 because of that increase in APPS-based law
7 enforcement costs?

8 MR. HAKL: Objection. Vague as to
9 APPS-based law enforcement costs, but you can answer.

10 THE WITNESS: So my understanding would be
11 yes. If the department chose to expand the APPS
12 unit, the enforcement unit, that they could choose to
13 increase the fee to pay for that expansion provided
14 the legislature provided the additional spending
15 authority to go along with the fee increase.

16 BY MR. FRANKLIN:

17 Q. And the spending authority would be in the
18 Budget Act?

19 A. Correct.

20 Q. And I think you've already answered this
21 question. Looking at total revenue and expenditures
22 going in and out of the DROS Special Account, is that
23 the method used for monitoring the amount of reserve
24 in that account?

25 A. That's a component of it, yes.

EXHIBIT 4

Memo

To: ML
From: London
Date: February 23, 2011
Re: Update and Talking Points on the AG's Firearms Proposal

I have spoken with Deputy Attorney General Jessica Devencenzi on their efforts to obtain a Republican author for the Armed Prohibited Persons System (APPS) enforcement proposal. So far, they have approached Senators Blakeslee and Huff who have both turned down the proposal. They have also approached Assemblyman Cook and are still awaiting a decision.

The AG's office would very much appreciate any assistance you could provide in getting the proposal in front of Senator Canella for consideration. Below you will find a short summary and some of the 'republican friendly' talking points provided to our office by the deputy:

Problem

The Armed Prohibited Person System (APPS) operated by the California Department of Justice has identified more than 18,000 individuals, including convicted felons who are illegally in possession of over 34,000 handguns and as many as 1,590 assault weapons. Unfortunately, the California Penal Code does not provide funding to the department or local agencies to confiscate these unlawfully possessed firearms.

Solution

Attorney General Harris would like to introduce legislation to allow DOJ to use the Dealer Record of Sale (DROS) account to partner with local agencies to provide training on the APPS computer-based program, conduct sweeps of individuals on the APPS list, compensate local jurisdictions on a per transaction basis for firearms confiscated from individuals on the APPS list, and fund additional positions within the department to ensure the investigation of individuals currently in violation.



Highlights

- 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.
- DOJ has discussed the issue with prominent gun rights advocates including the National Rifle Association, gun dealers, and the Gun Owners of California.
- These gun rights advocates agree that APPS enforcement should be funded. They believe the Legislature should avoid additional gun laws, and instead, enforce those laws already on the books.

Note: There is resistance from the gun lobby on how to fund enforcement efforts and specifically to using the DROS fund for this purpose. Nonetheless, all parties the AG has consulted have committed to a good faith dialogue on the issue.

- The AG is confident the bill will be strongly supported by law enforcement.



EXHIBIT 5



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

January 21, 2016

Members of the California Legislature
State Capitol
10th Street
Sacramento, CA 95814

RE: Armed and Prohibited Persons System (APPS)

Dear Colleagues:

California has some of the strongest gun safety laws and initiatives in the nation. One of the state's most important initiatives is the Department of Justice's ("Department") Armed and Prohibited Persons System ("APPS"), which keeps firearms out of the hands of those prohibited from possessing them due to their criminal history, mental health status, or existence of a restraining order.

At my request, the Governor and Legislature three years ago made a significant – but temporary – investment in APPS (SB 140, Ch. 2, Statutes of 2013). As a result of that investment, my office has made historic reductions in the number of individuals in the APPS database. Over the last 30 months, our APPS enforcement efforts have taken 335 assault weapons, 4,549 handguns, 4,848 long-guns, and 943,246 rounds of ammunition off the streets from those who illegally possessed them.

However, that temporary infusion of financial support expires May 1, 2016. Due to subsequent changes in law that will substantially increase the number of prohibited persons and the real and present danger these individuals pose to public safety, I strongly urge you to make permanent the increased APPS funding you approved three years ago.

Until recently, the APPS database, which went into effect in December of 2006, was based almost exclusively on handgun transaction records, despite the fact that each year approximately half of all California firearm sales involve long-guns. Indeed, between 2007 and 2013 there were 4,157,849 firearm transactions conducted in California (an average of 593,978 per year), split roughly evenly between handgun and long-gun transactions.

Effective January 1, 2014, a new California law mandated for the first time that the Department collect and retain firearm transaction information for all types of guns, including long-guns. By adding the long-gun registration requirement, the number of individuals who may fall into the APPS system has doubled. In 2014, there were 931,037 firearm transactions in California and we expect a similar volume for 2015 and in the years ahead. This new law will add to the APPS those individuals who purchase the hundreds of thousands of long-guns each year who subsequently commit a prohibiting offense. This statutory change alone justifies sustained and enhanced investment in the APPS.

In addition, we anticipate increased workload due to the new Gun Violence Restraining Order (Assembly Bill 1014) law that went into effect on January 1, 2016. This law allows family members who are concerned about the mental stability of a loved one who possesses a firearm to petition a court for a restraining order that would place the individual in the APPS database. We estimate that as many as 3,000 subjects could be added to the APPS database annually through this new law. Current agent staffing levels within the Bureau of Firearms are insufficient to deal with this increase in prohibited offenders.

In May 2013, just months after the horrific tragedy in Sandy Hook, the Legislature passed Senate Bill 140 with strong bipartisan support. SB 140 provided the Attorney General's Office with \$24 million over a three-year period to significantly reduce and eliminate the roughly 20,000 subjects in the APPS database. During the past two and half years, my Special Agents and other Bureau of Firearms staff conducted over 18,608 APPS investigations statewide. This reduced the subjects in the APPS database from a high of 21,357 on November 20, 2013, to 12,691 as of December 31, 2015, the lowest since September 2008.

These historic achievements came despite the addition of the new long-gun registration requirement and the increase in subjects being identified as armed and prohibited. In short, the Department's efforts, made possible by the funding from SB 140, has decreased the number of subjects in the APPS database every day and removed nearly 20,000 armed and prohibited subjects in under two and half years.

The Department needs additional resources to continue our successful work on the APPS and adequately address the public safety threat these individuals present to California. To achieve these goals, I respectfully request that the Legislature make permanent the temporary funding it has previously authorized in order to allow the Department to continue to disarm the people who become prohibited from possessing firearms in California.

Members of the California Legislature
January 21, 2016
Page 3

The Department has been privileged to receive the Legislature's support and encouragement on this important public safety initiative that can serve as a model for the country. We look forward to continuing this partnership in the years ahead.

Respectfully,



KAMALA D. HARRIS
Attorney General

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On June 30, 2017, I served the foregoing document(s) described as

PLAINTIFFS' EVIDENCE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION: DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION

on the interested parties in this action by placing

the original
 a true and correct copy

thereof by the following means, addressed as follows:

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

X **(BY OVERNIGHT MAIL)** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on June 30, 2017, at Long Beach, California.

X **(BY ELECTRONIC MAIL)** As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on June 30, 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