

1 XAVIER BECERRA  
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*

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GOSSC COURTHOUSE  
SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO  
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13 **DAVID GENTRY, JAMES PARKER,**  
14 **MARK MID LAM, JAMES BASS, and**  
15 **CALGUNS SHOOTING SPORTS**  
**ASSOCIATION,**

16 Plaintiffs and Petitioners,

17 v.

18 **XAVIER BECERRA, in his official capacity**  
19 **as Attorney General for the State of**  
20 **California; STEPHEN LINDLEY, in his**  
21 **official capacity as Director of the California**  
**Department of Justice Bureau of Firearms;**  
**BETTY T. YEE, in her official capacity as**  
**State Controller, and DOES 1-10,**

22 Defendants and  
23 Respondents.

Case No. 34-2013-80001667

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' SEPARATE STATEMENT  
IN SUPPORT OF MOTION FOR  
ADJUDICATION<sup>1</sup>**

Date: August 4, 2017  
Time: 9:00 a.m.  
Dept: 31  
Judge: The Honorable Michael P.  
Kenny

Action Filed: October 16, 2013

24 <sup>1</sup> As agreed with plaintiffs, defendants have submitted their own separate statement and  
25 offer this response to plaintiffs' separate statement. Defendants note, though, that such  
26 statements may be of limited utility in assessing plaintiffs' writ of mandate and declaratory relief  
27 claims, which are largely legal claims involving statutory construction. (See, e.g., *Gilbertson v.*  
28 *Osman* (1986) 185 Cal.App.3d 3d 308, 315 [trial court may consider merits of summary judgment  
motion despite absence of separate statement where case involves "a single, simple issue" with  
minimal evidentiary support], disapproved on other grounds in *Woods v. Young* (1991) 53 Cal.3d  
315, 320.)

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<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
1	To purchase a firearm in California, qualified individuals must pay a transaction fee known as a Dealer Record of Sale ("DROS") fee ("Fee").  <b>Evidence:</b> GENT002	Undisputed.
2	The California Department of Justice (the "Department") performs extensive "background checks" of all applicants seeking to purchase firearms.  <b>Evidence:</b> GENT002	Undisputed.
3	The primary purpose of the "DROS Process" is to ensure that people seeking to purchase firearms in California are not legally prohibited from possessing them.  <b>Evidence:</b> GENT002	Undisputed.
4	The Fee was \$2.25 in 1982 when it was statutorily created to cover the costs of background checks.  <b>Evidence:</b> AGIC007	Undisputed.
5	In 1990, the amount of the DROS Fee was \$4.25.  <b>Evidence:</b> GENT003, AGIC007.	Undisputed.

<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
6	<p>In 1995, the legislature capped the DROS Fee at \$14.00, subject to Consumer Price Index adjustment.</p> <p><b>Evidence:</b> GENT003</p>	Undisputed.
7	<p>In 2004, the Department increased the the DROS fee from \$14 to \$19 for the first handgun or any number of rifles or shotguns in a single transaction.</p> <p><b>Evidence:</b> GENT003</p>	Undisputed.
8	<p>Section 28225 provides the rules for how the Fee should be set, i.e., that the fee "shall be no more than is necessary to fund the following:" eleven classes of costs, based on what the Department determined to be "actual" or "estimated reasonable" costs to pay for the eleven costs classes identified.</p> <p><b>Evidence:</b> Penal Code § 28225</p>	<p>Disputed. Plaintiffs' description is not a complete and accurate summary of Penal Code §28225, the text of which speaks for itself.</p> <p><b>Evidence:</b> Penal Code §28225</p>
9	<p>Penal Code section 28225 places a duty on the Department to consider whether the amount currently being charged for the DROS fee is excessive, and the Department; the Department admits it cannot legally increase the DROS fee to an amount the Department believes to be greater than necessary to fund the costs referred to in Penal Code section 28225.</p> <p><b>Evidence:</b> GENT009-10; GENT034; AGRFP000399</p>	<p>Disputed. Penal Code §28225, the text of which speaks for itself, does not impose a ministerial duty on the Department.</p> <p><b>Evidence:</b> Penal Code §28225, GENT009-10, GENT034, AGRFP000399</p>
10	<p>The Department deposits DROS fee monies in the "Dealers' Record of Sale Special Account of the General Fund" ("DROS Fund").</p> <p><b>Evidence:</b> GENT004</p>	Undisputed.

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
11	<p>Revenue from multiple fees is pooled in the DROS Fund.</p> <p><b>Evidence:</b> GENT051-52</p>	<p>Undisputed.</p>
12	<p>Because of that pooling, however, it is impossible to trace if money paid in via a particular fee is actually used for costs related to that particular cost. For example, it is impossible to determine if a cost listed in Penal Code Section 28225 is funded from DROS fee funds, money from a mix of fee sources, or from fee sources exclusive of the DROS fee.</p> <p><b>Evidence:</b> GENT035-36; GENT051-952</p>	<p>Disputed, but not material. Plaintiffs' description is not an accurate summary of the evidence cited.</p> <p><b>Evidence:</b> GENT035-36, GENT051-52</p>
13	<p>The Department has claimed herein that it is "unable to admit or deny" whether DROS fee money constitutes a certain percentage of the money in the DROS Special Account.</p> <p><b>Evidence:</b> GENT035</p>	<p>Disputed, but not material. The cited document does not stand for the proposition claimed by plaintiffs.</p> <p><b>Evidence:</b> GENT035</p>
14	<p>Internal Department documents the Department was ordered to produce herein show that DROS fee funds are the primary source of money going into the DROS Special Account.</p> <p><b>Evidence:</b> AGICO32</p>	<p>Undisputed to the extent that this refers to the circumstances in 2005, which is the date of the cited document.</p> <p><b>Evidence:</b> AGIC032</p>
15	<p>The Department contends that Per Transaction Cost (i.e., the average cost of performing a given transaction, including a proportional share of overhead costs) of the DROS process is currently at least \$19.00.</p> <p><b>Evidence:</b> GENT011</p>	<p>Disputed, but not material. The cited document does not support the proposition advanced by plaintiffs.</p> <p><b>Evidence:</b> GENT011</p>

1 2 3 4 5 6 7 8 9 10 11 12 13	<b><u>No.</u></b> <b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
16	<p>The Department has not provided any basis, however, for that claim. In fact, the Department originally claimed that it would produce a current per transaction cost, but after two years of requests from Plaintiffs herein, the Department repudiated its promise during a meeting in chambers.</p> <p><b>Evidence:</b> Franklin Decl. ¶ 30</p>	<p>Disputed, but not material. In responding to Request for Admission No. 38 and the accompanying Form Interrogatory 17.1 defendants' explained why they are unable to admit that the average cost to the Department of a DROS transaction is less than \$19.00. Defendants also explained their calculation that for fiscal year 2003-2004 the average DROS transaction cost was \$21.13. Fiscal year 2003-2004 was the fiscal year immediately preceding the fiscal year that the DROS fee was last increased (from \$14.00 to \$19.00).</p> <p><b>Evidence:</b> GENT141; see also answers to Special Interrogatory Nos. 1 &amp; 2, a true and correct copy of which is attached as Exhibit A to the Hakl declaration filed in connection with defendants' opposition brief.</p>
17	<p>It was only after years of discovery in this action that the Department finally admitted that it does not actually consider any of the specific costs listed in Penal Code section 28225 when evaluating how much should be charged for the DROS Fee.</p> <p><b>Evidence:</b> GENT080-81; GENT110-111</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' assertion.</p> <p><b>Evidence:</b> GENT080-81; GENT110-111</p>

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
18	<p>The process used by the Department for at least the last thirteen years (the "Macro Review Process") consists of the following: occasionally, two people in the Department look at (1) how much money is in the DROS Fund, (2) then they estimate the <i>total</i> amount of money going into and coming out of the DROS Fund in the next year, and (3) as long as the DROS Fund will stay in the black and will have a surplus to cover up to one year's worth of operating expenses, the Fee will not be increased.</p> <p><b>Evidence:</b> AGIC007-12; GENT033-34; GENT057; GENT079-80; GENT087; GENT108; GENT110-111</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' assertion.</p> <p><b>Evidence:</b> AGIC007-12; ;GENT033-34; GENT057; GENT079-80; GENT087; GENT108; GENT110-111</p>
19	<p>The Department does not have protocol for determining when it should examine if the amount currently being charged for the DROS Fee is excessive.</p> <p><b>Evidence:</b> GENT010; GENT139; GENT078; GENT083</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' assertion.</p> <p><b>Evidence:</b> GENT010; GENT139; GENT078; GENT083</p>
20	<p>As to the eleven cost classes referred to in section 28225(b): (1) the Department is unaware of the amount spent yearly for eight of those categories, one of which is the particularly relevant class stated in section 28225(11) (and four of this group concern costs the Department has not been requested to pay since at least 2004), (2) the Department has identified two categories that are funded from a source other than the DROS Special Account, and (3) one is known: the amount spent for electronic information transfer (.83 to 3.53 as of 20__).</p> <p><b>Evidence:</b> GENT012-23; GENT043-47</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' assertion.</p> <p><b>Evidence:</b> GENT012-23; ;GENT043-47</p>

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
21	<p>The Department has previously paid Verizon for costs related to electronic information transfer.</p> <p><b>Evidence:</b> GENT045</p>	<p>Undisputed.</p>
22	<p>The Department cannot even provide the total amount of section 28225 costs for any year since 2002.</p> <p><b>Evidence:</b> GENT060A</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' assertion.</p> <p><b>Evidence:</b> GENT060A</p>
23	<p>The Department claims its process does contemplate the Fee being reduced.</p> <p><b>Evidence:</b> GENT081-83</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' assertion.</p> <p><b>Evidence:</b> GENT081-83</p>
24	<p>The DROS Fee has never been lowered.</p> <p><b>Evidence:</b> AGIC007; 11 CCR § 4001</p>	<p>Undisputed.</p>
25	<p>Between 2005 and 2011, the surplus in the DROS Special Account slowly grew to over \$14 million.</p> <p><b>Evidence:</b> GENT124; AGIC007</p>	<p>Undisputed.</p>
26	<p>It was only when the Department got pressure from the legislature about the size of the surplus that the Department instituted a rulemaking to reduce the Fee.</p> <p><b>Evidence:</b> GENT084-85; GENT131-134</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' assertion.</p> <p><b>Evidence:</b> GENT084-85; GENT131-134</p>
27	<p>The Department abandoned the 2010 rulemaking in secret in October 2011, about two years after David Harper sent his September 9, 2009, letter to then assembly Nielsen.</p> <p><b>Evidence:</b> GENT031; GENT132-34</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' assertion.</p> <p><b>Evidence:</b> GENT031; GENT132-34</p>

<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
28	<p>The amount of the Fee was most recently increased in 2005 via an emergency rulemaking ("2005 Rulemaking") intended to resolve an anticipated negative balance in the DROS Fund.</p> <p><b>Evidence:</b> 11 CCR § 4001 (emergency regulation permanently instituted on March 1, 2005); AGRFP000391-396</p>	Undisputed.
29	<p>At the time, the Department stated that 2005 increase was "only up to a level to cover actual costs as specified in statute."</p> <p><b>Evidence:</b> AGRFP000391-396</p>	<p>Undisputed that the phrase "only up to a level to cover actual costs as specified in statute" appears in the cited document.</p> <p><b>Evidence:</b> AGRFP000393</p>
30	<p>The Department concedes that the cost of APPS was not a cost considered in the calculation to raise the Fee.</p> <p><b>Evidence:</b> GENT011</p>	<p>Disputed, but not material. The cited document does not contain the admission claimed.</p> <p><b>Evidence:</b> GENT011</p>
31	<p>The Department claims that it "created a written document that utilized specific cost data to provide an explanation as to why a \$19.00 . . . FEE was appropriate[;]" but the Department refuses to produce such material, claiming it is privileged.</p> <p><b>Evidence:</b> GENT027; GENT064-65</p>	<p>Disputed, but not material. Defendants produced the relevant 2004 documents, which are Bates stamped AGIC007-020 and AGIC022-031.</p> <p><b>Evidence:</b> GENT027; GENT064-65</p>
32	<p>Documents ordered produced by this Court over the Department's objections, however, show that the Macro Review Process was used in the 2005 Rulemaking.</p> <p><b>Evidence:</b> AGIC007-19; AGIC048; AGIC022-36; GENT026-27; GENT033</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> AGIC007-19; AGIC048; AGIC022-36; GENT026-27; GENT033</p>



<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
33	<p>The Department's own internal audit recommended cost cutting as an element of a solution to the DROS Fund deficit.</p> <p><b>Evidence:</b> AGIC011-12; AGIC034</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> AGIC011-12; AGIC034</p>
34	<p>The Department chose to not adopt a cost cutting recommendation as a way deal with the low funds in the DROS Fund, and instead raised the Fee as the only measure to address the deficit.</p> <p><b>Evidence:</b> 11 C.F.R. § 4001; <i>cf.</i> AGIC0011</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> 11 C.F.R. § 4001, <i>cf.</i> AGIC0011</p>
35	<p>During the summer of 2009 then-Assemblyman Jim Nielsen contacted the Department about the unchecked growth of the DROS Fund surplus, which was over \$8 million at the time.</p> <p><b>Evidence:</b> GENT131</p>	<p>Disputed as to "unchecked growth," but not material. The letter from Assemblyman Jim Nielsen is in the record.</p> <p><b>Evidence:</b> GENT131</p>
36	<p>As of September 2, 2009, the Department knew the then \$10.5 million dollar surplus in the DROS Special Account was more than necessary.</p> <p><b>Evidence:</b> GENT131</p>	<p>Disputed, but not material. The cited document does not support plaintiffs' assertion.</p> <p><b>Evidence:</b> GENT131</p>
37	<p>In response to the assemblyman's inquiry, the Department stated that it was "currently exploring numerous administrative and statutory options to reduce the surplus", and that "[s]hould [the Department] decide to pursue statutory changes to reduced the surplus, [the Department would] "welcome an opportunity to meet with [the assemblyman] to discuss the specifics of any proposal."</p> <p><b>Evidence:</b> GENT131</p>	<p>Disputed, but not material. The cited document does not contain this language.</p> <p><b>Evidence:</b> GENT131</p>

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
38	<p>As a result of the pressure from the legislature, on July 9, 2010, the Department formally commenced rulemaking (the "2010 Rulemaking") regarding the possibility of reducing the amount charged for the Fee from \$19.00 to \$14.00.</p> <p><b>Evidence:</b> GENT84-86</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> GENT84-86</p>
39	<p>The 2010 Rulemaking was initiated while the Department was headed by Attorney General Jerry Brown.</p> <p><b>Evidence:</b> GENT005</p>	<p>Undisputed.</p>
40	<p>The Department stated the purpose of the 2010 Rulemaking was to make the amount of the Fee 'commensurate with the actual costs of processing a DROS [application].'</p> <p><b>Evidence:</b> AGRFP000048-49</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> AGRFP000048-49</p>
41	<p>The Department did not actually perform an analysis to determine that the proposed \$14.00 DROS Fee would be "commensurate with the actual costs of processing a DROS [application;]" instead, it performed only the Macro Review Process, which necessarily did not include "a specific, more detailed analysis[.]"</p> <p><b>Evidence:</b> GENT56-57; GENT109-11; AGRGP000048</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> GENT56-57; GENT109-11; AGRGP000048</p>

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
42	<p>Defendant Lindley admitted the 2010 Rulemaking was based on a determination that the surplus in the DROS Fund was "excessive[.]" and that, with the "\$19 fee structure . . . there was a surplus at the end of every fiscal year[.]" Similarly, he said "at that point the \$19 was more than what was needed."</p> <p><b>Evidence:</b> GENT083; GENT091; GENT132-134; AGRGP000048-49.</p>	<p>Undisputed that Lindley testified that "[a]t one time part of the analysis was we thought we had an excessive amount in there and that led to the 2010 rulemaking process" and that "we saw the \$19 fee structure that the – that there was additional surplus at the end of every fiscal year." Disputed as to the rest because GENT132-134 and AGRGP000048-49 are not testimony by Lindley.</p> <p><b>Evidence:</b> GENT083; GENT091</p>
43	<p>The Department claimed (1) that it never made even a preliminary determination that \$19 was excessive, and that (2) at the conclusion of the 2010 Rulemaking, the Department was of the opinion that the total amount collected as a result of the \$19.00 fee was reasonably related to the total amount of costs referred to in section 28225 that were being incurred by the Department at the time.</p> <p><b>Evidence:</b> GENT 10; GENT025; GENT030; AGRGP000048-49</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization. Defendants have admitted, though, subject to various objections the gist of (2): that "at the conclusion of the 2010 rulemaking regarding the possible reduction of the DROS FEE from \$19.00 to \$14.00, CAL DOJ was of the opinion that the total amount collected as a result of the \$19.00 DROS FEE was reasonably related to the total amount of costs referred to in SECTION 28225 that were being incurred by CAL DOJ at the time."</p> <p><b>Evidence:</b> GENT 10; GENT025; GENT030; AGRGP000048-49</p>
44	<p>As to the 2010 Rulemaking, the Department held a public hearing, and even created a final statement of reasons.</p> <p><b>Evidence:</b> AGRFP0000166-174</p>	<p>Undisputed.</p>
45	<p>Notwithstanding that the Department had basically completed the 2010 Rulemaking, the Department sat on the rulemaking until SB 819 passed, and then the rulemaking was abandoned in favor of SB 819, without any explanation to the public.</p> <p><b>Evidence:</b> AGRFP000174; GENT030-31; GENT050; GENT054-55; GENT120</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> AGRFP000174; GENT030-31; GENT050; GENT054-55; GENT120</p>

<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
46	<p>When Defendant Lindley was asked in a deposition in a different lawsuit why the rulemaking was abandoned, he said it was because all of the public comment was against it.</p> <p><b>Evidence:</b> GENT101</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> GENT101</p>
47	<p>The Calguns Foundation not only stated that it supported a fee reduction, but that it supported an even greater fee reduction than the 2010 Rulemaking proposed.</p> <p><b>Evidence:</b> AGRFP00176</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization. For example, the documents show that Calguns "supports the reduction in fees" in general, but opposed the 2010 Rulemaking in particular.</p> <p><b>Evidence:</b> AGRFP00176</p>
48	<p>When deposed in this matter, however, Defendant Lindley admitted that it was abandoned in favor of SB 819.</p> <p><b>Evidence:</b> GENT090A</p>	<p>Disputed, but not material. The evidence submitted does not contain a page stamped GENT090A</p>
49	<p>When Defendant Lindley was asked at deposition who made the decision to abandon the 2010 rulemaking, he indicated the decision had been made by then Attorney General Kamala Harris.</p> <p><b>Evidence:</b> GENT088-90; GENT092</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization. Lindley testified that "[t]hey wanted to move forward. There was a number -- not many people liked the idea of reducing the DROS fee for one reason or another. There were ideas about using the surplus DROS fee in order to pay for APPS enforcement and that's the way the administration wanted to go."</p> <p><b>Evidence:</b> GENT090</p>
50	<p>Defendant Lindley stated in a discovery response that he made the decision to abandon the rulemaking.</p> <p><b>Evidence:</b> GENT055</p>	<p>Undisputed, although defendants note that the Chief (now Director) of the Bureau of Firearms is part of "the administration" referred to the testimony cited immediately above.</p> <p><b>Evidence:</b> GENT055; GENT090</p>

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
51	<p>The initial statement of reasons for the 2010 Rulemaking literally says the purposes of the proposed fee reduction to "\$14, commensurate with the actual cost of processing a DROS[.]"</p> <p><b>Evidence:</b> AGRFP000419</p>	<p>Disputed, but not material. The cited document does not appear to contain the quoted phrase.</p> <p><b>Evidence:</b> AGRFP000419</p>
52	<p>Defendants herein admitted during discovery that the Department initiated the 2010 Rulemaking to reduce the amount of the Fee from \$19 to \$14.</p> <p><b>Evidence:</b> GENT029</p>	<p>Disputed, but not material. The cited document contains only a denial, no admission.</p> <p><b>Evidence:</b> GENT029</p>
53	<p>Defendant Lindley claims he does not "think there was an intent to lower it to \$14."</p> <p><b>Evidence:</b> GENT067-68</p>	<p>Disputed, but not material. The relevant deposition passage reads: "Because I don't think there was an intent to lower it to \$14. I think there was an intent to lower it or to look at the prospects of lowering it in 2010."</p> <p><b>Evidence:</b> GENT067-68</p>
54	<p>By winter 2010/2011, the DROS Fund surplus was over \$14 million.</p> <p><b>Evidence:</b> GENT124</p>	<p>Disputed, but not material. The cited email states that "as of January 31, 2011 DROS had a \$14,815,000.00 surplus."</p> <p><b>Evidence:</b> GENT124</p>
55	<p>In January 2011, newly elected Governor Jerry Brown released his proposed budget, which included almost \$62 million in cuts, over two years, to the Department's Division of Law Enforcement.</p> <p><b>Evidence:</b> GENT135-136</p>	<p>Undisputed.</p>
56	<p>In August 2011, the legislature enacted the California state budget for 2011-2, which included a \$71.5 million dollar reduction in the Division of Law Enforcement's budget over two years.</p> <p><b>Evidence:</b> GENT137-38</p>	<p>Disputed, but not material. The cited documents reflect a figure of "\$71.5 million in 2012-13 and ongoing."</p> <p><b>Evidence:</b> GENT138</p>

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
57	<p>The intent behind the \$71.5 million cut to the Division of Law Enforcement's budget was to "[e]liminate General Fund from the Division of Law Enforcement[;]" previously, the General Fund was used to pay for the Division of Law Enforcement's APPS-based law enforcement activities, among other things.</p> <p><b>Evidence:</b> GENT011; GENT40; GENT96-98; GENT137-38</p>	<p>Disputed, but not material. The relevant passage reflects the following "Adopted Solution": "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."</p> <p><b>Evidence:</b> GENT138</p>
58	<p>Shortly after Kamala Harris became California's Attorney General, the Department, acting on her specific instruction, brought proposed legislation to Senator Mark Leno that ultimately became Senate Bill 819 (Leno, 2011).</p> <p><b>Evidence:</b> GENT154A</p>	<p>Disputed, but not material. The cited document does not support plaintiffs' characterization.</p> <p><b>Evidence:</b> GENT154A</p>
59	<p>The first substantive version of SB 819, introduced March 21, 2011, did nothing other than addition the word "possession" to two passages in section 28225.</p> <p><b>Evidence:</b> GENT144-146</p>	<p>Disputed, but not material. The cited documents do not support this statement. The documents, with the use of italics and strikethrough, respectively, show other additions and deletions. Also, SB 819 was introduced on February 18, 2011.</p> <p><b>Evidence:</b> GENT144-146; see <a href="http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_819&amp;sess=1112&amp;house=B&amp;author=leno">http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_819&amp;sess=1112&amp;house=B&amp;author=leno</a></p>

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
60	<p>In the opinion of a Department attorney who was involved in the drafting of SB 819, "as the sponsor I think I can say that we felt that it [i.e., adding only the word "possession"] was a sufficient clarification of existing law."</p> <p><b>Evidence:</b> GENT114-15; GENT119; GENT121-22</p>	<p>Disputed, but not material. The cited documents do not support this statement. The relevant deposition passage is apparently: "I don't remember specific discussions, but we certainly would have talked about whether it addressed the department's -- whether it was a sufficient clarification of the law."</p> <p><b>Evidence:</b> GENT119</p>
61	<p>On April 14, 2011, Senator Leno introduced a new, and what was ultimately the final, version of SB 819.</p> <p><b>Evidence:</b> GENT147-53</p>	<p>Undisputed.</p>
62	<p>The April 14, 2011, version of SB 819 included a new section, and specifically, the subsection limiting SB 819 to providing a funding source for APPS-based law enforcement activities: Section 1(g).</p> <p><b>Evidence:</b> GENT147-50</p>	<p>Disputed that the new section was "specifically the subsection limiting SB 819 to providing a funding source for APPS-based law enforcement activities: Section 1(g)." This is a legal argument. The text of SB 819 speaks for itself.</p> <p><b>Evidence:</b> GENT147-50</p>
63	<p>Senator Leno's "Q&amp;A" packet for SB 189 expressly stated that he "added declarations and findings to make it clear that [SB 819 wa]s intended to address the APPS enforcement issue."</p> <p><b>Evidence:</b> GENT125-27</p>	<p>Disputed, but not material. Many of the details regarding the cited document are not known, included but not limited to its date, author, and any intended recipients.</p> <p><b>Evidence:</b> GENT125-27 see also Decl. of Anthony R. Hakl in Supp. of Defs.' Mot. for Summ. Adjud. ("Hakl Decl."), Exh. O at pp. 54-58 [discussing the nature of "Q &amp; A" document relied upon by plaintiffs].)</p>

<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
64	<p>A parenthetical note in the "Q&amp;A" packet also shows that the Department was involved in the revision of SB 819 when it the new Section 1 was added.</p> <p><b>Evidence:</b> GENT125-27</p>	<p>Disputed, but not material. Many of the details regarding the cited document are not known, included but not limited to its date, author, and any intended recipients.</p> <p><b>Evidence:</b> GENT125-27 see also Decl. of Anthony R. Hakl in Supp. of Defs.' Mot. for Summ. Adjud. ("Hakl Decl."), Exh. O at pp. 54-58 [discussing the nature of "Q &amp; A" document relied upon by plaintiffs.]</p>
65	<p>APPS is a system that cross-references (1) firearm purchaser background check records and (2) criminal or other records that indicate if an individual is prohibited from possessing firearms.</p> <p><b>Evidence:</b> GENT102-03; AGIC0050</p>	Undisputed.
66	<p>If the system produces a "hit" that is later verified by human analysis, it provides a basis for law enforcement to contact the person identified to determine that person is illegally possessing a firearm.</p> <p><b>Evidence:</b> GENT102-03</p>	Undisputed.
67	<p>Senator Leno and the Department worked together extensively in promoting SB 819.</p> <p><b>Evidence:</b> GENT154A</p>	<p>Disputed, but not material. The cited document does not support plaintiffs' characterization.</p> <p><b>Evidence:</b> GENT154A</p>
68	<p>While discussing SB 819 with the legislature and the public, Senator Leno and the Department both made it very clear that SB 819 <i>only</i> applied to funding for APPS-based law enforcement activities.</p> <p><b>Evidence:</b> GENT104; GENT125-127; GENT147-150</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> GENT104; GENT125-127; GENT147-150</p>



<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
69	<p>Further, when the Department and Senator Leno were pushed on why SB 819's proposed statutory change was limited to one word—the addition of the word “possession” to section 28225—the response was clear: SB 819's non-codified provisions provide the needed context to understand what “possession” would mean in section 28225 if SB 819 was enacted.</p> <p><b>Evidence:</b> GENT125-27</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p><b>Evidence:</b> GENT125-27 see also Decl. of Anthony R. Haki in Supp. of Defs.' Mot. for Summ. Adjud. (“Haki Decl.”), Exh. O at pp. 54-58 [discussing the nature of “Q &amp; A” document relied upon by plaintiffs].)</p>
70	<p>In 2011, the Legislature passed SB 819, which added the word “possession” to Section 28225, with the following uncodified intent language: “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, <i>limited</i> purpose of funding enforcement of the Armed Prohibited Persons System.”</p> <p><b>Evidence:</b> GENT151-53</p>	<p>Disputed, but not material. The complete text of section 28225 speaks for itself, and it does not contain any bolded or italicized language as indicated.</p> <p><b>Evidence:</b> GENT151-53</p>
71	<p>Since 1999, the Department has been using the DROS Fund to pay for attorney services in over 50 cases.</p> <p><b>Evidence:</b> GENT073-74</p>	<p>Disputed, but not material. The cited deposition testimony refers to a period from “2009,” and the “estimate” is “around 50.”</p> <p><b>Evidence:</b> GENT073-74</p>
72	<p>In fiscal year 2013/2014, \$181,486.29 of DROS Fund money was spent on attorneys.</p> <p><b>Evidence:</b> GENT59-60</p>	<p>Undisputed, but to be precise “the total amount of DROS SPECIAL ACCOUNT funds spent on salary for attorneys, limited to money expended during fiscal year 2013/2014” was “[a]pproximately \$181,486.29. This figure includes salary and benefits.”</p> <p><b>Evidence:</b> GENT59-60</p>

<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
73	<p>The total costs of attorney services paid for out of the DROS Fund is in the millions.</p> <p><b>Evidence:</b> GENT075</p>	<p>Undisputed, but defendants note that this was an estimate and referring to "the last ten years."</p> <p><b>Evidence:</b> GENT075</p>
74	<p>Five positions within the Department, but outside the Bureau, were being funded from the DROS Fund.</p> <p><b>Evidence:</b> AGIC010</p>	<p>Undisputed that this was the case as of May 28, 2004, and that the same document reflects a recommendation to "[m]ove CJIS positions that are funded out of DROS and into the Fingerprint Fee Account."</p> <p><b>Evidence:</b> AGIC007-011.</p>
75	<p>The State's auditor stated the DROS Fund was a "dubious funding source for these [five abovementioned] 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."</p> <p><b>Evidence:</b> AGIC010</p>	<p>Undisputed that this statement that was made by someone in the Department, likely a budget analyst, in a document dated May 28, 2004, and that the same document reflects a recommendation to "[m]ove CJIS positions that are funded out of DROS and into the Fingerprint Fee Account."</p> <p><b>Evidence:</b> AGIC007-011.</p>
76	<p>And once SB 819 became law, the Department started to use the DROS Fund not only to fund APPS-based law enforcement actives, it also used DROS Fund money to pay for APPS itself (e.g., generating the APPS list).</p> <p><b>Evidence:</b> AGRFP0017; GENT041</p>	<p>Disputed, but not material. Defendants have explained that "[t]he APPS program was funded with General Fund monies until approximately 2011 (i.e., the passage of SB 819)." Also, the distinction between "APPS-based law enforcement actives" and "APPS itself" as used here is unclear to defendants.</p> <p><b>Evidence:</b> AGRFP0017; GENT041</p>

<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
77	<p>Once SB 819 became law, the Department started to use the DROS Fund for investigations of people who were <i>not</i> on the APPS list. The Department claims SB 819 authorized DROS Fund money to be spent on law enforcement activities related to removing firearms from the possession of prohibited persons, whereas Plaintiffs contend SB 819 is expressly limited to funding APPS-based law enforcement activities.</p> <p><b>Evidence:</b> GENT069-71; GENT077 (See also the First Amended Complaint and Answer to the First Amended Complaint.)</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization in the first sentence. As to the second sentence, it is not a statement of fact, although defendants generally understand the distinction plaintiffs are drawing.</p> <p><b>Evidence:</b> GENT069-71; GENT077</p>
78	<p>Prior to SB 819, APPS and APPS-based law enforcement activities were funded out of the General Fund.</p> <p><b>Evidence:</b> GENT40; GENT011; GENT076; GENT095-96; GENT098-99</p>	<p>Undisputed, although it is not entirely clear what plaintiffs mean by "APPS" as opposed to "APPS-based law enforcement activities." Defendants have explained that "[t]he APPS program was funded with General Fund monies until approximately 2011 (i.e., the passage of SB 819)."</p> <p><b>Evidence:</b> GENT41</p>
79	<p>The list of costs funded from the DROS Fund, but not referred to in section 28225 also includes the cost of legislative analysis done by the department.</p> <p><b>Evidence:</b> GENT076</p>	<p>Disputed, but not material. The relevant deposition testimony is: "So, if there's a legislation that comes through, we have to produce a bill analysis for both entities or both bureau and the division. So, in the Bureau of Firearms we have staff that would work on that and analyze the impact to the department as it relates to the Bureau of Firearms and their work is paid for out of the DROS account."</p> <p><b>Evidence:</b> GENT076; see also section 28225, subd. (b)(11)</p>

<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
80	<p>The list of costs funded from the DROS Fund but not referred to in section 28225 also includes the cost of certain high-level Bureau executives' entire salaries.</p> <p><b>Evidence:</b> AGROG000016</p>	<p>Disputed, but not material. The cited document does not support plaintiffs' characterization.</p> <p><b>Evidence:</b> AGROG000016; see also section 28225, subd. (b)(11)</p>
81	<p>The Bureau does not just perform the DROS Process (and the extent relevant, APPS-based law enforcement); it administers over thirty state mandated programs.</p> <p><b>Evidence:</b> GENT139-143</p>	<p>Undisputed that "[t]he 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"</p> <p><b>Evidence:</b> GENT141</p>
82	<p>Approximately 25% of Defendant Lindley's time as chief of the Bureau was spent working on matters related to APPS.</p> <p><b>Evidence:</b> GENT074A</p>	<p>Disputed, but not material. The cited document does not indicate this, but GENT094A shows that as of February 14, 2014 the estimate "on a monthly basis" was "25 percent," give or take.</p> <p><b>Evidence:</b> GENT094A</p>
83	<p>The Department does not separately record expenses for non-APPS-based law enforcement activities and APPS-based law enforcement activities.</p> <p><b>Evidence:</b> GENT077</p>	<p>Undisputed, but the relevant distinction drawn by plaintiffs' counsel during the deposition was between "the APPS list cases and the similar but not so defined other cases," as opposed to "non-APPS-based law enforcement activities and APPS-based law enforcement activities."</p> <p><b>Evidence:</b> GENT077</p>
84	<p>Approximately 5% of the "APPS Cases" handled by the Department concern individuals not identified via APPS.</p> <p><b>Evidence:</b> GENT071-72</p>	<p>Undisputed, but the actual testimony is an estimate that "95% of the case we work would be system generated cases."</p> <p><b>Evidence:</b> GENT071-72</p>

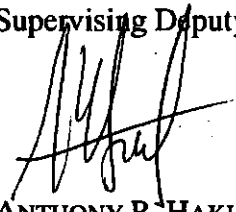
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<b>No.</b>	<b><u>PLAINTIFFS' UNDISPUTED FACT</u></b>	<b><u>DEFENDANTS' RESPONSES</u></b>
85	<p>Based on the Department's own data and estimation, and assuming both kinds of enforcement activities take the same time, the amount spent on non-APPS-based law enforcement activities by the Department is somewhere between \$131,272.16 to 262,859.04 (the total yearly salary for approximately 2.84 special agents)—depending on pay grade—not to mention overtime and support staff (e.g., non-sworn criminal identification specialists).</p> <p><b>Evidence:</b> GENT154; GENT156</p>	<p>Disputed, but not material. Defendants do not follow this mathematical calculation devised by plaintiffs, which is argumentative. Also, the cited documents do not cite these figures.</p> <p><b>Evidence:</b> GENT154; GENT156</p>
86	<p>Support staff do a large amount of investigatory work prior to special agents going into the field to contact people who may be armed but legally prohibited from possessing firearms.</p> <p><b>Evidence:</b> GENT100</p>	<p>Disputed, but not material. The actual testimony is "[c]riminal Identification Specialists, like we said, the ones that are up here in Sacramento, they're the ones that work the triggering events. The intelligence specialists are oftentimes in the field offices, and they assist the Agents in preparing cases to go work. Once an individual is identified as someone that we want to make contact with, we still have a lot of followup to do beforehand to ensure the safety of our Agents, the public and the individual we're going to be contacting, so that we know As much about them as possible."</p> <p><b>Evidence:</b> GENT100</p>

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Dated: June 30, 2017

Respectfully Submitted,  
XAVIER BECERRA  
Attorney General of California  
STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General



ANTHONY R. HAKL  
Deputy Attorney General  
*Attorneys for Defendants and Respondents*

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**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**  
No.: **34-2013-80001667**

I declare:


I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 30, 2017, I served the attached **DEFENDANTS' RESPONSE TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION FOR ADJUDICATION** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Scott Franklin  
Michel & Associates, P.C.  
180 E. Ocean Boulevard, Suite 200  
Long Beach, CA 90802  
E-mail: [SFranklin@michellawyers.com](mailto:SFranklin@michellawyers.com)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 30, 2017, at Sacramento, California.

Tracie L. Campbell  
Declarant

  
Signature