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GOSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

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

Plaintiffs and Petitioners,

v.

**XAVIER BECERRA, in his Official
Capacity as Attorney General for the State
of California; STEPHEN LINDLEY, in his
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.,**

Defendants and
Respondents.

Case No. 34-2013-80001667
**DEFENDANTS' RESPONSE TO
PLAINTIFFS' ADDITIONAL
MATERIAL FACTS**

Date: August 4, 2017
Time: 9:00 a.m.
Dept: 31
Judge: The Honorable Michael P.
Kenny
Action Filed: October 16, 2013

1 2 3 4 5 6 7 8 9	Plaintiffs' Additional Material Facts	Defendants' Response
10 11 12 13 14 15 16	<p>Additional Material Fact ("AMF") No. 1: The relevant emergency rulemaking was effectively complete in 2004, but it was not finalized until 2005.</p> <p>Evidence: Declaration of Scott M. Franklin in Support of Plaintiffs' Separate Statement in Opposition to Defendants' Motion for Summary Adjudication ("Franklin Decl. ISO Opp.") at Exhibit 1 (AGRFP000380, AGRFP000390).</p>	Undisputed.
17 18 19 20 21 22 23 24 25 26 27	<p>AMF No. 2: Prior to the adoption of SB 819 the Department expressly asserted that SB 819 would not result in the DROS Fee being increased.</p> <p>Evidence: GENT124 (Part of Exhibit 14 to the Declaration of Scott M. Franklin in Support of Plaintiffs' Motion for Adjudication of Plaintiffs' Fifth and Ninth Causes of Action Pursuant to the Bifurcation Order of November 4, 2016 ["Franklin Decl."])</p>	<p>Disputed, but not material. The cited document states that "[t]his legislation <u>will not</u> increase the gun fees," and SB 819 in fact did not result in any increased fees. The cited document does not indicate, as plaintiffs appear to suggest, that the DROS fee will never be raised. Related, defendants note that section 28225 currently caps the DROS fee at \$14.00, subject to Consumer Price Index adjustments.</p> <p>Evidence: GENT124</p>
28	<p>AMF No. 3: The Department now contends that it can raise the Fee based on costs related to APPS-based law enforcement activities.</p> <p>Evidence: Franklin Decl. ISO Opp. at Exhibits 2 & 3 (GENT157-62).</p>	<p>Disputed, but not material. This additional fact misstates the relevant deposition testimony.</p> <p>Evidence: GENT157</p>
	<p>AMF No. 4: The Department was involved in the revision of SB 819 when it the new Section 1 was added, so the Department knew SB 819 was being revised to include a specific limitation on SB 819's scope.</p> <p>Evidence: GENT125-27 (part of Exhibit 15 to the Franklin Decl.)</p>	<p>Disputed, but not material. Many of the details regarding the cited document are not known, including but not limited to its date, author, and any intended recipients. Also, this "fact" is actually a legal argument regarding the scope of SB 819.</p> <p>Evidence: 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 the "Q & A" document relied upon by plaintiffs].</p>

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Plaintiffs' Additional Material Facts	Defendants' Response
<p>AMF No. 5: During a recent deposition, the Department, for the first time, clearly admitted that it is funding non-APPS based law enforcement activities out of the DROS Fund based on the contention that SB 819's revision of section 28225 authorized such expenditures.</p> <p>Evidence: GENT069-71; GENT077 (part of Exhibit 9 to the Franklin Decl.)</p>	<p>Disputed, but not material. Defendants do not agree with plaintiffs' apparent distinction between "non-APPS-based" and "APPS-based" law enforcement activities. In any event, defendants' understanding of this issue is discussed in the briefing, and most recently in the reply brief. And it is undisputed that five percent of the expenditures at issue fall into what plaintiffs claim is an unauthorized category of expenditures, and defendants disagree with that legal claim.</p> <p>Evidence: GENT071-72</p>
<p>AMF No. 6: In the course of sponsoring SB 819, the Department made repeated representations that SB 819 money was needed to pay for APPS-based law enforcement activities performed by both the Department and local law enforcement agencies. For example, in one communication from the Department to a member of Senator Leno's staff dated February 16, 2011, the department claimed would use \$1.5-2.5 million of money obtained via (what would later be named) SB 819 to reimburse local law enforcement, and \$1 million a year to pay for the Department's employees to perform APPS-based law enforcement activities.</p> <p>Evidence: GENT124 (Exhibit 14 to the Franklin Decl.); see also GENT 128-130 (Exhibit 16 to the Franklin Decl.), Franklin Decl. ISO Opp. at Exhibit 4 (GENT163-64).</p>	<p>Undisputed as to the first sentence, although the phrase "repeated" is vague and as noted above defendants do not agree with plaintiffs' apparent distinction between "non-APPS-based" and "APPS-based" law enforcement activities. As to the second sentence, undisputed that the communication at issue states "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."</p>
<p>AMF No. 7: As of 2017, the Department has not paid local law enforcement any money out of the DROS Fund to local law enforcement regarding its APPS-based law enforcement work.</p> <p>Evidence: GENT072 (part of Exhibit 9 to the Franklin Decl.)</p>	<p>Undisputed, as of May 24, 2017, that the Department had not "used DROS Special Account money to reimburse local law enforcement of APPS based activities."</p> <p>Evidence: GENT072</p>

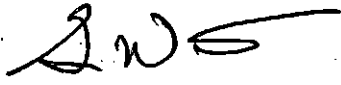
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Plaintiffs' Additional Material Facts	Defendants' Response
<p>AMF No. 8: The Department has spent tens of millions of dollars pursuant to SB 819 in the last six years.</p> <p>Evidence: Franklin Decl. ISO Opp. at Exhibit 5 (GENT165-167).</p>	<p>Undisputed that SB 140, as opposed to SB 819, "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."</p> <p>Evidence: GENT165-167.</p>

Dated: July 21, 2017

Respectfully Submitted,

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



for ANTHONY R. HAKL
Deputy Attorney General
Attorneys for Defendants

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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 July 21, 2017, I served the attached **DEFENDANTS' RESPONSE TO PLAINTIFFS' ADDITIONAL MATERIAL FACTS** 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 Address:
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 July 21, 2017, at Sacramento, California.

Tracie L. Campbell
Declarant

Tracie Campbell
Signature