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**FILED/ENDORSED**  
AUG - 9 2017  
*S. Lee*  
By S. Lee, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

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

Case No. 34-2013-80001667-CU-WM-GDS

**Plaintiffs and Petitioners,**

**RULING ON SUBMITTED MATTER:  
MOTIONS FOR ADJUDICATION OF  
PLAINTIFFS' FIFTH AND NINTH  
CAUSES OF ACTION**

v.

**XAVIER BECERRA, 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 T. YEE,  
in her official capacity as State  
Controller, and DOES 1-10,**

**Defendants and Respondents.**

This matter came on regularly for hearing on August 4, 2017. The parties appeared and presented oral argument, after which the Court took the matter under submission. The Court now issues its ruling on the submitted matter which reflects a revision on the Ninth Cause of Action.

**I. Introduction**

In this matter, Plaintiffs contend Defendants have been improperly imposing a fee, the Dealer's Record of Sale transaction fee (hereinafter the "DRoS Fee") on firearm purchasers without calculating the proper fee amount, and then have been using the funds collected outside

1 of their statutorily authorized purposes.

2 Via stipulation filed November 4, 2016, the parties agreed to bifurcate this matter, with  
3 motions for summary adjudication concerning Plaintiffs' fifth and/or ninth causes of action to  
4 proceed first<sup>1</sup>. Both Plaintiffs and Defendants have timely filed such motions, along with separate  
5 statements of undisputed material facts, and oppositions to the others' motion.  
6

7 The fifth cause of action alleges Defendants have a ministerial duty under Penal Code  
8 section 28225, subdivisions (a) and (b) to determine the "amount necessary to fund" the activities  
9 enumerated in subdivisions (b)(1) through (11) and to only charge the DROS Fee at that amount.  
10 Plaintiffs contend Defendants have not performed this duty.

11 The ninth cause of action alleges Defendants have been using the DROS Fee funds for  
12 activities outside of those statutorily allowed. Plaintiffs seek a declaration that Defendants are not  
13 authorized to use DROS Special Account Funds for "some use other than APPS-based law  
14 enforcement activities."<sup>2</sup>  
15

## 16 **II. Factual and Procedural Background**

17 In 1982, the Legislature first authorized the Department of Justice (hereinafter, the  
18 "Department") to collect a DROS Fee, to cover the cost of performing background checks on  
19 firearms purchasers. The initial DROS Fee was \$2.25. Over the years, the amount of the DROS  
20 Fee increased, as did the list of activities it funded. In 1995, the Legislature amended the statute  
21 to cap the DROS Fee at \$14 (the amount it had been since 1991), subject to increases accounting  
22 for inflation. In 2004, the Department adopted regulations adjusting the fee to \$19. The DROS  
23 Fee remains at \$19 today, as reflected in Title 11, California Code of Regulations, section 4001.  
24

25 <sup>1</sup> The Court notes Plaintiffs and Defendants have indicated in their papers that although the motions are titled as  
26 seeking summary adjudication, the motions are more akin to merits briefing on bifurcated issues in Plaintiffs' writ  
27 petition. Accordingly, the Court will not rule on the objections to the Separate Statements, choosing instead to treat  
28 this matter as a ruling on a writ petition, which has been bifurcated into two phases of trial.

<sup>2</sup> In connection with both of these causes of action, Plaintiffs also seek an injunction prohibiting defendants from  
imposing the current fee and from utilizing the funds for the contested purposes.

1 California Penal Code<sup>3</sup> section 28225 currently authorizes the Department to require a  
2 firearm dealer to charge a purchaser a fee no more than necessary to fund,

3  
4 “(b)(1) The department for the cost of furnishing this information.

5 (2) The department for the cost of meeting its obligations under paragraph (2) of  
6 subdivision (b) of Section 8100 of the Welfare and Institutions Code.

7 (3) Local mental health facilities for state-mandated local costs resulting from the  
8 reporting requirements imposed by Section 8103 of the Welfare and Institutions  
9 Code.

10 (4) The State Department of State Hospitals for the costs resulting from the  
11 requirements imposed by Section 8104 of the Welfare and Institutions Code.

12 (5) Local mental hospitals, sanitariums, and institutions for state-mandated local  
13 costs resulting from the reporting requirements imposed by Section 8105 of the  
14 Welfare and Institutions Code.

15 (6) Local law enforcement agencies for state-mandated local costs resulting from  
16 the notification requirements set forth in subdivision (a) of Section 6385 of the  
17 Family Code.

18 (7) Local law enforcement agencies for state-mandated local costs resulting from  
19 the notification requirements set forth in subdivision (c) of Section 8105 of the  
20 Welfare and Institutions Code.

21 (8) For the actual costs associated with the electronic or telephonic transfer of  
22 information pursuant to Section 28215.

23 (9) The Department of Food and Agriculture for the costs resulting from the  
24 notification provisions set forth in Section 5343.5 of the Food and Agricultural  
25 Code.

26 (10) The department for the costs associated with subdivisions (d) and (e) of  
27 Section 27560.

28 (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.”

In 2001, The Legislature established the Armed Prohibited Persons System (hereinafter,  
“APPS”). Via APPS, the Department maintains a database of persons prohibited from possessing  
firearms, and uses the database to investigate, disarm, apprehend, and prosecute those prohibited  
persons.

<sup>3</sup> All subsequent statutory references are to the Penal Code, unless otherwise indicated.

1 Prior to 2011, subdivision (b)(11) did not include the word “possession.” In 2011, the  
2 Legislature passed Senate Bill 819, adding “possession” to the pre-existing list allowing the  
3 DROS Fee calculation to include the cost of the Department’s “firearms-related regulatory and  
4 enforcement activities related to the sale, purchase, *possession*, loan, or transfer of firearms  
5 pursuant to any provision listed in Section 16580.” (emphasis added.)  
6

### 7 **III. Standard of Review**

8 In a motion for summary adjudication, the moving party must demonstrate that the  
9 material facts are undisputed and the party is entitled to judgment as a matter of law. (Code Civ.  
10 Proc., § 473c.) In this matter, the parties are proceeding via motions for summary adjudication on  
11 the merits of Plaintiffs’ fifth and ninth causes of action. Accordingly, the motions are viewed  
12 within the context of the standard of review for the subject writ petitions.  
13

14 The interpretation of statutes is an issue of law on which the court exercises its  
15 independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) In  
16 exercising its independent judgment, the Court is guided by certain established principles of  
17 statutory construction, which may be summarized as follows. The primary task of the court in  
18 interpreting a statute is to ascertain and effectuate the intent of the Legislature. (See, *Hsu v.*  
19 *Abbara* (1995) 9 Cal.4th 863, 871.) This extends to a challenge that a regulation exceeds the  
20 agency’s authority, although the Court gives great weight to the agency’s interpretation. (*Nick v.*  
21 *City of Lake Forest* (2014) 232 Cal.App.4th 871.)  
22

23 The starting point for the task of interpretation is the words of the statute itself, because  
24 they generally provide the most reliable indicator of legislative intent. (See, *Murphy v. Kenneth*  
25 *Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to be  
26 interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the  
27 statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The  
28

1 court should give meaning to every word of a statute if possible, avoiding constructions that  
2 render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes  
3 should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant*  
4 *Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)

5  
6 Beyond that, the Court must consider particular statutory language in the context of the  
7 entire statutory scheme in which it appears, construing words in context, keeping in mind the  
8 nature and obvious purpose of the statute where the language appears, and harmonizing the  
9 various parts of the statutory enactment by considering particular clauses or sections in the  
10 context of the whole. (See, *People v. Whaley* (2008) 160 Cal.App.4th 779, 793.)

#### 11 **IV. Discussion**

##### 12 **A. Fifth Cause of Action**

##### 13 **Timeliness**

14 Defendants first argue Plaintiffs are not entitled to the relief requested because their  
15 request is untimely. To support this argument, Defendants cite to Code of Civil Procedure section  
16 338 providing a three-year limitations period for “an action upon a liability created by statute...”  
17 Defendants argue that because the DROS Fee last increased in 2004, the statute of limitations to  
18 challenge the fee amount ran in 2007. Plaintiffs did not file this matter until 2013.

19  
20 Defendants’ argument assumes Plaintiffs are challenging the increase, instead of the  
21 continued imposition of a \$19 DROS Fee. Under Defendants’ interpretation, after 2007 a person  
22 would be barred from challenging whether \$19 was the amount “necessary to fund” the categories  
23 enumerated in section 28225, subdivision (b). Also, the Court would have to assume the costs in  
24 subdivision (b) will only increase, with no possibility that they may be reduced subsequent to  
25 2004. Such a reading of the “no more than necessary” requirement eliminates it from the statute  
26 post-2007. Defendants have provided no statutory language or legislative intent to support such a  
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1 reading.

2 In this section, and throughout their brief, Defendants argue section 28225 “does not  
3 impose a ministerial duty to calculate, review, or reassess the amount of the DROS fee at the  
4 time, in the manner, or under the circumstances that plaintiffs contend. On the contrary, the  
5 Legislature left those particulars to the discretion of the Department and other public agencies  
6 mentioned in the statute.” (Def. MPA, p. 20.) However, Defendants do not identify a policy,  
7 regulation, or even internal practice which they contend triggers the need for review of the DROS  
8 Fee amount. At times, it seems Defendants argue there is no obligation to further review the  
9 amount, as the Department “discharged that duty” by engaging in the rulemaking process in 2004  
10 to set the fee at \$19.  
11

12 The Court finds the statute of limitations does not preclude Petitioner’s challenge to  
13 whether the current \$19 fee is “no more than necessary” to fund the subdivision (b) activities. The  
14 2004 regulatory activity does not bar challenges to the current imposition of an annual fee.  
15

16 Laches

17 Defendants next argue laches bars the fifth cause of action because Plaintiffs have  
18 unreasonably delayed their claims for nine years (considering the 2004 date) and because doing  
19 the review Plaintiffs urge will be costly, resulting in “prejudice if the desired writ issues.”  
20

21 The Court has already rejected Defendants’ argument that the 2004 date is relevant in  
22 determining the timeliness of Plaintiffs’ claims. This appears to be the only argument supporting  
23 their claim of laches. Costliness of remedy alone is insufficient.

24 Ministerial Duty

25 Defendants contend, “[s]ection 28225 does not impose a ministerial duty on [D]efendants,  
26 and [P]laintiffs misconstrue the statute in contending the contrary.” Defendants then assert the  
27 statute does not mention any sort of “reassessment’ being required upon any kind of change in  
28

1 circumstances, or a 'review' of whether the use of DROS fee revenues on an authorized program  
2 amounts to a 'tax.'" (Def. MPA, p. 18-19.) There is no ministerial duty to reassess the DROS Fee  
3 as urged by Plaintiffs, instead "the Legislature left [the decision of time, manner, and  
4 circumstances of reassessment] to the discretion of the Department and other public agencies  
5 mentioned in the statute." (Def. MPA, p. 20.)  
6

7 In determining the existence of a mandatory ministerial duty, the Court is guided first by  
8 the statute's plain language. (*People v. Snook* (1997) 16 Cal.4th 1210, 1215.) While the statute  
9 does not provide a specific time or circumstance triggering the need for reassessment of the  
10 DROS Fee, inherent in the phrase "no more than necessary" is an ongoing obligation to make  
11 such a determination. Defendants have not identified any way in which they can ensure the fee is  
12 "no more than necessary" without collecting some sort of data and making some sort of ongoing  
13 determination. While the Department *may* have discretion to determine the process by which it  
14 makes such a review, including determining what time interval is appropriate between reviews,  
15 clearly the statute imposes a ministerial duty to perform a review at some point so long as the  
16 DROS Fee is being charged.  
17

18 Defendants provide that if the Court finds section 28225 imposes a ministerial duty, then  
19 such a duty was discharged by way of the 2004 rulemaking. Defendants also appear to claim there  
20 is an ongoing review process:  
21

22 "[the Department] expends considerable resources regularly monitoring, for  
23 example: the number of firearms transactions in California; the amount of DROS  
24 fee revenues being generated; the condition of the Dealer's Record of Sale Special  
25 Account, the annual state budget process, particularly as it impacts the  
26 Department, and the resulting appropriations by the Legislature; each and every  
27 expenditure by the Department to ensure that it is authorized by law; and the  
28 anticipated future needs of the Department based on myriad policy and legal  
considerations." (Def. MPA, p. 21; Sep. Statement, No. 12.)

27 However, again, Defendants have not identified a regular interval within which the  
28 Department performs any sort of review of the DROS Fee to confirm it is "no more than

1 necessary.” Defendants have also not identified any activities they claim trigger a DROS Fee  
2 review. “Regularly monitors” is vague and provides no indication as to the level of review, steps  
3 completed, and Defendants do not identify any sort of documentation produced from the “regular  
4 monitoring.”

5  
6 The only evidence before the Court is that the last time the DROS Fee was analyzed as to  
7 whether it is “no more than necessary” was in 2004 via the rulemaking process. The Court finds  
8 evaluating the DROS Fee to make sure it is “no more than necessary” every thirteen years is  
9 insufficient to comply with the ministerial duty section 28225 imposes. Plaintiffs’ motion for  
10 adjudication is **GRANTED** as to the fifth cause of action. Defendants’ motion for adjudication is  
11 **DENIED** as to the fifth cause of action.

12  
13 Plaintiffs further argue, to the extent the Department has been calculating the DROS Fee,  
14 it has been using an improper Macro Review Process, instead of complying with the statutory  
15 direction of section 28225, subdivision (c), including that they consider the “estimated reasonable  
16 costs of department firearms-related regulatory and enforcement activities related to the sale,  
17 purchase, possession, loan, or transfer of firearms...” Plaintiffs contend the statutory  
18 authorization is narrow, and the Department has only looked at the total amount of money going  
19 into and out of the DROS Fee account, instead of analyzing the specific categories. However, as  
20 the Court has already found, the Department has failed to provide evidence of *any* calculations  
21 being done sufficient to discharge the review section 28225 requires. Accordingly, it will not  
22 opine as to whether a particular potential calculation method is appropriate.

23  
24 **B. Ninth Cause of Action**

25 The ninth cause of action alleges Defendants have been using the DROS Fee funds for  
26 activities outside of those statutorily authorized. Plaintiffs seek a declaration that SB 819 does not  
27 permit Defendants to use DROS Special Account Funds for “some use other than APPS-based  
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1 law enforcement activities.”

2 The debate between the parties here centers on the word “possession” in the phrase “costs  
3 associated with funding Department of Justice firearms-related regulatory and enforcement  
4 activities related to the sale, purchase, possession, loan, or transfer of firearms pursuant to any  
5 provision listed in Section 16580.” (§ 28225, subd. (b)(11).) Plaintiffs contend “possession” was  
6 added via SB 819 solely for the “limited purpose of funding enforcement of the Armed Prohibited  
7 Persons System” and consequently possession refers only to the potential or actual possession of  
8 firearms by someone on the APPS list. (citing to SB 819, § 1, subd. (g).)

9  
10 Defendants argue additional language in SB 819 section 1 clarifies that “the Legislature’s  
11 overarching concern was not solely the functioning of APPS, but more broadly the growing  
12 number of ‘armed prohibited persons in California’ and their possession of ‘over 34,000  
13 handguns and 1,590 assault weapons.’” (Def. MSA, p. 23)(citing to SB 819, §1, subd. (d).)

14 Defendants also point to subdivision (f) which provides,

15  
16 “A Dealer Record of Sale fee is imposed upon every sale or transfer of a firearm  
17 by a dealer in California. Existing law authorizes the DOJ to utilize these funds for  
18 firearms-related regulatory and enforcement activities related to the sale, purchase,  
19 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.”

20 Defendants contend this language reflects the overall concern with illegal possession of  
21 firearms in general, instead of being limited to APPS related enforcement. Defendants argue  
22 ninety-five percent of APPS cases fall within the definition of possession Plaintiffs advance,  
23 while the remaining five percent are calls from citizens about an “individual who is now  
24 prohibited for one reason or another and that they have firearms that the department might not  
25 necessarily know about.” (Lindley Depo, p. 8:9-18.) Defendants also contend the Court should  
26 look no further than the plain language of the statute itself, which does not contain the limiting  
27 language found in SB 819.  
28

1           The starting point for the task of statutory interpretation is the language of the statute  
2 itself, because it generally provides the most reliable indicator of legislative intent. (See, *Murphy*  
3 *v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to  
4 be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the  
5 statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The  
6 Court must also consider any uncodified statutory language because “an uncodified section is part  
7 of the statutory law.” (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 925.)  
8 Although statements of intent “in an uncodified section do not confer power, determine rights, or  
9 enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute.”  
10 (*Id.*)

11  
12           Section 1, subdivision (g) is clear that the Legislature amended section 28225 to include  
13 “possession” solely for the “limited purpose of funding enforcement of the Armed Prohibited  
14 Persons System.” While subdivisions (d) and (f) may discuss an overall concern with illegal  
15 possession of firearms, this general language does not overcome the specific intent declared in  
16 subdivision (g). Based on the uncodified declaration of legislative intent, is clear that  
17 “possession” as used in section 28225, subdivision (b)(11) is limited to APPS-based activities.  
18 Accordingly, Plaintiffs’ motion for adjudication as to the ninth cause of action is **GRANTED**.  
19 Defendants’ motion for adjudication as to the ninth cause of action is **DENIED**.

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1 **V. Conclusion**

2 The phrase "no more than necessary" as used in section 28225 imposes a ministerial duty  
3 to perform a reassessment of the DROS Fee more frequently than every thirteen years.

4 Defendants have failed to perform this duty, consequently Plaintiffs' motion for adjudication is  
5 **GRANTED** as to the fifth cause of action, while Defendants' is **DENIED**.

6  
7 The plain language of subdivision (b)(11) does not specify to what "possession" activities  
8 it refers. However, SB 819, section 1, subdivision (g) makes clear that "possession" is limited to  
9 APPS-based enforcement. Plaintiffs' motion for adjudication is **GRANTED** as to the ninth cause  
10 of action, while Defendants' is **DENIED**.

11 DATED: August 9, 2017



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\_\_\_\_\_  
Judge MICHAEL P. KENNY  
Superior Court of California,  
County of Sacramento

**CERTIFICATE OF SERVICE BY MAILING**  
**(C.C.P. Sec. 1013a(4))**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9<sup>th</sup> Street, Sacramento, California.

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Superior Court of California,  
County of Sacramento

Dated: August 9, 2017

\_\_\_\_\_  
By: S. LEE  
Deputy Clerk