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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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

13 Plaintiffs and Petitioners,

14 v.

15 XAVIER BECERRA, in His Official  
16 Capacity as Attorney General For the State  
17 of California; STEPHEN LINDLEY, in  
18 His Official Capacity as Acting Chief for  
19 the California Department of Justice,  
BETTY T. YEE, in Her Official Capacity  
as State Controller, and DOES 1 - 10,

20 Defendants and Respondents.

Case No. 34-2013-80001667

**SEPARATE STATEMENT IN SUPPORT OF  
PLAINTIFFS' MOTION TO COMPEL  
ADDITIONAL RESPONSES TO SPECIAL  
INTERROGATORIES (SET FOUR)  
PROPOUNDED ON DEFENDANTS XAVIER  
BECERRA AND STEPHEN LINDLEY**

Hearing Date: November 3, 2017  
Hearing Time: 9:00 a.m.  
Judge: Honorable Michael P. Kenny  
Dept.: 31

Trial Date: March 16, 2018  
Action Filed: October 16, 2013

21  
22  
23 Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and  
24 Calguns Shooting Sports Association (collectively "Plaintiffs") hereby submit this Separate  
25 Statement pursuant to California Rules of Court, rule 3.1345, in support of Plaintiffs' Motion to  
26 Compel Further Responses to Special Interrogatories, Set Four, Propounded on  
27 Defendants/Respondents Xavier Becerra and Stephen Lindley (collectively "Defendants").  
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1 **INTERROGATORY NO. 33**

2 Explain the factual basis for DEFENDANTS' (as used herein, "DEFENDANTS"  
3 refers to defendants Stephen Lindley and Kamala Harris) denial of Paragraph 97 of  
4 the First Amended Complaint on file herein, i.e., "the current amount of the DROS  
5 Fee exceeds DOJ Defendants' actual costs for lawfully administering the DROS  
6 program[.]"

5 **RESPONSE**

6 Defendants object to this interrogatory. The operative answer in this matter does  
7 not contain a denial of Paragraph 97 of the First Amended Complaint. More  
8 specifically, defendants answered the First Amended Complaint, in relevant part:  
9 "Answering paragraph 95 through 100, respondents state that the matters asserted  
10 therein constitute legal argument and conclusions, as opposed to material  
11 allegations of fact. No response to such arguments and conclusions is required.  
12 To the extent paragraphs 95 through 100 contain any material allegations of fact,  
13 respondents deny the allegations." Additionally, to the extent petitioners contend  
14 that answer is for some reason defective, the time for objecting to the answer has  
15 expired.

12 The discovery request is also cumulative. The initial complaint contained the  
13 same allegation that "[o]n information and belief, the current amount of the DROS  
14 Fee exceeds DOJ Defendants' actual costs for lawfully administering the DROS  
15 program." (Compl. filed Oct. 13, 2013, at para. 111.) Defendants answered the  
16 initial complaint on March 5, 2015, stating, in relevant part: "Answering paragraph  
17 109 through 112, respondents state that the matters asserted therein constitute legal  
18 argument and conclusions, as opposed to material allegations of fact. No response  
19 to such arguments and conclusions is required. To the extent paragraphs 109  
20 through 112 contain any material allegations of fact, respondents deny the  
21 allegations." In a response to Form Interrogatory 15.1 dated May 26, 2015,  
22 defendants have already "[i]dentified each denial of a material allegation" and  
23 "state[d] all facts upon which [defendants] base[d] the denial." Plaintiffs did not  
24 challenge that response and the time for doing so has expired.

20 This interrogatory is also irrelevant to the causes of action remaining in this case,  
21 which involve legal questions, as opposed to factual ones. The cause of action  
22 related to the calculation of the amount of the DROS Fee (the Fifth Cause of  
23 Action) has been resolved.

23 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

24 Defendants' wrongly claim there was no denial as to Paragraph 97 as a justification for  
25 not responding to an interrogatory seeking the basis of that denial. But Defendants' own response  
26 confirms, there was a denial. The fact that the denial was party of a dubious strategy by  
27 Defendants to "hedge" their response, the denial plainly exists. Furthermore, Defendants' claim  
28 that the relevant request is cumulative because defendant *failed* to identify the basis for a denial

1 under a previous version of the complaint is without merit because: 1) the filing of a new  
2 amended complaint effectively starts the case over; 2) Defendants admit in a prior discovery  
3 response that if Form Interrogatory 15.1 is propounded before the complaint is substantively  
4 amended, then the interrogatory is superseded, and 3) it is not per se unreasonable to ask a single  
5 follow up question a year later in a case, especially on a key denial that Defendants did not offer a  
6 single fact to support when faced with Form Interrogatory 17.1.

7 Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
8 Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
9 *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
10 claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
11 as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
12 *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
13 involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
14 a question of law"); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
15 *also Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) ("Mixed  
16 questions of law and fact concern the application of the rule to the facts and the consequent  
17 determination whether the rule is satisfied.").

18 **INTERROGATORY NO. 35**

19 State the full name and case number of any lawsuit filed January 1, 2006, to the  
20 present, of each case that resulted in money being transferred from the DROS  
21 SPECIAL ACCOUNT to the Legal Services Revolving Fund to pay for legal  
22 services provided by an attorney.

23 **RESPONSE**

24 Defendants object to this interrogatory. This interrogatory is irrelevant to the  
25 causes of action remaining in this case, which involve legal questions, as opposed  
26 to factual ones.

27 It is also cumulative in light of the deposition testimony of Stephen Lindley (given  
28 after plaintiffs propounded this discovery) agreeing with counsel for plaintiffs that  
"DROS Special Account money has been spent defending firearm-related  
litigation in . . . the last ten years" and estimating the amount of that expenditure to  
be in the "millions." (Lindley Depo. at p. 33.) To the extent this fact is relevant to  
the remaining causes of action, all that is relevant is the existence of this  
expenditure (as opposed to the details demanded by plaintiffs, which are

1 unnecessary to the resolution of the legal issues before the Court). And searching  
2 records covering more than a decade to compile the itemization demanded by  
3 plaintiffs would be unduly burdensome and oppressive.

4 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

5 Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
6 Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
7 *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
8 claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
9 as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
10 *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
11 involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
12 a question of law"); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
13 *also Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) ("Mixed  
14 questions of law and fact concern the application of the rule to the facts and the consequent  
15 determination whether the rule is satisfied.").

16 Defendants' cumulative objection is meritless. Just "because the same question has been  
17 answered in a previous deposition does not preclude the request for a reply to an interrogatory in  
18 the absence of a showing that the requirement of a reply would be unjust, inequitable, oppressive  
19 or burdensome. *Darbee v. Super. Ct.*, 208 Cal. App. 2d 680, 687 (1962). "[T]he burden of such a  
20 showing is upon the one who objects to the interrogatory." *Id.* Defendants offer nothing to meet  
21 this burden, and their objection should therefore be overruled.

22 **INTERROGATORY NO. 37**

23 List each source of revenue, by amount of revenue contributed, comprising the  
24 \$17,286,000 of revenue related to "miscellaneous services to the public" that went  
25 into the DROS SPECIAL ACCOUNT for fiscal year 2014-2015; this  
26 interrogatory is based on data stated in California's 2016-2017 budget, though  
27 responding to this interrogatory does not require reference thereto by the  
28 responding parties.

27 ///

28 ///

1           **RESPONSE**

2           Defendants object to this interrogatory. This interrogatory is irrelevant to causes  
3           of action remaining in this case, which involve legal questions, as opposed to  
4           factual ones. It is also objectionable because it requires referring to other  
5           documents in order to respond, despite plaintiffs' contention to the contrary.  
6           While plaintiffs appear to be referring to a line item in a state budget, it is not clear  
7           what item plaintiffs are referring to. Finally, the interrogatory states it is "based on  
8           data stated in California's 2016-2017 budget," which may be a document authored  
9           by the Legislature (not the Department of Justice) and signed by the Governor.  
10          Therefore, the question may seek information equally available to plaintiffs.

11          Without waiving these objections, defendants respond as follows:

12          Defendants suggest the parties meet and confer regarding this interrogatory so that  
13          it can be clarified and defendants can provide the requested information to the  
14          extent possible.

15                   **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

16          Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
17          Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
18          *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
19          claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
20          as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
21          *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
22          involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
23          a question of law"); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
24          *also Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) ("Mixed  
25          questions of law and fact concern the application of the rule to the facts and the consequent  
26          determination whether the rule is satisfied.").

27                   **INTERROGATORY NO. 38**

28                  Provide the expenditure subtotals that were used in calculating the total  
                    \$28,616,000 of expenditures related to "Department of Justice (State Operations)"  
                    that were funded from the DROS SPECIAL ACCOUNT for fiscal year 2014-  
                    2015; this interrogatory is based on data stated in California's 2016-2017 budget,  
                    though responding to this interrogatory does not require reference thereto by the  
                    responding parties.

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1                   **RESPONSE**

2                   Defendants object to this interrogatory. This interrogatory is irrelevant to causes  
3                   of action remaining in this case, which involve legal questions, as opposed to  
4                   factual ones. It is also objectionable because it requires referring to other  
5                   documents in order to respond, despite plaintiffs' contention to the contrary.  
6                   While plaintiffs appear to be referring to a line item in a state budget, it is not clear  
7                   what item plaintiffs are referring to. Finally, the interrogatory states it is "based on  
8                   data stated in California's 2016-2017 budget," which may be a document authored  
9                   by the Legislature (not the Department of Justice) and signed by the Governor.  
10                  Therefore, the question may seek information equally available to plaintiffs.

11                  Without waiving these objections, defendants respond as follows:

12                  Defendants suggest the parties meet and confer regarding this interrogatory so that  
13                  it can be clarified and defendants can provide the requested information to the  
14                  extent possible.

15                  **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

16                  Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
17                  Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
18                  *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
19                  claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
20                  as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
21                  *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
22                  involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
23                  a question of law"); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
24                  *also Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) ("Mixed  
25                  questions of law and fact concern the application of the rule to the facts and the consequent  
26                  determination whether the rule is satisfied.").

27                  **INTERROGATORY NO. 39**

28                  List the activities that are funded from the DROS SPECIAL ACCOUNT that fall  
                    within unit code 505.

**RESPONSE**

                    Defendants object to this interrogatory. This interrogatory is irrelevant to the  
                    causes of action remaining in this case, which involve legal questions, as opposed  
                    to factual ones. The term "activities" is also undefined, vague, and subject to  
                    interpretation.

1 Without waiving these objections, defendants state:

2 Unit code 505 refers to the APPS program. The precise activities that fall within a  
3 unit code can vary from year to year. Defendants propose that the parties meet and  
4 confer to establish a time frame for this interrogatory.

5 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

6 Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
7 Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
8 *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
9 claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
10 as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
11 *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
12 involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
13 a question of law"); accord *Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); see  
14 also *Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) ("Mixed  
15 questions of law and fact concern the application of the rule to the facts and the consequent  
16 determination whether the rule is satisfied.").

17 **INTERROGATORY NO. 40**

18 List the activities that are funded from the DROS SPECIAL ACCOUNT that fall  
19 within unit code 823.

20 **RESPONSE**

21 Defendants object to this interrogatory. This interrogatory is irrelevant to the  
22 causes of action remaining in this case, which involve legal questions, as opposed  
23 to factual ones. The term "activities" is also undefined, vague, and subject to  
24 interpretation.

25 Without waiving these objections, defendants state:

26 Unit code 823 refers to the Gun Show program. The precise activities that fall  
27 within a unit code can vary from year to year. Defendants propose that the parties  
28 meet and confer to establish a time frame for this interrogatory.

**REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*

1 of Equalization, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
2 claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
3 as to how the money collected by the government is being used. Cf. *Oliver & Williams Elevator*  
4 *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
5 involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
6 a question of law"); accord *Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); see  
7 also *Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) ("Mixed  
8 questions of law and fact concern the application of the rule to the facts and the consequent  
9 determination whether the rule is satisfied.").

10 **INTERROGATORY NO. 41**

11 List the activities that are funded from the DROS SPECIAL ACCOUNT that fall  
12 within unit code 930.

13 **RESPONSE**

14 Defendants object to this interrogatory. This interrogatory is irrelevant to the  
15 causes of action remaining in this case, which involve legal questions, as opposed  
16 to factual ones. The term "activities" is also undefined, vague, and subject to  
17 interpretation.

18 Without waiving these objections, defendants state:

19 Unit code 930 refers to the SB 140 appropriation for the APPS program. The  
20 precise activities that fall within a unit code can vary from year to year.  
21 Defendants propose that the parties meet and confer to establish a time frame for  
22 this interrogatory. However, defendants note that unit code 930 is no longer in  
23 use, the relevant appropriation having expired.

24 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

25 Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
26 Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
27 *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
28 claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
as to how the money collected by the government is being used. Cf. *Oliver & Williams Elevator*  
*Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with



1 a question of law”); accord *Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); see  
2 also *Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) (“Mixed  
3 questions of law and fact concern the application of the rule to the facts and the consequent  
4 determination whether the rule is satisfied.”).

5 **INTERROGATORY NO. 42**

6 Does CAL DOJ contend that the only APPS-related benefit that flows from  
7 paying the DROS fee is that if a firearm is seized from the fee payer the firearm  
8 cannot be used thereafter in a harmful way? If not, describe all APPS-related  
9 benefits resulting from the payment of the DROS fee.

10 **RESPONSE**

11 Defendants object to this interrogatory. It is not full and complete in and of itself,  
12 contains subparts, and is compound. The interrogatory is also tantamount to  
13 demanding defendants brief the merits of the remaining causes of action in this  
14 case, which plaintiffs initiated. The merits hearing is currently set to be heard on  
15 March 16, 2018, and the matter will be briefed in due course according to the  
16 applicable rules. This interrogatory is therefore burdensome and oppressive and  
17 an inappropriate use of the discovery device.

18 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

19 Defendants’ relevancy objection is unfounded; the discovery sought is relevant to  
20 Plaintiffs’ illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
21 *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants’ implied claim that illegal tax  
22 claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
23 as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
24 *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) (“Since the issues here  
25 involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
26 a question of law”); accord *Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); see  
27 also *Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) (“Mixed  
28 questions of law and fact concern the application of the rule to the facts and the consequent  
determination whether the rule is satisfied.”).

**INTERROGATORY NO. 43**

Does CAL DOJ contend that all DROS fee payers create a burden on the public  
because some DROS fee payers may possess a firearm even after becoming  
prohibited from possessing firearms? If so, explain how a DROS fee payer who  
never becomes prohibited (from possessing a firearms) creates such a burden.

1                   **RESPONSE**

2                   Defendants object to this interrogatory. It is not full and complete in and of itself,  
3                   contains subparts, and is compound. The interrogatory is also tantamount to  
4                   demanding defendants brief the merits of the remaining causes of action in this  
5                   case, which plaintiffs initiated. The merits hearing is currently set to be heard on  
6                   March 16, 2018, and the matter will be briefed in due course according to the  
7                   applicable rules. This interrogatory is therefore burdensome and oppressive and  
8                   an inappropriate use of the discovery device.

9                   **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

10                  Defendants are wrong in claiming this interrogatory is inappropriate, burdensome, and  
11                  oppressive. The practice of using interrogatories to flush out legal contentions is consistently  
12                  recognized by the courts as legitimate. *See, e.g., Rifkind v. Super. Ct.*, 22 Cal. App. 4th 1255,  
13                  1261 (1994); *accord Burke v. Super. Ct.*, 71 Cal 2d 276, 281 (1969).

14                  **INTERROGATORY NO. 45**

15                  Explain how CAL DOJ determines what costs related to the possession of  
16                  firearms will be funded out of the DROS SPECIAL ACCOUNT in a given year.

17                  **RESPONSE**

18                  Defendants object to this interrogatory. It is irrelevant to the causes of action  
19                  remaining in this case, which challenge the validity of the appropriation of funds  
20                  under SB 140 (First, Second, Third, and Fourth Causes of Action) and challenge  
21                  SB 819 as an unlawful “tax” under Article XIII of the California Constitution  
22                  (Sixth, Seventh, and Eight Causes of Action.) The causes of action related to the  
23                  amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819 (Ninth  
24                  Cause of Action) have been resolved.

25                  **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

26                  Defendants’ relevancy objection is unfounded; the discovery sought is relevant to  
27                  Plaintiffs’ illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
28                  *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants’ implied claim that illegal tax  
                    claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
                    as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
                    *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) (“Since the issues here  
                    involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
                    a question of law”); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
                    *also Crocker Nat’l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) (“Mixed

1 questions of law and fact concern the application of the rule to the facts and the consequent  
2 determination whether the rule is satisfied.”).

3 **INTERROGATORY NO. 46**

4 Explain how CAL DOJ estimates what costs, related to the possession of firearms,  
5 are reasonable and thus can be funded out of the DROS SPECIAL ACCOUNT  
pursuant to Penal Code section 28225.

6 **RESPONSE**

7 Defendants object to this interrogatory. It is irrelevant to the causes of action  
8 remaining in this case, which challenge the validity of the appropriation of funds  
9 under SB 140 (First, Second, Third, and Fourth Causes of Action) and challenge  
10 SB 819 as an unlawful “tax” under Article XIII of the California Constitution  
(Sixth, Seventh, and Eight Causes of Action.) The causes of action related to the  
amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819 (Ninth  
Cause of Action) have been resolved.

11 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

12 Defendants’ relevancy objection is unfounded; the discovery sought is relevant to  
13 Plaintiffs’ illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
14 *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants’ implied claim that illegal tax  
15 claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
16 as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
17 *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) (“Since the issues here  
18 involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
19 a question of law”); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
20 *also Crocker Nat’l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) (“Mixed  
21 questions of law and fact concern the application of the rule to the facts and the consequent  
22 determination whether the rule is satisfied.”).

23 **INTERROGATORY NO. 47**

24 As to the “costs associated with funding Department of Justice firearms-related  
25 regulatory . . . activities related to the sale, purchase, possession, loan, or transfer  
of firearms pursuant to any provision listed in Section 16580[.]”<sup>1</sup> identify-by  
26 activity and amount-the six most costly such activities for fiscal year 2014-2015.

27  
28  
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<sup>1</sup> Pen. Code, § 28225, subd. (b)(1).

1                   **RESPONSE**

2                   Defendants object to this interrogatory. It is irrelevant to the causes of action  
3                   remaining in this case, which challenge the validity of the appropriation of funds  
4                   under SB 140 (First, Second, Third, and Fourth Causes of Action) and challenge  
5                   SB 819 as an unlawful "tax" under Article XIII of the California Constitution  
6                   (Sixth, Seventh, and Eight Causes of Action.) The causes of action related to the  
7                   amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819 (Ninth  
8                   Cause of Action) have been resolved.

9                   **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

10                  Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
11                  Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
12                  *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
13                  claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
14                  as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
15                  *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
16                  involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
17                  a question of law"); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
18                  *also Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) ("Mixed  
19                  questions of law and fact concern the application of the rule to the facts and the consequent  
20                  determination whether the rule is satisfied.").

21                  **INTERROGATORY NO. 48**

22                  As to the "costs associated with funding Department of Justice firearms-related . .  
23                  . enforcement activities related to the sale, purchase, possession, loan, or transfer  
24                  of firearms pursuant to any provision listed in Section 16580[,]"<sup>2</sup> identify-by  
25                  activity and amount-the six most costly such activities for fiscal year 2014-2015.

26                  **RESPONSE**

27                  Defendants object to this interrogatory. It is irrelevant to the causes of action  
28                  remaining in this case, which challenge the validity of the appropriation of funds  
                    under SB 140 (First, Second, Third, and Fourth Causes of Action) and challenge  
                    SB 819 as an unlawful "tax" under Article XIII of the California Constitution  
                    (Sixth, Seventh, and Eight Causes of Action.) The causes of action related to the  
                    amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819 (Ninth  
                    Cause of Action) have been resolved.

29                  ///

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30                  <sup>2</sup> *Id.*

1                   **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

2                   Defendants’ relevancy objection is unfounded; the discovery sought is relevant to  
3                   Plaintiffs’ illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
4                   *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants’ implied claim that illegal tax  
5                   claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
6                   as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
7                   *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) (“Since the issues here  
8                   involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
9                   a question of law”); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
10                  *also Crocker Nat’l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) (“Mixed  
11                  questions of law and fact concern the application of the rule to the facts and the consequent  
12                  determination whether the rule is satisfied.”).

13                  **INTERROGATORY NO. 49**

14                  Explain how unit code 930 is utilized by CAL DOJ, including whether it is used  
15                  directly by employees to account for time or resources expended, or whether it is  
16                  used only for accounting purposes, or both, or neither.

17                  **RESPONSE**

18                  Defendants object to this interrogatory. It is irrelevant to the causes of action  
19                  remaining in this case, which challenge the validity of the appropriation of funds  
20                  under SB 140 (First, Second, Third, and Fourth Causes of Action) and challenge  
21                  SB 819 as an unlawful “tax” under Article XIII of the California Constitution  
22                  (Sixth, Seventh, and Eight Causes of Action.) The causes of action related to the  
23                  amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819 (Ninth  
24                  Cause of Action) have been resolved.

25                  Without waiving these objections, defendants state:

26                  As stated above, unit code 930 is no longer utilized.

27                  **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

28                  Defendants’ relevancy objection is unfounded; the discovery sought is relevant to  
29                  Plaintiffs’ illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
30                  *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants’ implied claim that illegal tax  
31                  claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute

1 as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
2 *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) (“Since the issues here  
3 involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
4 a question of law”); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
5 *also Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) (“Mixed  
6 questions of law and fact concern the application of the rule to the facts and the consequent  
7 determination whether the rule is satisfied.”).

8 **INTERROGATORY NO. 52**

9 Is it CAL DOJ's position that all DROS FEE payers create a burden that is  
10 addressed via APPS-based law enforcement activities? If not, explain how a  
11 DROS FEE payer creates a burden that is addressed by APPS-based law  
12 enforcement activities as to those DROS FEE payers who never become  
13 prohibited from possessing firearms.

12 **RESPONSE**

13 Defendants object to this interrogatory. It is not full and complete in and of itself,  
14 contains subparts, and is compound. The interrogatory is also tantamount to  
15 demanding defendants brief the merits of the remaining causes of action in this  
16 case, which plaintiffs initiated. The merits hearing is currently set to be heard on  
17 March 16, 2018, and the matter will be briefed in due course according to the  
18 applicable rules. This interrogatory is therefore burdensome and oppressive and  
19 an inappropriate use of the discovery device.

17 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

18 Defendants are wrong in claiming this interrogatory is inappropriate, burdensome, and  
19 oppressive. The practice of using interrogatories to flush out legal contentions is consistently  
20 recognized by the courts as legitimate. *See, e.g., Rifkind v. Super. Ct.*, 22 Cal. App. 4th 1255,  
21 1261 (1994); *accord Burke v. Super. Ct.*, 71 Cal 2d 276, 281 (1969).

22 **INTERROGATORY NO. 53**

23 Is it CAL DOJ' s position that nothing other than “regulatory . . . activity[,]” as  
24 that term is used in Penal Code Section 28225, is funded out of the DROS  
25 SPECIAL ACCOUNT? If not, describe in detail each and every category of  
26 “enforcement activity” funded out of the DROS SPECIAL ACCOUNT,  
27 including-but not limited to-firearm seizures based on APPS data.

26 **RESPONSE**

27 Defendants object to this interrogatory. It is not full and complete in and of itself,  
28 contains subparts, and is compound. This interrogatory is irrelevant to the causes  
of action remaining in this case, which involve legal questions, as opposed to

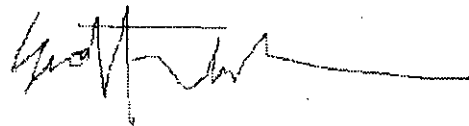
1 factual ones. The causes of action related to the calculation of the amount of the  
2 DROS Fee (Fifth Cause of Action) and the "possession" issue (Ninth Cause of  
3 Action) have been resolved.

4 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED**

5 Defendants' relevancy objection is unfounded; the discovery sought is relevant to  
6 Plaintiffs' illegal tax claims, specifically under the standard put forth in *Sinclair Paint v. State Bd.*  
7 *of Equalization*, 15 Cal.4th 866 (1997). And contrary to Defendants' implied claim that illegal tax  
8 claims are pure questions of law, they are mixed questions of fact when, as here, there is a dispute  
9 as to how the money collected by the government is being used. *Cf. Oliver & Williams Elevator*  
10 *Corp. v. State Bd. of Equalization*, 48 Cal. App. 3d 890, 894 (1975) ("Since the issues here  
11 involve the applicability of taxing statutes to uncontradicted facts, we are confronted purely with  
12 a question of law"); *accord Neecke v. City of Mill Valley*, 39 Cal. App. 4th 946, 953 (1995); *see*  
13 *also Crocker Nat'l Bank v. City & Cty. of San Francisco*, 49 Cal. 3d 881, 888 (1989) ("Mixed  
14 questions of law and fact concern the application of the rule to the facts and the consequent  
15 determination whether the rule is satisfied.").

16 Dated: October 12, 2017

**MICHEL & ASSOCIATES, P.C.**

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22 Scott M. Franklin  
23 Attorney for Plaintiffs  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

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

On October 12, 2017, the foregoing document described as

**SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL  
ADDITIONAL RESPONSES TO SPECIAL INTERROGATORIES (SET FOUR)  
PROPOUNDED ON DEFENDANTS XAVIER BECERRA AND STEPHEN LINDLEY**

on the interested parties in this action by placing

- the original
- a true and correct copy

thereof enclosed in sealed envelope(s) addressed as follows:

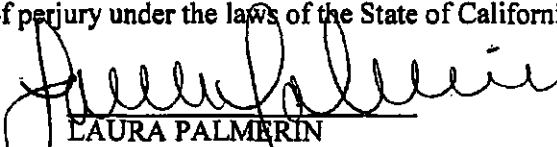
Anthony R. Hakl  
Deputy Attorney General  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550

*Attorney for Defendants*

**(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 October 12, 2017, at Long Beach, California.

**(BY MAIL)** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit. Executed on October 12, 2017, at Long Beach, California.

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
LAURA PALMERIN



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2017 OCT 12 PM 4:40

DOWNTOWN COURTHOUSE  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO