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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 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.

Case No. 34-2013-80001667

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL

Date: November 3, 2017
Time: 9:00 a.m.
Dep't: 31
Judge: The Honorable Michael P. Kenny
Trial Date: March 16, 2018
Action Filed: October 16, 2013

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INTRODUCTION

Defendants Xavier Becerra, the Attorney General of California, and Stephen Lindley, Director of the Bureau of Firearms of the California Department of Justice ("Department" or "DOJ"), submit this brief in opposition to plaintiffs' motions to compel further responses to requests for admission and further responses to special interrogatories.

As this Court is aware from previous motions, plaintiffs' complaint generally challenges DOJ's expenditure of Dealer's Record of Sale ("DROS") fee revenues on California's Armed Prohibited Persons System ("APPS") program. The DROS fee is a $19.00 firearms transaction fee, and APPS is a DOJ law enforcement program aimed at recovering firearms from persons prohibited from possessing them due to criminal behavior or mental illness.

Currently at issue are some of defendants' responses to plaintiffs' latest discovery requests. As explained below, the vast majority of those requests are irrelevant in light of the nature and scope of the legal questions, as opposed to factual ones, that remain in this case. Indeed, a number of the current requests are substantially the same as – and in a number of instances *identical* to – previous requests by plaintiffs that this Court considered and rejected in a written order on an earlier motion to compel.

Additionally, considering the enormous amount of discovery that already has occurred in this and a related federal case, many of plaintiffs' requests are cumulative and therefore burdensome and oppressive. The requests by plaintiffs – the parties who initiated this lawsuit and therefore ultimately bear the burden of proof – also are tantamount to a demand that defendants brief the merits of what remains of this case in the context of discovery and months ahead of their obligation to do so. Considering all of the circumstances, the requests are an improper use of the discovery rules.

This case is now more than four years old. It is set to be resolved on the merits on March 18, 2018. The parties should proceed to briefing the legal issues in the ordinary course. And with the exception of those requests that defendants agree to supplement, as indicated below, the Court should deny plaintiffs' motions to compel and accompanying request for sanctions.

LEGAL AND FACTUAL BACKGROUND

I. BRIEF SUMMARY OF RELEVANT CALIFORNIA FIREARMS LAWS

A. Dealer's Record of Sale Transaction Fee.

When an individual purchases a firearm in California, he or she generally must pay $25.00 in fees. The majority of that sum consists of a statutory $19.00 Dealer's Record of Sale (DROS) fee intended to reimburse DOJ for specified costs. (See Penal Code, § 28225, Cal. Code. Regs. Tit. 11, § 4001; see also Penal Code, §§ 28230, 28235 & 28240.)[1] The Dealer's Record of Sale Special Account is the name of the state fund created by the Legislature into which all DROS fees collected as a result of firearms transactions are deposited. (§ 28235 ("[a]ll moneys received by the department pursuant to this article shall be deposited in the Dealer's Record of Sale Special Account of the General Fund, which is hereby created").

B. California's Armed Prohibited Persons System.

The California Legislature established the Armed Prohibited Persons System (APPS) in 2001. (§ 30000.) That legislation established an electronic system within DOJ to cross-reference certain databases containing records regarding persons prohibited from owning firearms and produce a list of armed prohibited persons. (*Ibid.*) In general, prohibited persons are those who have been convicted of a felony or a violent misdemeanor, are subject to a domestic violence restraining order, or have been involuntarily committed for mental health care. (§ 30005.)

Law enforcement officers throughout California can access the APPS list 24 hours a day, seven days a week, through the California Law Enforcement Telecommunications System (CLETS). (See § 30000, subd. (b); see also § 30010 ["The Attorney General shall provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm."].) DOJ uses the APPS list to conduct enforcement actions that result in the seizure of firearms in the possession of prohibited persons.

[1] All further statutory citations are to the California Penal Code unless otherwise indicated.

C. California Senate Bills 819 and 140.

The APPS program went into effect around 2006, at which time APPS was funded through moneys appropriated from the General Fund. But with the passage of Senate Bill 819 in 2011, the Legislature clarified that the APPS program could be funded with the DROS fees deposited into the Dealer's Record of Sale Special Account. With SB 819 the Legislature amended the DROS fee statute (i.e., section 28225) to include the costs of enforcement activities related to firearms possession. As a result of SB 819, the provision states that the DROS fee shall be no more than is necessary to fund DOJ for:

> [T]he 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.

(§ 28225, subd. (b)(11), emphasis added.)

In 2013, the Legislature passed Senate Bill 140, a bill appropriating $24 million from the DROS Special Account to DOJ to address a growing backlog in APPS. The Legislature added section 30015, which provides, in relevant part:

> The sum of twenty-four million dollars ($24,000,000) is hereby appropriated from the Dealers' Record of Sale Special Account of the General Fund to the Department of Justice to address the backlog in the Armed Prohibited Persons System (APPS) and the illegal possession of firearms by those prohibited persons.

(§ 30015, subd. (a).)

II. RELEVANT PROCEDURAL HISTORY.

As mentioned, this matter has been before the Court on a number of occasions. In particular, the Court has resolved several disputes in connection with the discovery served by plaintiffs. The Court granted defendants' motion for judgment on the pleadings on the claim that SB 140 is an unlawful appropriation because SB 819 violates Proposition 26, the 2010 measure that amended section 3 of article XIIIA of the California Constitution. The Court also granted plaintiffs' motion for leave to file a first amended complaint.

By order filed August 9, 2017, the Court granted plaintiffs' motion for adjudication of the fifth and ninth causes of action. Those claims concerned the Department's calculation of the

amount of the DROS fee and the meaning of the word "possession" in section 28225, subd. (b)(11), respectively.

Most recently, the parties were before the Court in chambers on September 8, 2017, to discuss this discovery dispute.[2] After additional meeting and conferring between the parties, plaintiffs filed the instant motions to compel. This opposition brief addresses both of those motions.

Currently at issue are a collection of plaintiffs' Request for Admissions (Set Three) and Special Interrogatories (Set Four), although plaintiffs have propounded hundreds of discovery requests over the past few years. In total, and with respect to the DOJ defendants only (i.e., excluding the discovery served upon the State Controller, who is also a defendant), this has included:

- Requests for Admissions ("RFA"), including 214 requests;
- Form Interrogatories, including Interrogatories 15.1 and 17.1 (i.e., effectively hundreds of additional requests);[3]
- Special Interrogatories, including 53 interrogatories; and
- Requests for Production of Documents, including 106 requests.

Plaintiffs also have deposed those persons with considerable knowledge of the Bureau of Firearms, the Department's budget and finances, and the Department's work in connection with SB 819. These individuals include defendant Stephen Lindley, the Director of the Department's Bureau of Firearms; David Harper, the Deputy Director of the Department's Division of

[2] Contrary to counsel for plaintiffs' recollection, the memory of the undersigned is that the Court did not lift the discovery stay at this in chambers conference. The matter simply was not addressed by the Court or the parties. Plaintiffs did express an intention to proceed by way of these motions to compel; therefore, subsequent to the conference defendants agreed to serve responses to the discovery at issue.

[3] Form Interrogatories 15.1 and 17.1 are onerous. Interrogatory 15.1 generally calls for an explanation of all of the "Denials and Special or Affirmative Defenses" in defendants' answer and Interrogatory 17.1 requires the responding party to explain each and every denial to any request for admission, which in this case includes 214 such requests.

Administrative Support; and Jessica Devencenzi, the former Deputy Attorney General assigned to the Department's Office of Legislative Affairs and SB 819.

Finally, in the related federal case challenging the expenditure of DROS fee monies on the APPS program on Second Amendment grounds, plaintiffs also served a significant amount of discovery, including approximately 73 Special Interrogatories; 74 Requests for Production of Documents; and 42 Requests for Admissions.[4]

III. PLAINTIFFS' REMAINING CLAIMS.

The Court already has ruled on some of plaintiffs' claims. The remaining claims relevant to the instant discovery dispute are the sixth, seventh, and eight causes of action, which allege theories that SB 819 is an unlawful tax under the California Constitution.

The sixth cause of action alleges that SB 819 is unlawful because it created "a property tax that does not meet the constitutional proportionality requirement that applies to property taxes" under section 1(b) of article XIII of the California Constitution. (First Am. Compl. ¶ 104.)

The seventh cause of action alleges that SB 819 is unlawful "because it created a differential tax that does not meet the constitutional two-thirds vote requirement that applies to the creation of a differential property tax" under section 2, article XIII of the California Constitution. (*Id.* ¶ 120.)

The eighth cause of action alleges that SB 819 "created an illegal tax under Section 3(m) of Article XIII of the California Constitution," which according to the proposed amended complaint, exempts firearms from property taxation because they qualify as "household furnishings and personal effects." (*Id.* ¶¶ 134 & 130.)

Also remaining, but not at issue in the current discovery dispute, are the second and third causes of action against the State Controller. Based on the claim that SB 140 "is an unlawful appropriation," those claims seek a writ of mandate "stopping appropriation of SB 140 funds" and

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[4] In the federal case, the district court rejected all of plaintiffs' federal constitutional claims on the merits, granting defendants' motion for summary judgment in its entirety. (See *Bauer v. Harris*, Case No. 1:11-cv-01440-LJO-MJS (E.D. Cal.) [Memo. Decision & Order filed March 2, 2015].) The Ninth Circuit affirmed in a published decision. (See *Bauer v. Becerra*, 858 F.3d 1216, 1218 (9th Cir. 2017) [concluding that collection and use of DROS fees on APPS program does not violate the Second Amendment]).

"recouping of SB 140 funds," respectively. (See Compl. at pp. 17-18.) The related fourth cause of action is against the DOJ defendants. Based on the "unlawful appropriation" claim, it seeks writ relief directing the DOJ defendants return the funds appropriated under SB 140. (Compl. at p. 18.)

THE COURT SHOULD DENY THE MOTIONS TO COMPEL.

I. PLAINTIFFS' DISCOVERY REQUESTS ARE IRRELEVANT.

Most of the discovery requests at issue are irrelevant considering what remains of this case. Plaintiffs disagree, arguing that the discovery is relevant in light of *Sinclair Paint v. State Bd. of Equalization*, 15 Cal.4th 866 (1997), which plaintiffs assert is a "major guidepost" for the claims. Plaintiffs' position is flawed.

Sinclair Paint concerned whether approximately $97,000 in fees assessed against a paint company under the Childhood Lead Poisoning Prevention Act of 1991 "were 'actually taxes imposed by the California [L]egislature in violation of Proposition 13, Article XIIIA, Section 3 of the California Constitution.'" (*Sinclair Paint*, 15 Cal.4th at p. 870.) *Sinclair Paint* simply did not involve any claims under article *XIII* of the California Constitution, which is the basis of plaintiffs' sixth, seventh, and eighth causes of action. (See *Alameida v. State Personnel Bd.* (2004) 120 Cal.App.4th 46, 58 ["Cases are not authority for propositions not therein considered"].) While plaintiffs' original complaint alleged a claim under article XIIIA, the Court long ago dismissed that claim without leave to amend when it granted defendants' motion for judgment on the pleadings. (See Order After Hearing filed July 20, 2015.)

It is also apparent that many of plaintiffs' discovery requests – which demand that defendants explain the "benefits," "burdens," and related interests associated with the DROS process – were drafted in light of the actual language of article XIIIA, which mention these considerations. (See, e.g., Cal. Const., art. XIIIA, § 3(b) & (d).) Examples of such requests include Requests for Admissions Nos. 157, 159-162, 176-177, 181-185, 209-211, and Special Interrogatories Nos. 42-43 and 52. Article XIII, sections 1, 2, and 3(m) do not speak in the same terms.

Defendants' position on the relevancy issue is well-taken. In its May 31, 2016 ruling on plaintiffs' earlier motion to compel, the Court rejected plaintiffs' argument that another article XIIIA case (i.e., *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421) justified the substantially similar requests for admissions at issue at that time. The Court found no merit in the contention then that "a 'benefit' 'burden' analysis is applicable for the constitutional claims Petitioners currently allege," which included the same sixth, seventh, and eighth causes of action. (Ruling on Submitted Matter filed May 31, 2016, at p. 5.)[5] The Court therefore should find no merit in the same argument by plaintiffs now.

If that is not enough, it must not be overlooked that a number of the requests now before the Court are identical to requests denied by the Court last year. These include Request for Admissions Nos. 157, 159, 160, 161, and 162, which are the same as Request for Admissions Nos. 84, 85, 86, 88, and 89 already ruled upon by the Court.[6] (Ruling on Submitted Matter filed May 31, 2016, at p. 2.) There are two possible explanations for this circumstance. One is that plaintiffs are ignoring a prior order of the Court. The other is that plaintiffs have served so much discovery that they cannot keep track of their own requests. Either way, plaintiffs' repeated serving of already-denied requests is emblematic of the futility that surrounds their ongoing discovery exercise. This reason alone justifies denying plaintiffs' motions in their entirety, up to an including the request for sanctions.[7]

Many of plaintiffs' requests are irrelevant for an additional reason. The Court has already ruled in plaintiffs' favor on the fifth and ninth causes of action. (See Ruling on Submitted Matter filed Aug. 9, 2017.) This means that the Court already has decided to issue a writ of mandate directing the Department to perform a reassessment of the amount of the DROS fee and has ruled

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[5] For convenience, a copy of this order is attached as Exhibit A.

[6] The current requests are the same as the previous requests except that the current requests reflect corrections of a few typographical errors.

[7] This is not the first time plaintiffs have tested the limits of a prior Court order, or at least proceeded without due care in the face of one. (See Order filed Dec. 23, 2015, Exh. 1 at p. 4 ["The proposed amended complaint improperly still contains the first cause of action and first alternate theory in the second cause, both of which were removed from the Petition/Complaint, without leave to amend, via order dated July 20, 2015."].)

that that the term "possession" as it is used in section 28225, subdivision b(11) "is limited to APPS-based enforcement." (*Id.* at p. 11.) Thus, all of those requests aimed at how the Department calculates the amount of the DROS fee, how it interprets the term "possession," how APPS-based enforcement activities are paid for, the composition of the APPS list, and similar requests are now beside the point. Examples of these requests include Request for Admissions Nos. 171-173, 180, 186, 189, 190-192, 201, 205, and 212 and Special Interrogatories Nos. 33, 45-48, and 53.

Finally, plaintiffs' persistence in conducting discovery is undermined by their articulated need for the information they continue to seek. Plaintiffs claim the current requests are designed to learn "who pays the [DROS] fee, what they purportedly are paying for, and what they are actually funding." (Pls.' Mot. to Compel RFAs at p. 10; Pls.' Mot. Compel. Spec. Interrogs. at pp. 8-9.) Yet this information is already in the record. Plaintiffs know that firearms purchasers pay the DROS fee. (See § 28225; Defs.' Response to RFA No. 174 [admitting that "the average Californian over the age of 21 cannot purchase a firearm in an arms-length transaction with paying the DROS FEE"].) Plaintiffs know what the DROS fee is intended to fund (i.e., what firearms purchasers are paying for). (See § 28225, subd. (b) [listing eleven categories of activities DROS fee is designed to "fund"].) And plaintiffs know what the DROS fee is actually funding. Defendants have produced extensive reports detailing the DOJ programs funded by the DROS Special Fund, laying out the annual appropriation and year-end expenditures for each such program. Defendants also have produced the actual reports itemizing those expenditures. And over the course of the *Bauer* litigation in federal court and this case, defendants have produced this information covering a period of more than a decade.[8] In light of this information, not to mention the opportunities to depose various Department officials on these issues, plaintiffs cannot credibly claim that they do not know "what they are funding." (Pls.' Mot. to Compel RFAs at p. 10; Pls.' Mot. Compel. Spec. Interrogs. at pp. 8-9.)

[8] An example of the relevant documents is already in the court record. (See Decl. of Anthony R. Hakl filed on June 30, 2017.)

For all of these reasons, the Court should deny plaintiffs' irrelevant and unnecessary discovery requests.

II. PLAINTIFFS' DISCOVERY REQUESTS ARE CUMULATIVE AND THEREFORE BURDENSOME AND OPPRESSIVE.

As the above discussion of plaintiffs' discovery history makes apparent, plaintiffs' latest round of discovery is hardly the first occasion on which the parties have exchanged information on the relevant issues. Also as laid out above, plaintiffs have served so much discovery they are now repeating requests. Still more of the requests at issue are substantively the same as previous requests asked by plaintiffs and answered by defendants without dispute. For example, more than two years ago defendants admitted (or denied with an appropriate explanation) whether use of DROS fee funds on the APPS program "in any way operates as a tax under state law" and whether funding APPS from the DROS Special Fund "cause[s] the DROS fee to be a tax under state law." (See Requests for Admissions Nos. 11-14.) Plaintiffs cannot continue to ask effectively the same questions, which they do by way of Requests for Admissions Nos. 156, 158, and 166-169.

The discovery rules generally authorize the use of multiple discovery devices. But in its discretion – and considering the nature and amount of the discovery that has occurred, the years plaintiffs have had to conduct that discovery, the age of this case, the legal nature of the remaining claims, and the upcoming hearing on the merits – the Court is also authorized to put an end to plaintiffs' discovery. (See *John B. v. Superior Court* (2006) 38 Cal.4th 1177, 1186, [trial court is vested with wide statutory discretion to manage discovery].)

For this additional reason, the Court should deny plaintiffs' motions to compel.

III. PLAINTIFFS CANNOT USE THE DISCOVERY PROCESS TO FORCE DEFENDANTS TO BRIEF THE MERITS.

Plaintiffs' discovery requests are also tantamount to a demand that defendants brief the merits of this case by way of discovery responses. However, requests for admissions are not a vehicle for briefing the merits. They have limits. Their purpose is to expedite trials by setting at rest triable issues and to eliminate the need for proof when matters are not legitimately contested.

(*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) They are not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784.) Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree"], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22 Cal.App.4th 60, 64–65.) Based on these principles, one court of appeal has explained that requests for admission are not even discovery devices. (*Hillman v. Stults* (1968) 263 Cal.App.2d 848, 885.) In their motions, plaintiffs attempt to distinguish the above cases based on their facts. But the legal principles articulated in the cases still apply.

The discovery rules support defendants' similar objection with respect to the special interrogatories, which now number 53. In particular, Code of Civil Procedure section 2017.020, subdivision (a) provides that "[t]he court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." Additionally, despite a propounding party's "declaration of necessity" purporting to justify a need to go beyond the regular limit of 35 interrogatories, a responding party may seek a protective order pursuant to Code of Civil Procedure section 2030.090, subdivision (b)(2) on the grounds that "contrary to the representations made (in the declaration of necessity) . . . the number of specially prepared interrogatories is unwarranted." Code of Civil Procedure section 2030.090, subdivision (b) states that the Court "may make any order justice requires to protect any party from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." Remedies include an order that the set of interrogatories, or particular interrogatories, need not be answered. (Code of Civil Procedure § 2030.090, subdivision (b)(1).) Finally, a protective order may be granted

simply on the Court's determination that "justice so requires," considering the Court's inherent power to control the proceedings before it. (The Rutter Group, California Practice Guide, Civil Procedure Before Trial (2006) § 8:1019.)

Plaintiffs cannot use written discovery to force defendants to unnecessarily and prematurely take a position on any legal issue of plaintiffs' choosing. At this point in the litigation, the legal issue of whether the DROS fee is an "illegal tax" is obviously legitimately contested. And defendants should not be required to brief every related issue of which plaintiffs can conceive over the course of 214 requests for admissions; the related Form Interrogatory 17.1, which effectively amounts to 214 additional discovery requests; and 53 special interrogatories. This additional reason justifies denying plaintiffs' motions to compel.

IV. THE COURT SHOULD DENY THE MOTIONS WITH RESPECT TO REQUESTS FOR ADMISSIONS NOS. 189 AND 205 AND SPECIAL INTERROGATORY 33 FOR ADDITIONAL REASONS.

With respect to Request for Admission No. 189, defendants already have responded they are "[u]nable to admit or deny." That is a valid response. (See *Smith v. Circle P Ranch Co.* (1978) 87 Cal.App.3d 267, 277 ["California allows a person to state that he unable to admit or deny a specific request for admission"].) Defendants have also explained that response in their accompanying answer to Form Interrogatory 17.1. No further response is warranted.

A similar situation exists with respect to Request for Admission No. 205. Defendants have admitted as much of that request as possible, considering the phrasing of that request is unclear. Under the rules an answer must be "as complete and straightforward" as the information available reasonably permits and must "[a]dmit so much of the matter involved in the request as is true . . . or as reasonably and clearly qualified by the responding party." (Code Civ Proc., § 2033.220, subd. (a), (b)(1).) Defendants' answer meets that standard. No further response is needed.

Finally, with respect to Special Interrogatory No. 33, defendants' detailed objection speaks for itself. To the extent the denial of any material allegation of paragraph 97 of the amended complaint remains relevant considering the claims that remain in this case, the time for plaintiffs to challenge that denial or demand further explanation has expired.

V. DEFENDANTS AGREE TO PROVIDE FURTHER RESPONSES TO A NUMBER OF REQUESTS AT ISSUE.

The parties having met and conferred about the issues encompassed by plaintiffs' motions, and defendants having reconsidered their position in connection with drafting this opposition brief, defendants agree to provide amended responses to Requests for Admissions Nos. 153, 195, 196, and 203 and Special Interrogatories Nos. 35, 37-41, and 49.[9]

VI. THE COURT SHOULD DENY THE REQUEST FOR SANCTIONS.

As an initial matter, plaintiffs' request for sanctions under Code of Civil Procedure section 2023.010, subdivisions (e) and (f) is untimely, plaintiffs having filed the notice of motion and motion and accompanying declaration of counsel on October 13, 2017, one day after the due date of October 12, 2017.

Additionally, defendants' objections to plaintiffs' discovery, as discussed above, hardly lack substantial justification. On the contrary, the objections are effectively the same as the objections raised by defendants in the past, and which did not draw a request for sanctions. The objections also were the basis of defendants' successful opposition to plaintiffs' previous motions to compel. (See Ruling on Submitted Matter filed May 31, 2016.)

It is also worth remembering that the discovery currently at issue was at one time stayed considering the legal issues involved in this matter, as opposed to factual ones. The parties stipulated to the stay at the Court's suggestion at an informal discovery conference, and the Court approved that stipulation. An objection to discovery on the same grounds that gave rise to a Court-approved stay is hardly an objection without substantial justification.

Finally, and as laid out above, a number of plaintiffs' requests are identical to requests previously denied by the Court in a written order, which is sanctionable conduct itself. (See Code Civ. Proc., § section 2023.010, subd. (g).) Remarkably, plaintiffs also admit to serving the discovery at issue in the absence of a complete understanding of the elements of their claims.

[9] Related, defendants understand that plaintiffs are no longer pursuing further responses to Requests for Admissions Nos. 206-208 and 214, which concern communications with Senator Leno, considering the previous informal discovery conference with the Court regarding the legislative privilege. Defendants' understanding in this regard is based on a meet-and-confer telephone discussion before plaintiffs' motions to compel, which are somewhat unclear on this issue.

(Decl. of Scott Franklin in Supp. of Motion to Compel Responses to RFA, Exh. 1 at p. 4 ["Plaintiffs' counsel has not completed its research on exactly what it will need to prove regarding its illegal tax claims (i.e., Plaintiffs Sixth, Seventh, and Eighth Causes of Action))"].) Thus, plaintiffs do not make their motions or the request for sanctions with clean hands, and it would be inequitable to award sanctions against defendants in the face of such conduct by plaintiffs.

For these reasons, the Court should deny the request for sanctions in its entirety.

CONCLUSION

For the reasons set forth above, with the exception of those requests that defendants have agreed to amend, the Court should deny plaintiffs' motions to compel and requests for sanctions.

Dated: October 23, 2017

Respectfully Submitted,

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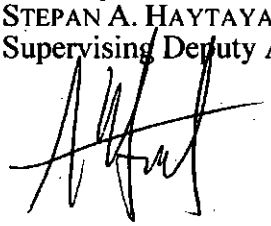

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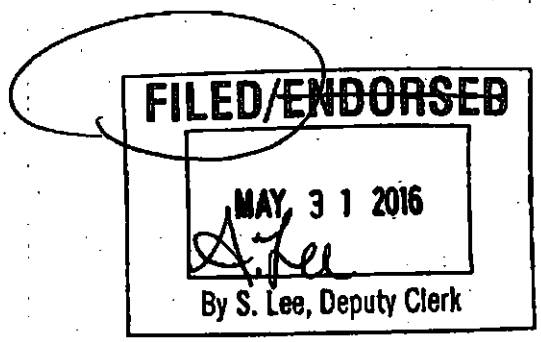
EXHIBIT A



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

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

Plaintiffs and Petitioners,

v.

KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10,

Defendants and Respondents.

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

RULING ON SUBMITTED MATTER: RENEWED MOTION TO COMPEL ADDITIONAL RESPONSES TO FORM INTERROGATORIES, AND MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS

The parties waived a hearing in this matter, requesting instead that the Court undertake an "expedited dispute resolution procedure" on these motions, and rule solely on the papers and arguments made when these discovery requests were previously addressed. The Court agreed, but ordered the parties to submit a joint statement identifying the specific discovery requests at issue, and the arguments being made by each party concerning those requests. The parties filed the joint statement on April 20, 2016, along with an "appendix of discovery requests and disputed responses thereto." The Court took the matter under submission on May 11, 2016.

A. Motion to compel further responses to request for admissions

Petitioners seek to compel further responses to their requests for admissions numbers 83, 84, 85, 86, 88 and 89. The requests are:

> 83. Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS place an unusual burden on the general public as to the illegal possession of firearms.
>
> 84. Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS do not place an unusual burden on the general public as to the illegal possession of firearms.
>
> 85. Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS pose no greater burden on the public as to illegal firearm possession than do law abiding citizens who have not participated in the DROS PROCESS.
>
> 86. Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS pose a greater burden on the public as to illegal firearm possession than do law abiding citizens who have not participated in the DROS PROCESS.
>
> 88. Admit that it is the position of CAL DOJ that law-abiding firearm owners have a greater interest, as compared to other law-abiding citizens who do not own firearms, in insuring firearms are not in the possession of persons who are not legally permitted to possess a firearm.
>
> 89. Admit that it is the position of CAL DOJ that law-abiding firearm owners do not have a greater interest, as compared to other law-abiding citizens who do not own firearms, in insuring firearms are not in the possession of persons who are not legally permitted to possess a firearm."

Respondents objected to these requests as being irrelevant in light of Respondents' admission that the use of DROS funds does not operate as a tax. Respondents also objected that the requests were an improper use of the admission discovery tool as it goes to the heart of the matter, not to an issue that could be eliminated at trial. Respondents' amended response was:

> "This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not 'result[] in any taxpayer paying a higher tax[.]' Cal. Const., art. XIIIA § 3(a). Thus, at this time defendants have no position either way on the precise issue identified in this request for admission." (Appendix of Disc. Requests, p. 5.)

Via order dated July 20, 2015, the Court granted Respondents' motion for judgment on the pleadings as to the first cause of action without leave to amend, on the grounds that it did not state facts sufficient to constitute a cause of action. This cause of action was for declaratory and injunctive relief on the basis that SB 819 was a tax and its passage violated article XIII A, section 3, subdivision (a) of the California Constitution because it was not passed by two-thirds of all members of each house of the Legislature. Article XIII A, section 3, subdivision (a) provides,

> "Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed."

In their motion for judgment on the pleadings, Respondents successfully argued that SB 819 did not result in anyone paying a *higher* tax. This was because, prior to the enactment of SB 819, firearms purchasers paid a DROS fee of $19.00, which fee remained the same after the passage of SB 819. The language of Article XIII A, section 3, subdivision (a) was only concerned with the taxpayer paying a higher tax, and not with how the tax was being used, consequently the failure of SB 819 to raise the DROS fee amount was fatal to Petitioners' claims.

On December 30, 2015, Petitioners filed an amended petition and complaint, adding the following constitutional claims:

> 6. Declaratory and injunctive relief, violation of California Constitution article XIII, sec. 1(b) – By expanding the activities for which DROS Fee revenues can be used, SB 819 creates a property tax which must be assessed in proportion to the value of the property being taxed per article XIII, section 1(b) of the California Constitution. DOJ has never evaluated whether SB 819 is assessed in proportion to the value of the property being taxed, and the amount charged is not proportional, which violates article XIII, section 1(b).
>
> 7. Declaratory and injunctive relief, violation of California Constitution article XIII, sec. 2 – The DROS Fee revenue use expansion caused by SB 819 creates a tax, which requires a two-thirds vote of the legislature as a differential tax pursuant to article XIII, section 2 of the California Constitution. SB 819 was not enacted by a two-thirds vote, and consequently violates article XIII, section 2.
>
> 8. Declaratory and injunctive relief, violation of California Constitution article

> XIII, sec. 3 – The DROS Fee revenue use expansion caused by SB 819 creates a tax. "Household furnishings and personal effects not held or used in connection with a trade profession, or business" are exempt from property taxation under article XIII, section 3(m) of the California Constitution, and consequently firearms purchased for personal use must be exempt from the SB 819 property tax. As SB 819 violates article XIII, section 3(m), it is void and unenforceable.

With regard to the requests for admissions, Petitioners admit that there is no longer an Article XIII A, section 3 claim, and consequently no implication of section 3, subdivision (d), which provides,

> "[t]he State bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."

However, Petitioners contend the issues of a claimed tax's benefits and burdens on those required to pay it remains relevant, even absent a constitutional provision so providing. Pursuant to *California Farm Bureau Federation v. State Water Resources Control Board*, "[o]rdinarily, taxes are imposed for revenue purposes and not 'in return for a specific benefit conferred or privilege granted'... In contrast, a fee may be charged by a government entity so long as it does not exceed the reasonable cost of providing services necessary to regulate the activity for which the fee is charged. A valid fee may not be imposed for unrelated revenue purposes." ((2011) 51 Cal.4th 421, 437-38.) Petitioners argue any analysis of whether fee payers are causing the burden at issue is essential to a determination whether the "fee" is actually a tax.

Respondents argue the requests for admissions were propounded when the complaint alleged the Article XIIIA, section 3(a) claim, and are now irrelevant. None of the new constitutional claims alleged refer to the benefits and burdens of the governmental activity on the payor. Respondents also contend they have already responded claiming inability to admit or deny the requests, and consequently cannot be required to instead admit or deny them. Respondents

also point to the fact they have already denied that the DROS fee is a tax. Consequently, they have not formulated a "position on all possible legal questions subsidiary to that issue" such as the questions asked in the Requests for Admissions. Finally, Respondents argue Petitioners are improperly attempting to "brief" the case, in advance of the actual merits briefing in this matter.

California Farm Bureau Federation specifically dealt with the Article XIIIA, section 3 language that is no longer at issue in this case. Accordingly, the case does not stand for the contention that such a "benefit" "burden" analysis is applicable for the constitutional claims Petitioners currently allege. Petitioners have not cited to any cases analyzing the benefits and burdens of fees/taxes pursuant to those constitutional claims now pending in the amended complaint/petition in this matter. However, cases discussing the difference between a tax and a fee indicate that a charge is not a tax when it does "not exceed the value of the governmental benefit conferred upon or the service rendered to the individuals" or "charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities." (*Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 660.) Furthermore, to show a regulatory fee is not a special tax, "it is not necessary for the payor to perceive a 'benefit.' A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provision of the regulation." (*San Diego Gas & Elective Co. v. San Diego County Air Pollution Control Dist.* (1998) 203 Cal.App.3d 1132, 1146, FN 18)(citing *Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375.)

It does appear to the Court that the Requests for Admissions were specifically crafted to address subdivision (c) of Article XIIIA, section 3; a claim that is no longer pending in this matter. It also appears in this matter, the issue is whether the DROS fee constitutes an amount necessary to carry out the purposes and provision of the regulation. While the issue of benefits to

the user may be part of an applicable tax/fee determination, the Requests for Admissions, as worded, do not appear to be relevant to the constitutional tax issues pending. They instead appear to be directly relevant to the Article XIIIA, section 3 claim that was previously dismissed.

The Court **DENIES** the motion to compel further responses to requests for admissions.

B. Motion to compel further responses to form interrogatories, set one, No. 17.1(b)

Petitioners seek to compel further responses to their form interrogatories, set one, No. 17.1(b) in connection with the above-referenced requests for admissions, as well as requests for admissions numbers 18, 19, 21, and 22. As the Court has already denied the requests for further responses to requests for admissions based on relevancy, the request is **DENIED** as to numbers 83, 84, 85, 86, 88, and 89.

Form interrogatory number 17.1(b) inquires, "[i]s your response to each request for admission served with these Interrogatories an unqualified admission? If not, for each response that is not an unqualified admission...state all facts upon which you base your response..." The subject requests for admissions are:

> 18. Admit that the payment of a DROS FEE does not result in an APPS-related special privilege being granted directly to the payor.
>
> 19. Admit that a person who has paid a DROS FEE receives no greater benefit from APPS than a person who has not paid a DROS FEE.
>
> 21. Admit that the payment of a DROS FEE does not result in an APPS-related service being provided directly to the payor.
>
> 22. Admit that a person who has paid a DROS FEE receives no different government service by way of APPS than does a person who has not paid a DROS FEE.

Respondents' answer to form interrogatory number 17.1(b) was the same as to each request:

> "Depending on the circumstances of a particular case, payment of a DROS fee may ultimately lead to a benefit realized by the payor vis-à-vis the APPS program. For example, a person who pays a DROS fee may later become

prohibited from possessing firearms and have firearms recovered as a result of the APPS program." (Appendix of Discovery Responses, pp. 2-3.)

Petitioners argue that none of the subject requests sought an admission as to whether a benefit could be realized by paying the DROS fee, but that is the sole issue addressed by Respondents' response. Respondents now argue that the discovery requests are not relevant in light of the Court's dismissal of the article XIIIA, section 3 claim.

Instead of objecting to the requests in the way they seek to now, Respondents' responses to number 18, 19, 21, and 22, appear to have been an attempt to give a substantive response. Accordingly, these responses do not mirror the response provided in connection with the previously discussed requests. Further, these requests are not clearly premised on the language of Article XIIIA, section 3, as were the previously discussed requests, as it does not track Article XIIIA, section 3, subdivision (d). Accordingly, it does not appear that the requests could only be relevant if such a claim were still pending, as Respondents contend.

The blanket response given to each of the subject requests is not actually responsive, as Petitioners argue. It is also unclear to the Court why Respondents would be unable to admit or deny these requests, as they contend in the Joint Statement. The Court finds these requests are not patently irrelevant, and the answers Respondents provided are not actually responsive. The motion for further responses to Form Interrogatories is **GRANTED** in part and **DENIED** in part. To the extent Respondents have further information to provide in a form interrogatory number 17.1(b) response concerning requests for admissions numbers 18, 19, 21, and 22, they are ordered to do so within 30 days of the date of entry of this Court's order. The request for further responses is denied as it relates to requests for admissions numbers 83, 84, 85, 86, 88 and 89.

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Conclusion

The motion to compel further responses to requests for admissions is **DENIED**. The motion for further responses to Form Interrogatories is **GRANTED** in part and **DENIED** in part. To the extent Respondents have further information to provide in a form interrogatory number 17.1(b) response concerning requests for admissions numbers 18, 19, 21, and 22, they are ordered to do so within 30 days of the date of entry of this Court's order. The request for further responses is denied as it relates to requests for admissions numbers 83, 84, 85, 86, 88 and 89.

DATED: May 31, 2016

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 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: May31, 2016

By: S. LEE
Deputy Clerk

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:

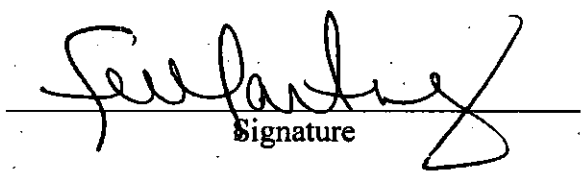
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General 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 October 23, 2017, I served the attached **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** 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 October 23, 2017, at Sacramento, California.

Chris A. McCartney
Declarant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