SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 11/03/2017 TIME: 09:00:00 AM DEPT: 31

JUDICIAL OFFICER PRESIDING: Michael P. Kenny

CLERK: S. Lee

REPORTER/ERM: B. Ryan, CSR #11373

BAILIFF/COURT ATTENDANT: Larry Moorman

CASE NO: **34-2013-80001667-CU-WM-GDS**CASE INIT.DATE: 10/16/2013

CASE TITLE: **Gentry vs. Harris**CASE CATEGORY: Civil - Unlimited

EVENT ID/DOCUMENT ID: ,15235600

EVENT TYPE: Motion - Other - Writ of Mandate

MOVING PARTY: David Gentry

CAUSAL DOCUMENT/DATE FILED: Notice - Other Amended Notice of Motion to Compel, 10/13/2017

EVENT ID/DOCUMENT ID: ,15235595

EVENT TYPE: Motion - Other - Writ of Mandate

MOVING PARTY: Calguns Shooting Sports Association, David Gentry, Mark Midlam, James Bass,

James Parker

CAUSAL DOCUMENT/DATE FILED: Notice of Motion Amended (set four), 10/13/2017

APPEARANCES

Scott M. Franklin, counsel present for Petitioners/Plaintiffs.

Anthony R. Hakl, Deputy Attorney General, counsel present for Respondents/Defendants.

The services of the certified court reporter is requested by the Petitioners/Plaintiffs.

NATURE OF PROCEEDINGS: MOTIONS TO COMPEL ADDITIONAL RESPONSES TO REQUEST FOR ADMISSION (SET THREE), SPECIAL INTERROGATORIES (SET FOUR) AND FOR SANCTIONS

TENTATIVE RULING

The following shall constitute the Court's tentative ruling on the discovery motions and requests for sanctions, which are scheduled to be heard by the Court on Friday, November 3, 2017 at 9:00 a.m. in Department 31. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Any party desiring an official record of this proceeding shall make arrangements for reporting services with the Clerk of the Department where the matter will be heard not later than 4:30 p.m. on the day before the hearing. The fee is \$30.00 for civil proceedings lasting under one hour, and \$239.00 per half day of proceedings lasting more than one hour. (Local Rule 1.12(B) and Government Code § 68086.) Payment is due at the time of the hearing.

DATE: 11/03/2017 MINUTE ORDER Page 1
DEPT: 31 Calendar No.

I. Factual and Procedural Background

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 of their statutorily authorized purposes. Plaintiffs also contend the DROS fee constitutes an unlawful tax, and that SB 140 constitutes an illegal appropriation.

Via stipulation, the Court bifurcated the matter, hearing the fifth and ninth causes of action first. Via ruling on submitted matter the Court found in favor of Plaintiffs. Specifically, the Court held, the phrase "no more than necessary" as used in section 28225 imposes a ministerial duty to perform a reassessment of the DROS Fee more frequently than every thirteen years. Defendants have failed to perform this duty. With regard to statutorily authorized purposes, the plain language of subdivision (b)(11) does not specify to what "possession" activities it refers. However, SB 819, section 1, subdivision (g) makes clear that "possession" is limited to APPS-based enforcement. Accordingly, Plaintiffs' request for a declaration that SB 819 does not permit Defendants to use DROS Special Account Funds for "some use other than APPS-based law enforcement activities" was granted.

Plaintiffs' first through fourth, and sixth through eighth causes of action remain pending.

II. Special Interrogatories

Plaintiffs seek to compel further responses to their special interrogatories numbers 33, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 52, and 53. In their opposition, Defendants agree to provide further responses to numbers 35, 37-41, and 49. Accordingly, the Court will grant those requests as there is no evidence Defendants have yet provided supplemental responses per their agreement that such responses are warranted.

Plaintiffs are admonished for providing what are mostly boiler plate explanations in their separate statement as to why further responses should be compelled. Such generalized explanations do not provide the Court guidance as to why Plaintiffs contend they are entitled to further responses for each specific request. The Court also notes Defendants' opposition does not include a responsive separate statement. While not required by the rules, the lack of separate statement causes the Court significant additional review to assess the parties' arguments.

The Court has reviewed the parties' arguments and rules as follows:

- 33 DENIED
- 35 GRANTED
- 37 GRANTED
- 38 GRANTED
- 39 GRANTED
- 40 GRANTED
- 41 GRANTED
- 42 DENIED

DATE: 11/03/2017 Page 2 MINUTE ORDER DEPT: 31

- 43 DENIED
- 45 DENIED
- 46 DENIED
- 47 DENIED
- 48 DENIED
- 49 GRANTED
- 52 DENIED
- 53 DENIED

The request for sanctions is denied.

III. Request for Admissions

Plaintiffs seek to compel further responses to their request for admissions numbers 153, 156, 157, 158, 159, 160, 161, 162, 166, 167, 168, 169, 171, 172, 173, 176, 177, 180, 181, 182, 183, 184, 185, 186, 189, 190, 191, 192, 195, 196, 201, 203, 205, 206, 209, 211, 212, and 214. In their opposition, Defendants agree to provide further responses to numbers 153, 195, 196, and 203. Accordingly, the Court will grant those requests as there is no evidence Defendants have yet provided supplemental responses per their agreement that such responses are warranted.

Plaintiffs are admonished for providing what are mostly boiler plate explanations in their separate statement as to why further responses should be compelled. Such generalized explanations do not provide the Court guidance as to why Plaintiffs contend they are entitled to further responses for each specific request. The Court also notes Defendants' opposition does not include a responsive separate statement. While not required by the rules, the lack of separate statement causes the Court significant additional review to assess the parties' arguments.

The Court has reviewed the parties' arguments and rules as follows:

- 153 GRANTED
- 156 DENIED
- 157 DENIED
- **158 DENIED**
- 159 **DENIED**
- **160 DENIED**
- **161 DENIED**
- **162 DENIED**

- 166 DENIED
- **167 DENIED**
- 168 GRANTED
- 169 GRANTED
- 171 **DENIED**
- **172 DENIED**
- **173 DENIED**
- **176 DENIED**
- **177 DENIED**
- **180 DENIED**
- **181 DENIED**
- **182 DENIED**
- 183 **DENIED**
- **184 DENIED**
- 185 **DENIED**
- **186 DENIED**
- 189 GRANTED
- 190 DENIED[1]
- 191 **DENIED**
- 192 **DENIED**
- 195 GRANTED
- 196 GRANTED
- 201 **DENIED**
- 203 GRANTED
- 205 DENIED
- 206 DENIED

209 - DENIED

211 - DENIED

212 - DENIED

214 - DENIED

The request for sanctions is denied.

IV. Conclusion

The motions to compel are GRANTED IN PART and DENIED IN PART as indicated above. No later than December 1, 2017, Defendants shall serve further responses to the subject requests for admissions and special interrogatories. The requests for sanctions are DENIED.

The Court's Minute Order is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or other notice is required.

[1] The Court notes Plaintiffs' separate statement lists Request for Admission number 190 twice. The Court presumes this was a typo and has only listed it once in its ruling.

COURT RULING

The matter is argued and submitted.

The Court takes the matter under submission.

COURT RULING ON SUBMITTED MATTER

The Court AFFIRMS the tentative ruling with the following modification:

Per the parties' discussions with the Court, Plaintiffs may propound eight discovery requests (whether special interrogatories or requests for admissions), and Defendants shall respond. If this process results in the need for a motion to compel, the Court will make every effort to adjust its schedule to expedite the timing of a hearing date. Plaintiffs are not limited in what discovery requests they may initiate or re-initiate (in the context of these eight requests) by the Court's ruling on this motion.

With regard to the Court's May 2016 ruling on submitted matter, the Court finds that it does not preclude Plaintiffs from making discovery requests concerning the benefits and/or burdens analysis they claim is relevant to their pending tax claims. The Court notes that its ruling included a finding that cases discussing the difference between a tax and a fee indicate a discussion of the benefit conferred upon the individual or reasonable expense of the regulatory activity may be relevant. The Court's ultimate finding was that the specific discovery requests appeared to have been crafted to address Plaintiffs' Article

DATE: 11/03/2017 MINUTE ORDER Page 5

DEPT: 31

XIIIA, section 3 claim, which was no longer pending. The Court did not intend to, and finds the ruling does not, preclude a relevant benefit/burden inquiry with regard to the tax claims still pending.

Certificate of Service by Mailing is attached.

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing MINUTE ORDER DATED NOVEMBER 3, 2017 by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each which envelopes was addressed respectively to the persons and addresses show below:

SCOTT M. FRANKLIN, ESQ. Michel & Associates, P.C. 180 E. Ocean Boulevard, Suite 200 Long Beach, CA 90802

ANTHONY R. HAKL Deputy Attorney General P.O. Box 944255 Sacramento, CA 94244-2550

I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: November 3, 2017

SUPERIOR COURT OF CALIFORNIA **COUNTY OF SACRAMENTO**

/s/ S. Lee

By S. Lee, Deputy Clerk

DATE: 11/03/2017 MINUTE ORDER DEPT: 31 Calendar No.