

SENIOR PARTNER  
C. D. MICHEL\*

MANAGING PARTNER  
JOSHUA ROBERT DALE

SPECIAL COUNSEL  
ERIC M. NAKASU  
W. LEE SMITH

ASSOCIATES  
ANNA M. BARVIR  
SEAN A. BRADY  
MATTHEW D. CUBEIRO  
MARGARET E. LEIDY  
JOSEPH A. SILVOSO, III  
NICHOLAS W. STADMILLER  
LOS ANGELES, CA

\* ALSO ADMITTED IN TEXAS AND THE  
DISTRICT OF COLUMBIA



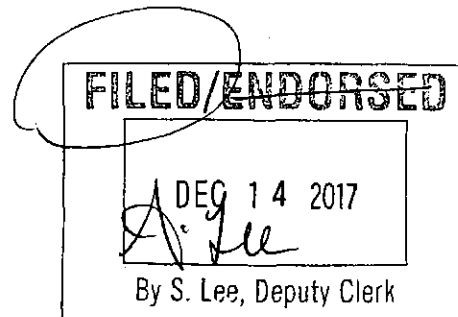
OF COUNSEL  
SCOTT M. FRANKLIN  
CLINT B. MONFORT  
MICHAEL W. PRICE  
LOS ANGELES, CA

WRITER'S DIRECT CONTACT:  
562-216-4474  
SFRANKLIN@MICHELLAWYERS.COM

December 13, 2017

**VIA OVERNIGHT MAIL**

Judge Michael P. Kenny  
Department 31 – Fourth Floor  
California Superior Court  
County of Sacramento  
720 9th Street  
Sacramento, CA 95814



**Re: Informal Discovery Conference Set for 11:00 a.m. on December 15,  
2017 (*Gentry, et al. v. Becerra, et al.* Case No.: 34-2013-80001667)**

Dear Judge Kenny:

The informal discovery conference mentioned above concerns Defendants' responses to Plaintiffs' Special Interrogatories (Set Six). That set of eight interrogatories was authorized by the Court on November 3, 2017. Defendants produced their response by email yesterday, December 12, 2017. A copy of that response is enclosed herewith.

After having thoroughly analyzed Defendants' response, Plaintiffs have identified five specific responses that are legally insufficient. Because the specified responses are not as complete and straightforward as the information reasonably available to the responding party permits, those five responses are evasive and each provides a sufficient basis for a successful motion to compel. Civ. Proc. Code §§ 2030.220, 2030.300(a)(1).

**Defendants' Response to Special Interrogatory No. 74**

First, though the response states there is a burden that results from law-abiding firearm ownership, the response never states *what* that burden is. The two sentences purportedly explaining Defendants' position state only that: there are "certain legal responsibilities" of legal firearm ownership, and that Defendants have "certain legal responsibilities" as to legally possessed firearms. Defendants never state that either set of "certain legal responsibilities" is a burden caused by legally obtaining a firearm after participating in the DROS Process.

Second, it seems that this response is “pregnant” as to what Defendants may later claim are its specific “legal responsibilities” that constitute a burden arising from law abiding firearm ownership. But if Defendants can now claim there are “*certain* legal responsibilities” that constitute a burden arising from legal firearm ownership, then it is evasive to not identify those specific legal responsibilities now.

### **Defendants’ Response to Special Interrogatory No. 75**

First, the response does not expressly refer to “costs” at all, and the interrogatory specifically concerns costs. Perhaps it can be inferred that Defendants’ discussion of NON-APPS-BASED LAW ENFORCEMENT ACTIVITIES necessarily includes the concept of costs related thereto, but that is certainly not clear in the response provided.

Second, the first two sentences of the response do not explain why, in Defendants’ view, “NON-APPS-BASED LAW ENFORCEMENT ACTIVITIES’ are reasonably related to” legal “firearm possession[.]” Rather, those sentences simply restate the contention at issue, and then raise the additional, irrelevant contention that NON-APPS-BASED LAW ENFORCEMENT ACTIVITIES are reasonably related to illegal firearm possession. That contention is irrelevant because there is no dispute that legitimate NON-APPS-BASED LAW ENFORCEMENT ACTIVITIES are reasonably related to *illegal* firearm possession.

Third, the last sentence in the response is also non-responsive: the interrogatory does not concern Penal Code section 28225, nor, as discussed above, does it concern whether *illegal* firearm possession is reasonably related to NON-APPS-BASED LAW ENFORCEMENT ACTIVITIES. Accordingly, Defendants’ reference to the Penal Code is nothing more than a space filler of no substantive import, just like the remainder of Defendants’ response (other than the word “Yes.”).

Whether or not there is any relationship between law abiding DROS Fee payers and the use of their DROS Fees for NON-APPS-BASED LAW ENFORCEMENT ACTIVITIES is one of the central issues in this case, and Defendants’ response to Interrogatory No. 75 does not constitute a reasonable attempt to address the relevant subject.

### **Defendants’ Response to Special Interrogatory No. 76**

Interrogatory No. 76 asks Defendants if they contend there are any “enforcement activities related to the sale, purchase, possession, loan or transfer of firearms” that are also related to the DROS PROCESS, and if so, to explain how each activity is related to the DROS PROCESS. Defendants admit they do make the relevant contention, but their response does not identify or describe any activities, let alone enforcement activities, related to the DROS PROCESS. Instead, Defendants talk vaguely about what the DROS PROCESS helps “ensure”—without identifying any activities that are actually used to help “ensure” certain things happen. Thus, Defendants’ closing assertion that “the activities listed above are related to the DROS Process” is false; there are no “activities listed above” at all.

This is another issue at the heart of Plaintiffs' case: the apparent use of funds collected under a regulatory guise for non-regulatory purposes, and Defendants do not have a legal right to avoid this issue by the use of an evasive response.

### **Defendants' Response to Special Interrogatory No. 77**

Defendants failed to provide a substantive response to this interrogatory, and a further response should be provided. The legislative author of SB 819 (Leno, 2011), expressly claimed that there was a "very close nexus" between using DROS Fee money for APPS-based law enforcement activities (the focus of SB 819) and gun owners' "particularly strong interest in this [i.e., ensuring "firearms are not in the possession of prohibited persons"] to help avoid gun ownership from becoming strongly associated with the random acts of deranged individuals." ((Report of the Assembly Committee on Appropriations, July 5, 2011, re: SB 819 ("Committee Report") [available at [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201120120SB819](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201120120SB819)].

As previously argued in this action, the closeness of the relationship, i.e., nexus, between the use of DROS Funds for law enforcement activities, on the one hand, and participating in the DROS Process on the other, is likely to be determinative on the foundational issue of whether DROS Fee is really, at least in part, a tax. Thus, it is obviously relevant whether Defendants are, or are not, taking actions to meet the "interest" identified by Senator Leno.

Finally, Defendants' claim that the salient statement was not specifically attributed to "any of the defendants" is irrelevant. The statement at issue is part of the legislative history of SB 819, and the "deranged individuals" claim was explanation provided to the legislature and the public as to why all DROS Fee payers should be financially responsible for the costs of APPS-based law enforcement activities. Accordingly, if Defendants are aware of any activities that were actually funded with DROS Fee money "to prevent gun ownership from becoming strongly associated with the random acts of deranged individuals[.]" they are required to sufficiently describe each such activity pursuant to Interrogatory No. 77.

### **Defendants' Response to Special Interrogatory No. 78**

First, the response does not expressly refer to "costs" at all, and the interrogatory specifically concerns costs. Perhaps it can be inferred that Defendants' discussion of APPS-BASED LAW ENFORCEMENT ACTIVITIES necessarily includes the concept of costs related thereto, but that is certainly not clear in the response provided.

Second, the first two sentences of the response do not explain why, in Defendants' view, "'APPS-BASED LAW ENFORCEMENT ACTIVITIES' are reasonably related to" legal "firearm possession[.]" Rather, they simply restate the contention at issue, and then raise the additional, irrelevant contention that APPS-BASED LAW ENFORCEMENT ACTIVITIES are reasonably related to illegal firearm possession. That contention is irrelevant because there is no dispute that legitimate APPS-BASED LAW ENFORCEMENT ACTIVITIES are reasonably related to illegal firearm possession.

Third and finally, the last sentence in the response is also non-responsive: the interrogatory does not concern Penal Code section 28225, nor, as discussed above, does it concern whether illegal firearm possession is reasonably related to APPS-BASED LAW ENFORCEMENT ACTIVITIES.

Accordingly, Defendants' reference to the Penal Code is nothing more than a space filler of no substantive import, just like the remainder of Defendants' response (other than the word "Yes."). Whether or not there is any relationship between law abiding DROS Fee payers and the use of their DROS Fees for APPS-BASED LAW ENFORCEMENT ACTIVITIES is one of the central issues in this case, and Defendants' response to Interrogatory No. 78 does not constitute a reasonable attempt to address the relevant subject. Because Defendants' response is not complete and straightforward as the information available to Defendants allows, a further response should be provided. Civ. Proc. Code §§ 2030.220, 2030.300(a)(1).

Sincerely,  
**Michel & Associates, P.C.**



Scott M. Franklin

cc via email: Anthony Hakl (Anthony.Hakl@doj.ca.gov)

Enclosure: (Defendants' Response to Special Interrogatories (Set Six))

1 XAVIER BECERRA  
Attorney General of California  
2 STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General  
3 ANTHONY R. HAKL  
Acting Supervising Deputy Attorney General  
4 State Bar No. 197335  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 210-6065  
Fax: (916) 324-8835  
7 E-mail: Anthony.Hakl@doj.ca.gov  
*Attorneys for Defendants and Respondents*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO  
11  
12

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

16 Plaintiffs and Petitioners,

17 v.

18 **XAVIER BECERRA, in his Official  
19 Capacity as Attorney General for the State  
of California; STEPHEN LINDLEY, in His  
20 Official Capacity as Acting Chief for the  
California Department of Justice, Betty T.  
21 Yee, in her official capacity as State  
Controller, and DOES 1-10,**

22  
23 Defendants and  
Respondents.  
24  
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26  
27  
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Case No. 34-2013-80001667

**DEFENDANTS ATTORNEY GENERAL  
XAVIER BECERRA AND BUREAU OF  
FIREARMS DIRECTOR STEPHEN  
LINDLEY'S RESPONSES TO SPECIAL  
INTERROGATORIES (SET SIX)**

1 **PROPOUNDING PARTY: PLAINTIFFS**

2 **RESPONDING PARTY: DEFENDANTS ATTORNEY GENERAL XAVIER BECERRA**  
3 **AND BUREAU OF FIREARMS DIRECTOR STEPHEN**  
4 **LINDLEY**

5 **SET NO.: SIX**

6 **INTERROGATORY NO. 72:**

7 Do responding parties contend that DROS FEE (as used herein, "DROS FEE" refers to the  
8 fee charged pursuant to 11 C.C.R. § 4001) payers get at least one benefit from APPS-BASED  
9 LAW ENFORCEMENT ACTIVITIES (as used herein, "APPS-BASED LAW ENFORCEMENT  
10 ACTIVITIES" refers to law enforcement activities performed to ensure persons identified via  
11 APPS [i.e., the Armed and Prohibited Persons System] are not illegally possessing firearms;  
12 APPS-BASED LAW ENFORCEMENT ACTIVITIES" expressly does not refer to law  
13 enforcement activities aimed at illegal possession of firearms by people who have not been  
14 identified as a law enforcement target as a result of being identified via APPS) that is different  
15 from what is received by the general public in this state as a result of such activities? If so, please  
16 describe, in reasonable detail, each such benefit.

17 **RESPONSE TO INTERROGATORY NO. 72:**

18 Defendants object to this interrogatory. It contains multiple questions and is compound. Its  
19 multiple questions are also inconsistent. In particular, the first sentence asks defendants if there is  
20 "at least one" relevant benefit whereas the second sentence effectively asks defendants to list *all*  
21 such benefits.

22 Defendants also object to plaintiffs' definitions of what plaintiffs refer to as "APPS-  
23 BASED LAW ENFORCEMENT ACTIVITIES" and "NON-APPS-BASED LAW  
24 ENFORCEMENT ACTIVITIES." Plaintiffs have assigned special definitions to these terms in  
25 an attempt to create a distinction not reflected in the plain language of the relevant statute.  
26 Plaintiffs' definitions of these terms are also incomplete and vague.

27 The interrogatory is also objectionable because it is tantamount to demanding defendants  
28 brief the merits of the remaining causes of action in this case, which plaintiffs initiated. The

1 merits hearing is currently set to be heard on March 16, 2018, and the matter will be briefed in  
2 due course according to the applicable rules. This interrogatory is therefore burdensome and  
3 oppressive and an inappropriate use of the discovery device.

4 Defendants also object to the vague and undefined term "benefit," which in taxation  
5 jurisprudence can be a legal term of art.

6 Without waiving these objections, defendants respond as follows:

7 Yes. DROS fee payers get at least one such benefit. In particular, the APPS program helps  
8 identify and disarm convicted criminals, mentally ill persons, and other dangerous individuals  
9 prohibited from possessing firearms subsequent to their legal acquisition. That acquisition  
10 typically involves the payment of a DROS fee. Thus, the APPS program helps ensure that DROS  
11 fee payers do not cause firearms-related injuries to themselves, others, or property with a firearm  
12 despite being prohibited from owning one. It helps reduce the chances of a DROS fee payer  
13 being involved in firearms violence and firearms-related criminal activities.

14 **INTERROGATORY NO. 73:**

15 Exclusive of benefits derived from APPS-BASED LAW ENFORCEMENT ACTIVITIES,  
16 do responding parties contend that a DROS FEE payer who never becomes legally prohibited  
17 from possessing a firearm gets at least one benefit as a result of paying that fee? If so, please  
18 describe, in detail, each such benefit.

19 **RESPONSE TO INTERROGATORY NO. 73:**

20 Defendants object to this interrogatory. It contains multiple questions and is compound. Its  
21 multiple questions are also inconsistent. In particular, the first sentence asks defendants if there is  
22 "at least one" relevant benefit whereas the second sentence effectively asks defendants to list *all*  
23 such benefits.

24 Defendants also object to plaintiffs' definitions of what plaintiffs refer to as "APPS-  
25 BASED LAW ENFORCEMENT ACTIVITIES" and "NON-APPS-BASED LAW  
26 ENFORCEMENT ACTIVITIES." Plaintiffs have assigned special definitions to these terms in  
27 an attempt to create a distinction not reflected in the plain language of the relevant statute.  
28 Plaintiffs' definitions of these terms are also incomplete and vague.

1           The interrogatory is also objectionable because it is tantamount to demanding defendants  
2 brief the merits of the remaining causes of action in this case, which plaintiffs initiated. The  
3 merits hearing is currently set to be heard on March 16, 2018, and the matter will be briefed in  
4 due course according to the applicable rules. This interrogatory is therefore burdensome and  
5 oppressive and an inappropriate use of the discovery device.

6           Defendants also object to the vague and undefined term "benefit," which in taxation  
7 jurisprudence can be a legal term of art.

8           Without waiving these objections, defendants respond as follows:

9           Yes. DROS fee payers get at least one such benefit. In addition to the above, a DROS FEE  
10 payer who never becomes legally prohibited from possessing a firearm receives the benefits of a  
11 background check as part of the DROS process, which helps ensure that the individual is eligible  
12 to possess a firearm in the first place. Thus, the DROS process also helps ensure that DROS fee  
13 payers do not cause firearms-related injuries to themselves, others, or property with a firearm  
14 despite being prohibited from owning one. It helps reduce the chances of a DROS fee payer  
15 being involved in firearms violence and firearms-related criminal activities. DROS fee payers  
16 also receive the benefit of systems, such as the Automated Firearms System (AFS), that assist  
17 them in managing any transfer, disposition, loss, or theft of their firearms.

18 **INTERROGATORY NO. 74:**

19           Do responding parties contend that at least one burden results from the transfer of a firearm  
20 to a DROS FEE payer who never becomes legally prohibited from possessing a firearm? If so,  
21 please describe, in reasonable detail, each such burden.

22 **RESPONSE TO INTERROGATORY NO. 74:**

23           Defendants object to this interrogatory. It contains multiple questions and is compound. Its  
24 multiple questions are also inconsistent. In particular, the first sentence asks defendants if there is  
25 "at least one" relevant burden whereas the second sentence effectively asks defendants to list *all*  
26 such burdens.

27           The interrogatory is also objectionable because it is tantamount to demanding defendants  
28 brief the merits of the remaining causes of action in this case, which plaintiffs initiated. The



1 merits hearing is currently set to be heard on March 16, 2018, and the matter will be briefed in  
2 due course according to the applicable rules. This interrogatory is therefore burdensome and  
3 oppressive and an inappropriate use of the discovery device.

4 Defendants also object to the vague and undefined term "burden," which in taxation  
5 jurisprudence can be a legal term of art.

6 Without waiving these objections, defendants respond as follows:

7 Yes. The transfer of a firearm to a DROS fee payer who never becomes legally prohibited  
8 from possessing a firearm results in at least one burden. For example, DROS fee payers who  
9 legally acquire firearms have certain legal responsibilities in connection with the possession,  
10 maintenance, and use of those firearms. Defendants also have certain legal responsibilities in  
11 connection with the possession, maintenance, and use of those firearms.

12 **INTERROGATORY NO. 75:**

13 Do responding parties contend that the costs of the DEPARTMENT's (as used herein,  
14 "DEPARTMENT" refers to the California Department of Justice, including all subsidiary entities  
15 and employees thereof) NON-APPS-BASED LAW ENFORCEMENT ACTIVITIES (as used  
16 herein, "NON-APPS-BASED LAW ENFORCEMENT ACTIVITIES" refers to law enforcement  
17 activities aimed at illegal possession of firearms by people who have not been identified as a law  
18 enforcement target via APPS) are reasonably related to legal firearm possession? If so, please  
19 describe, in reasonable detail, the factual and legal bases for that contention.

20 **RESPONSE TO INTERROGATORY NO. 75:**

21 Defendants object to this interrogatory. It contains multiple questions and is compound.

22 Defendants also object to plaintiffs' definitions of what plaintiffs refer to as "APPS-  
23 BASED LAW ENFORCEMENT ACTIVITIES" and "NON-APPS-BASED LAW  
24 ENFORCEMENT ACTIVITIES." Plaintiffs have assigned special definitions to these terms in  
25 an attempt to create a distinction not reflected in the plain language of the relevant statute.  
26 Plaintiffs' definitions of these terms are also incomplete and vague.

27 The interrogatory is also objectionable because it is tantamount to demanding defendants  
28 brief the merits of the remaining causes of action in this case, which plaintiffs initiated. The

1 merits hearing is currently set to be heard on March 16, 2018, and the matter will be briefed in  
2 due course according to the applicable rules. This interrogatory is therefore burdensome and  
3 oppressive and an inappropriate use of the discovery device.

4 Without waiving these objections, defendants respond as follows:

5 Yes. What plaintiffs characterize as "NON-APPS-BASED LAW ENFORCEMENT  
6 ACTIVITIES" are reasonably related to firearm possession, irrespective of whether that  
7 possession is characterized as legal or illegal. Penal Code section 28225 does not distinguish  
8 between certain kinds of possession (e.g., "legal" and "illegal"); it speaks solely in terms of  
9 "possession."

10 **INTERROGATORY NO. 76:**

11 Do responding parties contend that there are "enforcement activities related to the sale,  
12 purchase, possession, loan, or transfer of firearms" (Penal Code Section 28225(b)(1)-(c)) that are  
13 part of the DROS PROCESS (as used herein, "DROS PROCESS" refers to the background check  
14 process that occurs when a firearm purchase or transfer occurs in California; the  
15 DEPARTMENT's own usage of DROS PROCESS can be found at  
16 <http://oag.ca.gov/firearms/pubfaqs>)? If so, please explain in reasonable detail how each such  
17 activity is related to the DROS PROCESS.

18 **RESPONSE TO INTERROGATORY NO. 76:**

19 Defendants object to this interrogatory. It contains multiple questions and is compound.

20 The interrogatory is also objectionable because it is tantamount to demanding defendants  
21 brief the merits of the remaining causes of action in this case, which plaintiffs initiated. The  
22 merits hearing is currently set to be heard on March 16, 2018, and the matter will be briefed in  
23 due course according to the applicable rules. This interrogatory is therefore burdensome and  
24 oppressive and an inappropriate use of the discovery device.

25 Without waiving these objections, defendants respond as follows:

26 Yes. The DROS process, among other things, helps ensure that the sale and purchase of  
27 firearms in California occurs in accordance with applicable statutes and regulations. It also helps  
28

1 ensure that a firearms purchaser is eligible to possess a firearm in the first place. Thus, the  
2 activities listed above are related to the DROS process.

3 **INTERROGATORY NO. 77:**

4 Describe in reasonable detail each activity performed by the DEPARTMENT that is both  
5 funded by DROS FEE money and is specifically intended to prevent gun ownership from  
6 becoming strongly associated with the random acts of deranged individuals.

7 **RESPONSE TO INTERROGATORY NO. 77:**

8 Defendants object to this interrogatory. It is irrelevant. It is also intended to harass or  
9 impose an undue burden or expense on defendants. Defendants also note that the language of this  
10 interrogatory appears to have been taken from a passage in the legislative history of SB 819,  
11 which attributes a similar statement to the author of SB 819, not any of the defendants.

12 **INTERROGATORY NO. 78:**

13 Do responding parties contend that the costs of APPS-BASED LAW ENFORCEMENT  
14 ACTIVITIES are reasonably related to legal firearm possession? If so, please describe, in  
15 reasonable detail, the factual and legal bases for that contention.

16 **RESPONSE TO INTERROGATORY NO. 78:**

17 Defendants object to this interrogatory. It contains multiple questions and is compound.

18 Defendants also object to plaintiffs' definitions of what plaintiffs refer to as "APPS-  
19 BASED LAW ENFORCEMENT ACTIVITIES" and "NON-APPS-BASED LAW  
20 ENFORCEMENT ACTIVITIES." Plaintiffs have assigned special definitions to these terms in  
21 an attempt to create a distinction not reflected in the plain language of the relevant statute.  
22 Plaintiffs' definitions of these terms are also incomplete and vague.

23 The interrogatory is also objectionable because it is tantamount to demanding defendants  
24 brief the merits of the remaining causes of action in this case, which plaintiffs initiated. The  
25 merits hearing is currently set to be heard on March 16, 2018, and the matter will be briefed in  
26 due course according to the applicable rules. This interrogatory is therefore burdensome and  
27 oppressive and an inappropriate use of the discovery device.

28

1 Without waiving these objections, defendants respond as follows:

2 Yes. What plaintiffs characterize as "APPS-BASED LAW ENFORCEMENT  
3 ACTIVITIES" are reasonably related to firearm possession, irrespective of whether that  
4 possession is characterized as legal or illegal. Penal Code section 28225 does not distinguish  
5 between certain kinds of possession (e.g., "legal" and "illegal"); it speaks solely in terms of  
6 "possession."

7 **INTERROGATORY NO. 79:**

8 Please state responding parties' best estimate as to the amount of DROS FUND (as used  
9 herein, "DROS FUND" refers to the Dealers' Record of Sale Special Account of the General  
10 Fund) money the DEPARTMENT spent on NON-APPS-BASED LAW ENFORCEMENT  
11 ACTIVITIES for each fiscal year from 2011-2012 to the present.

12 **RESPONSE TO INTERROGATORY NO. 79:**

13 Defendants object to plaintiffs' definitions of what plaintiffs refer to as "APPS-BASED  
14 LAW ENFORCEMENT ACTIVITIES" and "NON-APPS-BASED LAW ENFORCEMENT  
15 ACTIVITIES." Plaintiffs have assigned special definitions to these terms in an attempt to create  
16 a distinction not reflected in the plain language of the relevant statute. Plaintiffs' definitions of  
17 these terms are also incomplete and vague.

18 Without waiving these objections, defendants' best estimate based on the data available at  
19 this time is as follows:

20	FY 2011/2012	\$152,630
21	FY 2012/2013	\$212,743
22	FY 2013/2014	\$341,206
23	FY 2014/2015	\$337,270
24	FY 2015/2016	\$433,524
25	FY 2016/2017	\$461,316.

26 Finally, defendants note that some of the above figures may include monies from the  
27 Firearms Safety and Enforcement Fund. As indicated in earlier discovery responses, unit code  
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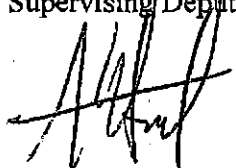
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505, which concerns the APPS program, is "split funded," meaning 50% of the funding is from the DROS special account and 50% is from the Firearms Safety and Enforcement Fund.

Dated: December 12, 2017

Respectfully Submitted,

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



ANTHONY R. HAKL  
Deputy Attorney General  
*Attorneys for Defendants and Respondents*

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