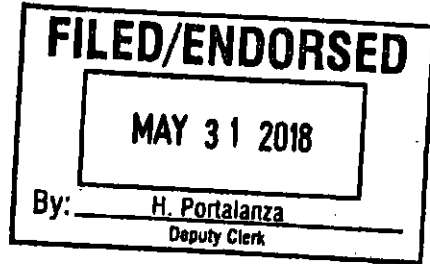


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Attorneys for Plaintiffs/Petitioners



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

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

Plaintiffs and Petitioners,

vs.

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

**DECLARATION OF SCOTT M.
FRANKLIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF AND SECOND AMENDED
PETITION FOR WRIT OF MANDAMUS**

I, Scott M. Franklin, declare:

- I am an attorney at law admitted to practice before all courts of the state of California. I have personal knowledge of each matter and the facts stated herein as a result of my employment with Michel & Associates, P.C., attorneys for Plaintiffs/Petitioners ("Plaintiffs"), and if called upon and sworn as a witness, I could and would testify competently thereto.
- The proposed Second Amended Complaint filed herewith as **Exhibit 1** is the same as Plaintiffs' prior complaint, except that two new causes of action are added, and the prayer is amended to reflect the relief sought via the new causes of action.

1 3. During the hearing of June 5, 2015, the Court heard argument regarding Defendants'
2 Motion for Judgment on the Pleadings (the "MJOP"). During the hearing, the Court requested the
3 parties draft a proposed order regarding the MJOP ruling and other issues that were before the
4 Court.

5 4. It took years for Defendants to even take a partial position as to a keystone issue in this
6 case: how, if at all, law abiding DROS Fee payers (e.g., Plaintiffs) created a burden on, or
7 received a special benefit from, APPS-based law enforcement activities funded via the DROS
8 Fee. Attached hereto as **Exhibit 2** are true and correct copies of excerpts of discovery documents
9 from 2015 and 2017 evincing Plaintiffs' difficulty in extracting information from Defendants.
10 The interrogatories cited here were allowed by the Court in response to a motion to compel
11 further discovery responses and after I explained to the Court the difficulty I was having in
12 getting responsive, straightforward discovery responses from Defendants.

13 5. Attached hereto as **Exhibit 3** are true and correct excerpts of deposition transcripts taken
14 during the depositions of California Department of Justice employees Stephen Lindley and David
15 Harper.

16 6. After contacting the Court to determine available hearing dates, I proposed to Defendants'
17 counsel that the hearing for Plaintiffs' motion for leave to file an amended complaint be set on
18 June 22, 2018, and that trial in this matter be rescheduled for August 24, 2018, which was the
19 first hearing date the Court had available after June 22, 2018. Counsel for Defendants agreed to
20 the two hearing dates proposed by Plaintiffs' counsel. The attorneys also agreed to the following
21 briefing schedule, including the relevant filing and service dates applicable if Plaintiffs' motion is
22 granted.

- 23 • May 31, 2018 - Motion for Leave to Amend
- 24 • June 11, 2018 - Opposition
- 25 • June 15, 2018 - Reply
- 26 • June 22, 2018 - Hearing (the forgoing dates are per the Code of Civil Procedure);
- 27 • June 22, 2018 - Filing and in-person service of Second Amended Complaint
- 28 (assuming the motion is granted; in-person service will be unnecessary if the

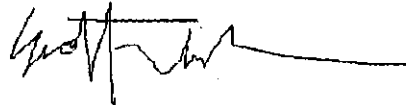
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proposed Second Amended Complaint filed with the motion is deemed filed)

- August 6, 2018 - Answer (if required)
- August 6, 2018 - Defendants' Supplemental Brief on Plaintiffs' new causes of action
- August 13, 2018 - Plaintiffs' Supplemental Brief on new causes of action
- August 24, 2018 - Trial

Attached hereto as Exhibit 4 is a true and correct copy of an email exchange wherein opposing counsel and I discussed, and agreed to, the relevant briefing deadlines.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this Declaration was executed on May 31, 2018, in Glendale, California.



Scott M. Franklin
Declarant

EXHIBIT 1

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6 Attorneys for Plaintiffs

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO

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

13 Plaintiffs and Petitioners,

14 vs.

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

20 Defendants and Respondents.

CASE NO. 34-2013-80001667

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDAMUS**

1 **INTRODUCTION**

2 1. The California Department of Justice (“DOJ”)¹ collects information from potential
3 firearm purchasers via a Dealer Record of Sale (DROS) form. The DROS form is primarily used
4 for conducting background checks. Along with submission of the DROS form, the DOJ requires
5 potential purchasers² to pay a fee (the “DROS Fee”). As required by statute, monies collected
6 from the DROS Fee are segregated in a DROS Special Account of the General Fund, to be used
7 *only* for covering the costs associated with administering the DROS program.

8 2. The Penal Code limits what DOJ can charge for the DROS Fee to an amount “no more
9 than is necessary” to recover DOJ’s costs of administering the DROS program. Despite this
10 statutory limitation, in recent years, the DROS Special Account has amassed a surplus of over \$35
11 million, primarily consisting of DROS Fee revenues.

12 3. The \$35 million surplus is extraordinary given that DOJ’s annual budget for the DROS
13 program has been approximately \$9 million on average during the last ten years. In other words,
14 the surplus is about four times the average amount of the annual DROS program budget.

15 4. Rather than lower the DROS Fee to reduce the surplus and to avoid such large and
16 illegal surpluses in the future, the Legislature chose instead to “authorize” DOJ’s use of the
17 DROS Fee for additional purposes by passing Senate Bill 819 (“SB 819”).

18 5. SB 819, effective January 2012, categorically expanded the scope of activities funded
19 by the DROS Special Account (and specifically by DROS Fee revenues) to include general
20 regulatory and enforcement activities related to the “possession” of firearms. These activities
21 extend far beyond those reasonably related to the DROS program, the original purpose of which
22 was to make sure those individuals seeking to purchase a firearm were not prohibited from doing
23 so. Moreover, such activities had previously – and properly – been paid for out of the General
24

25 ¹ Defendants, being sued in their official capacity as heads of the DOJ, and DOJ being
26 under Defendants’ control, all references to “DOJ” herein should be construed as a reference to
27 Defendants.

28 ² With few exceptions, this “fee” applies to all types of transfers, even gifts and trades.
But for simplicity’s sake “purchase” will be used throughout this Complaint to include all such
activities unless specifically stated otherwise.

1 Fund.

2 6. The Legislature, relying on SB 819, passed Senate Bill 140 (“SB 140”) the following
3 year, which appropriated the then-existing \$24 million dollar DROS Special Account surplus to
4 pay for DOJ’s enforcement of the Armed Prohibited Persons System (APPS) program. APPS
5 enforcement activities primarily include, e.g., hiring additional officers and staff to conduct
6 SWAT-style raids on residents DOJ believes are illegally in possession of firearms – again,
7 activities far removed from data collection and background checks that comprise the DROS
8 program.

9 7. The DOJ’s current use of DROS Fee revenues to fund APPS enforcement or any other
10 activities not reasonably related to the DROS program violates California law.

11 8. The California Constitution presumes that any bill enacting or increasing a “levy,
12 charge, or exaction” of any kind is a tax, and, as such, must receive approval from two-thirds of
13 all members of each house of the Legislature to be valid.

14 9. By expanding the activities for which DROS Fee revenues can be used to include
15 regulating the “possession” of firearms, and thereby increasing the activities the DROS Fee payer
16 is responsible to finance, SB 819 constitutes “a levy, charge, or exaction” that the law presumes is
17 a tax.

18 10. Despite the Legislature’s attempt to paint it as such, SB 819 is not the type of
19 regulatory measure that is exempt from being considered a tax. Rather, it represents precisely the
20 type of government conduct that a 2010 amendment to the California Constitution was intended to
21 stop, i.e., the government’s effort to circumvent tax-control measures by disguising new taxes or
22 tax increases as “fees” or mere regulations.

23 11. Because SB 819 does not meet any of the exceptions for being a tax and was not
24 passed with the requisite two-thirds majority of both legislative houses, it is void and
25 unenforceable as an illegal tax.

26 12. And, because its authorization was based solely on the invalid adoption of SB 819, the
27 Legislature’s appropriation of \$24 million from the DROS Special Account surplus to fund the
28 Armed Prohibited Persons System (APPS) pursuant to SB 140 was and is an ongoing illegal

1 expenditure of state funds.

2 13. Plaintiffs-Petitioners ("Plaintiffs") are individuals who have paid the DROS Fee in the
3 past and who expect to pay it for their future lawful purchases of firearms. Plaintiffs seek a
4 declaration from this Court that SB 819 is void as an illegal tax, along with an injunction
5 prohibiting DOJ Defendants from using DROS Fee revenues for regulating the "possession" of
6 firearms.

7 14. Plaintiffs further seek to enjoin any expenditure of DROS Fees purportedly authorized
8 by SB 140, and a writ of mandate ordering the return of any such fees to the DROS Special
9 Account that may have been transferred, appropriated, or otherwise allocated to DOJ pursuant to
10 SB 140.

11 15. Additionally, because the DROS Fee has been increased from \$14 to \$19 in 2004,
12 resulting in a surplus of at least \$35 million (despite DOJ Defendants spending DROS Fee
13 revenues on unauthorized activities) from that time, Plaintiffs believe the DROS Fee is being
14 charged at an amount beyond that permitted by statute.

15 16. As such, Plaintiffs seek a writ of mandate ordering DOJ Defendants to comply with
16 their statutory duty to review the amount of the DROS Fee and establish its proper amount,
17 without taking the costs of regulating "possession" of firearms into account, since SB 819 is void.

18
19 **JURISDICTION & VENUE**

20 17. This Court has jurisdiction under California Code of Civil Procedure sections 525,
21 526, 526a, 187, and 1085 and other applicable laws.

22 18. Venue in this judicial district is proper under California Code of Civil Procedure
23 sections 303(b) and 401 because Defendants are public officers and each maintains an official
24 office within this judicial district. Additionally, Plaintiffs are residents of Sacramento County,
25 wherein their injuries forming the basis of this lawsuit occurred.

26 **PARTIES**

27 **I. Plaintiffs-Petitioners**

28 19. All individual Plaintiffs are natural persons, citizens of the United States, and current

1 residents of Sacramento County, California.

2 20. All individual Plaintiffs are eligible to possess firearms under state and federal law.

3 21. Plaintiff David Gentry has lawfully purchased firearms, for which he paid the DROS
4 Fee, both before and after January 1, 2012, including within the last twelve months. Plaintiff
5 Gentry expects to purchase a firearm within California in the near future, for which he would be
6 subject to the DROS Fee.

7 22. Plaintiff James Parker is a resident and taxpayer of Sacramento, California. Plaintiff
8 Parker has lawfully purchased firearms, for which he paid the DROS Fee, before January 1, 2012,
9 including within the last twelve months.

10 23. Plaintiff Mark Midlam has lawfully purchased various firearms, for which he paid the
11 DROS Fee, both before and after January 1, 2012, including within the last twelve months.
12 Plaintiff Midlam expects to purchase a firearm within California in the near future, for which he
13 would be subject to the DROS Fee.

14 24. Plaintiff James Bass has lawfully purchased firearms, for which he paid the DROS
15 Fee, both before and after January 1, 2012, including within the last twelve months. Plaintiff Bass
16 expects to purchase a firearm within California in the near future, for which he would be subject
17 to the DROS Fee.

18 25. Plaintiff Calguns Shooting Sports Association ("CGSSA") is a non-profit entity
19 classified under section 501(c)(4) of the Internal Revenue Code and incorporated under the laws
20 of California, with its principal place of business in Covina, California. CGSSA is committed to
21 promoting and expanding safe recreational firearm shooting in California through education
22 within the California shooting-sports Community. CGSSA is also dedicated to the protection of
23 the rights of those involved in the shooting-sports. CGSSA represents the interests of its
24 supporters all over California, including those within Sacramento County. Those supporters
25 consist of firearm owners, collectors, hunters, enthusiasts, competitive and recreational shooters
26 and others interested in safe and legal shooting-sports and firearm-related activities. The interests
27 CGSSA seeks to protect on behalf of those supporters include being free from unlawful taxes
28 imposed on law-abiding firearm purchasers. CGSSA brings this action on behalf of itself and its

1 supporters in California who have been, are being, and will in the future be required to pay
2 excessive DROS Fees that are used unlawfully by Defendants-Respondents for purposes other
3 than the DROS program.

4 **II. Defendants-Respondents**

5 26. Defendant KAMALA HARRIS is the Attorney General of California. She is the chief
6 law enforcement officer of California, and is charged by Article V, Section 13 of the California
7 Constitution with the duty to inform the general public and to supervise and instruct local
8 prosecutors and law enforcement agencies regarding the meaning of the laws of the State,
9 including the fair and proper implementation of the DROS program and use of DROS Fees. She is
10 sued in her official capacity.

11 27. Defendant STEPHEN LINDLEY is the Acting Chief of the DOJ Bureau of Firearms
12 and, as such, is responsible for executing, interpreting, and enforcing certain laws of the State of
13 California, as well as customs, practices, and policies at issue in this lawsuit. He is sued in his
14 official capacity.

15 28. Defendants HARRIS and LINDLEY (collectively "DOJ Defendants") are responsible
16 for administering and enforcing the DROS Fee and related programs, and have in the past
17 demanded and are presently demanding, and will continue to demand payment of the DROS Fee
18 from firearms purchasers, including Plaintiffs. DOJ Defendants are also responsible for expending
19 funds from the DROS Special Account as authorized and allocated to DOJ by the Legislature.

20 29. Defendant BETTY YEE is the current California Controller. As such, Defendant YEE
21 is the Chief Fiscal Officer of California, and is responsible for accounting for and controlling the
22 disbursement of all state funds, which would include the disbursement of funds from the DROS
23 Special Account allocated to the DOJ Defendants by the Legislature.

24 30. The true names or capacities, whether individual, corporate, associate or otherwise of
25 the DEFENDANTS named herein as DOES 1-10, are presently unknown to PLAINTIFFS, who
26 therefore sue said DEFENDANTS by such fictitious names. PLAINTIFFS pray for leave to
27 amend this Complaint and Petition to show the true names, capacities, and/or liabilities of DOE
28 Defendants if and when they have been determined.

1 ///

2 OVERVIEW OF CALIFORNIA REGULATORY SCHEME

3 I. Regulating the Imposition of Taxes and Fees

4 31. Section 3 of Article XIII A of the California Constitution (hereafter “Section 3”) was
5 originally made law by voter approval of Proposition 13 in 1978. It placed limits on the
6 government in enacting new taxes, and defined what would constitute a “tax” for its purposes.

7 32. In 2010, California voters approved Proposition 26, which, relevant to Plaintiffs’
8 claims, amended Section 3 to clarify what constitutes a “tax” under California law.

9 33. Proposition 26 amended Section 3, in pertinent part, as follows:

10 a. “Any change in state statute which results in any taxpayer paying a
11 higher tax must be imposed by an act passed by not less than two-thirds of all members elected to
12 each of the two houses of the Legislature.” Cal. Const., art. XIII A § 3(a).

13 b. “As used in [Section 3 of article XIII A of the California
14 Constitution], ‘tax’ means any levy, charge, or exaction of any kind imposed by the State.” Cal.
15 Const., art. XIII A § 3(b).

16 c. “The State bears the burden of proving by a preponderance of the
17 evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than
18 necessary to cover the reasonable costs of the governmental activity, and that the manner in which
19 those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens
20 on, or benefits received from, the governmental activity.” Cal. Const. art. XIII A, § 3(d).

21 34. Proposition 26’s express and primary purpose was to end the previously common
22 legislative and regulatory practice of circumventing Proposition 13’s tax-increase restrictions –
23 and thwarting the will of the people – by levying a tax under the guise of a regulatory “fee.”

24 II. Regulating Firearm Transfers

25 A. Licensed Dealer Requirement

26 35. When individuals wish to obtain a firearm in California, state law generally requires
27 them to process the transaction through a federally-licensed, California firearm dealer (an “FFL”).
28 Cal. Penal Code §§ 26500, 26520.

1 36. California requires that various fees be paid by the intended purchaser at the time of
2 initiating the transfer of a firearm, which fees are collected by the FFL processing the transfer.
3 Cal. Penal Code § 28055.

4 **B. The Dealer's Record of Sale (DROS) "Fee"**

5 37. California Penal Code sections 28225(a)-(c) [12076(e)],³ 28230 [12076(f)], 28235
6 [12076(g)], and 28240(a)-(b) [12076(I)], and California Code of Regulations section
7 4001 establish the fees paid by a firearm transferee when processing a DROS (i.e., the DROS
8 Fee),⁴ and how those fees may be used.

9 38. Subdivision (a) of Penal Code section 28225 [12076(e)] provides:

10 The [DOJ] may require the [FFL] to charge each firearm purchaser a fee not to
11 exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to
12 exceed any increase in the California Consumer Price Index as compiled and
13 reported by the Department of Industrial Relations.

14 39. The use of the words "may" and "not to exceed" in subdivision (a) of Penal Code
15 section 28225 [12076(e)] make clear that DOJ Defendants are not *required* to charge the
16 maximum fee amount allowed for by that statute, or to even charge *any* fee at all.

17 40. Subdivision (b) of Penal Code section 28225 [12076(e)] further provides that "[t]he
18 [DROS] fee shall be no more than is necessary to fund" the activities enumerated at Penal Code
19 section 28225(b)(1)-(11) [12076(e)(1)-(10)].

20 41. Penal Code section 28225(b)(11) [12076(e)(10)] authorizes the DOJ to use revenues
21 from the DROS Fee to fund "the estimated reasonable costs of [DOJ] firearms-related regulatory
22 and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms."

23 42. Before January 1, 2012, section 28225(b)(11) [12076(e)(10)] did *not* provide for

24 ³ Pursuant to the Legislature's enactment of Assembly Concurrent Resolution 73
25 (McCarthy) 2006, which authorized a Non-Substantive Reorganization of California's Deadly
26 Weapons Statutes, various California Penal Code sections were renumbered as of January 1,
2012. For convenience and ease of reference, the corresponding previous code section for each
27 referenced "renumbered" Penal Code section is provided in brackets.

28 ⁴ The "fees" DOJ charges pursuant to California Code of Regulations, Title 11, Section
4001, and Penal Code sections 12076(e) [28225(a)-(c)], 12076(f)(1)(B) [28230(a)(2)], discussed
herein, shall be referred to as the "DROS Fee" throughout.

1 expenditure of DROS Fee revenues on firearms-related regulatory and enforcement activities
2 related to the mere “possession” of firearms. But the Legislature amended that section during the
3 2011 Legislative session via SB 819 to “authorize” using DROS Fee revenues for this new and
4 expansive category of activities, as explained in detail below.

5 43. Penal Code section 28230(a)(2) [12076(f)(1)(B)] provides for DOJ to also use DROS
6 Fee revenues for “the actual processing costs associated with the submission of a [DROS] to the
7 [DOJ].”

8 44. Section 28235 [12076(g)] provides:

9 All money received by the department pursuant to this article shall be
10 deposited in the Dealers’ Record of Sale Special Account of the General
11 Fund, which is hereby created, to be available, upon appropriation by the
Legislature, for expenditure by the department to offset the costs incurred
pursuant to any of the following:

- 12 (a) This article;
- 13 (b) Section 18910 [12305(f)-(g)];
- 14 (c) Section 27555 [12072(f)(1)];
- 15 (d) Subdivisions (d) and (e) of Section 27560 [12072(f)(2)];
- 16 (e) Article 6 (commencing with Section 28450) [12083 (entirety)];
- 17 (f) Section 31110 [12289.5];
- 18 (g) Section 31115 [12289];
- 19 (h) Subdivision (a) of Section 32020 12131(c)];
- 20 (i) Section 32670 [12234];
- 21 (j) Section 33320 [12099].

22 45. The reference to “this article” in section 28235 [12076(g)] means Article 3 of Chapter
23 6 of Title 4 of Part 6 of the California Penal Code (beginning at section 28200 and ending with
24 section 28250 [12076(entirety)]), which solely includes sections concerning imposition of the
25 DROS Fee.

26 46. The activities covered in the Penal Code sections referenced by section 28235
27 [12076(g)] also include:

- 28 (1) inspections of “Destructive Device” Permit-Holders (Cal. Penal Code § 18910

1 [12305(f)-(g)];

2 (2) the California FFL Check Program (Cal. Penal Code § 27555 [12072(f)(1)]);

3 (3) a public education program pertaining to importers of personal handguns (Cal.
4 Penal Code § [27560(d)-(e)] [12072(f)(2)(D)];

5 (4) the Centralized List of Exempted FFLs (Cal. Penal Code § 28450, *et seq.*
6 [12083]);

7 (5) inspections of “Assault Weapon” Permit-Holders (Cal. Penal Code § 31110
8 [12289.5]);

9 (6) public education program regarding registration of “assault weapons” (Cal.
10 Penal Code § 31115 [12289]);

11 (7) retesting of handguns certified as “not unsafe” (Cal. Penal Code § 32020(a)
12 [12131(c)]);

13 (8) inspections of Machine Gun Permit-Holders (Cal. Penal Code § 32670
14 [12234]); and

15 (9) inspections of Short-Barreled Long Gun Permit-Holders (Cal. Penal Code §
16 33320 [12099]).

17 47. The DOJ currently charges the DROS Fee at \$19 for a single transaction involving
18 one or more rifles or shotguns and not more than one handgun. The DROS Fee for each additional
19 handgun being purchased at the same time is \$15. 11 Cal. Code of Reg. section 4001.

20 48. DOJ requires the DROS Fee be paid by purchasers for *all* firearm sales from an FFL,
21 as well as private party transfers of firearms that must be processed through an FFL (which
22 includes most transfers).⁵ Cal. Penal Code § 28225.

23 49. The Penal Code mandates that revenue from the DROS Fee is to be deposited into the
24 DROS Special Account of the General Fund (“DROS Special Account”). Cal. Penal Code §

25
26
27 ⁵ *But See* Cal. Pen. Code §§ 27875, 27920, 27925, and 27966 (exempting from the FFL-
28 processing requirement transfers between immediate family members, transfers by operation of
law, and transfers of “curios and relics”).

1 28235 [12076(g)].⁶

2 **C. The DROS Fee Has Continually Been Utilized for Expanding Purposes,**
3 **Despite DOJ's Failure to Review Its Proper Amount for Recovering DOJ's**
4 **Legitimate Costs**

5 50. Plaintiffs are informed and believe that the State (DOJ) began charging a DROS Fee
6 in 1990. It was \$4.25 at that time. *See* Senate Bill 670, 1995-1996 Leg. Sess. (Cal. 1995) (as
7 introduced Feb. 22, 1995).

8 51. By 1995, the DROS Fee had ballooned to \$14.00, an increase of greater than 300
9 percent in less than five years. *Id.*

10 52. In 1995, the California Legislature passed Senate Bills 670 and 671 to cap the rate for
11 a DROS fee at \$14.00, with increases "at a rate not to exceed any increase in the California
12 Consumer Price Index." That amendment is reflected in Penal Code section 28225(a) [12076(e)]
13 described above.

14 53. In the following years, a trend emerged of passing bills that would allow monies in
15 the DROS Special Account to finance an ever-expanding list of programs and services found at
16 section 28235 [12076(g)].

17 **1. AB 161: Deleting specific prohibitions against using "DROS Fee"**
18 **funds for other purposes**

19 54. In 2003, AB 161 was proposed to expand the scope of section 28225(a)-(c) [12076(e)]
20 by providing a "catch-all" to ensure that those programs (*i.e.*, those sections listed in section
21 28235 [12076(g)]) could be supported by revenues collected from the "DROS Fee" that were
22 deposited in the DROS Special Account.

23 55. As AB 161 made its way through the legislative process, the bill's sponsor argued that
24

25 ⁶ DOJ Defendants deposit (and commingle) funds collected from some additional fees –
26 for special firearm licensing and miscellaneous services (*see e.g.*, Cal. Penal Code §§ 30900-
27 30905 [12285(a),(b)]), concealed weapon permit applications and Cal. Pen. Code § 26190(a)-(b)
28 [12054]), "Assault Weapon" Permits – into the DROS Special Account. Plaintiffs estimate that
70-80% of the account consists of monies from the DROS Fee; Plaintiffs' efforts to ascertain a
more definite figure are hampered by the DOJ's lack of accounting.

1 it did not expand the use of revenues from the DROS Fee, but merely *clarified* their use.⁷

2 56. Nevertheless, in its final form as signed into law, AB 161 removed the prohibition on
3 using DROS Fee revenues to “directly fund or as a loan to fund any program not specified” and,
4 added section 28225(b)(11) [12076(e)(10)], allowing the DOJ to use funds collected from firearm
5 transactions for any “regulatory and enforcement activit[y] related to the sale, purchase, loan, or
6 transfer of firearms.”

7 57. Due to AB 161’s expansion of activities to be funded by the DROS Special Account,
8 on January 26, 2004, then Senator Morrow submitted a written request to the Joint Legislative
9 Audit Committee (“JLAC”), seeking a formal audit of the DROS Special Account, noting that the
10 DOJ’s previous reports lacked sufficient detail. That request was heard a month later, but was not
11 granted.⁸

12 **2. 11 CCR 4001: Raising the DROS Fee Amount**

13 58. Later that same year, less than one year after AB 161 expanded the list of activities
14 that DROS Fee payers are forced to fund, and after the Legislature rejected Senator Morrow’s call
15 for a formal audit, the DOJ, without justification or explanation, adopted California Code of
16 Regulations, title 11, section 4001, which increased the cap on the DROS Fee from \$14 to \$19 for
17 the first handgun in a single transaction, and for one or more rifles or shotguns in a single
18 transaction. And, DOJ capped the DROS Fee for each additional handgun being purchased at the
19 same time as the first handgun at \$15.

20 59. No support was provided by DOJ tying the \$5 increase of the maximum fee amount
21 (from \$14 to \$19) to the California Consumer Price Index, to which DROS Fee increases are
22 statutorily limited. Nor was any support provided by DOJ justifying the \$15 fee as necessary to
23

24 ⁷ See Sen. Comm. on Public Safety, Bill Analysis: Dealers Record of Sale Special
25 Account - Expanding Authorized Use - Appropriation to Fund Firearms Trafficking Prevention
26 Act of 2002, at 10 (July 8, 2003) *available at*
http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0151-0200/ab_161_cfa_20030708_141850_sen_comm.html.

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28 ⁸ PLAINTIFFS have so far been unable to ascertain the vote or outcome of that February
24, 2004 hearing, despite diligent efforts.

1 cover its costs relating to the sale of an additional handgun.

2 **3. DOJ's failed attempt to lower admittedly excessive DROS Fee**

3 60. California Code of Regulations, title 11, section 4001 remained in effect without any
4 attempts by DOJ to amend it to raise or lower the DROS Fee, until 2010 when the DOJ issued a
5 notice of proposed rulemaking, stating its intent to *lower* the maximum fee allowed from \$19 to
6 the pre-2004 emergency regulation amount of \$14.

7 61. The 2010 initial statement of reasons concerning the proposed rulemaking intended to
8 lower the DROS Fee indicated that "although the volume of DROS transactions has increased, the
9 average time spent on each DROS, and thus the processing cost, has decreased."⁹ It also noted
10 that "[t]he proposed regulations [would] lower the current \$19 DROS Fee to \$14, *commensurate*
11 *with the actual cost of processing a DROS.*" (emphasis added).¹⁰

12 62. Ultimately, the 2010 proposed rulemaking was not adopted, thereby allowing DOJ to
13 continue collecting the admittedly excessive DROS Fee revenues and use them to fund other
14 government activities.

15 63. With the possible exception of DOJ's assessment in 2010, which was never acted
16 upon despite its finding that the amount of the DROS Fee is too high, it appears DOJ has never
17 conducted a review of the DROS Fee to ensure "that the amount is no more than necessary to
18 cover the reasonable costs" of the DROS program, as required by law. Cal. Penal Code §§
19 28225(a) [12076(e)], 28225(b) [12076(e)]; *See also* Cal. Const. art. XIII A, § 3(d).

20 **D. SB 819: Further expanding potential uses for DROS Fee funds and the**
21 **surplus accumulated in the DROS Special Account**

22 64. Rather than lower the DROS Fee, based on DOJ's 2010 findings, and use the DROS
23 Special Account's surplus for purposes relating to the DROS system, in 2011, the California
24 Legislature passed and Governor Brown signed into law Senate Bill 819 (Leno), effective as of
25

26 ⁹ Cal. Dept. of Justice, Initial Statement of Reasons concerning Proposed DROS Fee
27 Regulations (2010), available at <http://ag.ca.gov/firearms/regs/DROSIsoor.pdf>.

28 ¹⁰ *Id.*

1 January 1, 2012. SB 819 once again expanded the uses to which DROS Fee revenues may be put,
2 as described in the findings for amending section 28225, quoted below.

3 65. In addition to the Legislature's express findings to the same effect, DOJ Defendants
4 have admitted SB 819's purpose and effect is to use funds from the DROS Fee on activities
5 unrelated to the DROS program: "To clear the [Armed and Prohibited Persons System] backlog of
6 approximately 34,000 handguns, Attorney General Harris is the sponsor of Senate Bill 819, which
7 would revise the Penal Code to *expand* the use of existing regulatory fees collected by gun dealers
8 to allow the state [DOJ] to use fee revenue to pay for the APPS program." Press Release, Office
9 of the Attorney General, Attorney General Kamala D. Harris Announces Seizure of 1,200 Guns
10 from Mentally Unstable and Other Individuals (June 16, 2011) (emphasis added).

11 66. As noted above, prior to January 1, 2012, section 28225(b)(11) [12076(e)(10)] did not
12 provide for expenditure of DROS Fee revenues on regulations or enforcement activities related to
13 "possession" of firearms. Such general law enforcement activities were always funded from the
14 General Fund. But the Legislature amended that section during the 2011 Legislative session via
15 SB 819 to allow for such, based on its following purported findings:

16 SECTION 1. The Legislature finds and declares all of the following:

17 (a) California is the first and only state in the nation to establish an
18 automated system for tracking handgun and assault weapon owners
who might fall into a prohibited status.

19 (b) The California Department of Justice (DOJ) is required to
20 maintain an online database, which is currently known as the
21 Armed Prohibited Persons System, otherwise known as APPS,
22 which cross-references all handgun and assault weapon owners
23 across the state against criminal history records to determine
persons who have been, or will become, prohibited from possessing
a firearm subsequent to the legal acquisition or registration of a
firearm or assault weapon.

24 (c) The DOJ is further required to provide authorized law
25 enforcement agencies with inquiry capabilities and investigative
assistance to determine the prohibition status of a person of interest.

26 (d) Each day, the list of armed prohibited persons in California
27 grows by about 15 to 20 people. There are currently more than
28 18,000 armed prohibited persons in California. Collectively, these
individuals are believed to be in possession of over 34,000
handguns and 1,590 assault weapons. The illegal possession of
these firearms presents a substantial danger to public safety.

1 (e) Neither the DOJ nor local law enforcement has sufficient
2 resources to confiscate the enormous backlog of weapons, nor can
they keep up with the daily influx of newly prohibited persons.

3 (f) A Dealer Record of Sale fee is imposed upon every sale or
4 transfer of a firearm by a dealer in California. Existing law
5 authorizes the DOJ to utilize these funds for firearms-related
6 regulatory and enforcement activities related to the sale, purchase,
loan, or transfer of firearms pursuant to any provision listed in
Section 16580 of the Penal Code, but not expressly for the
enforcement activities related to possession.

7 (g) *Rather than placing an additional burden on the taxpayers of*
8 *California to fund enhanced enforcement of the existing armed*
9 *prohibited persons program, it is the intent of the Legislature in*
10 *enacting this measure to allow the DOJ to utilize the Dealer Record*
11 *of Sale Account for the additional, limited purpose of funding*
12 *enforcement of the Armed Prohibited Persons System. S.B. 819,*
13 *2011 Leg., Reg. Sess. (Ca. 2011) (emphasis added).*

11 **E. SB 140: Appropriation of \$24 Million from DROS Special Account for DOJ's**
12 **Armed Prohibited Person System**

13 67. DOJ Defendants received what they sought from SB 819 the following year, on May
14 1, 2013, when Senate Bill 140 (2013) was signed into law as an emergency measure, adding
15 Section 30015 to the Penal Code. SB 140 appropriates the current \$24 million surplus from the
16 DROS Special Account to DOJ Defendants “to address the backlog in the Armed Prohibited
17 Persons System (APPS) and the illegal possession of firearms by those prohibited persons.”

18 68. Evidenced by, among other things, their various press releases and television
19 interviews in the last few months touting their efforts and purported accomplishments, DOJ
20 Defendants have been aggressively spending the monies appropriated to them via SB 140 by
21 hiring new agents to conduct APPS-related investigations, including SWAT-style raids on
22 suspects’ homes, hoping to seize illegally possessed firearms from dangerous criminals.
23 Regardless of the efficacy or wisdom of these raids, such activities are not reasonably related to
24 the DROS program.

25 69. Nonetheless, as seen above in the legislative findings for Section 30015, the
26 Legislature chose to burden potential firearm purchasers via an excessive DROS Fee with the cost
27 of administering the APPS “[r]ather than placing an additional burden on the taxpayers of
28 California.”

1 70. Prior to January 1, 2012, when SB 819 went into effect, there was no statutory
2 authority for SB 140, because section 28225(b)(11) [12076(e)(10)] did not provide for
3 expenditure of DROS Fee revenues on activities related to “possession” of firearms before that
4 time. Nothing in SB 140 purports to justify the use of surplus DROS Fee funds collected before
5 January 1, 2012, on the “possession of firearms.”

6 71. Plaintiffs have each been required to, and have in fact paid the DROS Fee before and
7 after SB 819 went into effect on January 1, 2012.

8 72. Plaintiffs intend to purchase additional firearms in the near future, which will require
9 their paying the DROS Fee again.

10 **FIRST CAUSE OF ACTION**
11 **FOR DECLARATORY AND INJUNCTIVE RELIEF INVALIDITY OF**
12 **APPROPRIATION OF PRE-EXISTING DROS FEE REVENUES TO ARMED**
13 **PROHIBITED PERSON SYSTEM**
14 **California Code of Civil Procedure § 526a**
15 **(By All Plaintiffs Against DOJ Defendants)**

16 73. All of the above paragraphs are re-alleged and incorporated herein by reference.

17 74. Even if SB 819 is not an illegal tax under California’s Constitution, DOJ Defendants
18 did not have statutory authority to use DROS Fee revenues on regulating the “possession” of
19 firearms before SB 819 went into effect on January 1, 2012. Therefore, at minimum, DOJ
20 Defendants have no statutory authority to use any revenues collected from the DROS Fee before
21 2012 for activities relating to the “possession” of firearms.

22 75. Enforcing APPS programs relates solely to regulating individuals’ “possession” of
23 firearms. As such, any monies collected from the DROS Fee prior to SB 819 going into effect on
24 January 1, 2012, cannot be used to fund the enforcement of APPS programs.

25 76. Because a significant portion of the \$24 million SB 140 appropriated to DOJ
26 Defendants was amassed from individuals, including Plaintiffs, paying the DROS Fee prior to SB
27 819 going into effect on January 1, 2012, DOJ Defendants are not authorized to use such portion
28 of that \$24 million on APPS programs, and are thus precluded from doing so.

77. Plaintiffs have been and continuously are irreparably injured by DOJ Defendants
using the \$24 million appropriated to them by SB 140 or, at minimum, that portion of the \$24

1 million collected before January 1, 2012.

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3 **SECOND CAUSE OF ACTION:**
4 **WRIT OF MANDATE – STOPPING APPROPRIATION OF SB 140 FUNDS**
5 **California Code of Civil Procedure §§ 526a, 1085**
6 **(By All Plaintiffs / Petitioners Against Defendant Controller)**

7 78. All of the above paragraphs are re-alleged and incorporated herein by reference.

8 79. Defendant Controller has, currently is, and will continue to appropriate to DOJ
9 Defendants funds pursuant to SB 140.

10 80. Because SB 140 constitutes an illegal appropriation, Defendant Controller cannot
11 lawfully appropriate to DOJ Defendants any of the \$24 million authorized by SB 140.

12 81. Plaintiffs have been and continuously are irreparably injured by Defendant
13 Controller's appropriating to DOJ Defendants funds pursuant to SB 140 because Plaintiffs have
14 no plain, speedy, and adequate remedy to prevent such an illegal appropriation.

15 82. Defendant Controller always has a clear, present, and ministerial duty to refrain from
16 unlawfully appropriating funds, and Plaintiffs always have a right to be free from the unlawful use
17 of the revenues collected from the fees they pay.

18 83. In the alternative, Defendant Controller cannot lawfully appropriate to DOJ
19 Defendants that portion of the \$24 million authorized by SB 140 that represents DROS Fee
20 revenues collected before January 1, 2012, and has a ministerial duty to refrain from doing so.
21 Plaintiffs, as payers of such DROS Fee, are irreparably injured by such unlawful appropriations.

22 **THIRD CAUSE OF ACTION:**
23 **WRIT OF MANDATE – RECOUPING OF SB 140 FUNDS**
24 **California Code of Civil Procedure §§ 526a, 1085**
25 **(By All Plaintiffs / Petitioners Against Defendant Controller)**

26 84. All of the above paragraphs are re-alleged and incorporated herein by reference.

27 85. Because those funds already transferred to DOJ Defendants by Defendant Controller
28 pursuant to SB 140 constituted an illegal appropriation, at least in part, Defendant Controller has
a clear, present, and ministerial duty to preserve and recoup any such unlawfully appropriated
funds from DOJ Defendants.

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**FOURTH CAUSE OF ACTION
WRIT OF MANDATE – RETURN OF SB 140 FUNDS
California Code of Civil Procedure §§ 526a, 1085
(By All Plaintiffs / Petitioners Against DOJ Defendants)**

86. All of the above paragraphs are re-alleged and incorporated herein by reference.

87. DOJ Defendants always have a clear, present, and ministerial duty to refrain from accepting or using funds unlawfully appropriated to them, and Plaintiffs always have a right to be free from such unlawful use of the revenues collected from the fees they pay.

88. Because any funds already transferred to DOJ Defendants by Defendant Controller pursuant to SB 140 constituted an illegal appropriation, at least in part, DOJ Defendants have a clear, present, and ministerial duty to return any such funds to Defendant Controller.

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**FIFTH CAUSE OF ACTION:
WRIT OF MANDATE – REVIEW PROPER AMOUNT OF “DROS FEE”
(California Penal Code §§ 28225(a) [12076(e)] / 28225(b) [12076(e)])
(By All Plaintiffs / Petitioners Against DOJ Defendants)**

89. All of the above paragraphs are re-alleged and incorporated herein by reference.

90. DOJ Defendants have a clear, present, and ministerial duty pursuant to California Penal Code sections 28225(a) [12076(e)] and 28225(b) [12076(e)] to determine “the amount necessary to fund” the activities enumerated at Penal Code section 28225(b)(1)-(11) [12076(e)(1)-(10)] and to only charge the DROS Fee at that amount.

91. On information and belief, DOJ Defendants have been charging the DROS Fee at the maximum amount statutorily allowed, without first determining whether that amount is “no more than is necessary to fund” the regulatory and enforcement activities for which they are statutorily permitted to use DROS Fee revenues.

92. The DROS Fee is currently imposed by DOJ Defendants on Plaintiffs and other firearm purchasers at \$19 per firearm transaction, plus \$15 per each additional handgun.

93. Since the year 2004, the DROS Special Account, despite expenditures therefrom having been made on unauthorized activities, has accumulated an approximately \$35 million surplus.

94. Most, if not all, of the approximately \$35 million in surplus revenues in the DROS

1 Special Account was generated by payers, including Plaintiffs, of the DROS Fee.

2 95. Despite amassing a multi-million-dollar surplus, DOJ Defendants have failed to
3 properly review the amount of the DROS Fee to ensure that the amount is “no more than is
4 necessary to fund” the activities enumerated at Penal Code section 28225(b)(1)-(11)
5 [12076(e)(1)-(10)].

6 96. DOJ Defendants are not complying with their duty to tailor the amount of the DROS
7 Fee to DOJ's actual costs in administering the DROS program.

8 97. On information and belief, the current amount of the DROS Fee exceeds DOJ
9 Defendants' actual costs for lawfully administering the DROS program.

10 98. PLAINTIFFS have been and continuously are irreparably injured by DOJ Defendants'
11 imposing the DROS Fee at an amount that accrues a multi-million-dollar surplus without tying
12 such amount to DOJ's actual costs for administering the DROS program.

13 99. Further, even if this Court holds that the use of DROS Fee funds for APPS-based law
14 enforcement activities is legal, and that the DROS Fee was being charged at a proper amount
15 prior to the passage of SB 819, the expansion of the scope of “necessary” costs funded by the
16 DROS Fee resulting from that new use constitutes a major change in circumstance that requires
17 DOJ Defendants to reassess the amount being charged for the DROS Fee based on the DOJ
18 Defendants' clear, present, and ministerial duty pursuant to California Penal Code sections
19 28225(a) [12076(e)] and 28225(b) [12076(e)] to determine “the amount necessary to fund” the
20 activities enumerated at Penal Code section 28225(b)(1)-(11) [12076(e)(1)-(10)] and to only
21 charge the DROS Fee at that amount.

22 100. In light of DOJ Defendants' duties to (1) perform a review to determine “the amount
23 necessary to fund” the activities enumerated at Penal Code section 28225(b)(1)-(11)
24 [12076(e)(1)-(10)] and to (2) charge the DROS Fee at that amount or less, DOJ Defendants'
25 review of the relevant costs necessarily must include a determination of whether the use of DROS
26 Fee funds for APPS-based law enforcement activities constitutes a tax. What is “necessary” to
27 fund the activities referred to in the pre-SB 819 version of Penal Code section 28225 is different
28 from what is “necessary” to fund “possession”-related law enforcement activities that are yet to

1 be specified, inasmuch as a higher level of scrutiny applies to levies purportedly incurred to fund
2 regulatory activities (as opposed to costs paid for via funds collected for a tax).

3 **SIXTH CAUSE OF ACTION:**
4 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
5 **VALIDITY OF SENATE BILL 819/THE DROS FEE**
6 **Violation of California Const., Art. XIII, Sec. 1(b)**
7 **(By All Plaintiffs Against DOJ Defendants)**

8 101. All of the above paragraphs are re-alleged and incorporated herein by reference.

9 102. By expanding the activities for which DROS Fee revenues can be used to include
10 regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is
11 responsible to finance and shifting the responsibility for millions of dollars in law enforcement
12 costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS
13 Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

14 103. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-
15 called regulatory fee.

16 104. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so
17 they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under
18 California law.

19 105. Property taxes must be assessed in proportion to the value of the property being
20 taxed per California Constitution, article XIII, section 1(b).

21 106. On information and belief, DOJ has never attempted to determine whether the SB
22 819-created tax is, or could be, assessed in proportion to the value of the property being taxed.

23 107. On information and belief, the SB 819-created tax is not being proportionally
24 assessed as required by California Constitution, article XIII, section 1(b).

25 108. SB 819 is void and unenforceable because it creates a property tax that does not
26 meet the constitutional proportionality requirement that applies to property taxes.

27 109. An actual controversy exists between the parties hereto in that Plaintiffs believe that
28 DOJ's use of DROS Fee funds for costs not resulting from the DROS process, purportedly
pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ
continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant

1 to SB 819.

2 110. Plaintiffs desire a judicial determination of the rights and duties of the parties,
3 including a declaration that SB 819 created an illegal tax under section 1(b) of article XIII of the
4 California Constitution.

5 111. Plaintiffs have been and continuously are irreparably injured by DOJ's use of DROS
6 Fee revenues for APPS-related law enforcement activities pursuant to SB 819, as Plaintiffs are
7 being subjected to an illegal tax as a result thereof.

8 112. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing
9 DROS Fee revenues for law enforcement activities related to the "possession" of firearms
10 pursuant to SB 819.

11 **SEVENTH CAUSE OF ACTION:**
12 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
13 **VALIDITY OF SENATE BILL 819/THE DROS FEE**
Violation of California Const., Art. XIII, Sec. 2
(By All Plaintiffs Against DOJ Defendants)

14 113. All of the above paragraphs are re-alleged and incorporated herein by reference.

15 114. By expanding the activities for which DROS Fee revenues can be used to include
16 regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is
17 responsible to finance and shifting the responsibility for millions of dollars in law enforcement
18 costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS
19 Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

20 115. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-
21 called regulatory fee.

22 116. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so
23 they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under
24 California law.

25 117. A two-thirds vote of the legislature is required to subject a specific type of personal
26 property to differential taxation pursuant to California Constitution, article XIII, section 2.

27 118. The implementation of SB 819 resulted in the differential taxation of personal
28 property (i.e., firearms).

1 119. SB 819 was not enacted by a two-thirds vote.

2 120. SB 819 is void and unenforceable because it created a differential tax that does not
3 meet the constitutional two-thirds vote requirement that applies to the creation of a differential
4 property tax.

5 121. An actual controversy exists between the parties hereto in that Plaintiffs believe that
6 DOJ's use of DROS Fee funds for costs not resulting from the DROS process, purportedly
7 pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ
8 continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant
9 to SB 819.

10 122. Plaintiffs desire a judicial determination of the rights and duties of the parties,
11 including a declaration as to whether SB 819 created an illegal tax under section 2 of article XIII
12 of the California Constitution.

13 123. Plaintiffs have been and continuously are irreparably injured by DOJ's use of DROS
14 Fee revenues for APPS-related law enforcement activities pursuant to SB 819, as Plaintiffs are
15 being subjected to an illegal tax as a result thereof.

16 124. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing
17 DROS Fee revenues for law enforcement activities related to the "possession" of firearms
18 pursuant to SB 819.

19 **EIGHTH CAUSE OF ACTION:**
20 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
21 **VALIDITY OF SENATE BILL 819/THE DROS FEE**
22 **Violation of California Const., Art. XIII, Sec. 3**
23 **(By All Plaintiffs Against DOJ Defendants)**

24 125. All of the above paragraphs are re-alleged and incorporated herein by reference.

25 126. By expanding the activities for which DROS Fee revenues can be used to include
26 regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is
27 responsible to finance and shifting the responsibility for millions of dollars in law enforcement
28 costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS
Fee payers, in particular, SB 819 creates a tax on DROS fee payers.

127. SB 819 created a tax notwithstanding the fact that the tax is collected as part of a so-

1 called regulatory fee.

2 128. Because the SB 819-created tax is imposed on DROS Fee payers who pay the tax so
3 they can obtain personal property (i.e., a firearm), the SB 819-created tax is a property tax under
4 California law.

5 129. "Household furnishings and personal effects not held or used in connection with a
6 trade, profession, or business" are exempt from property taxation under California Constitution,
7 article XIII, section 3(m).

8 130. Firearms "not held or used in connection with a trade, profession, or business" are
9 within the category of "household furnishings and personal effects" and thus firearms purchased
10 for non-commercial use are exempt from property taxation under California Constitution, article
11 XIII, section 3(m).

12 131. SB 819 resulted in a tax on firearms, and because firearms are not to be taxed
13 pursuant to the California Constitution, article XIII, section 3(m), SB 819 is void and
14 unenforceable.

15 132. An actual controversy exists between the parties hereto in that Plaintiffs believe that
16 DOJ's use of DROS Fee funds for costs not resulting from the DROS process, purportedly
17 pursuant to SB 819, constitutes an invalid tax, and DOJ Defendants contend otherwise, thus DOJ
18 continues to utilize DROS Fee revenues to fund APPS- based law enforcement activities pursuant
19 to SB 819.

20 133. Plaintiffs desire a judicial determination of the rights and duties of the parties,
21 including a declaration that SB 819 created an illegal tax under Section 3(m) of Article XIII of the
22 California Constitution.

23 134. Plaintiffs have been and continuously are irreparably injured by DOJ's use of DROS
24 Fee revenues for APPS-related law enforcement activities pursuant to SB 819.

25 135. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing
26 DROS Fee revenues for law enforcement activities related to the "possession" of firearms
27 pursuant to SB 819.

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**NINTH CAUSE OF ACTION:
FOR DECLARATORY AND INJUNCTIVE RELIEF
Scope of Senate Bill 819's "Possession" Provision as
Applied to Funds Collected under the Guise of the DROS Fee
(By All Plaintiffs Against DOJ Defendants)**

136. All of the above paragraphs are re-alleged and incorporated herein by reference, and this cause of action is pleaded in the alternative to the other causes of action pleaded herein.

137. On information and belief, DOJ Defendants contend that, as a result of SB 819, Penal Code section 28225(c) was amended such that the DOJ can now use the DROS Fee to recoup costs of "firearms-related . . . enforcement . . . activities related to the . . . possession . . . of firearms" including, **but not limited to**, APPS-based law enforcement activities. Penal Code § 28225(c).

138. On information and belief, an actual controversy exists between the parties hereto in that Plaintiffs believe that SB 819, if it is valid at all, only authorized "the DOJ to utilize the Dealer Record of Sale Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System[.]" whereas DOJ Defendants contend SB 819 authorizes DOJ to spend DROS Special Account money on any "firearms-related . . . regulatory and enforcement . . . activities related to the . . . possession . . . of firearms[.]" Penal Code § 28225(c).

139. On information and belief, an actual controversy exists between the parties hereto in that Plaintiffs believe that SB 819 did not authorize DOJ to use DROS Special Account Funds to address the costs of APPS itself (as opposed to the costs of enforcement activities based on data created via APPS), but DOJ switched the funding source for APPS itself from the General Fund to the DROS Special Account in approximately 2011, based on the passage of SB 819.

140. DOJ continues to utilize DROS Fee revenues to fund APPS pursuant to an incorrect interpretation of SB 819, and declaratory relief on the scope of SB 819 is appropriate not only to end improper appropriations currently occurring, but to prevent a multiplicity of litigation concerning other costs alleged to be improperly appropriated based on an incorrect interpretation of the scope of SB 819.

141. Plaintiffs desire a judicial determination of the rights and duties of the parties, including a declaration that SB 819 does not authorize the appropriation of DROS Special

1 Account funds for some use other than APPS-based law enforcement activities.

2 142. Plaintiffs have been and continuously are irreparably injured by DROS Fee
3 revenues being utilized for activities other than APPS-related law enforcement activities pursuant
4 to SB 819, as Plaintiffs are being subjected to an illegal tax as a result thereof.

5 143. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing
6 DROS Fee revenues for purposes unrelated to the DROS background check process or APPS-
7 based law enforcement activities.

8 **TENTH CAUSE OF ACTION:**
9 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
10 **Scope of Costs Referred to in Penal Code SECTION 28225⁽¹¹⁾**
11 **(By All Plaintiffs Against DOJ Defendants)**

12 144. All of the above paragraphs are re-alleged and incorporated herein by reference, and
13 this cause of action is pleaded in the alternative to the other causes of action pleaded herein.

14 145. DOJ Defendants contend that, pursuant to Penal Code section 28225, DOJ can use
15 the DROS Fee and DROS Fund monies to recoup, among other things, the costs of defending
16 firearms-related lawsuits brought against DOJ, its lesser bodies, and its employees, including, but
17 not limited to, lawsuits that are not related to the DROS Fee.

18 146. On information and belief, DOJ has been and currently is knowingly utilizing DROS
19 Fee money and the DROS Special Account for expenditures that are outside the scope of what the
20 legislature intended when it added the following language to Penal Code section 12076 [section
21 28225's predecessor] in 2003, which states that costs to be considered in setting the amount of the
22 DROS Fee included “firearms-related regulatory and enforcement activities related to the sale,
23 purchase, loan, or transfer of firearms[.]”

24 147. In 2003, the legislature only intended the new language being added to then Penal
25 Code section 12076 (“firearms-related regulatory and enforcement activities related to the sale,
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27 ¹¹ In 2011, the word “possession” was added to Penal Code section 28225. Judge
28 Michael P. Kenny’s prior ruling on the Ninth Cause of Action herein addresses the meaning of
that word, so this cause of action concerns the portion of the clause at issue that predates the
inclusion of the word “possession.”

1 purchase, loan, or transfer of firearms”) to address the costs of certain specific activities that were
2 clearly identified at the time of the addition; namely, costs incurred: (1) for the verification of
3 licensure provisions for transfers of firearms from out-of-state to in-state licensed gun dealers; (2)
4 for the inspection of dangerous device permit holders; and (3) for certain handgun safety testing.

5 148. An actual controversy exists between the parties hereto in that Plaintiffs believe that
6 DOJ has been and currently is using DROS Special Account Fund monies to pay for attorney
7 services and other expenses not authorized by Penal Code section 28225, and DOJ disagrees.

8 149. DOJ continues to utilize DROS Fee revenues to fund, inter alia, services provided by
9 its own attorneys pursuant to an incorrect interpretation of Penal Code section 28225. Thus,
10 declaratory relief on the correct interpretation of Penal Code section 28225 is appropriate not only
11 to end improper appropriations of DROS Fee monies currently occurring, but also to prevent a
12 multiplicity of future litigation concerning other allegedly improper appropriations stemming
13 from an incorrect interpretation of Penal Code section 28225.

14 150. Plaintiffs desire a judicial determination that Penal Code section 28225, and
15 specifically the language added in 2003 to what was then Penal Code section 12076
16 (“firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or
17 transfer of firearms”) does not authorize the use of DROS Special Account funds on attorney
18 services or any other expenses beyond those that the legislature clearly intended, and confirming
19 that, as to the 2003 change, the legislature only intended to address costs incurred: (1) for the
20 verification of licensure provisions for transfers of firearms from out-of-state to in-state licensed
21 gun dealers; (2) for the inspection of dangerous device permit holders; and (3) for certain handgun
22 safety testing.

23 151. Plaintiffs desire an injunction prohibiting Defendants from utilizing DROS Fee
24 revenues for purposes unrelated to the costs actually identified when the relevant statutory
25 language was added to Penal Code section 12076 [now section 28225] in 2003, i.e., costs
26 incurred: (1) for the verification of licensure provisions for transfers of firearms from out-of-state
27 to in-state licensed gun dealers; (2) for the inspection of dangerous device permit holders; and (3)
28 for certain handgun safety testing.

1 **ELEVENTH CAUSE OF ACTION:**
2 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
3 **Violation of the Separation of Powers Doctrine; Cal. Const., art. III, § 3**
4 **(By All Plaintiffs Against DOJ Defendants)**

5 152. All of the above paragraphs are re-alleged and incorporated herein by reference, and
6 this cause of action is pleaded in the alternative to the other causes of action pleaded herein.

7 153. If the Legislature did intend to grant DOJ the power to collect money to support non-
8 regulatory costs within the total amount charged as the "DROS Fee," which was intended to be a
9 regulatory fee only, that would mean that the Legislature improperly delegated its taxation
10 authority to DOJ, as DOJ only has the power to set pure regulatory fees, and not levies that, like
11 the DROS Fee, are being set and collected based on both regulatory costs and general fund costs.

12 154. The Legislature is not permitted to delegate its taxation authority. Cal. Const., art.
13 III, § 3; *Sav. & Loan Soc. v. Austin*, 46 Cal. 415, 515 (1873) (Wallace, C.J., concurring but
14 dissenting in part) (noting that "the power to lay taxes under our system is one of the powers of
15 Government which does not belong to either the executive or the judicial department, [a]nd . . .
16 the right to exercise this power cannot be delegated is self-evident.").

17 155. If, regardless of Plaintiffs' argument that DOJ is relying on an incorrectly broad
18 interpretation of Penal Code section 28225, this Court finds Penal Code section 28225 is as broad
19 as DOJ claims, then an actual controversy exists between the parties hereto in that Plaintiffs
20 contend that Penal Code section 28225 necessarily includes an improper delegation of the
21 Legislature's taxation authority, and DOJ is believed to disagree with that conclusion.

22 156. To the extent the legislature intended to grant DOJ the broad authority to collect
23 non-regulatory levies under the guise of the DROS Fee, Plaintiffs seek declaratory relief on the
24 scope of that section, e.g., to what extent it allows DOJ to use the DROS Fee to fund non-
25 regulatory activities, and whether it includes an improper delegation of a power that is exclusive
26 to the Legislature; such relief is appropriate not only to end improper appropriations currently
27 occurring, but to prevent a multiplicity of litigation concerning the nebulous group of cost being
28 funded via DROS Fee money.

157. Plaintiffs desire a judicial determination of the rights and duties of the parties,

1 including a declaration that as to whether DOJ's broad interpretation of Section 28225 is correct,
2 and if so, that the Legislature has delegated its taxation authority in violation of the law.

3 158. Plaintiffs have been and are continuously irreparably injured by DOJ imposing taxes
4 that it lacks the authority to impose, not only because it violates the separation of powers doctrine,
5 but because Plaintiffs have paid inflated DROS Fees that were being used to fund general fund
6 expenses.

7 159. Plaintiffs further desire an injunction prohibiting DOJ from utilizing DROS Fee
8 revenues obtained via a an illegally imposed tax pursuant to an improper delegation of the
9 Legislature's taxation authority; e.g., the portion of the DROS Fee currently being charged that is
10 not legitimately related to a regulatory function that can be considered in setting the DROS Fee.

11 **PRAYER**

12 WHEREFORE PLAINTIFFS pray for relief as follows:

13 1) For a declaration that there is no legal authorization for DOJ Defendants to use funds
14 collected from the "DROS Fee" before Senate Bill 819 went into effect on January 1, 2012, for
15 regulating the "possession" of firearms pursuant to section 28225(b)(11) [12076(e)(10)];

16 2) Alternatively, for a preliminary and permanent prohibitory injunction forbidding DOJ
17 Defendants and their agents, employees, officers, and representatives, from receiving or using any
18 monies collected from the "DROS Fee" before Senate Bill 819 went into effect on January 1,
19 2012, that were appropriated to them via SB 140 for purposes of regulating the "possession" of
20 firearms pursuant to section 28225(b)(11) [12076(e)(10)];

21 3) For a preliminary and permanent prohibitory injunction forbidding Defendant
22 Controller and his agents, employees, officers, and representatives, from appropriating any funds
23 from the DROS Special Account to DOJ Defendants pursuant to SB 819 or SB 140, limited to
24 funds that were collected prior to Senate Bill 819 going into effect on January 1, 2012;

25 4) Alternatively, to the extent the Court believes a writ of mandate is appropriate rather
26 than an injunction, for a peremptory writ of mandate ordering Defendant State Controller and his
27 agents, employees, officers, and representatives, to refrain from appropriating any funds from the
28 DROS Special Account to DOJ Defendants pursuant to SB 819 or SB 140, limited to funds that

1 were collected prior to Senate Bill 819 going into effect on January 1, 2012;

2 5) For a peremptory writ of mandate ordering Defendant State Controller and his agents,
3 employees, officers, and representatives, to recoup any funds that Defendant State Controller has
4 already appropriated to DOJ Defendants pursuant to SB 140, as to funds that were collected prior
5 to Senate Bill 819 going into effect on January 1, 2012;

6 6) For a peremptory writ of mandate ordering DOJ Defendants and their agents,
7 employees, officers, and representatives, to return any and all funds they may have received
8 pursuant to Senate Bill 140, as to funds that were collected prior to Senate Bill 819 going into
9 effect on January 1, 2012.

10 7) For a peremptory writ of mandate ordering DOJ Defendants and their agents,
11 employees, officers, and representatives, to review the DROS Fee as currently imposed to
12 determine whether the amount is "no more than is necessary" to cover its costs for the DROS
13 program;

14 8) For a preliminary and permanent prohibitory injunction forbidding DOJ Defendants and
15 their agents, employees, officers, and representatives, from imposing the "DROS Fee" as
16 currently imposed, at least until the required review is conducted by DOJ and the appropriate
17 amount for the DROS Fee is established;

18 9) For a declaration that the 2003 amendment to Penal Code section 12076 (now section
19 28225) did not authorize DROS Special Account funds to be spent on attorney services or any
20 other expenses beyond those actually intended to be addressed by the legislature's adoption of the
21 relevant statutory language (i.e., costs incurred: (1) for the verification of licensure provisions for
22 transfers of firearms from out-of-state to in-state licensed gun dealers; (2) for the inspection of
23 dangerous device permit holders; and (3) for certain handgun safety testing);

24 10) For a declaration that states, in setting the DROS Fee, Penal Code section 28225 only
25 allows DOJ to consider regulatory costs, and further defines regulatory costs in a way that
26 recognizes the incidental nature of regulatory fees, and in a way that necessarily excludes
27 attorneys fees;

28 11) For an injunction prohibiting DOJ Defendants from utilizing DROS Fee revenues for

1 purposes unrelated to the costs actually identified when the relevant statutory language was added
2 to Penal Code section 12076 [now section 28225]; specifically costs incurred: (1) for the
3 verification of licensure provisions for transfers of firearms from out-of-state to in-state licensed
4 gun dealers; (2) for the inspection of dangerous device permit holders; and (3) for certain handgun
5 safety testing;

6 12) In the event the Court finds that, as to Penal Code section 28225, the legislature
7 intended to grant DOJ the ability to use a regulatory fee (i.e., the DROS Fee) to levy and collect
8 money to defray costs of non-regulatory activities, a declaration that the legislature's delegation
9 of its taxation authority violates the nondelegation and separation of powers doctrine;

10 13) For a writ of mandate ordering DOJ Defendants and their agents, employees, officers,
11 and representatives, to review the DROS Fee, as currently imposed, to determine whether the
12 amount is "no more than is necessary" to cover its costs related to the regulatory activities that
13 Penal Code section 28225 was legislatively intended to reference;

14 14) For a writ of mandate ordering DOJ to identify in reasonable details all categories of
15 costs it currently pays for with DROS Fund money, limited to costs DOJ claims are regulatory in
16 nature.

17 15) For an award of reasonable attorneys' fees, costs, and expenses pursuant to California
18 Code of Civil Procedure § 1021.5 and/or other applicable law;

19 16) For such other and further relief as the Court may be just and proper;

20 17) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII,
21 section 1(b) of the California Constitution and is thus void;

22 18) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII,
23 section 2 of the California Constitution and is thus void;

24 19) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII,
25 section 3(m) of the California Constitution and is thus void; and

26 ///

27 ///

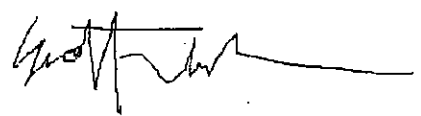
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20) Alternatively, for a declaration confirming Senate Bill 819 authorizes DOJ to use DROS Special Account funds for nothing other than costs specifically incurred as the result of APPS-based law enforcement activities, and an injunction on spending based on such declaration.

Dated: May 31, 2018

MICHEL & ASSOCIATES. P.C.



Scott M. Franklin
Attorney for Plaintiffs

EXHIBIT 2

1 KAMALA D. HARRIS
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 ANTHONY R. HAKL, State Bar No. 197335
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7 *Attorneys for Defendants and Respondents*

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

11
12 **DAVID GENTRY, JAMES PARKER,
MARK MID LAM, JAMES BASS, and
13 CALGUNS SHOOTING SPORTS
ASSOCIATION,**

14 Plaintiffs and Petitioners,

15 v.

16
17 **KAMALA HARRIS, in Her Official
Capacity as Attorney General for the State
18 of California; STEPHEN LINDLEY, in His
Official Capacity as Acting Chief for the
19 California Department of Justice, JOHN
CHLANG, in his official capacity as State
20 Controller, and DOES 1-10,**

21 Defendants and Respondents.
22

Case No. 34-2013-80001667

**DEFENDANTS ATTORNEY GENERAL
KAMALA HARRIS AND BUREAU OF
FIREARMS CHIEF STEPHEN
LINDLEY'S RESPONSES TO
REQUESTS FOR ADMISSIONS
(SET ONE)**

23 **PROPOUNDING PARTY: PLAINTIFFS**

24 **RESPONDING PARTY: DEFENDANTS ATTORNEY GENERAL KAMALA
HARRIS AND BUREAU OF FIREARMS CHIEF
25 STEPHEN LINDLEY**

26 **SET NUMBER: ONE**
27
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 81:**

2 Defendant objects to this request. It seeks information protected by the attorney-client
3 privilege and work product doctrine. It also incorporates Penal Code section 28225(c) by
4 reference. Thus, the request is not “separate and complete in and of itself,” contains subparts, and
5 is compound. The request also requires referring to other documents in order to respond.

6 **REQUEST FOR ADMISSION NO. 82:**

7 Admit that, in 2010, CAL DOJ created a document that utilized specific cost data in
8 evaluating whether \$19.00 was appropriate for the DROS FEE.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 82:**

10 Defendants object to this request. The use of the phrase “specific cost data” here is vague
11 and ambiguous. Without waiving this objection, defendants respond as follows:

12 Defendants admit that the relevant regulatory package from 2010 provides an evaluation
13 of the whether the \$19.00 DROS fee is appropriate.

14 **REQUEST FOR ADMISSION NO. 83:**

15 Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the
16 DROS PROCESS place an unusual burden on the general public as to the illegal possession of
17 firearms.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 83:**

19 Defendants object to this request. It is irrelevant, defendants having admitted that the use
20 of DROS funds does not operate as a tax. The request is also an improper use of the request for
21 admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need
22 for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56
23 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal
24 issue implicated by this request becomes relevant, defendants will contest the issue at trial. The
25 request for admission device is not intended to provide a windfall to litigants in granting a
26 substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court*
27 (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is “calculated to compel admissions as to all
28

1 things that cannot reasonably be controverted” not to provide “gotcha,” after-the-fact penalties for
2 pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d
3 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 [“Although the admissions
4 procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at
5 issue here did not include issues as to which the parties might conceivably agree.”], superseded
6 by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22
7 Cal.App.4th 60, 64–65.)

8 **REQUEST FOR ADMISSION NO. 84:**

9 Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the
10 DROS PROCESS do not place an unusual burden on the general public as to the illegal
11 possession of firearms.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 84:**

13 Defendants object to this request. It is irrelevant, defendants having admitted that the use
14 of DROS funds does not operate as a tax. The request is also an improper use of the request for
15 admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need
16 for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56
17 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal
18 issue implicated by this request becomes relevant, defendants will contest the issue at trial. The
19 request for admission device is not intended to provide a windfall to litigants in granting a
20 substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court*
21 (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is “calculated to compel admissions as to all
22 things that cannot reasonably be controverted” not to provide “gotcha,” after-the-fact penalties for
23 pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d
24 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 [“Although the admissions
25 procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at
26 issue here did not include issues as to which the parties might conceivably agree.”], superseded
27

VERIFICATION

I, Stephen Lindley, declare

I am the Chief of the Bureau of Firearms of the California Department of Justice. I have read DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S RESPONSES TO REQUESTS FOR ADMISSIONS (SET ONE). I know their contents and the same are true to my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Verification was executed on August 12, 2014, at San Diego, California.


STEPHEN LINDLEY

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

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; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On August 1, 2014, I served the attached

DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S RESPONSES TO FORM INTERROGATORIES (SET ONE)

DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S RESPONSES TO SPECIAL INTERROGATORIES (SET ONE)

DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S RESPONSES TO REQUESTS FOR ADMISSIONS (SET ONE)

DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS (SET ONE)

DEFENDANT STATE CONTROLLER JOHN CHIANG'S RESPONSES TO SPECIAL INTERROGATORIES (SET ONE)

DEFENDANT STATE CONTROLLER JOHN CHIANG'S RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS (SET ONE)

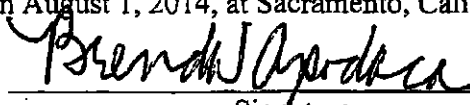
by placing a true copy thereof enclosed in a sealed envelope with the Golden State Overnight courier service, addressed as follows:

C.D. Michel
Glenn S. McRoberts
Sean A. Brady
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

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 August 1, 2014, at Sacramento, California.

Brenda Apodaca

Declarant



Signature

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
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6 Telephone: (916) 210-6065
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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
20 of California; STEPHEN LINDLEY, in His
21 Official Capacity as Acting Chief for the
California Department of Justice, Betty T.
Yee, in her official capacity as State
22 Controller, and DOES 1-10,**

23 Defendants and
24 Respondents.
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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.

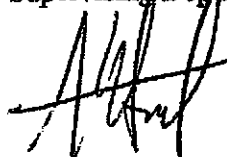
27 The interrogatory is also objectionable because it is tantamount to demanding defendants
28 brief the merits of the remaining causes of action in this case, which plaintiffs initiated. The

1 505, which concerns the APPS program, is "split funded," meaning 50% of the funding is from
2 the DROS special account and 50% is from the Firearms Safety and Enforcement Fund.

3
4 Dated: December 12, 2017

Respectfully Submitted,

XAVIER BECERRA
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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EXHIBIT 3

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

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

Plaintiffs and
Petitioners,

vs.

Case No. 34-2013-80001667

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 YEE, in
Her Official Capacity as
State Controller for the
State of California and
DOES 1-10,

Defendants and
Respondents.

/ DEPOSITION OF

STEPHEN J. LINDLEY

May 24, 2017

9:52 a.m.

1300 I Street
Sacramento, California

LAURIE D. LERDA, CSR No. 3649

1 Q. So, do you have any understanding as to how
2 much DROS Special Account money has been spent
3 defending firearm-related litigation in say the last
4 ten years?

5 A. Off the top of my head I don't. That's --
6 we probably have that documented someplace.

7 Q. Do you think it's reasonable to estimate
8 it's, you know, somewhere in the millions?

9 A. It's in the millions.

10 Q. You say that definitively.

11 A. Yes.

12 MR. HAKL: You guys bring a lot of lawsuits.

13 BY MR. FRANKLIN:

14 Q. I don't know who guys you're referring to.

15 Do you have an understanding as to whether
16 or not there's a way, a specific way for someone
17 reviewing department financial records to calculate
18 how much DROS Special Account money is spent on
19 attorneys in a given year?

20 A. Yes.

21 Q. Can you explain to me how that would be
22 done?

23 A. So there would be at least two ways.

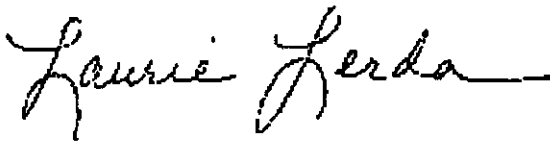
24 The bureau has different line items in each
25 of our what we call our cost codes.

1 REPORTER'S CERTIFICATION

2
3 I, Laurie D. Lerda, a Certified Shorthand
4 Reporter in and for the State of California, do
5 hereby certify:
6

7 That the foregoing witness was by me duly sworn;
8 that the deposition was then taken before me at the
9 time and place herein set forth; that the testimony
10 and proceedings were reported stenographically by me
11 and later transcribed into typewriting under my
12 direction; that the foregoing is a true record of the
13 testimony and proceedings taken at that time.
14

15 IN WITNESS WHEREOF, I have subscribed my name
16 this 1st day of June, 2017.

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20 Laurie D. Lerda, CSR No. 3649
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

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DAVID GENTRY, JAMES
PARKER, MARK MIDLAM,
JAMES BASS, and CALGUNS
SHOOTING SPORTS
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KAMALA HARRIS, in Her
Official Capacity as
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STEPHEN LINDLEY, in His
Official Capacity as
Acting Chief for the
California Department of
Justice, BETTY YEE, in
Her Official Capacity as
State Controller for the
State of California and
DOES 1-10,

Defendants and
Respondents.

_____ /

DEPOSITION OF
DAVID SCOTT HARPER
January 30, 2017
8:46 a.m.
1300 I Street
Sacramento, California

LAURIE D. LERDA, CSR No. 3649

1 question. Assuming all other revenue and expenditure
2 amounts are consistent, if the department has an
3 increase in costs related to APPS-based law
4 enforcement, is it your understanding that the
5 department could increase the amount of the fee
6 because of that increase in APPS-based law
7 enforcement costs?

8 MR. HAKL: Objection. Vague as to
9 APPS-based law enforcement costs, but you can answer.

10 THE WITNESS: So my understanding would be
11 yes. If the department chose to expand the APPS
12 unit, the enforcement unit, that they could choose to
13 increase the fee to pay for that expansion provided
14 the legislature provided the additional spending
15 authority to go along with the fee increase.

16 BY MR. FRANKLIN:

17 Q. And the spending authority would be in the
18 Budget Act?

19 A. Correct.

20 Q. And I think you've already answered this
21 question. Looking at total revenue and expenditures
22 going in and out of the DROS Special Account, is that
23 the method used for monitoring the amount of reserve
24 in that account?

25 A. That's a component of it, yes.

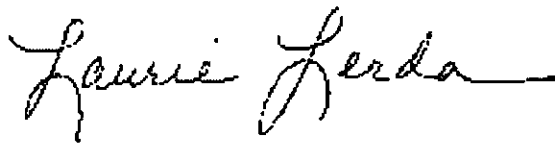
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REPORTER'S CERTIFICATION

I, Laurie D. Lerda, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 7th day of February, 2017.



Laurie D. Lerda, CSR No. 3649

EXHIBIT 4


Laura Palmerin

From: Scott Franklin <SFranklin@michellawyers.com>
Sent: Sunday, May 27, 2018 12:14 PM
To: 'Anthony Hakl'
Cc: Laura Palmerin
Subject: RE: Proposed briefing schedule (Gentry) [MA-Interwoven.FID53479]

Mr. Hakl:

I don't know if your email below got lost in the shuffle, but I want to confirm, perhaps again, the dates you proposed in the email below are acceptable and we will calendar them accordingly.

Thanks,

<p>Scott Franklin Of Counsel</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4474 Main: (562) 216-4444 Fax: (562) 216-4445 Email: SFranklin@michellawyers.com Web: www.michellawyers.com</p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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From: Anthony Hakl [mailto:Anthony.Hakl@doj.ca.gov]
Sent: Tuesday, April 17, 2018 11:26 AM
To: Scott Franklin <SFranklin@michellawyers.com>
Cc: Laura Palmerin <lpalmerin@michellawyers.com>
Subject: RE: Proposed briefing schedule (Gentry) [MA-Interwoven.FID53479]

Can we adjust two dates as follows:

- August 6** – Answer (if this is required, though I don't see a practical reason why it would be) and Defendants' Supplemental Brief on Plaintiffs' new COAs
- August 13** – Plaintiffs' Supplemental Brief on new COAs.

I return to the office on July 23, and I know I will be jammed that week – making a July 30 deadline less than ideal. And that still gives the court 11 days before the hearing.

Anthony R. Hakl
Deputy Attorney General | Government Law Section
California Department of Justice
1300 I Street, 17th Floor | Sacramento, CA 95814
Phone: 916.210.6065 | Fax: 916.324.8835
anthony.hakl@doj.ca.gov

From: Scott Franklin [mailto:SFranklin@michellawyers.com]
Sent: Tuesday, April 17, 2018 11:18 AM
To: Anthony Hakl <Anthony.Hakl@doj.ca.gov>
Cc: Laura Palmerin <lpalmerin@michellawyers.com>
Subject: Proposed briefing schedule (Gentry) [MA-Interwoven.FID53479]


Mr. Hakl:

I found my notes on this. Here is what I propose.

- a. May 31 – Motion for Leave to Amend
- b. June 11 – Opposition
- c. June 15 – Reply
- d. June 22 – hearing (the dates above are per the code); filing and in-person service of Amended Complaint (assuming the motion is granted)
- e. July 30 – Answer (if this is required, though I don't see a practical reason why it would be) and Defendants' Supplemental Brief on Plaintiffs' new COAs
- f. August 6 – Plaintiffs' Supplemental Brief on new COAs.
- g. August 24 – Trial

Let me know if this does not work for you.

Thanks.

<p>Scott Franklin Of Counsel</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental · Land Use · Firearms · Employment Law Civil Litigation · Criminal Defense</p>	<p>Direct: (562) 216-4474 Main: (562) 216-4444 Fax: (562) 216-4445 Email: SFranklin@michellawyers.com Web: www.michellawyers.com</p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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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 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 May 31, 2018, I served a true and correct copy of the foregoing document(s) described as:

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND SECOND AMENDED PETITION FOR WRIT OF MANDAMUS

on the interested parties in this action as follows:

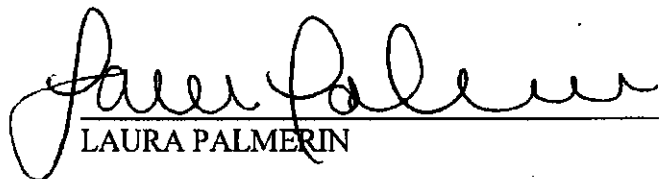
Anthony R. Hakl
anthony.hakl@doj.ca.gov
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

X **(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 May 31, 2018, at Long Beach, California.

X **(VIA ELECTRONIC MAIL)** As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on May 31, 2018, at Long Beach, California.

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

 (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.


LAURA PALMERIN