

BY FAX

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**FILED/ENDORSED**  
**JUN 21 2018**  
By: H. Portalanza  
Deputy Clerk

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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

13 Plaintiffs and Petitioners,

14 v.

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

20 Defendants and Respondents.

Case No. 34-2013-80001667

**SECOND SUPPLEMENTAL 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**

Hearing Date: June 22, 2018  
Hearing Time: 10:00 a.m.  
Judge: Honorable Richard K. Sueyoshi  
Dept.: 28

Trial Date: August 24, 2018  
Action Filed: October 16, 2013

1                   **SECOND SUPPLEMENTAL DECLARATION OF SCOTT M. FRANKLIN**

2           I, Scott M. Franklin, declare:

3           1.       I am an attorney at law admitted to practice before all courts of the state of  
4 California. I have personal knowledge of each matter and the facts stated herein as a result of my  
5 employment with Michel & Associates, P.C., attorneys for Plaintiffs/Petitioners (“Plaintiffs”),  
6 and if called upon and sworn as a witness, I could and would testify competently thereto.

7           2.       Pursuant to California Rules of Court Rule 3.1324(a)(3), which requires a party  
8 seeking leave to amend to “State what allegations are proposed to be added to the previous pleading,  
9 if any, and where, by page, paragraph, and line number, the additional allegations are located[,]” the  
10 proposed new material presented in the Second Amended Complaint (attached as Exhibit 1 to the  
11 Declaration of Scott Franklin in Support of Motion for Leave to File Second Amended Complaint for  
12 Declaratory and Injunctive Relief and Second Amended Writ of Mandamus) is at paragraphs 144-159  
13 (lines 25:8-28:10), and in the prayer at paragraphs 9-14 (lines 29:18030:16).

14           3.       California Rules of Court Rule 3.1324(b) requires that a declaration accompanying  
15 a motion for leave to amend must specify: “(1) the effect of the amendment; (2) Why the  
16 amendment is necessary and proper; (3) when the facts giving rise to the amended allegations  
17 were discovered; and (4) the reasons why the request for amendment was not made earlier.”  
18 These topics are addressed in the following paragraphs.

19           4.       As to the first issue, the effect of the amendment will be to add two new causes of  
20 action to the operative complaint, along with related additions to the prayer as to the relief sought  
21 in the two new causes of action. Specifically, the first new cause of action will be the Tenth  
22 Cause of Action, which is based on an allegation that the California Department of Justice is  
23 relying on an improper interpretation of certain language in Penal Code Section 28225 when  
24 considering what can be: (1) funded from the Dealers’ Record of Sale (“DROS”) Special Account  
25 of the General Fund (“DROS Fund”), and (2) what categories of costs can be utilized in setting  
26 the amount of DROS Fee. The second new cause of action will be the Eleventh Cause of Action,  
27 and it concerns whether the Legislature’s grant of power in Penal Code Section 28225, as  
28 interpreted by the Department, constituted an illegal delegation of the Legislature’s non-delegable

1 authority to tax.

2 5. As to the second issue, the second amended complaint is necessary because,  
3 without it, Plaintiffs would not be able to raise two meritorious claims that are much related to the  
4 extant claims herein, such that, if raised in a separate action, there is the clear possibility of  
5 inconsistent judgments. And amendment is proper because it will not delay trial, it will not cause  
6 defendants any prejudice (.e.g., the amendment does not require discovery to be reopened), and  
7 because it clearly would serve the ends of judicial economy as compared to a second suit being  
8 brought based on the two causes of action at issue.

9 6. As to the third issue, the facts giving rise to the amended allegations could have  
10 been discovered during two depositions occurring January 30, 2017, and May 25, 2017. I am not  
11 sure exactly when I realized the existence of the two proposed arguments, but based on a review  
12 of my Westlaw research history, it seems the latest I actually became aware of the two proposed  
13 causes of action was mid-January 2018, when I was drafting Plaintiffs' opening brief on the  
14 merits.

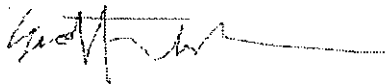
15 7. It is important to note that, at the time of the relevant depositions, as the result of a  
16 suggestion by Judge Michael P. Kenny, the parties were briefing the two bifurcated causes of  
17 action (the Fifth and Ninth Causes of Action), because Judge Kenny thought that some of the  
18 other causes of action might become moot depending on how he ruled on the bifurcated issues.  
19 (Dkt. 115, Order Bifurcating Action, dated November 24, 2016). In his ruling of August 9, 2017,  
20 Judge Kenny found in Plaintiffs' favor on both causes of action. (Dkt. 150.) Thus, although  
21 Plaintiffs could have hypothetically sought leave to amend between the depositions and the ruling  
22 issued, I would not have done so, as in my opinion, it would have been directly counter to Judge  
23 Kenny's expressed intent to deal with the bifurcated issues before dealing with any other "big  
24 picture" issues.

25 8. Of similar importance is that, as of ruling of August 9, 2017, several discovery  
26 disputes that were put on hold previously (Dkt. 115) became active again. And while the parties  
27 were trying to resolve those disputes, the court set this matter for trial during an information  
28 status conference held September 4, 2017. Thus, I believe that, practically speaking, the earliest it

1 would have been reasonable to file a motion for leave to file an amended complaint was August  
2 10, 2017.

3 9. As to the fourth issue, I believe the reason leave to amend was not sought earlier  
4 because, prior to the ruling on the bifurcated issues, I was focused on those issues, and not what  
5 was going to be "left over" once the bifurcated issues were ruled upon. I suspect that if I did  
6 identify the new causes of action while drafting Plaintiffs' opening trial brief, it was because that  
7 process required me to look at the statements made in the broader context of this case, not the  
8 bifurcated issues that were ruled a few months after the relevant depositions.

9 10. I declare under penalty of perjury under the laws of California that the foregoing is  
10 true and correct, and that this Declaration was executed on June 21, 2018, in Glendale, California.

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15 Scott M. Franklin  
16 Declarant  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

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

On June 21, 2018, the foregoing document described as:

**SECOND SUPPLEMENTAL 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 by placing  
 the original  
 a true and correct copy  
thereof enclosed in sealed envelope(s) addressed as follows:

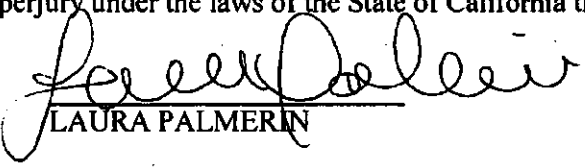
Anthony R. Hakl  
anthony.hakl@doj.ca.gov  
Deputy Attorney General  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550

*Attorney for Defendants*

**(BY ELECTRONIC MAIL)** As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error. Executed on June 21, 2018, at Long Beach, California.

**(BY MAIL)** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit. Executed on June 21, 2018, at Long Beach, California.

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

  
LAURA PALMERIN