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10 Attorneys for Plaintiffs

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF SACRAMENTO

13 DAVID GENTRY, JAMES PARKER,
14 MARK MIDLAM, JAMES BASS, and
15 CALGUNS SHOOTING SPORTS
16 ASSOCIATION,

17 Plaintiffs and Petitioners,

18 v.

19 XAVIER BECERRA, in His Official
20 Capacity as Attorney General for the State
21 of California; STEPHEN LINDLEY, in
22 His Official Capacity as Acting Chief for
23 the California Department of Justice,
24 BETTY T. YEE, in Her Official Capacity
25 as State Controller, and DOES 1 - 10,

26 Defendants and Respondents.

FILED/ENDORSED

DEC 04 2018

By: K. Fay
Deputy Clerk

Case No. 34-2013-80001667

**DECLARATION OF SCOTT M. FRANKLIN
IN SUPPORT OF PLAINTIFFS' OPENING
TRIAL BRIEF**

Hearing/Trial Date: January 18, 2019

Hearing Time: 11:00 a.m.

Judge: Honorable Richard K. Sueyoshi

Dept.: 28

Action Filed: October 16, 2013

BY FAX

1 819 (Leno) APPS Enforcement - Q & A” obtained from Senator Leno’s file for SB 819 via
2 Legislative Intent Service.

3 11. Based on conversations with opposing counsel and my review of this state’s
4 publicly available budget documents for the fiscal years 2012-13 through 2017-18, I assume that
5 all of the \$24 million appropriated via Senate Bill 140 (Leno, 2013) has been spent by the
6 Department, but I have not received express confirmation on this point. Attached hereto as
7 Exhibit 10 is a true and correct copy of then-Attorney General Kamala Harris’ letter to the
8 legislature suggesting the Senate Bill 140 appropriate was going to soon “expire[.]”

9 12. Attached hereto as Exhibit 11 is a true and correct copy of a group of documents
10 titled “DOJ Programs Funded with DROS Special Fund” that cover fiscal years 2003-04 through
11 2015-16. These documents were produced in response to discovery requests propounded on the
12 Defendants in this case or *Bauer v. Harris*, 1:11-CV-1440-LJO MJS (E.D. Cal.).

13 13. Attached hereto as Exhibit 12 is a set of pie charts created by my office that
14 graphically represents the salient data presented in Exhibit 11.

15 14. Attached hereto as Exhibit 13 is a true and correct copy of excerpts of the
16 California Department of Justice’s Biennial Report for 2015-2016.

17 15. Attached hereto as Exhibit 14 is a true and correct copy of the file-stamped first
18 page of the first Complaint filed herein.

19 16. Attached hereto as Exhibit 15 is a true and correct copy of the Order issued in this
20 Action by Judge Michael P. Kenny on July 20, 2015.

21 17. Attached hereto as Exhibit 16 is a true and correct copy of the Order issued in this
22 Action by Michael P. Kenny on December 11, 2016; though denominated a tentative ruling, it
23 became a final ruling by operation of law, pursuant to Sacramento Superior Court Local Rule
24 1.06.

25 18. Attached hereto as Exhibit 17 is a true and correct copy of excerpts from
26 Plaintiffs’ Opposition to Defendants’ Motion for Judgment on the Pleadings.

27 19. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of the
28 Stipulation and Order of November 4, 2016, filed in this matter.

1 20. Attached hereto as Exhibit 19 is a true and correct copy of excerpts of the
2 Amended Complaint Plaintiffs filed herein on December 30, 2015.

3 21. Attached hereto as Exhibit 20 is a true and correct copy of the Initial Statement of
4 Reasons published by the Department concerning the rulemaking it proposed in 2010 that would
5 have reduced the "\$19 DROS fee to \$14, commensurate with the actual cost of processing a
6 DROS."

7 22. Attached hereto as Exhibit 21 is a true and correct copy of excerpts of Defendants'
8 Amended Responses to Form Interrogatories, Set Three, wherein Defendants admit that the
9 "decision referred to [i.e., the decision to abandoned the 2010 fee reduction rulemaking] did not
10 become final until approximately October of 2011, when SB 819 became law."

11 23. Attached hereto as Exhibit 22 is a true and correct copy of excerpts of the order
12 issued in this Action by Judge Michael P. Kenny on August 9, 2017.

13 24. Attached hereto as Exhibit 23 is a true and correct copy of excerpts of Defendants'
14 Opposition to Plaintiffs' Motion for Adjudication.

15 25. Attached hereto as Exhibit 24 is a true and correct copy of excerpts of Defendants'
16 Amended Responses to Requests for Admissions (Set One).

17 26. Attached hereto as Exhibit 25 is a true and correct copy of excerpts of Defendants'
18 Responses to Special Interrogatories (Set One).

19 27. Attached hereto as Exhibit 26 is a true and correct copy of excerpts of Defendants'
20 Second Amended Response to Special Interrogatories (Set Two). During an informal discovery
21 conference in Judge Michael P. Kenny's chambers held about a year ago, I pointed out that, as
22 stated in Exhibit 26, Defendants had promised to provide the "Per Transaction Cost" for
23 processing a DROS Application over a year prior to the conference. In response, Defendants'
24 counsel, Anthony Hakl, made it clear that the Defendants were not going to follow through on
25 their promise.

26 28. Attached hereto as Exhibit 27 is a true and correct copy of excerpts of Defendants'
27 First Amended Responses to Requests for Admissions (Set Three).

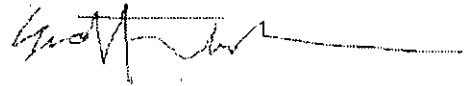
28 29. Attached hereto as Exhibit 28 is a true and correct copy of excerpts of Defendants'

1 Responses to Special Interrogatories (Set Six).

2 30. Attached hereto as Exhibit 29 is a true and correct copy of excerpts of the Report
3 of the Senate Public Safety Committee for the hearing of April 24, 2001, regarding SB 950
4 (Brulte, 2001).

5 31. Attached hereto as Exhibit 30 is a true and correct copy of excerpt of Defendants'
6 Third Amended Responses to Form Interrogatories (Set One).

7 I declare under penalty of perjury under the laws of California that the foregoing is true
8 and correct, and that this Declaration was executed on December 4, 2018, in Glendale, California.

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11 _____
12 Scott M. Franklin
13 Declarant
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EXHIBIT 1

1 XAVIER BECERRA
 Attorney General of California
 2 STEPAN A. HAYTAYAN
 Supervising Deputy Attorney General
 3 ANTHONY R. HAKL
 Deputy Attorney General
 4 State Bar No. 197335
 1300 I Street, Suite 125
 5 P.O. Box 944255
 Sacramento, CA 94244-2550
 6 Telephone: (916) 322-9041
 Fax: (916) 324-8835
 7 E-mail: Anthony.Hakl@doj.ca.gov
 Attorneys for Defendants and Respondents

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

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 capacity
 as Attorney General for the State of
 19 California; STEPHEN LINDLEY, in his
 official capacity as Director of the California
 20 Department of Justice Bureau of Firearms;
 BETTY T. YEE, in her official capacity as
 21 State Controller, and DOES 1-10,

22 Defendants and
 23 Respondents.

Case No. 34-2013-80001667

DEFENDANTS' RESPONSE TO
 PLAINTIFFS' SEPARATE STATEMENT
 IN SUPPORT OF MOTION FOR
 ADJUDICATION¹

Date: August 4, 2017
 Time: 9:00 a.m.
 Dept: 31
 Judge: The Honorable Michael P.
 Kenny
 Action Filed: October 16, 2013

24 ¹ As agreed with plaintiffs, defendants have submitted their own separate statement and
 25 offer this response to plaintiffs' separate statement. Defendants note, though, that such
 26 statements may be of limited utility in assessing plaintiffs' writ of mandate and declaratory relief
 27 claims, which are largely legal claims involving statutory construction. (See, e.g., *Gilbertson v.*
 28 *Osman* (1986) 185 Cal.App.3d 3d 308, 315 [trial court may consider merits of summary judgment
 motion despite absence of separate statement where case involves "a single, simple issue" with
 minimal evidentiary support], disapproved on other grounds in *Woods v. Young* (1991) 53 Cal.3d
 315, 320.)

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<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
1	<p>To purchase a firearm in California, qualified individuals must pay a transaction fee known as a Dealer Record of Sale ("DROS") fee ("Fee").</p> <p>Evidence: GENT002</p>	Undisputed.
2	<p>The California Department of Justice (the "Department") performs extensive "background checks" of all applicants seeking to purchase firearms.</p> <p>Evidence: GENT002</p>	Undisputed.
3	<p>The primary purpose of the "DROS Process" is to ensure that people seeking to purchase firearms in California are not legally prohibited from possessing them.</p> <p>Evidence: GENT002</p>	Undisputed.
4	<p>The Fee was \$2.25 in 1982 when it was statutorily created to cover the costs of background checks.</p> <p>Evidence: AGIC007</p>	Undisputed.
5	<p>In 1990, the amount of the DROS Fee was \$4.25.</p> <p>Evidence: GENT003, AGIC007</p>	Undisputed.

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No.	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
6	<p>In 1995, the legislature capped the DROS Fee at \$14.00, subject to Consumer Price Index adjustment.</p> <p>Evidence: GENT003</p>	Undisputed.
7	<p>In 2004, the Department increased the the DROS fee from \$14 to \$19 for the first handgun or any number of rifles or shotguns in a single transaction.</p> <p>Evidence: GENT003</p>	Undisputed.
8	<p>Section 28225 provides the rules for how the Fee should be set, i.e., that the fee "shall be no more than is necessary to fund the following:" eleven classes of costs, based on what the Department determined to be "actual" or "estimated reasonable" costs to pay for the eleven costs classes identified.</p> <p>Evidence: Penal Code § 28225</p>	<p>Disputed. Plaintiffs' description is not a complete and accurate summary of Penal Code §28225, the text of which speaks for itself.</p> <p>Evidence: Penal Code §28225</p>
9	<p>Penal Code section 28225 places a duty on the Department to consider whether the amount currently being charged for the DROS fee is excessive, and the Department; the Department admits it cannot legally increase the DROS fee to an amount the Department believes to be greater than necessary to fund the costs referred to in Penal Code section 28225.</p> <p>Evidence: GENT009-10; GENT034; AGRFP000399</p>	<p>Disputed. Penal Code §28225, the text of which speaks for itself, does not impose a ministerial duty on the Department.</p> <p>Evidence: Penal Code §28225, GENT009-10, GENT034, AGRFP000399</p>
10	<p>The Department deposits DROS fee monies in the "Dealers' Record of Sale Special Account of the General Fund" ("DROS Fund").</p> <p>Evidence: GENT004</p>	Undisputed.

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<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
11	Revenue from multiple fees is pooled in the DROS Fund. Evidence: GENT051-52	Undisputed.
12	Because of that pooling, however, it is impossible to trace if money paid in via a particular fee is actually used for costs related to that particular cost. For example, it is impossible to determine if a cost listed in Penal Code Section 28225 is funded from DROS fee funds, money from a mix of fee sources, or from fee sources exclusive of the DROS fee. Evidence: GENT035-36; GENT051-952	Disputed, but not material. Plaintiffs' description is not an accurate summary of the evidence cited. Evidence: GENT035-36, GENT051-52
13	The Department has claimed herein that it is "unable to admit or deny" whether DROS fee money constitutes a certain percentage of the money in the DROS Special Account. Evidence: GENT035	Disputed, but not material. The cited document does not stand for the proposition claimed by plaintiffs. Evidence: GENT035
14	Internal Department documents the Department was ordered to produce herein show that DROS fee funds are the primary source of money going into the DROS Special Account. Evidence: AGIC032	Undisputed to the extent that this refers to the circumstances in 2005, which is the date of the cited document. Evidence: AGIC032
15	The Department contends that Per Transaction Cost (i.e., the average cost of performing a given transaction, including a proportional share of overhead costs) of the DROS process is currently at least \$19.00. Evidence: GENT011	Disputed, but not material. The cited document does not support the proposition advanced by plaintiffs. Evidence: GENT011

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<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
64	<p>A parenthetical note in the "Q&A" packet also shows that the Department was involved in the revision of SB 819 when it the new Section 1 was added.</p> <p>Evidence: GENT125-27</p>	<p>Disputed, but not material. Many of the details regarding the cited document are not known, included but not limited to its date, author, and any intended recipients.</p> <p>Evidence: GENT125-27 see also Decl. of Anthony R. Hakl in Supp. of Defs.' Mot. for Summ. Adjud. ("Hakl Decl."), Exh. O at pp. 54-58 [discussing the nature of "Q & A" document relied upon by plaintiffs].)</p>
65	<p>APPS is a system that cross-references (1) firearm purchaser background check records and (2) criminal or other records that indicate if an individual is prohibited from possessing firearms.</p> <p>Evidence: GENT102-03; AGIC0050</p>	<p>Undisputed.</p>
66	<p>If the system produces a "hit" that is later verified by human analysis, it provides a basis for law enforcement to contact the person identified to determine that person is illegally possessing a firearm.</p> <p>Evidence: GENT102-03</p>	<p>Undisputed.</p>
67	<p>Senator Leno and the Department worked together extensively in promoting SB 819.</p> <p>Evidence: GENT154A</p>	<p>Disputed, but not material. The cited document does not support plaintiffs' characterization.</p> <p>Evidence: GENT154A</p>
68	<p>While discussing SB 819 with the legislature and the public, Senator Leno and the Department both made it very clear that SB 819 <i>only</i> applied to funding for APPS-based law enforcement activities.</p> <p>Evidence: GENT104; GENT125-127; GENT147-150</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization.</p> <p>Evidence: GENT104; GENT125-127; GENT147-150</p>

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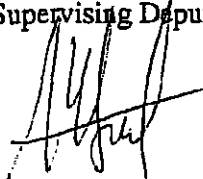
<u>No.</u>	<u>PLAINTIFFS' UNDISPUTED FACT</u>	<u>DEFENDANTS' RESPONSES</u>
77	<p>Once SB 819 became law, the Department started to use the DROS Fund for investigations of people who were <i>not</i> on the APPS list. The Department claims SB 819 authorized DROS Fund money to be spent on law enforcement activities related to removing firearms from the possession of prohibited persons, whereas Plaintiffs contend SB 819 is expressly limited to funding APPS-based law enforcement activities.</p> <p>Evidence: GENT069-71; GENT077 (See also the First Amended Complaint and Answer to the First Amended Complaint.)</p>	<p>Disputed, but not material. The cited documents do not support plaintiffs' characterization in the first sentence. As to the second sentence, it is not a statement of fact, although defendants generally understand the distinction plaintiffs are drawing.</p> <p>Evidence: GENT069-71; GENT077</p>
78	<p>Prior to SB 819, APPS and APPS-based law enforcement activities were funded out of the General Fund.</p> <p>Evidence: GENT40; GENT011; GENT076; GENT095-96; GENT098-99.</p>	<p>Undisputed, although it is not entirely clear what plaintiffs mean by "APPS" as opposed to "APPS-based law enforcement activities." Defendants have explained that "[t]he APPS program was funded with General Fund monies until approximately 2011 (i.e., the passage of SB 819)."</p> <p>Evidence: GENT41</p>
79	<p>The list of costs funded from the DROS Fund but not referred to in section 28225 also includes the cost of legislative analysis done by the department.</p> <p>Evidence: GENT076</p>	<p>Disputed, but not material. The relevant deposition testimony is: "So, if there's a legislation that comes through, we have to produce a bill analysis for both entities or both bureau and the division. So, in the Bureau of Firearms we have staff that would work on that and analyze the impact to the department as it relates to the Bureau of Firearms and their work is paid for out of the DROS account."</p> <p>Evidence: GENT076; see also section 28225, subd. (b)(11)</p>

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Dated: June 30, 2017

Respectfully Submitted,

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

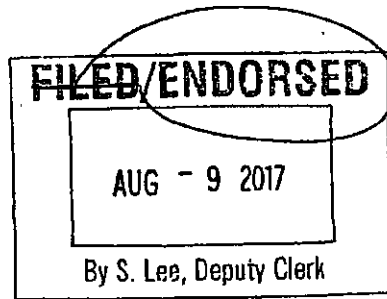


ANTHONY R. HAKL
Deputy Attorney General
Attorneys for Defendants and Respondents

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EXHIBIT 2

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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

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

Plaintiffs and Petitioners,
v.

**RULING ON SUBMITTED MATTER:
MOTIONS FOR ADJUDICATION OF
PLAINTIFFS' FIFTH AND NINTH
CAUSES OF ACTION**

**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.

This matter came on regularly for hearing on August 4, 2017. The parties appeared and presented oral argument, after which the Court took the matter under submission. The Court now issues its ruling on the submitted matter which reflects a revision on the Ninth Cause of Action.

I. Introduction

In this matter, Plaintiffs contend Defendants have been improperly imposing a fee, the Dealer's Record of Sale transaction fee (hereinafter the "DROS Fee") on firearm purchasers without calculating the proper fee amount, and then have been using the funds collected outside

1 necessary.” Defendants have also not identified any activities they claim trigger a DROS Fee
2 review. “Regularly monitors” is vague and provides no indication as to the level of review, steps
3 completed, and Defendants do not identify any sort of documentation produced from the “regular
4 monitoring.”

5 ~~The only evidence before the Court is that the last time the DROS Fee was analyzed as to~~
6 ~~whether it is “no more than necessary” was in 2004 via the rulemaking process. The Court finds~~
7 ~~evaluating the DROS Fee to make sure it is “no more than necessary” every thirteen years is~~
8 ~~insufficient to comply with the ministerial duty section 28225 imposes. Plaintiffs’ motion for~~
9 ~~adjudication is GRANTED as to the fifth cause of action. Defendants’ motion for adjudication is~~
10 ~~DENIED as to the fifth cause of action.~~

11 **DENIED** as to the fifth cause of action.
12
13 Plaintiffs further argue, to the extent the Department has been calculating the DROS Fee,
14 it has been using an improper Macro Review Process, instead of complying with the statutory
15 direction of section 28225, subdivision (c), including that they consider the “estimated reasonable
16 costs of department firearms-related regulatory and enforcement activities related to the sale,
17 purchase, possession, loan, or transfer of firearms...” Plaintiffs contend the statutory
18 authorization is narrow, and the Department has only looked at the total amount of money going
19 into and out of the DROS Fee account, instead of analyzing the specific categories. However, as
20 the Court has already found, the Department has failed to provide evidence of *any* calculations
21 being done sufficient to discharge the review section 28225 requires. Accordingly, it will not
22 opine as to whether a particular potential calculation method is appropriate.

24 **B. Ninth Cause of Action**

25 The ninth cause of action alleges Defendants have been using the DROS Fee funds for
26 activities outside of those statutorily authorized. Plaintiffs seek a declaration that SB 819 does not
27 permit Defendants to use DROS Special Account Funds for “some use other than APPS-based
28

1 The starting point for the task of statutory interpretation is the language of the statute
2 itself, because it generally provides the most reliable indicator of legislative intent. (See, *Murphy*
3 *v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to
4 be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the
5 statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The
6 Court must also consider any uncodified statutory language because “an uncodified section is part
7 of the statutory law.” (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 925.)
8 Although statements of intent “in an uncodified section do not confer power, determine rights, or
9 enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute.”
10
11 (*Id.*)

12 Section 1, subdivision (g) is clear that the Legislature amended section 28225 to include
13 “possession” solely for the “limited purpose of funding enforcement of the Armed Prohibited
14 Persons System.” While subdivisions (d) and (f) may discuss an overall concern with illegal
15 possession of firearms, this general language does not overcome the specific intent declared in
16 subdivision (g). Based on the uncodified declaration of legislative intent, is clear that
17 “possession” as used in section 28225, subdivision (b)(11) is limited to APPS-based activities.
18 Accordingly, Plaintiffs’ motion for adjudication as to the ninth cause of action is **GRANTED**.
19 Defendants’ motion for adjudication as to the ninth cause of action is **DENIED**.
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V. Conclusion

The phrase "no more than necessary" as used in section 28225 imposes a ministerial duty to perform a reassessment of the DROS Fee more frequently than every thirteen years. Defendants have failed to perform this duty, consequently Plaintiffs' motion for adjudication is **GRANTED** as to the fifth cause of action, while Defendants' is **DENIED**.

The plain language of subdivision (b)(11) does not specify to what "possession" activities it refers. However, SB 819, section 1, subdivision (g) makes clear that "possession" is limited to APPS-based enforcement. Plaintiffs' motion for adjudication is **GRANTED** as to the ninth cause of action, while Defendants' is **DENIED**.

DATED: August 9, 2017

MICHAEL P. KENNY

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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

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

Superior Court of California,
County of Sacramento

Dated: August 9, 2017

By: S. LEE
Deputy Clerk

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

DAVID SCOTT HARPER

January 30, 2017

8:46 a.m.

1300 I Street
Sacramento, California

LAURIE D. LERDA, CSR No. 3649

1 A. Exactly. Background check, yeah.

2 And possibly even gun show if gun show is
3 DROS funded. So, any of the programs that receive
4 funding from DROS they would be analyzed or
5 considered in kind of in totality that, you know,
6 that the DROS fee is the appropriate fund source or
7 the DROS Fund is the appropriate fund source to pay
8 for those activities.

9 Q. As part of the process of setting the
10 DROS fee is there any -- is there any consideration
11 given to any benefit that goes to the fee payer?

12 MR. HAKL: Objection, vague, as to benefit
13 to the fee payer. That's a legal term also.

14 BY MR. FRANKLIN:

15 Q. No. I don't mean -- I don't mean it in a
16 legal sense. I mean it in just a, you know, common
17 English sense.

18 A. Yeah. No. I don't understand the question
19 quite frankly.

20 Q. Okay. Other than the programatic costs that
21 we've been discussing, are there any specific costs
22 that are considered in setting the DROS fee?

23 A. Not that I know of.

24 Q. And then other than the type of programatic
25 costs that we've been discussing, are you aware of

1 support all the existing activities within the
2 Bureau of Firearms that rely on the DROS Fund.

3 Q. But that could change in the future?

4 A. Absolutely. It could change. It could go
5 up. It could go down.

6 Q. So, without getting to in the weeds on a
7 hypothetical. If there's a drastic increase in the
8 number of people on the APPS list and it leads to
9 an increase in costs absent enforcement costs,
10 how would that affect the analysis of the propriety
11 of the DROS fee?

12 MR. HAKL: Objection. Incomplete
13 hypothetical. But go ahead.

14 THE WITNESS: So, again, simply an increase
15 in the number of people on the APPS list doesn't
16 necessarily lead to an increase in program costs.

17 If there is some type of a policy decision
18 that is made either by an Attorney General and/or the
19 legislature that they want to increase enforcement,
20 they would have to provide additional appropriation
21 authority to spend more money, if you will, and that
22 appropriation authority would have to be supported by
23 some level of increased revenue if in fact the fund
24 was to remain solvent. So it really depends.

25 The legislature could uniformly just say I'm

1 going to raise the fee \$5, provide all that money for
2 more enforcement. That's not something we would do.

3 We could raise the fee theoretically.

4 That doesn't mean we're going to get
5 additional spending authority to spend that extra
6 revenue. So, the two kind of are hand-in-hand.

7 Conversely, if there's an initiative to
8 expand enforcement in the APPS program say an
9 internal initiative by the Attorney General, we may
10 be able to redirect agents from other programs into
11 the APPS program provided we can create the savings
12 elsewhere in the DROS Fund from our existing
13 appropriation to fund those expanded enforcement
14 activities.

15 So, there's no one answer to your question.

16 It's simply what do you want to achieve, and
17 then knowing what you want to achieve, what is
18 the I'm not going to say what is the best, what are
19 the options to achieve that.

20 And the options may be what are the quickest
21 options. What are the best long-term options.

22 It's -- so there's a lot of factors that go into
23 determining something like that like what you asked.

24 BY MR. FRANKLIN:

25 Q. So, I'll try and make a more simple

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.

1 still. What I can say is that, um, the services the
2 attorneys provide to the Bureau of Firearms on behalf
3 of the DROS account and somehow support the statutes
4 within the firearm statutes or the operations of the
5 bureau or some combination of the two.

6 BY MR. FRANKLIN:

7 Q. Do you know whether or not there are
8 attorneys who are not in the Civil Law is it section,
9 Civil Law Section?

10 A. Civil Law Division.

11 Q. Division.

12 A. Yeah.

13 Q. That are paid for out of the
14 DROS Special Account?

15 MR. HAKL: Objection. Vague.

16 You got -- you lost me with a couple
17 negatives there. That's all.

18 BY MR. FRANKLIN:

19 Q. Are you aware of any attorneys outside of
20 the Civil Law Division that are funded -- that
21 their work is funded via the DROS Special Account?

22 A. Are you talking about currently or

23 Q. Let's say in the last 15 years.

24 A. So, there was a time when I first started
25 working here that then the Division of Firearms had

1 their own attorneys. I don't know how many. Maybe
2 two or three. And those attorneys worked for the
3 Division on Firearms-related stuff.
4 Attorney General --

5 Q. They were paid out of?

6 A. Out of the DROS Fund, you know, the
7 DROS account as far as I know.

8 Or it could have been a combination of
9 DROS and General Fund to the extent that the bureau
10 had General Fund back -- or the Division of General
11 Fund back then.

12 Shortly after General Brown took office the
13 department went through a major reorganization and
14 there was some consolidations in the Division of
15 Law Enforcement. So they collapsed what were a lot
16 of stand-alone divisions back then and created
17 bureaus.

18 And so in the context of those bureaus, one
19 of the other changes we made is we tried to
20 transition the attorneys out of the bureaus back
21 into the legal sections of the department, and it
22 was primarily due to chain of command issues so that
23 the attorneys could get their direction from
24 Supervising Deputy Attorney General's and so to that
25 nature chain of, you know, chain of work types of

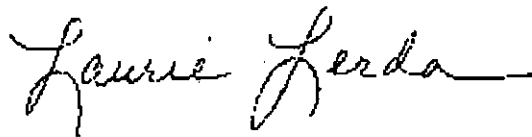
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REPORTER'S CERTIFICATION

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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

--o0o--

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 A. Yes.

2 Q. Do you believe you were involved in the
3 drafting of this section?

4 A. I at least reviewed it.

5 Q. Okay. If I could have you turn to page --
6 I'm sorry. It's the bottom of page 18 the line that
7 says: "Significant APPS cases include the
8 following:" Do you see that line?

9 A. Yes, sir.

10 Q. When you at least reviewed this document,
11 did you have an understanding of what the phrase
12 APPS cases was intended to mean?

13 A. I have my reference to what I believe APPS
14 means, yes.

15 Q. Okay. But specifically APPS cases that
16 phrase, do you have an understanding of what that
17 phrase means?

18 A. Yes.

19 Q. And what is that understanding?

20 A. So APPS cases are individuals who have been
21 identified as being prohibited and then identified as
22 having firearms. They're both armed and prohibited.

23 Q. And would those people have necessarily
24 appeared on the APPS list?

25 A. I would say a vast majority of them are

1 identified through the APPS system and then go
2 through our analytical work before the agents go out
3 into the field, but that's not the sole manner in
4 which people can be identified as being armed or
5 prohibited.

6 Q. Okay. So, not as to a specific case or
7 incident, but can you give me an example of an APPS
8 case that is not from the APPS list?

9 A. We get a call from a citizen, an ex-wife,
10 sometimes, you know, family members about an
11 individual who is now prohibited for one reason or
12 another and that they have firearms that the
13 department might not necessarily know about.

14 Q. And then the department in that instance
15 may take steps to determine if that person should
16 have the firearm removed from that person's
17 possession?

18 A. Yes. And we have a duty for public safety.

19 MR. FRANKLIN: I believe that's the only
20 question I have for that document.

21 And then this is going to be marked as
22 Exhibit 3. And I will represent it is a
23 press release that I obtained from the
24 Attorney General's Web site.

25 (Exhibit No. 3 was marked)

1 work would be system-generated cases.

2 BY MR. FRANKLIN:

3 Q. And just to clarify the record,
4 system-generated means?

5 A. The APPS system generated the hit --

6 Q. Uh-huh.

7 A. -- identifying the person as being armed
8 prohibited. Analysts confirm that, agents confirm
9 that, and they go out into the field and investigate
10 that individual.

11 Q. To the best of your knowledge after SB 819
12 became effective, do you know if the department has
13 used DROS Special Account money to reimburse local
14 law enforcement of APPS based activities?

15 A. We have not as of yet.

16 Q. Is that something that's on the horizon?

17 A. I believe in the 2016-17 state budget it
18 authorized the department \$5 million to
19 reimburse local law enforcement agencies for
20 their assistance to the Bureau of Firearms in
21 their APPS work.

22 The criteria for that has not been set yet.

23 Q. Does the department fund the cost of defense
24 attorneys out of the DROS Special Account?

25 MR. HAKL: Vague as to the phrase

1 "defense attorneys".

2 MR. FRANKLIN: I can tell you generally my
3 understanding would be these would be internal
4 attorneys for matters brought against the department
5 or department employees, but I don't actually know --

6 MR. HAKL: Okay.

7 MR. FRANKLIN: -- what kind of defense.

8 You know, for all I know there's outside
9 counsel being brought in as well so that's why I'm
10 starting broad.

11 MR. HAKL: Okay.

12 You can answer the question.

13 THE WITNESS: So, the department does use
14 DROS money in defense of firearm-related lawsuits
15 against the department.

16 BY MR. FRANKLIN:

17 Q. And how if you -- strike that.

18 How is it determined whether or not a
19 particular case would be considered firearms-related
20 in this context?

21 A. It would be a lawsuit against the bureau
22 itself, employees for some type of action, or any
23 type of enforcement regulation or defense of the
24 Second Amendment.

25 Q. And I guess it's implied but I'll ask.

1 The funding of attorneys from the
2 DROS Special Account is not limited to matters that
3 are directly related to the DROS fee?

4 A. I think you need to break that down a little
5 bit more. I'm pretty sure what you're referring to,
6 but not a hundred percent.

7 Q. I'll try to rephrase it.

8 Maybe an example is better and this is a
9 hypothetical. So, let's say, for example, that there
10 is a lawsuit challenging the department's activities
11 at gun shows investigatory activities at gun shows.

12 Would that be the kind of lawsuit that would
13 be funded out of the DROS Special Account defending
14 that lawsuit?

15 A. Yes.

16 Q. Okay. How many cases are you aware of where
17 the money from the DROS Special Account was used to
18 pay for the defense of a firearm-related matter?

19 A. I could not give you that number. A lot.

20 Q. Would you be comfortable in estimating?

21 You know, we normally do the -- you know,
22 set the range. Would you say it's over 25?

23 A. I think you'd have to look at in what time
24 frame.

25 Q. Let's say the time frame that I gave which I

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 So, I'm going to ask another question which
2 will further help me answer that and that is:

3 You recall we've talked earlier today about
4 the distinction I've made about what I consider to be
5 APPS list cases and other cases that may be similar
6 but don't directly derive from the APPS list.

7 You recall that distinction?

8 A. Yes.

9 Q. Okay. So, the issue we were just discussing
10 about how things are coded between the what I've
11 identified as the APPS list cases and the similar but
12 not so defined other cases, would there be any
13 distinction in recordkeeping about one versus the
14 other?

15 A. No.

16 Q. Okay. So, I reserve the right to think
17 about this a little bit more off the record, but I
18 suspect that's going to resolve some of this issue,
19 because until this moment right now I didn't know
20 that that was the case.

21 Borrow this.

22 So, one of the topics that you were
23 designated as Person Most Knowledgeable or Qualified
24 on was topic 16.

25 And what we were looking for on that is an

1 A. I wouldn't say we're a burden on the
2 taxpayers of California for the work that we do.

3 Q. Oh. That's a fair point.

4 ~~And other than that bit of possibly not~~
5 ~~correct language, the concept of placing the payment~~
6 ~~of these costs on the Dealers' Records of Sale~~
7 ~~account as opposed to the taxpayers of California is~~
8 ~~that a proposition that is consistent with the~~
9 ~~department's current position?~~

10 A. I believe -- we believe that it's an
11 appropriate use of the DRQS fund to pay for the
12 Armed Prohibitive Person System, the APPS system, as
13 opposed to taking it from the General Fund.

14 Q. Can you explain the basis for that
15 position?

16 A. The problem is caused by people who own
17 firearms. If you don't own a firearm and you don't
18 possess a firearm, you won't show up in the
19 Armed Prohibitive Person System.

20 Q. And that's, well, correct me if I'm wrong,
21 that's also true as to other people who are
22 illegally in possession of firearms who are not on
23 the APPS list?

24 A. Why would they be illegally in charge or in
25 possession of firearms? Do they have an assault

1 BY MR. FRANKLIN:

2 Q. After Senate Bill 819 became law, did the
3 way in which the amount of the DROS fee is analyzed
4 by the department change in any way?

5 A. I think you have to talk about time frame.
6 Initially, no, it did not.

7 Q. And then after initially?

8 A. Yes. Because there's now a cost associated
9 from the Armed Prohibitive Person System that are
10 being paid for out of the DROS fee.

11 Q. And as of yet that hasn't led to an
12 increase in the DROS fee?

13 A. Not as of yet, no.

14 Q. Based on your understanding of how the
15 DROS fee is to be calculated at this point in time,
16 is it possible that the DROS fee could be increased
17 due to the costs of APPS-based law enforcement?

18 A. I would say it a different way.

19 I wouldn't just blame it on the cost of
20 APPS enforcement, but the last time it was -- the
21 DROS fee was raised was, you know, 13 years ago. So,
22 costs have increased since then over the department
23 including the bureau.

24 So, unless there's another revenue source
25 that comes in, eventually all fees will be increased

1 including the DROS fee.

2 When that happens I have no idea.

3 Q. So, is it fair to state that the amount of
4 the money being spent on APPS-based law enforcement
5 activities is a consideration when the department
6 analyzes the propriety of the DROS fee being
7 charged?

8 A. I would use a different word than propriety.
9 But is that a calculation in the costs that
10 is covered by the DROS fee, yes.

11 Q. And that's new at some point after
12 Senate Bill 819 became law, correct?

13 A. Not necessarily.

14 So we had an APPS program before 819.

15 819 just allowed the expansion of that fee
16 to cover possession that deals a lot with the APPS
17 program. And, yes, it's covered under that.

18 Some of that change in the budget was done
19 at the Governor's level not at the department level.

20 And then recently other parts of the
21 APPS program had been moved in part to other
22 funding sources besides DROS.

23 Q. Well, since SB 819 became law, does the
24 department consider anything about the specific
25 individuals paying the DROS fee when looking at what

1 Q. That's all information that I appreciate and
2 is relevant. And I'm just still trying to check off
3 this question. And, again, I think I understand the
4 answer, but so the question I have is this:

5 Is it correct to say that in setting the
6 DROS fee the department doesn't consider whether a
7 specific fee payer might become prohibited later on?

8 A. So, I'll, again, when you talk about how we
9 setting the fee, the fee is set. So, I guess we can
10 go round-and-round with that with that determination.

11 Um, but to the second portion of your
12 question about whether or not we consider the
13 individual person who may or may not become
14 prohibited do we factor that into our calculation of
15 the DROS fee, no, we do not.

16 Q. And that is the question I was looking to
17 have answered so I can cross some stuff out.

18 Okay. On the other side of the coin,
19 are there any benefits to DROS fee payers that get
20 considered when the DROS amount review occurs?

21 MR. HAKL: Just objection in terms of I mean
22 burdens and benefits can be legal terms of art when
23 it comes to --

24 MR. FRANKLIN: Sure.

25 MR. HAKL: -- you know, some of the claims

1 in this case about tax versus fee and all that.

2 So, you know, to the extent you're going to
3 talk about burdens and benefits that's just an
4 objection that it calls for a legal conclusion and
5 the term may be vague depending on how you intend it.
6 But he can answer your questions to the extent he
7 can.

8 THE WITNESS: Can you answer or ask that
9 again, please.

10 BY MR. FRANKLIN:

11 Q. Yeah, I'll just reword it again.

12 Does the department consider any benefits
13 received by DROS fee payers when setting the
14 DROS fee?

15 A. Outside of what they get for the fee
16 there is they get a lot of enforcement, a lot of
17 regulatory process, a lot of, you know, public safety
18 concerns with that fee and that's what we're in the
19 business of doing.

20 Q. And those -- those items you mentioned,
21 those are benefits to society or California as a
22 whole?

23 A. Some are. But a lot of them are
24 concentrated around the firearm industry, the firearm
25 possessors.

1 Q. Could you tell me what those kind are the
2 ones that are concentrated on the firearm possessors?

3 A. Okay. Making sure they have a safe firearm.
4 That's making sure that, you know, there's a
5 background check. That, you know, people that are
6 going to gun stores, people that are going to gun
7 ranges that hopefully they're not prohibited. They
8 don't have mental health issues. They're not
9 convicted felons. And does that have some bleed over
10 into society, yes. But the problem is caused by
11 people who are purchasing, possessing, selling
12 firearms.

13 Q. So I have one more question on this.
14 The benefits of APPS-based law enforcement
15 activities, is that a benefit that goes to the
16 DROS fee payers or is that a benefit that goes to the
17 public?

18 MR. HAKL: Same objection regarding benefit,
19 but you can answer the question.

20 THE WITNESS: Is there an impact to society
21 as a whole for public safety through APPS
22 enforcement, yes. Is there a benefit to the
23 individual gun owner, yes. But the problem is caused
24 by people who purchase, possess, use firearms.

25 If you don't have a firearm, you're not

1 A. I know that they wanted -- because of the
2 transition, they didn't want to do something that was
3 going to affect the next administration and that was
4 done on a variety of different issues.

5 Q. This probably overlaps a little bit with
6 something you said previously, but do you know what
7 the process was for the department's decision to
8 abandon for lack of a better term the 2010
9 rulemaking?

10 A. I think they wanted to use the funds for
11 other reasons in conjunction with legislation
12 proposed by Senator Leno.

13 Q. Do you know if there was ever any public
14 explanation from the department regarding the end of
15 that 2010 rulemaking process?

16 A. I don't know that.

17 Q. And then there's a second part of the
18 proposed rulemaking regarding the annual review of
19 the DROS Special Account.

20 Do you remember any separate discussion
21 about why that part of the rulemaking would be
22 abandoned?

23 A. I mean the entire rulemaking package was --
24 did not move forward so...

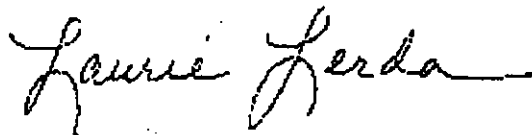
25 Q. The reason I'm asking is because I could at

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 1st day of June, 2017.



Laurie D. Lerda, CSR No. 3649

EXHIBIT 5

1 **KAMALA D. HARRIS**
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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,**
13 **MARK MID LAM, JAMES BASS, and**
14 **CALGUNS SHOOTING SPORTS**
ASSOCIATION,

15 Plaintiffs and Petitioners,

16 v.

17 **KAMALA HARRIS, in Her Official**
18 **Capacity as Attorney General for the State**
19 **of California; STEPHEN LINDLEY, in His**
20 **Official Capacity as Acting Chief for the**
California Department of Justice, JOHN
CHIANG, in his official capacity as State
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 SECOND AMENDED
RESPONSES TO REQUESTS FOR
ADMISSIONS
(SET ONE)

23 **PROPOUNDING PARTY: PLAINTIFFS**

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

27 **SET NUMBER: ONE**
28

1 by statute on another basis as described in *Tackett v. City of Huntington Beach* (1994) 22
2 Cal.App.4th 60, 64–65.)

3 Without waiving this objection, defendants respond as follows:

4 Denied.

5 **REQUEST FOR ADMISSION NO. 20:**

6 Admit that a person purchasing a firearm in California cannot “opt out” of paying a
7 portion of the DROS FEE based on an objection to the use of DROS FEES being used to fund
8 APPS.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

10 Admitted.

11 **REQUEST FOR ADMISSION NO. 21:**

12 ~~Admit that the payment of a DROS FEE does not result in an APPS-related service being~~
13 ~~provided directly to the payor.~~

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

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

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 115:**

2 Admitted, although it should be noted that this was a function of how the DROS special
3 account is maintained.

4 **REQUEST FOR ADMISSION NO. 116:**

5 Admit that, at some time after 2004, funds from the DROS SPECIAL ACCOUNT were
6 used for costs arising from the processing of Certificate of Eligibility applications performed by
7 CAL DOJ.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 116:**

9 Admitted.

10 **REQUEST FOR ADMISSION NO. 117:**

11 Admit APPS' primary use is as an investigatory tool for law enforcement.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 117:**

13 Admitted.

14 Dated: September 15, 2015

Respectfully Submitted,

KAMALA D. HARRIS
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 6

1 XAVIER BECERRA
 Attorney General of California
 2 STEPAN A. HAYTAYAN
 Supervising Deputy Attorney General
 3 ANTHONY R. HAKL
 Acting Supervising Deputy Attorney General
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8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SACRAMENTO

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**
 22 **California Department of Justice, Betty T.**
Yee, in her official capacity as State
Controller, and DOES 1-10,

23 Defendants and
 24 Respondents.

Case No. 34-2013-80001667

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

1 *Silvester v. Harris*, U.S. District Court (E.D. Cal.) – No. 1:11-cv-02137-AWI-SKO

2 *Wilder v. DOJ*, San Diego County Superior Court – No. 37-2016-00037721

3 **INTERROGATORY NO. 37:**

4 List each source of revenue, by amount of revenue contributed, comprising the \$17,286,000
5 of revenue related to “miscellaneous services to the public” that went into the DROS SPECIAL
6 ACCOUNT for fiscal year 2014-2015; this interrogatory is based on data stated in California’s
7 2016-2017 budget, though responding to this interrogatory does not require reference thereto by
8 the responding parties.

9 **RESPONSE TO INTERROGATORY NO. 37:**

10 Defendants object to this interrogatory. This interrogatory is irrelevant to causes of action
11 remaining in this case, which involve legal questions, as opposed to factual ones. It is also
12 objectionable because it requires referring to other documents in order to respond, despite
13 plaintiffs’ contention to the contrary. While plaintiffs appear to be referring to a line item in a
14 state budget, it is not clear what item plaintiffs are referring to. Finally, the interrogatory states it
15 is “based on data stated in California’s 2016-2017 budget,” which may be a document authored
16 by the Legislature (not the Department of Justice) and signed by the Governor. Therefore, the
17 question may seek information equally available to plaintiffs.

18 Without waiving these objections, and having met and conferred with plaintiffs regarding
19 the scope of this interrogatory and the desired information, defendants respond as follows:

20 The relevant revenue codes, sources, and amounts are as follows:

21	116 DROS HANDGUN BILLED	\$400.00
22	136 ASSAULT WPNS ROS UBLD	\$14,228.00
23	145 CERT OF ELIG – APP	\$87,646.00
24	146 CERT OF ELIG – RENEWAL	\$109,485.50
25	152 FIREARMS REPORTING	\$294,200.98
26	164 FIREARM DEALER INSPECT	\$248,285.00
27	172 CCW INITIAL DROS UBLD	\$118,644.00
28	173 CCW RENEWAL DROS UBLD	\$796,570.00

1 608 GUN SHOW PROMOTER LIC \$1,870.00
2 617 DROS DES CC TRANSGTNS \$15,364,008.00
3 641 PERSONAL ELIG CHECK \$41,589.00
4 642 LW ENF GUN RLS ELIG CK \$214,541.75

5 Finally, these figures actually total \$17,291,468.23 which is slightly larger than the figure
6 listed in this interrogatory. The difference is likely attributable to a late receipt of funds by the
7 Department (i.e., funds received after the calculation of the \$17,286,000 figure reflected in the
8 relevant budget documents).

9 **INTERROGATORY NO. 38:**

10 Provide the expenditure subtotals that were used in calculating the total \$28,616,000 of
11 expenditures related to "Department of Justice (State Operations)" that were funded from the
12 DROS SPECIAL ACCOUNT for fiscal year 2014-2015; this interrogatory is based on data stated
13 in California's 2016-2017 budget, though responding to this interrogatory does not require
14 reference thereto by the responding parties.

15 **RESPONSE TO INTERROGATORY NO. 38:**

16 Defendants object to this interrogatory. This interrogatory is irrelevant to causes of action
17 remaining in this case, which involve legal questions, as opposed to factual ones. It is also
18 objectionable because it requires referring to other documents in order to respond, despite
19 plaintiffs' contention to the contrary. While plaintiffs appear to be referring to a line item in a
20 state budget, it is not clear what item plaintiffs are referring to. Finally, the interrogatory states it
21 is "based on data stated in California's 2016-2017 budget," which may be a document authored
22 by the Legislature (not the Department of Justice) and signed by the Governor. Therefore, the
23 question may seek information equally available to plaintiffs.

24 Without waiving these objections, and having met and conferred with plaintiffs regarding
25 the scope of this interrogatory and the desired information, defendants respond as follows:

26 The expenditure subtotals totaling \$28,616,077 are listed on the document Bates numbered
27 AGRFP001276. Those subtotals are further detailed on the supporting documents Bates
28 numbered AGRFP001277 through AGRFP001294.

EXHIBIT 6A

Date of Hearing: June 21, 2011
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Tom Armiano, Chair

SB 819 (Leno) – As Amended: April 14, 2011

SUMMARY: Provides that the Department of Justice (DOJ) may use dealer record of sale (DROS) funds for costs associated with its firearms-related regulatory and enforcement activities regarding the possession, as well as the sale, purchase, loan, or transfer, of firearms, as specified. Specifically, this bill:

- 1) Authorizes the using the DOJ purchaser fee to fund the DOJ's firearms-related regulatory and enforcement activities related to the possession of firearms.
- 2) Makes the following findings and declarations:
 - a) California is the first and only state in the nation to establish an automated system for tracking handgun and assault weapon owners who might fall into a prohibited status.
 - b) DOJ is required to maintain an online database, which is currently known as the "Armed Prohibited Persons System" (APPS), which cross-references all handgun and assault weapon owners 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.
 - c) The DOJ is further required to provide authorized law enforcement agencies with inquiry capabilities and investigative assistance to determine the prohibition status of a person of interest.
 - d) Each day, the list of armed prohibited persons in California increases by about 15 to 20 people. There are currently more than 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.
 - e) Neither the DOJ nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons.
 - f) A DROS fee is imposed upon every sale or transfer of a firearm by a dealer in California. Existing law authorizes the DOJ to utilize these funds for firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to any provision listed in Penal Code Section 16580, but not expressly for the enforcement activities related to possession.

- g) Rather than placing an additional burden on the taxpayers of California to fund enhanced enforcement of the existing armed prohibited persons program, it is the intent of the Legislature in enacting this bill to allow the DOJ to utilize the DROS Account for the additional, limited purpose of funding enforcement of the APPS.

EXISTING LAW:

- 1) States that it shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to persons if that person is under indictment or has been convicted of specified crimes, is under a restraining order, has been committed to a mental institution, and other specified disqualifying factors. (18 U.S.C. Section 922.)
- 2) Requires that persons who sell, lease, or transfer firearms be licensed by California. (Penal Code Sections 26500 and 26700, et seq.)
- 3) Sets forth a series of requirements to be state licensed by DOJ, which provides that to be recognized as state licensed, a person must be on a centralized list of gun dealers and allows access to the centralized list by authorized persons for various reasons. (Penal Code Section 26700.)
- 4) Requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to DOJ to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. The record of applicant information must be transmitted to the DOJ in Sacramento by electronic transfer on the date of the application to purchase. The original of each record of electronic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, DOJ employee designated by the Attorney General, or agent of the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. (Penal Code Sections 28160 to 28220.)
- 5) Requires handguns to be centrally registered at time of transfer or sale by way of transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to DOJ indicating who owns what handgun by make, model, and serial number and the date thereof. [Penal Code Section 11106(a) and (c).]
- 6) Requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the California Department of Mental Health (DMH) pursuant to Welfare and Institutions Code (WIC) Section 8104, in order to determine if the purchaser is prohibited from purchasing a firearm because of a prior felony conviction or because they had previously purchased a handgun within the last 30 days, or because they had received inpatient treatment for a mental health disorder, as specified. (Penal Code Section 28220.)
- 7) States that, to the extent funding is available, DOJ may participate in the National Instant Criminal Background Check System (NICS), as specified, and, if that participation is

implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law. (Penal Code Section 28220.)

- 8) States that if DOJ determines that the purchaser is prohibited from possessing a firearm, as specified, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact. (Penal Code Section 28220.)
- 9) States that no person who has been taken into custody, found to be a danger to himself, herself, or others, and, as a result, admitted to a specified mental health facility, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility, except as specified. [WIC Section 8103(f)(1).] For each such person, the facility shall immediately, on the date of admission, submit a report to DOJ, on a form prescribed by DOJ, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility. [WIC Section 8103(f)(2)(A).]
- 10) No person who has been certified for intensive treatment for a mental disorder, as specified, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years and relevant treatment facilities shall report the identities of such persons to DOJ, as specified. [WIC Section 8103(g).]
- 11) DOJ may require the dealer to charge each firearm purchaser a fee not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. This fee, known as the Dealer Record of Sale or DROS fee, shall be no more than is necessary to fund the following:
 - a) DOJ for the cost of furnishing this information.
 - b) DOJ for the cost of meeting its obligations to notify specified persons that they are prohibited from owning firearms due to their receiving inpatient treatment for a mental disorder.
 - c) Local mental health facilities for state-mandated local costs resulting from the specified reporting requirements.
 - d) The DMH for the costs resulting from the specified requirements imposed.
 - e) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the specified reporting requirements.

- f) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements regarding service of restraining orders, as specified.
 - g) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements regarding specified persons prohibited from owning firearms due to their receiving inpatient treatment for a mental disorder.
 - h) For the actual costs associated with the electronic or telephonic transfer of information, as specified.
 - i) The Department of Food and Agriculture for the costs resulting from the notification provisions regarding importing firearms into the state, as specified.
 - j) DOJ for the costs associated with public education requirements regarding importation of firearms into California, as specified.
 - k) DOJ for the costs associated with funding DOJ firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to any provision listed in Section 16580. [Penal Code Section 28225(a) and (b).]
- 12) The fee established pursuant to this section shall not exceed the sum of the actual processing costs of the DOJ, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed as specified, the costs of DMH for complying with the requirements imposed as specified, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed as specified, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements, as specified, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements imposed as specified, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the specified notification provisions, the estimated reasonable costs of the DOJ for the costs associated with public education requirements regarding importation of firearms into California, and the estimated reasonable costs of DOJ firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to specified provisions of law pertaining to firearms. [Penal Code Section 28225(c).]
- 13) DOJ may charge a fee sufficient to reimburse it for each of the following but not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations:
- a) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to any provision listed in Penal Code Section 16585(a).
 - b) For the actual processing costs associated with the submission of a DROS to the DOJ.

- c) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to Penal Code Section 26905, 27565, or 28000, or 27560(1)(a).
 - d) For the actual costs associated with the electronic or telephonic transfer of information pursuant to Penal Code Section 28215.
 - e) Any costs incurred by the DOJ to implement this section shall be reimbursed from fees collected and charged pursuant to this section. No fees shall be charged to the dealer pursuant to Penal Code Section 28225 for implementing this section. (Penal Code Section 28230.)
- 14) All money received by the DOJ pursuant to this article shall be deposited in the DROS Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the DOJ to offset the costs incurred pursuant to any of the following:
- a) This article.
 - b) Annual inspections of permitted destructive devices. (Penal Code Section 18910.)
 - c) Regulating firearms transaction between licensed dealers. (Penal Code Section 27555.)
 - d) Conduct public education and notification programs regarding importation of firearms into California. [Penal Section 27560(d) and (e).]
 - e) Maintain a list of federally licensed firearms dealers in California exempt from the state dealer licensing requirements, as specified. [Penal Code Section 28450 et seq.]
 - f) Inspection of inventory of licensed firearms dealers. (Penal Code Section 31110.)
 - g) Public education and notification programs regarding registration of assault weapons. (Penal Code Section 31115.)
 - h) Retesting of handguns on the not unsafe handgun list, as specified. [Penal Code Section 32020(a).]
 - i) Inspection of inventories of machine guns held under permit. (Penal Code Section 32670.)
 - j) Inspection of inventories of short-barreled shotguns and rifles held under permit. (Penal Code Sections 33320 and 28235.)
- 15) States the Attorney General shall establish and maintain an online database to be known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. The information contained in the Prohibited Armed Persons File shall only be available to specified entities through the California Law

Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Penal Code Section 30000.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement: "SB 819 will amend the Penal Code to allow the DOJ to use existing Department resources to provide enhanced enforcement of the APPS which has identified over 36,000 handguns and assault weapons in the hands of more than 18,000 prohibited persons such as convicted felons and the mentally ill.

"Recently, the New York Times reported on California's Armed Prohibited Persons File and the problems it seeks to address:

"By law, Roy Perez should not have had a gun three years ago when he shot his mother 16 times in their home in Baldwin Park, Calif., killing her, and then went next door and killed a woman and her 4-year-old daughter.

"Mr. Perez, who pleaded guilty to three counts of murder and was sentenced last year to life in prison, had a history of mental health issues. As a result, even though in 2004 he legally bought the 9-millimeter Glock 26 handgun he used, at the time of the shootings his name was in a statewide law enforcement database as someone whose gun should be taken away, according to the authorities.

"The case highlights a serious vulnerability when it comes to keeping guns out of the hands of the mentally unstable and others, not just in California but across the country.

"In the wake of the Tucson shootings, much attention has been paid to various categories of people who are legally barred from buying handguns — those who have been 'adjudicated as a mental defective,' have felony convictions, have committed domestic violence misdemeanors and so on. The focus has almost entirely been on gaps in the federal background check system that is supposed to deny guns to these prohibited buyers.

"There is, however, another major blind spot in the system.

"Tens of thousands of gun owners, like Mr. Perez, bought their weapons legally but under the law should no longer have them because of subsequent mental health or criminal issues. In Mr. Perez's case, he had been held involuntarily by the authorities several times for psychiatric evaluation, which in California bars a person from possessing a gun for five years.

"Policing these prohibitions is difficult, however, in most states. The authorities usually have to stumble upon the weapon in, say, a traffic stop or some other encounter, and run the person's name through various record checks.

"California is unique in the country, gun control advocates say, because of its computerized database, the APPS. It was created, in part, to enable law enforcement officials to handle the issue pre-emptively, actively identifying people who legally bought handguns, or registered

assault weapons, but are now prohibited from having them.

"The list had 18,374 names on it as of the beginning of this month — 15 to 20 are added a day — swamping law enforcement's ability to keep up. Some police departments admitted that they had not even tried.

"SB 819 addresses the critical need to enforce existing firearm prohibition laws. Increased confiscation of unlawfully possessed firearms could result in the prevention of future crimes and potentially major future cost savings associated with avoided prosecution and incarceration. This bill is strongly supported local law as well organizations working to reduce firearms violence in our communities."

- 2) Background: According to the background provided by the author, SB 819 will amend the Penal Code to allow DOJ to use existing DOJ resources to provide enhanced enforcement of the APPS which has identified over 36,000 handguns and assault weapons in the hands of more than 18,000 prohibited persons such as convicted felons and the mentally ill. SB 819 addresses the critical need to enforce existing firearm prohibition laws.

Enforcement of existing firearms laws are a critical component of the state's responsibility to ensure public safety. However, there is a huge blind spot in the system. Tens of thousands of gun owners bought their weapons legally, but under law should no longer have them due to subsequent mental health or criminal issues. In fact, every day, the list of armed prohibited persons in California grows by about 15 to 20 people. As of March 22, 2011, the Bureau of Firearms identified 18,377 individuals with a prior felony conviction or mental health disorder that disqualified them from possessing more than 36,000 firearms.

"Although DOJ and local law enforcement have the authority to confiscate these weapons in the interest of public safety, the truth is, the situation continues to get worse. Law enforcement is struggling to disarm people who've lost the right to own a gun. Neither DOJ nor the locals have the resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of the newly prohibited."

- 3) Armed Prohibited Persons System: California is the first and only state in the nation to establish an automated system for tracking handgun and assault weapon owners who pose a threat to public safety. The APPS maintains information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or an assault weapon. The APPS also provides authorized law enforcement agencies with inquiry capabilities to determine the prohibition status of a person of interest. DOJ populates APPS with all handgun and assault weapon owners across the state and matches them against criminal history records to determine who might fall into a prohibited status. Automatic notifications from state and federal criminal history systems will be received daily to determine if there is a match for a current California gun owner. When a match is found, the system automatically raises a flag to Firearms Division staff, which triggers an investigation into the person's status.

For example, the daily APPS report for March 22, 2011 provided a breakdown of prohibited persons by county. A few examples include: Orange County - 1,163 prohibited persons with 2,488 illegal handguns; Sacramento County - 516 prohibited persons with 1,037 illegal

handguns; and San Diego County - 841 prohibited persons with 1,841 illegal handguns

- 4) DOJ's Role in APPS Enforcement: Although the burden for confiscating weapons falls largely on local jurisdictions, in practice, most local jurisdictions are too short on resources to do much or only vaguely aware of how the APPS database works. In fact, 98% of the individuals removed from the list are a result of DOJ efforts, not local law enforcement. While DOJ provides locals with access to the list of prohibited persons and has trained more than 1,300 officers in its use, DOJ's own team of 20 agents specifically tasked with investigating and confiscating the weapons of unlawful gun owners has proven to be the most effective.

For example, in Los Angeles County, a jurisdiction with 5,871 prohibited persons, local law enforcement was only able to confiscate weapons in six cases. DOJ was able to confiscate weapons in 76 cases.

- 5) Argument in Support: According to the Legal Community Against Violence, "[u]nder current law, DOJ is authorized to require firearms dealers to impose a fee attached to the purchase of a firearm; under state law, the fees, collected in the Dealers' Record of Sale Special Account of the General Fund ('DROS Fund'), may be used to fund a specific set of purposes, including DOJ regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms.' SB 819 (Leno) would authorize the use of the DROS Fund for enforcement activities related to the possession of firearms.

"DOJ maintains an APPS, which identifies individuals who legally purchased handguns or assault weapons but subsequently became prohibited from possessing firearms. APPS presently contains the names of over 18,000 Californians in possession of over 36,000 handguns and assault weapons, even though these individuals are prohibited from having guns under state law. The 18,000 prohibited persons include convicted felons, domestic abusers and mentally ill individuals, among others who have been convicted of serious crimes that rightfully disqualify them from firearm ownership. State efforts to disarm prohibited individuals are currently funded through the General Fund. SB 819 would enable the use of DROS Fund money for this important purpose."

- 6) Argument in Opposition: According to the California Association of Firearms Retailers (CAFR), "[t]he money paid to the DROS fund by a prospective purchaser or other transferee of a firearm is a fee to pay for the costs of a criminal and mental history background check to determine that person's eligibility to lawfully possess a firearm.

"The DROS fee is not a regulatory fee, tax, license or other form of non-user charge. CAFR believes that the DROS fund has often been improperly used to fund non-background check activities of DOJ.

"The use of DROS fees as proposed in SB 819 is considered to constitute a tax on prospective firearm purchasers since it would be used, in part, to pay for the general public services proposed in the bill, rather than for its original intended purpose as a user fee to pay for services rendered only to the fee payer."

- 7) Prior Legislation: AB 302 (Beall), Statutes of 2010, Chapter 344, required the electronic submission of specified information to DOJ with respect to persons admitted to a mental

health facility on the basis of being a threat to themselves or others, or as a result of being certified for intensive treatment.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs
California Chapters of the Brady Campaign
California Department of Justice
California State Sheriffs' Association
California Statewide Law Enforcement Association
Legal Community Against Violence
Los Angeles County Sheriff's Department
Riverside Sheriffs' Association

Opposition

California Association of Firearms Retailers
California Rifle and Pistol Association
California Sportsman's Lobby
Crossroads of the West
Gun Owners of California
National Rifle Association of America
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Safari Club International
One private individual

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

EXHIBIT 7

LEGISLATIVE, JUDICIAL, AND EXECUTIVE

Governmental entities classified under the Legislative, Judicial, and Executive section are either established as independent entities under the California Constitution or are departments that operate outside the agency structure. Constitutionally established bodies include the Legislature, the Judicial Branch, Governor's Office, and Constitutional Officers.

The 2011 Budget Act includes total funding of more than \$9 billion for all programs included in this area.

JUDICIAL BRANCH

The Judicial Branch consists of the state-level judiciary which includes the Supreme Court, the Courts of Appeal, the Administrative Office of the Courts, and 58 superior courts.

ADOPTED SOLUTIONS

- **Courts Reduction**—A reduction of \$350 million to the court system. A portion of this reduction will be offset by a variety of fund shifts, the use of reserve balances, and expenditure delays.

CALIFORNIA EMERGENCY MANAGEMENT AGENCY

The principal objective of the California Emergency Management Agency (Cal EMA) is to reduce vulnerability to hazards and crimes through emergency management and criminal justice.

ADOPTED SOLUTIONS

- California Disaster Assistance Act Payments—An ongoing reduction of \$20 million related to an adjustment of projected future disaster payment liabilities.

DEPARTMENT OF JUSTICE

As chief law officer of the state, the Attorney General has the responsibility to see that the laws of California are uniformly and adequately enforced through the programs of the Department of Justice.

ADOPTED SOLUTIONS

- Eliminate General Fund from the Division of Law Enforcement—A reduction of \$36.8 million beginning in 2011-12, and \$71.5 million in 2012-13 and ongoing. General Fund resources have been maintained for the forensic laboratory program, the Armed Prohibited Persons Program, and investigation teams to assist the Department's legal services division.
- Quest Settlement—A one-time transfer of \$20 million from the False Claims Act Fund to the General Fund resulting from the whistleblower settlement reached by the Attorney General against Quest Diagnostics.

EXHIBIT 8

California State Senate

Senate Public Safety Committee, Part 2

April 26, 2011

Web Link: <http://senate.ca.gov/media-archive?title=&startdate=04%2F26%2F2011&enddate=04%2F26%2F2011>

Senator Mark Leno at 53:00-53:15

“the attorney general brought us this bill”

Attorney General Kamala Harris at 58:00-58:20

“what we seek to do is this DROS fund in a way that can supplement the work that we want to do out of the Department of Justice to support local law enforcement in going after those folks who are on this list”

[Plaintiff believes the contents of this audio are undisputed.]

EXHIBIT 9

SB 819 (Leno) APPS Enforcement – Q & A

Why is the DROS account appropriate for funding enforcement of the APPS program?

Existing law authorizes DOJ to utilize DROS funds for *all firearms-related 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 regulatory and enforcement activities related to *possession*. The Penal Code sections governing the Armed Prohibited Persons system are specifically referenced in section 16580 of the Penal Code. Given this, it is likely that DOJ can currently utilize these funds for the enforcement of APPS. This legislation simply clarifies that DOJ has the authority to ask for DROS funds through the normal budget process specifically for the enforcement of APPS.

Is there money in the DROS account to fund this legislation?

There is currently a \$5,500,000.00 surplus in the DROS account, which is enough to cover the (1) \$945,000 for five ongoing additional Special Agent positions to assist other DOJ Special Agents in investigating APPS offenders, and to assist local law enforcement agencies in training, setting up, and investigating local APPS offender sweeps throughout the State, and (2) a one-time allotment of \$500,000 in funding to DOJ taskforces. These allocations will need to be requested and processed as a Budget Change Proposal (BCP) through the regular budget process.

What is the DROS fee currently?

\$19.00.

DOJ had a large surplus in the DROS fund, why wasn't the DROS fee reduced?

DOJ attempted to reduce the DROS fee last year from \$19.00 to \$14.00 and was met with opposition. In fact, in response to the regulations proposed one of the firearms groups called for an audit and opposed the reduction to \$14.00 on the grounds that they believe it should be reduced even further.

When was the DROS fee last raised?

Seven years ago.

Could this legislation lead to an increase in the DROS fee?

The DROS fund currently operates with a sufficient surplus to absorb the ongoing costs that will be requested in next year's BCP (\$985,000) without raising the DROS fee.



However, even if this were to become necessary in the future, DOJ would need to go through the regulatory process to change that fee.

Why has DOJ been resistant to an audit of the DROS fund?

DOJ has not been resistant to an audit and would do one if the Legislature requested one.

What is DOJ currently doing to enforce APPS?

DOJ currently funds APPS enforcement out of the general fund. They have only 20 agents doing this critical work, statewide. This legislation will give the Department of Justice the additional resources it needs to make a significant reduction in the number of illegally possessed firearms.

Why should firearms owners have to pay for APPS enforcement?

It is in everyone's interest to ensure that firearms are not in the possession of prohibited persons. However, law-abiding firearms owners have a particularly strong interest in this to help avoid gun ownership from becoming strongly associated with the random acts of deranged individuals. Moreover, the purpose of the bill is to strengthen enforcement of existing guns laws. A prospective gun owner pays a fee to determine whether he or she is eligible to purchase a gun (background check), it makes sense that the fee should apply to enforcement when those same individuals become "ineligible" due to criminal behavior or mental illness. Accordingly, there is a very close nexus between the DROS fund and the bill's intended purpose. Moreover, the bill is aligned with gun advocates' stated interest in heightened enforcement of existing gun laws and the alternative would be to place this additional burden on the tax payer at large.

Isn't this bill just a gun tax?

No. A tax is levied upon people for general purposes. A regulatory fee is assessed in connection with a person's participation in a regulated activity. However, it is permissible to enact a fee "for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public." (California Assn. of Prof. Scientists v. Dept. of Fish and Game (2000) 79 Cal. App.4th 935, 950.) Given this, utilizing DROS funds to ensure that felons and the mentally ill do not have firearms, seems to fall squarely within a regulatory purpose of the DROS fund.

This is analogous to fishing licensing fees for field enforcement activities by the Department of Fish and Game.

Plus, this bill does not raise any fee or make an appropriation. The bill simply gives DOJ the authority to request funding from this account through the normal budget process.



The bill only changes one word in the statute. Isn't adding the word 'possession' overly broad and ambiguous?

We added declarations and findings to make it clear that the bill is intended to address the APPS enforcement issue. The statute that governs the funding of enforcement related regulatory activities from the DROS account is specific and states that the activity must be related to the "sale, purchase, loan, or transfer" of a firearm. Given that APPS enforcement is not an activity specifically relating to the sale, purchase, loan or transfer of a firearm, the word "possession" was necessary to allow DOJ to ask permission through the normal budget process to use these funds.

(Our sponsor is willing to amend the bill to say that the funds are specifically for APPS enforcement in the codified section of the bill, in contrast to simply the findings, but only if it gets us Republican support.)

Won't this bill just drain the DROS account?

No. This bill will not result in a draining of the DROS Fund. All funding for APPS enforcement must be approved through a Budget Change Proposal through the regular budget process.

Will this bill result in increased DROS fees?

No. This bill will not result in increased DROS fees. DROS fees can only be increased through the normal regulation process with a public comment period and sign off by the Attorney General. DROS fees have not been raised for 7 years and the fund will continue to run a surplus regardless of the passage of SB 819.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



EXHIBIT 10



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

January 21, 2016

Members of the California Legislature
State Capitol
10th Street
Sacramento, CA 95814

RE: Armed and Prohibited Persons System (APPS)

Dear Colleagues:

California has some of the strongest gun safety laws and initiatives in the nation. One of the state's most important initiatives is the Department of Justice's ("Department") Armed and Prohibited Persons System ("APPS"), which keeps firearms out of the hands of those prohibited from possessing them due to their criminal history, mental health status, or existence of a restraining order.

At my request, the Governor and Legislature three years ago made a significant – but temporary – investment in APPS (SB 140, Ch. 2, Statutes of 2013). As a result of that investment, my office has made historic reductions in the number of individuals in the APPS database. Over the last 30 months, our APPS enforcement efforts have taken 335 assault weapons, 4,549 handguns, 4,848 long-guns, and 943,246 rounds of ammunition off the streets from those who illegally possessed them.

However, that temporary infusion of financial support expires May 1, 2016. Due to subsequent changes in law that will substantially increase the number of prohibited persons and the real and present danger these individuals pose to public safety, I strongly urge you to make permanent the increased APPS funding you approved three years ago.

Until recently, the APPS database, which went into effect in December of 2006, was based almost exclusively on handgun transaction records, despite the fact that each year approximately half of all California firearm sales involve long-guns. Indeed, between 2007 and 2013 there were 4,157,849 firearm transactions conducted in California (an average of 593,978 per year), split roughly evenly between handgun and long-gun transactions.

Effective January 1, 2014, a new California law mandated for the first time that the Department collect and retain firearm transaction information for all types of guns, including long-guns. By adding the long-gun registration requirement, the number of individuals who may fall into the APPS system has doubled. In 2014, there were 931,037 firearm transactions in California and we expect a similar volume for 2015 and in the years ahead. This new law will add to the APPS those individuals who purchase the hundreds of thousands of long-guns each year who subsequently commit a prohibiting offense. This statutory change alone justifies sustained and enhanced investment in the APPS.

In addition, we anticipate increased workload due to the new Gun Violence Restraining Order (Assembly Bill 1014) law that went into effect on January 1, 2016. This law allows family members who are concerned about the mental stability of a loved one who possesses a firearm to petition a court for a restraining order that would place the individual in the APPS database. We estimate that as many as 3,000 subjects could be added to the APPS database annually through this new law. Current agent staffing levels within the Bureau of Firearms are insufficient to deal with this increase in prohibited offenders.

In May 2013, just months after the horrific tragedy in Sandy Hook, the Legislature passed Senate Bill 140 with strong bipartisan support. SB 140 provided the Attorney General's Office with \$24 million over a three-year period to significantly reduce and eliminate the roughly 20,000 subjects in the APPS database. During the past two and half years, my Special Agents and other Bureau of Firearms staff conducted over 18,608 APPS investigations statewide. This reduced the subjects in the APPS database from a high of 21,357 on November 20, 2013, to 12,691 as of December 31, 2015, the lowest since September 2008.

These historic achievements came despite the addition of the new long-gun registration requirement and the increase in subjects being identified as armed and prohibited. In short, the Department's efforts, made possible by the funding from SB 140, has decreased the number of subjects in the APPS database every day and removed nearly 20,000 armed and prohibited subjects in under two and half years.

The Department needs additional resources to continue our successful work on the APPS and adequately address the public safety threat these individuals present to California. To achieve these goals, I respectfully request that the Legislature make permanent the temporary funding it has previously authorized in order to allow the Department to continue to disarm the people who become prohibited from possessing firearms in California.

Members of the California Legislature
January 21, 2016
Page 3

The Department has been privileged to receive the Legislature's support and encouragement on this important public safety initiative that can serve as a model for the country. We look forward to continuing this partnership in the years ahead.

Respectfully,



KAMALA D. HARRIS
Attorney General

EXHIBIT 11

DOJ Programs Funded with DROS Special Fund

FY 2003/04 BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 7,252,000	\$ 6,462,448 ^{1/}	97.24%
FIREARMS TOTAL DROS FUNDING		\$ 7,252,000	\$ 6,462,448	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 807,000	\$ 845,549	1.86%
795	DROS - Long Gun	\$ 194,000	\$ 213,189	100.00%
732	Firearms Program - DROS	\$ 477,000	\$ 436,049	85.95%
700	CJIS Facilities & Communications	\$ 50,000	\$ 48,813	1.83%
705	CJIS Executive Office	\$ 206,000	\$ 190,400	6.09%
DCJIS TOTAL DROS FUNDING		\$ 1,734,000	\$ 1,734,000	
DOJ TOTAL DROS FUNDING		\$ 8,986,000	\$ 8,196,448	

1/ Actual year-end expenditures include \$299,573 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2004/05 BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 6,955,300	\$ 6,615,900	93.26%
FIREARMS TOTAL DROS FUNDING		\$ 6,955,300	\$ 6,615,900	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 784,000	\$ 828,004	1.93%
795	DROS - Long Gun	\$ 177,000	\$ 201,093	100.00%
732	Firearms Program - DROS	\$ 448,000	\$ 392,307	85.17%
700	CJIS Facilities & Communications	\$ 51,000	\$ 49,270	1.83%
705	CJIS Executive Office	\$ 198,000	\$ 187,327	5.62%
DCJIS TOTAL DROS FUNDING		\$ 1,658,000	\$ 1,658,000	
DOJ TOTAL DROS FUNDING		\$ 8,613,300	\$ 8,273,900	

1/ Actual year-end expenditures include \$350,628 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2005/06 BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 6,947,816	\$ 6,947,816 ^{1/}	97.06%
FIREARMS TOTAL DROS FUNDING		\$ 6,947,816	\$ 6,947,816	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 805,000	\$ 897,266	1.66%
795	DROS - Long Gun	\$ 179,000	\$ 193,395	100.00%
732	Firearms Program - DROS	\$ 452,936	\$ 390,481	100.00%
700	CJIS Facilities & Communications	\$ 48,000	\$ 44,242	1.77%
705	CJIS Executive Office	\$ 200,000	\$ 159,552	5.63%
DCJIS TOTAL DROS FUNDING		\$ 1,684,936	\$ 1,684,936	
DOJ TOTAL DROS FUNDING		\$ 8,632,752	\$ 8,632,752	

1/ Actual year-end expenditures include \$279,580 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2006/07 BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 7,313,491	\$ 6,652,385	97.05%
FIREARMS TOTAL DROS FUNDING		\$ 7,313,491	\$ 6,652,385	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 847,000	\$ 805,088	1.55%
795	DROS - Long Gun	\$ 190,557	\$ 180,761	100.00%
732	Firearms Program - DROS	\$ 474,169		100.00%
700	CJIS Facilities & Communications	\$ 50,000	\$ 45,723	1.77%
705	CJIS Executive Office	\$ 213,000	\$ 194,911	5.64%
DCJIS TOTAL DROS FUNDING		\$ 1,774,726	\$ 1,226,484	
DOJ TOTAL DROS FUNDING		\$ 9,088,217	\$ 7,878,869	

1/ Actual year-end expenditures include \$258,702 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2007/08 BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 8,145,004	\$ 7,521,381 ^{1/}	97.31%
FIREARMS TOTAL DROS FUNDING		\$ 8,145,004	\$ 7,521,381	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 876,000	\$ 821,234	1.55%
795	DROS - Long Gun	\$ 193,887	\$ 152,881	100%
732	Firearms Program - DROS	\$ 484,015	\$ 495,132	100%
700	CJIS Facilities & Communications	\$ 51,000	\$ 49,667	1.77%
705	CJIS Executive Office	\$ 219,000	\$ 114,331	5.45%
DCJIS TOTAL DROS FUNDING		\$ 1,823,902	\$ 1,633,245	
DOJ TOTAL DROS FUNDING		\$ 9,968,906	\$ 9,154,626	

1/ Actual year-end expenditures include \$270,879 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

**FY 2008/09
BUREAU OF FIREARMS**

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 9,615,237	\$ 9,276,312 ^v	99.9%
FIREARMS TOTAL DROS FUNDING		\$ 9,615,237	\$ 9,276,312	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 888,000	\$ 874,668	2.3%
795	DROS - Long Gun	\$ 583,606	\$ 457,978	100%
732	Firearms Program - DROS	\$ 319,581	\$ 199,753	100%
700	CJIS Facilities & Communications	\$ 52,000	\$ 50,676	1.8%
DCJIS TOTAL DROS FUNDING		\$ 1,843,187	\$ 1,583,075	
DOJ TOTAL DROS FUNDING		\$ 11,458,424	\$ 10,859,386	

1/ Actual year-end expenditures include \$322,175 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

**FY 2009/10
BUREAU OF FIREARMS**

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 8,696,016	\$ 8,054,470	100%
FIREARMS TOTAL DROS FUNDING		\$ 8,696,016	\$ 8,054,470	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 570,733	\$ 553,040	2%
795	DROS - Long Gun	\$ 408,332	\$ 278,657	79%
732	Firearms Program - DROS	\$ 218,000	\$ 254,556	98%
DCJIS TOTAL DROS FUNDING		\$ 1,197,065	\$ 1,086,253	
DOJ TOTAL DROS FUNDING		\$ 9,893,081	\$ 9,140,722	

1/ Actual year-end expenditures include \$276,613 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

**FY 2010/11
BUREAU OF FIREARMS**

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 8,778,666	\$ 8,470,616 ^{1/}	100%
823	Gun Show	\$ 547,644	\$ 559,714	100%
FIREARMS TOTAL DROS FUNDING		\$ 9,326,310	\$ 9,030,330	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 747,257	\$ 687,446	4%
795	DROS - Long Gun	\$ 165,164	\$ 165,776	100%
732	Firearms Program - DROS	\$ 381,202	\$ 367,347	100%
700	CJIS Facilities & Communications	\$ 2,000	\$ 1,979	0.04%
DCJIS TOTAL DROS FUNDING		\$ 1,295,623	\$ 1,222,549	
DOJ TOTAL DROS FUNDING		\$ 10,621,933	\$ 10,252,878	

^{1/} Actual year-end expenditures include \$491,886 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2011/12

BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 9,582,111	\$ 9,204,449 ^{1/}	100%
823	Gun Show	\$ 772,172	\$ 727,250	100%
FIREARMS TOTAL DROS FUNDING		\$ 10,354,283	\$ 9,931,699	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 1,145,000	\$ 1,159,376	5%
795	DROS - Long Gun	\$ 176,319	\$ 185,045	100%
732	Firearms Program - DROS	\$ 369,251	\$ 311,022	100%
DCJIS TOTAL DROS FUNDING		\$ 1,690,570	\$ 1,655,443	
DOJ TOTAL DROS FUNDING		\$ 12,044,853	\$ 11,587,142	

^{1/} Actual year-end expenditures include \$473,151 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2012/13

BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 13,693,531	\$ 13,213,470 ^{1/}	100%
505	Armed Prohibited	\$ 6,767,750	\$ 6,607,278	100%
823	Gun Show	\$ 908,744	\$ 904,507	100%
FIREARMS TOTAL DROS FUNDING		\$ 21,370,025	\$ 20,725,254	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 1,152,002	\$ 1,057,966	2%
795	DROS - Long Gun	\$ 183,184	\$ 186,614	100%
732	Firearms Program - DROS	\$ 830,524	\$ 770,166	100%
705	CJIS Facilities	\$ 2,000	\$ 1,839	0.04%
DCJIS TOTAL DROS FUNDING		\$ 2,167,710	\$ 2,016,584	
DOJ TOTAL DROS FUNDING		\$ 23,537,735	\$ 22,741,838	

^{1/} Actual year-end expenditures include \$507,497 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2013/14

BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 13,696,143	\$ 14,302,411 ^{1/}	100%
505	Armed Prohibited	\$ 6,745,965	\$ 5,826,467	100%
823	Gun Show	\$ 757,070	\$ 847,151	100%
930	APPS (SB 140)	\$ 8,000,000	\$ 6,457,616	100%
FIREARMS TOTAL DROS FUNDING		\$ 29,199,178	\$ 27,433,645	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 1,279,000	\$ 1,279,000	2%
795	DROS - Long Gun	\$ 197,203	\$ 195,925	100%
732	Firearms Program - DROS	\$ 316,892	\$ 233,746	100%
700	CJIS Facilities	\$ 2,000	\$ 2,066	0.04%
DCJIS TOTAL DROS FUNDING		\$ 1,795,095	\$ 1,710,737	
DOJ TOTAL DROS FUNDING		\$ 30,994,273	\$ 29,144,382	

^{1/} Actual year-end expenditures include \$784,185 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2014/15

BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 13,938,458	\$ 13,243,312 ^{1/}	100%
505	Armed Prohibited	\$ 6,921,859	\$ 7,330,454	100%
823	Gun Show	\$ 785,365	\$ 933,138	100%
930	APPS (SB 140)	\$ 8,000,000	\$ 5,481,379	100%
FIREARMS TOTAL DROS FUNDING		\$ 29,645,682	\$ 26,988,283	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 1,308,000	\$ 1,223,845	2%
795	DROS - Long Gun	\$ 199,659	\$ 185,656	100%
732	Firearms Program - DROS	\$ 315,885	\$ 216,253	100%
700	CJIS Facilities	\$ 2,000	\$ 2,040	0.04%
DCJIS TOTAL DROS FUNDING		\$ 1,825,544	\$ 1,627,794	
DOJ TOTAL DROS FUNDING		\$ 31,471,226	\$ 28,616,077	

^{1/} Actual year-end expenditures include \$1,416,577 in statewide ProRata charges.

DOJ Programs Funded with DROS Special Fund

FY 2015/16

BUREAU OF FIREARMS

Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
510	Dealers Record of Sale	\$ 12,623,000	\$ 11,573,006 ^{1/}	100%
505	Armed Prohibited	\$ 7,430,000	\$ 7,332,426	100%
823	Gun Show	\$ 813,000	\$ 784,675	100%
710	Executive Unit	\$ 733,000	\$ 1,005,414	23%
930	APPS (SB 140)	\$ 8,000,000	\$ 6,036,072	100%
FIREARMS TOTAL DROS FUNDING		\$ 29,599,000	\$ 26,731,593	

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

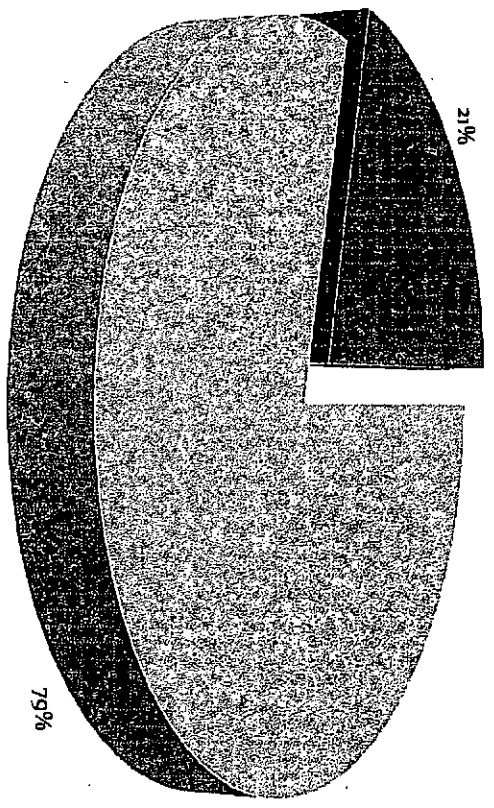
Unit Code	Program Title	Appropriation	Actual Year-End Expenditures	DROS Funding %
861	Technology Support Bureau	\$ 1,330,000	\$ 1,236,705	2%
795	DROS - Long Gun	\$ 205,000	\$ 176,239	100%
732	Firearms Program - DROS	\$ 329,000	\$ 247,755	100%
700	CJIS Facilities	\$ 2,000	\$ 2,391	0.04%
DCJIS TOTAL DROS FUNDING		\$ 1,866,000	\$ 1,663,090	
DOJ TOTAL DROS FUNDING		\$ 31,465,000	\$ 28,394,683	

^{1/} Actual year-end expenditures include \$2,337,446 in statewide ProRata charges.

EXHIBIT 12

Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 6,462,448
DQIS Total DROS Funding	\$ 1,734,000
Total DROS Fund Expenditure	\$ 8,196,448
Special Fund (Cal. DOJ)	1,734,000
Cal. Department of Justice	6,462,448

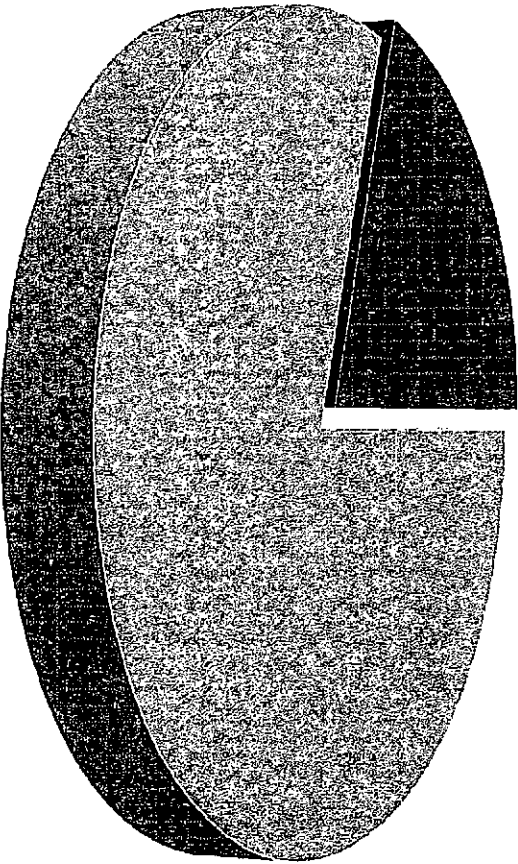
DROS FUND EXPENDITURES: CAL. DOJ:
FY 2003/2004



■ DROS (Background Checks) ■ DQIS Total DROS Funding

Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 6,615,900
DJIS Total DROS Funding	\$ 1,658,000
Total DROS Expenditures	\$ 8,273,900
Penalty/Exp. (BO) Funded	
Penalty/Exp. (BO) Funded	

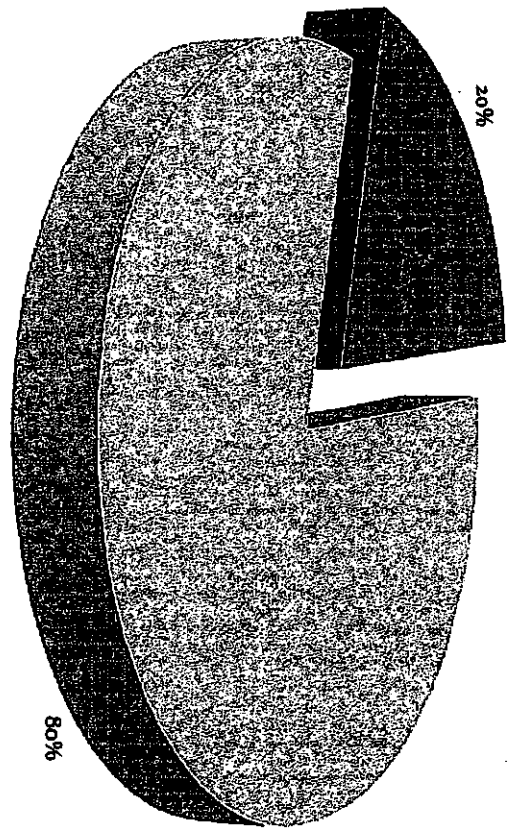
DROS FUND EXPENDITURES: CAL. DOJ:
FY 2004/2005



■ DROS (Background Checks) ■ DJIS Total DROS Funding

Department/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 6,947,816
DCJIS Total DROS Funding	\$ 1,684,936
<small> DROS FUNDING FUNDING (CAL DOJ) IN FISCAL YEAR 2005/2006 </small>	

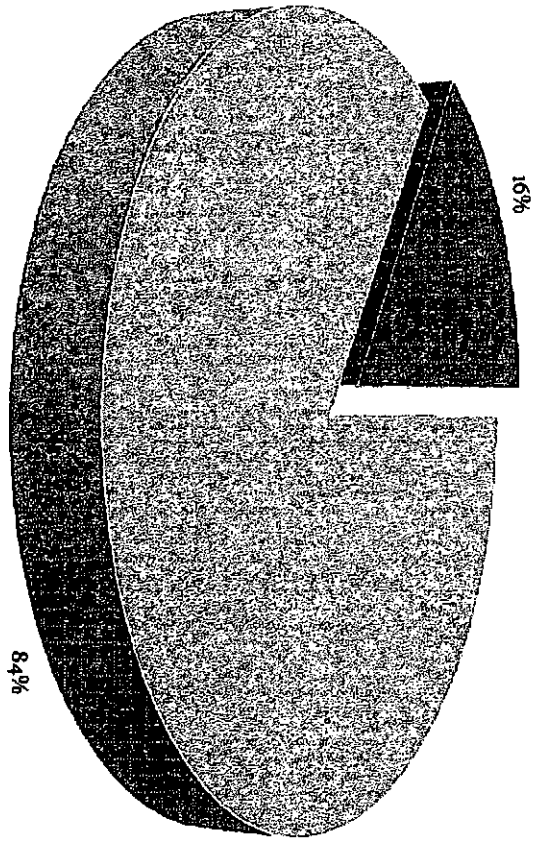
**DROS FUND EXPENDITURES: CAL. DOJ:
FY 2005/2006**



DROS (Background Checks)
 DCJIS Total DROS Funding

Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 6,652,385
DCJIS Total DROS Funding	\$ 1,226,484
Total DROS Funding	\$ 7,878,869
Specialty CAL (DCJIS)	\$ 1,226,484
CAL 2006/2007	\$ 1,226,484

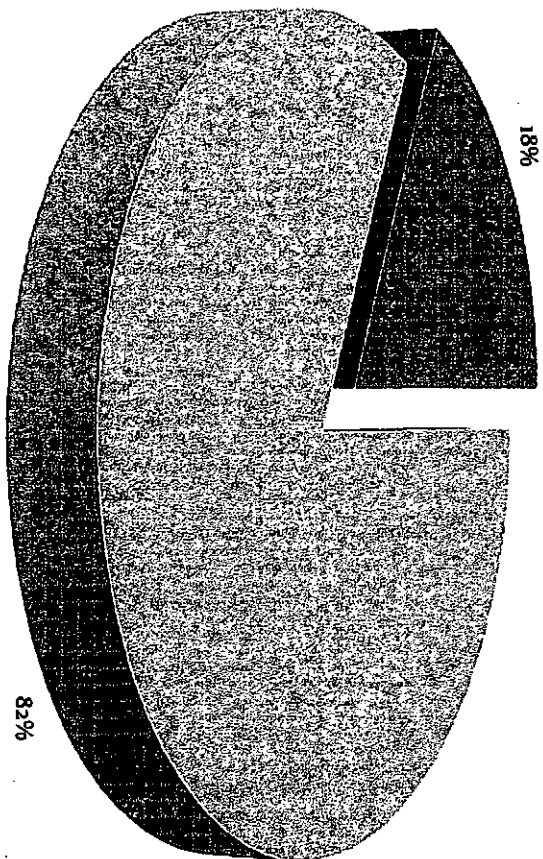
DROS FUND EXPENDITURES: CAL. DOJ:
FY 2006/2007



■ DROS (Background Checks) ■ DCJIS Total DROS Funding

Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 7,521,381
DCJIS Total DROS Funding	\$ 1,633,245

DROS FUND EXPENDITURES: CAL. DOJ:
FY 2007/2008

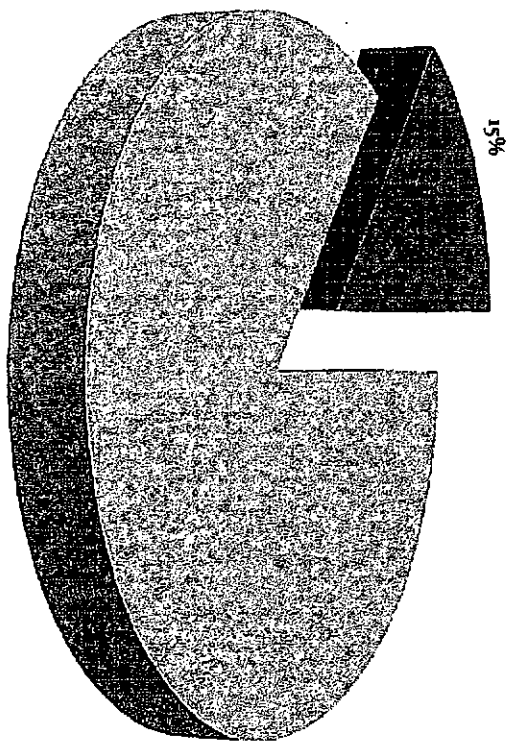


■ DROS (Background Checks)

■ DCJIS Total DROS Funding

Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 9,276,312
DCJIS Total DROS Funding	\$ 1,583,075

DROS FUND EXPENDITURES: CAL. DOJ:
FY 2008/2009

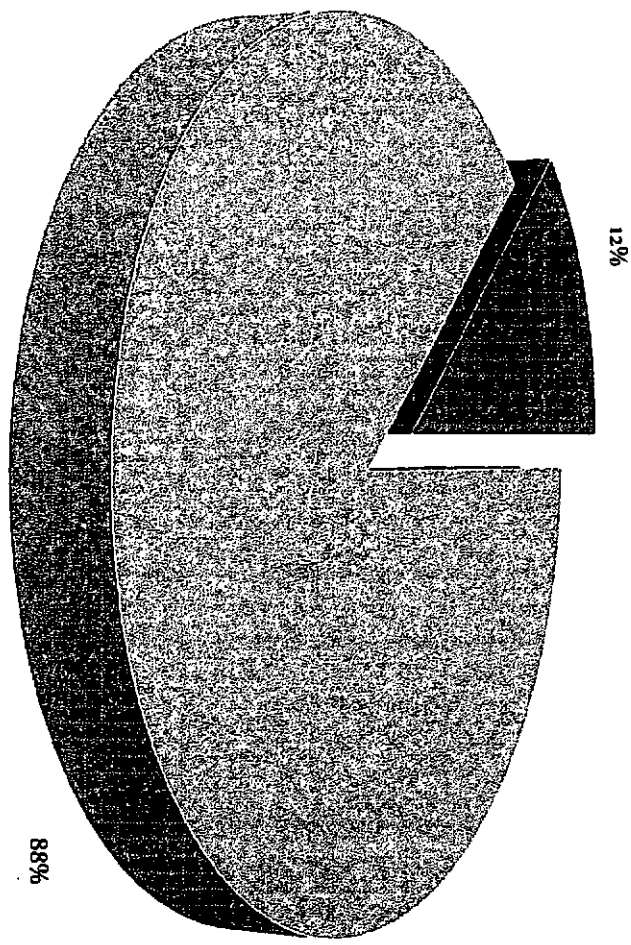


• DROS (Background Checks)

• DCJIS Total DROS Funding

Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 8,054,470
DCJIS Total DROS Funding	\$ 1,086,253
Total DROS Fund Expenditure by the Alameda County Sheriff's Office for 2009/2010	

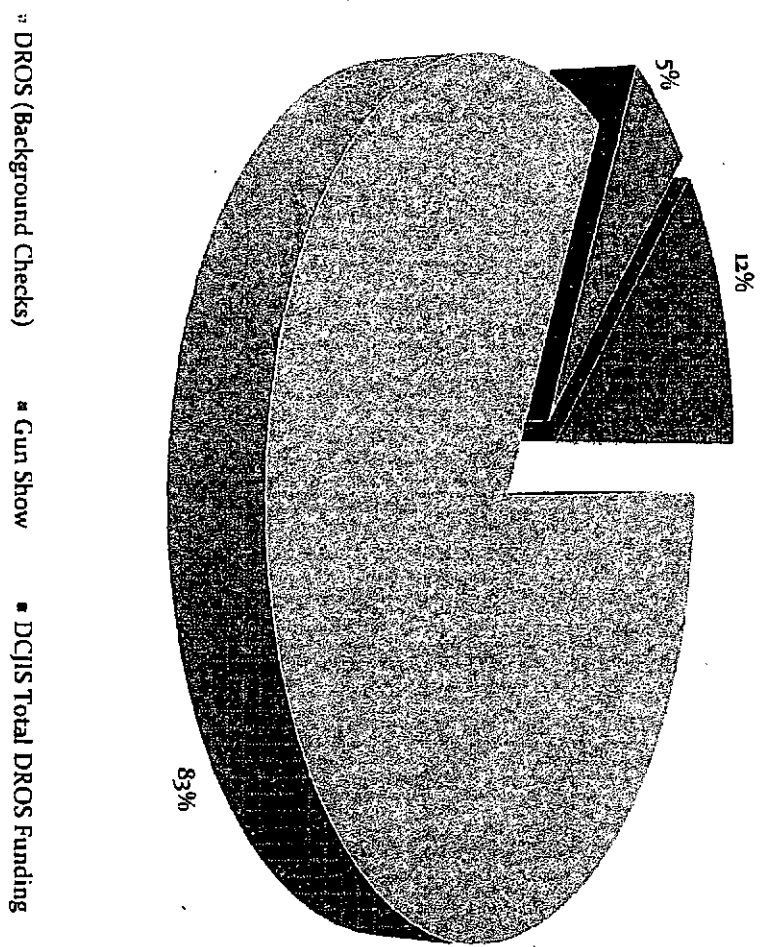
DROS FUND EXPENDITURES: CAL. DOJ:
FY 2009/2010



■ DROS (Background Checks) ■ DCJIS Total DROS Funding

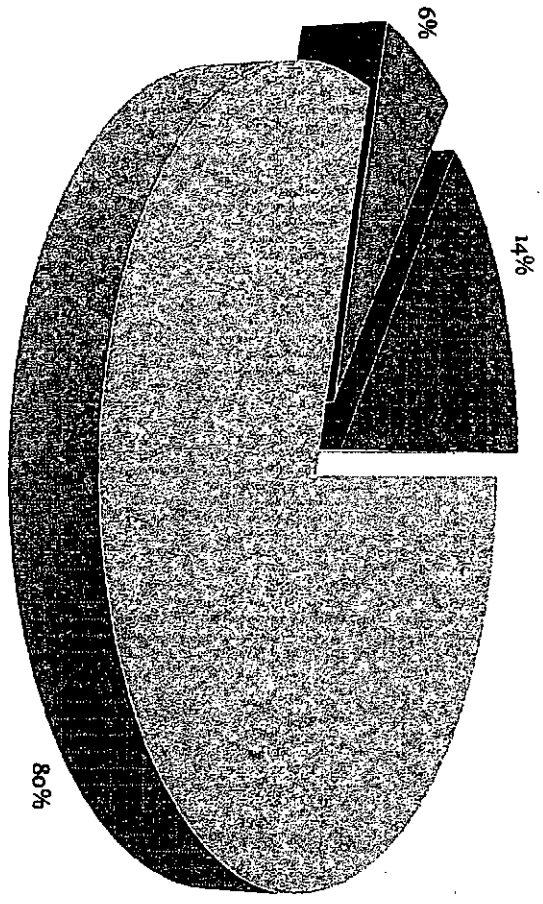
Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 8,479,616
Gun Show	\$ 559,714
DGJS Total DROS Funding	\$ 1,222,549
Total DROS Fund Expenditure	\$ 10,269,889
DROS (Background Checks)	83%
Gun Show	5%
DGJS Total DROS Funding	12%

DROS FUND EXPENDITURES: CAL. DOJ
 FY 2010/2011



Program/Division	DROS Fund Expenditure
DROS	\$ 9,204,449
Gun Show	\$ 727,250
DGJIS Total DROS Funding	\$ 1,655,443
Total DROS Fund Expenditure	\$ 11,587,142
DROS Fund Expenditure	\$ 11,587,142

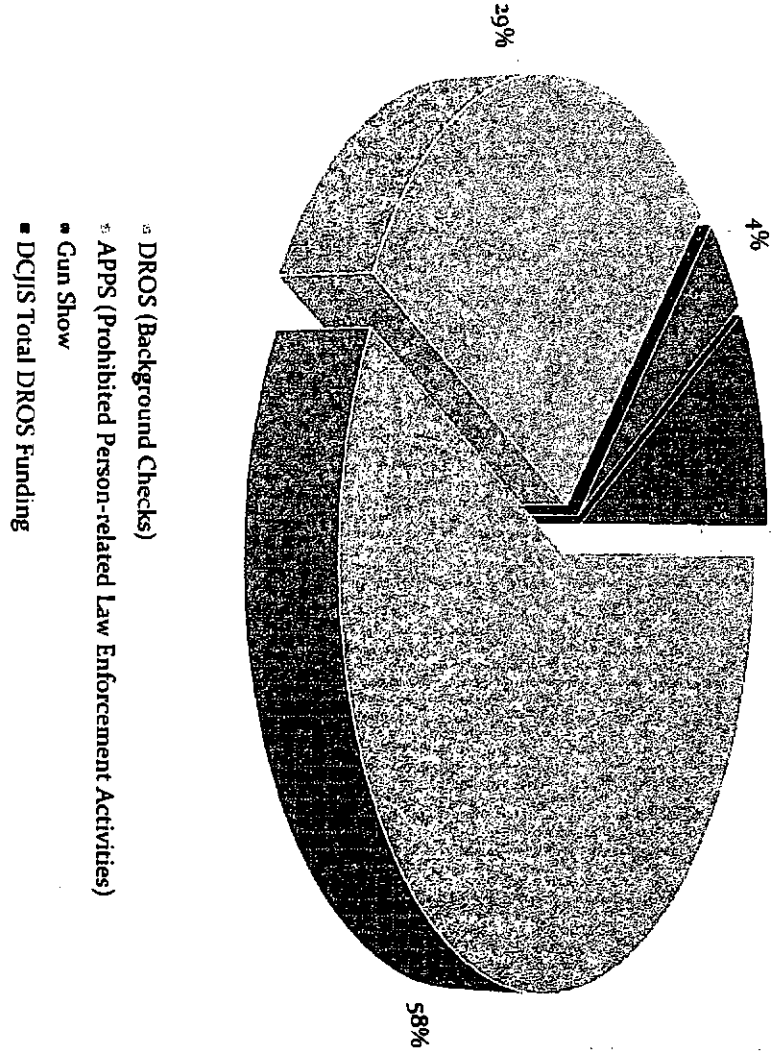
DROS FUND EXPENDITURES - CAL. DOJ:
FY 2011/2012



- DROS
- Gun Show
- DGJIS Total DROS Funding

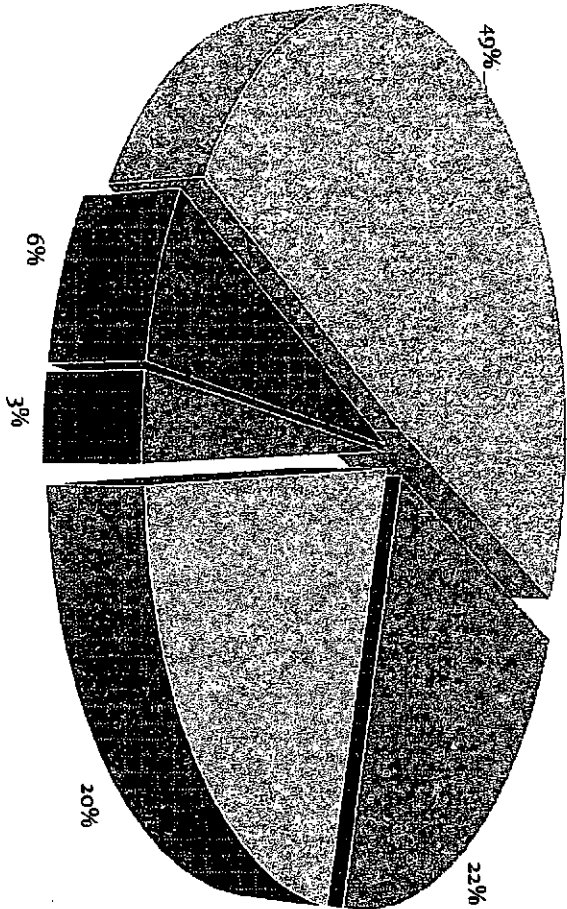
Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 13,213,470
APPS (Prohibited Person-related Law Enforcement Activities)	\$ 6,607,278
Gun Show	\$ 904,507
DCJIS Total DROS Funding	\$ 2,016,584

DROS FUND EXPENDITURES: CAL. DOJ:
FY 2012/2013



Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 14,302,411
APPS (Prohibited, Person-related Law Enforcement Activities)	\$ 6,457,616
APPS (Maintenance of APPS List)	\$ 5,826,467
Gun Show	\$ 847,151
DJIS Total DROS Funding	\$ 1,710,737

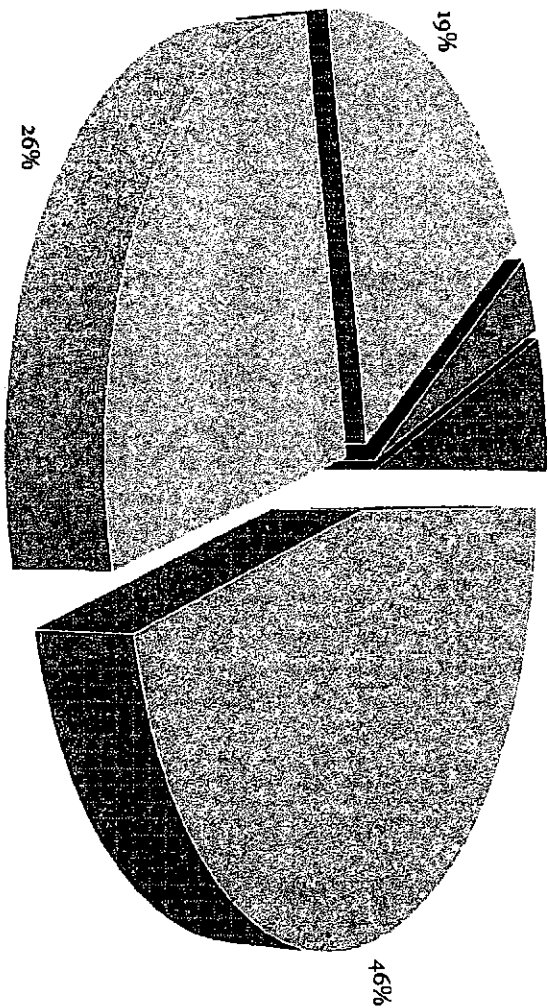
**DROS FUND EXPENDITURES: CAL. DOJ:
FY 2013/2014**



- DROS (Background Checks)
- APPS (Prohibited Person-related Law Enforcement Activities)
- APPS (Maintenance of APPS List)
- Gun Show
- DJIS Total DROS Funding

Program/Division	DROS Fund Expenditure
DROS (Background Checks)	\$ 13,243,322
APPS (Prohibited Person-related Law Enforcement Activities)	\$ 7,330,454
APPS (Maintenance of APPS List)	\$ 5,481,379
Gun Show	\$ 933,138
DCJIS Total DROS Funding	\$ 1,627,794

DROS FUND EXPENDITURES: CAL. DOJ:
FY 2014/2015



- DROS (Background Checks)
- APPS (Prohibited Person-related Law Enforcement Activities)
- APPS (Maintenance of APPS List)
- Gun Show
- DCJIS Total DROS Funding

Program/Division	DRQS Fund Expenditure
DRQS (Background Checks)	\$ 1,573,005
APPS (Prohibited Person-related Law Enforcement Activities)	\$ 7,332,426
APPS (Maintenance of APPS List)	\$ 6,036,072
Gun Show	\$ 784,675
Executive Unit	\$ 1,005,414
DCJIS Total DRQS Funding	\$ 1,663,090
Total DRQS Fund Expenditure	\$ 17,731,602

DRQS FUND EXPENDITURES: CAL. DOJ:
FY 2015/2016

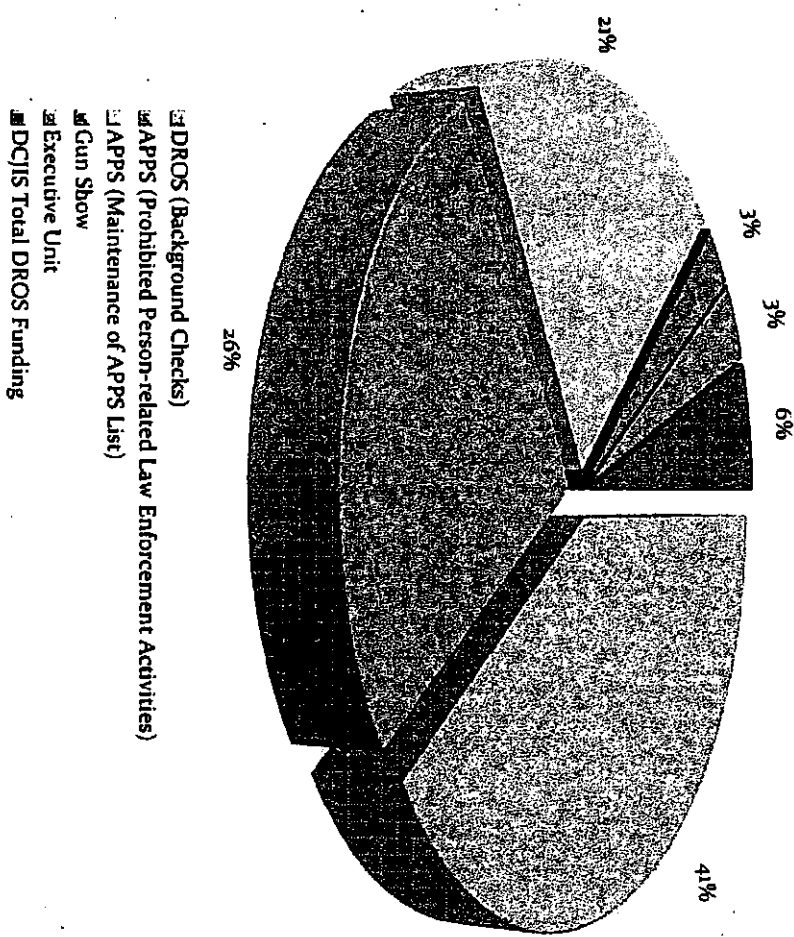


EXHIBIT 13

**California Department of Justice
Office of the Attorney General**

**Biennial Report
Major Activities in 2015-2016**



**Kamala D. Harris
Attorney General**

Firearm Safety Certificates (FSC) Program. The FSC program, formerly known as the Handgun Safety Certificate (HSC) Program, was specific to handguns only and its work processes were manual. In 2013, the state Legislature passed Senate Bill 683 to expand handgun safety certificate laws to all firearms, creating the Firearms Safety Certificate Program. In light of this new legislation, as well as feedback from stakeholders, the Bureau of Firearms moved forward with automating processes associated with the program and created the Firearm Certification System (FCS). In January 2015, SB 683 became law and the FCS was launched, streamlining the program processes and establishing an electronic method of receiving payment and issuing certificates. In July 2015, the FCS was further enhanced by automating the submission of the DOJ Certified Instructor (CI) application. Once approved, a CI can purchase, issue and generate FSCs and access CI resources. Due to the online application allowing immediate purchase and printing of the FSC, the program has generated over \$7.5 million in public savings since its implementation. The Customer Support Center, which fields calls for assistance from the CIs, handled 15,345 FSC program-related calls through June 30, 2016.

Dealer of Records Sale Unit (DROS). From January to May 2016, the unit received and processed 409,911 DROS applications and denied 4,154 applicants due to existing prohibitions. The unit also processed 26,167 DROS-related DMV mismatched transactions and 11,177 other firearms-related applications and documents. In 2015, the DROS Unit received and processed 880,603 DROS applications, and denied 9,669 applicants due to existing prohibitions. The unit also processed 56,653 DROS-related DMV mismatched transactions in 2015, in which the name supplied on the DROS application did not match the applicant's DMV issued driver license or identification card, thus resulting in rejection of the transaction. The DROS Unit also processed 31,762 other firearms-related applications and documents in 2015.

Dealer's Record of Sale (DROS) Entry System Customer Support Center. The DROS Entry System (DES) is a web-based application used by California Firearm Dealers (CFDs) to report the sale, loan, transfer, redemption, and/or acquisition of handguns and long guns to the DOJ. The system also added new functionality on the retention of long gun information pursuant to Assembly Bill 809. If an invoice is not paid within 30 days, CFDs are restricted from submitting additional transactions until outstanding invoices are paid. Prior to 2014, DOJ only accepted payment by check. The improved DES system now accepts payment of invoices by credit cards. This new business rule has reduced outstanding debt to less than a tenth of one percent. The Customer Support Center provides regulatory and technical support to CFDs on transactions, application issues, compliance-related questions, and billing inquiries. From January 1 to May 31, 2016, CSC responded to 7,061 phone calls and emails. In 2015, the CSC responded to 14,509 DES related phone calls and emails.

The Mental Health Reporting System. The Mental Health Reporting System (MHRS) enhances public safety through improved reporting of firearm prohibition. MHRS provides authorized users the ability to electronically report to the DOJ those individuals who are prohibited from possessing firearms. MHRS was enhanced to allow authorized superior courts, juvenile courts and law enforcement users to electronically report prohibitions to the department pursuant to Assembly Bill 1131 and Senate Bill 127.

EXHIBIT 14

FILED
Superior Court Of California,
Sacramento
10/16/2013
emuniz
By _____, Deputy
Case Number:
34-2013-80001667

1 C. D. Michel - S.B.N. 144258
Glenn S. McRoberts - S.B.N. 144852
2 Sean A. Brady - S.B.N. 262007
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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,
12 MARK MIDLAM, JAMES BASS, and
13 CALGUNS SHOOTING SPORTS
ASSOCIATION

14 Plaintiffs and Petitioners,

CASE NO.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDAMUS

15 vs.

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

19 Defendants and Respondents.
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By Fax

1 **FIRST CAUSE OF ACTION**
2 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
3 **VALIDITY OF SENATE BILL 819**
4 **Violation of California Const., Art. XIII A, Sec. 3**
5 **(By All Plaintiffs Against DOJ Defendants)**

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

7 74. By expanding the activities for which DROS Fee revenues can be used to include
8 regulating the "possession" of firearms, thereby increasing the activities the DROS Fee payer is
9 responsible to finance and shifting the responsibility for millions of dollars in law enforcement
10 costs from the General Fund and taxpayers, generally, to the DROS Special Account and DROS
11 Fee payers, in particular, SB 819 is a levy, charge, or exaction.

12 75. DOJ Defendants cannot meet their burden to show that such a levy, charge, or exaction
13 falls within Section 3, subdivision (b)'s five listed exceptions to being a tax, because regulating
14 the (unlawful) "possession" of firearms bears no reasonable relationship to the Plaintiffs' (i.e.,
15 DROS Fee payers') burden on or benefits received from DOJ Defendants' administration of the
16 DROS program, which is neither a licensing or permitting program.

17 76. The regulation of the *unlawful* possession of firearms, which is SB 819's main purpose
18 per its own findings, constitutes a general law enforcement activity that has no unique association
19 with DROS Fee payers. And, SB 819's main purpose – per its own findings – is to purportedly
20 benefit society as a whole, not just lawful firearm purchasers.

21 77. The adoption of SB 819 was a post hoc justification for utilizing the multi-million-
22 dollar surplus in the DROS Special Account and, as such, is the type of legislative trick meant to
23 disguise a "tax" for the purpose of generating revenue for unrelated governmental activities that
24 Proposition 26 sought to preclude.

25 78. SB 819 is thus a tax under Section 3.

26 79. Bills enacting or increasing a "tax" require the approval of two-thirds of all members of
27 each house of the Legislature under article XIII A, section 3, subdivision (a) of the California
28 Constitution.

80. Because SB 819 was not passed by the required two-thirds vote in each house of the
Legislature, it is an illegal tax under Section 3 that never became law, and thus void and

1 unenforceable.

2 81. An actual controversy exists between the parties hereto in that Plaintiffs believe that SB
3 819 constitutes an invalid tax, whereas DOJ Defendants do not, and continue to utilize DROS Fee
4 revenues to fund regulation of the "possession" of firearms.

5 82. Plaintiffs desire a judicial determination of the rights and duties of the parties, including
6 a declaration as to whether SB 819 is an illegal tax under Section 3 of Article XIII A of the
7 California Constitution.

8 83. Plaintiffs have been and continuously are irreparably injured by "DROS Fee" revenues
9 being utilized for regulating the "possession" of firearms pursuant to SB 819.

10 84. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing DROS
11 Fee revenues for the purpose of regulating the "possession" of firearms pursuant to SB 819.

12
13 **SECOND CAUSE OF ACTION**
14 **FOR DECLARATORY AND INJUNCTIVE RELIEF**
15 **INVALIDITY OF APPROPRIATION OF DROS FEE REVENUES TO ARMED**
16 **PROHIBITED PERSON SYSTEM**
17 **California Code of Civil Procedure § 526a**
18 **(By All Plaintiffs Against DOJ Defendants)**

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

20 86. Because SB 819 is an illegal tax under California's Constitution, the \$24 million
21 appropriated to DOJ Defendants via SB 140 – pursuant to and solely authorized by SB 819 – is an
22 unlawful appropriation, and SB 140 is void.

23 87. DOJ Defendants are precluded by Section 3 from using any of the \$24 million
24 appropriated by SB 140 on enforcing APPS programs.

25 88. Alternatively, even if SB 819 is not an illegal tax under California's Constitution, DOJ
26 Defendants did not have statutory authority to use DROS Fee revenues on regulating the
27 "possession" of firearms before SB 819 went into effect on January 1, 2012. Therefore, at
28 minimum, DOJ Defendants have no statutory authority to use any revenues collected from the
DROS Fee before 2012 for activities relating to the "possession" of firearms.

89. Enforcing APPS programs relates solely to regulating individuals' "possession" of
firearms. As such, any monies collected from the DROS Fee prior to SB 819 going into effect on

EXHIBIT 15

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FILED/ENDORSED
JUL 20 2015
S. Lee
By S. Lee, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

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

Plaintiffs and Petitioners,

v.

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

Defendants and
Respondents.

Case No. 34-2013-80001667

**[PROPOSED] ORDER AFTER
HEARING**

Date: June 5, 2015
Time: 9:00 a.m.
Dept: 31
Judge: The Honorable Michael P.
Kenny

Trial Date: None set
Action Filed: October 16, 2013

1 This matter came before the Court on June 5, 2015, at 9:00 a.m., for hearing on
2 (1) defendants' motion for judgment on the pleadings; (2) plaintiffs' motion to compel further
3 responses to requests for admissions; and (3) plaintiffs' motion to compel further responses to
4 Form Interrogatory 17.1.

5 Scott M. Franklin of Michel & Associates, P.C. appeared on behalf of plaintiffs. Deputy
6 Attorney General Anthony R. Hakl appeared on behalf of defendants.

7 Prior to the hearing the Court issued a Notice to Appear for Oral Argument, with questions.
8 Having heard oral argument, and having considered the written submissions of the parties, for the
9 reasons discussed more fully on the record during the hearing, IT IS HEREBY ORDERED that:

- 10 ~~1. Defendants' motion for judgment on the pleadings is granted.~~ *a.k.a. the 1st cause of*
11 ~~2. The first cause of action of the complaint for declaratory and injunctive relief and~~ *act.*
12 ~~petition for writ of mandamus is dismissed without leave to amend on the grounds that it does not~~ *AK*
13 ~~state facts sufficient to constitute a cause of action against moving defendants;~~

14 3. With respect to the second cause of action, and as indicated in the Court's questions
15 issued before the hearing, that cause of action appears to plead two alternative claims: that SB
16 140 is an unlawful appropriation because SB 819 is an illegal tax under the California
17 Constitution; and that, even if SB 819 is not an illegal tax, the DOJ defendants had no statutory
18 authority to use DROS fee revenues on regulating the possession of firearms prior to January 1,
19 2012, the date that SB 819 went into effect. The first alternative claim of the second cause of
20 action is dismissed without leave to amend, the Court having granted the motion for judgment on
21 the pleadings and dismissed the first cause of action;

22 4. With respect to the second alternative claim of the second cause of action, and as
23 discussed on the record during the hearing, the Court is inclined to construe the motion for
24 judgment on the pleadings as a motion to strike and strike that claim. Nevertheless, the parties
25 shall be afforded an opportunity to brief the motion to strike issue. Accordingly, on or before
26 8/7/15, each side may file a supplemental brief no longer than five pages addressing
27 whether the Court should construe the motion for judgment on the pleadings as a motion to strike
28 and strike the second alternative claim of the second cause of action.

EXHIBIT 16

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME	December 11, 2015, 9:00 a.m.	DEPT. NO	31
JUDGE	HON. MICHAEL KENNY	CLERK	S. LEE
DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, <p style="text-align: center;">Plaintiffs and Petitioners,</p> <p style="text-align: center;">v.</p> KAMALA HARRIS, in Her Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10, <p style="text-align: center;">Defendants and Respondents.</p>		Case No.: 34-2013-80001667	
Nature of Proceedings:		MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT	

The following shall constitute the Court's tentative ruling on the motion for leave to file first amended complaint, which is scheduled to be heard by the Court on Friday, December 11, 2015 at 9:00 a.m. in Department 31. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

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

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

Background

Via order dated July 20, 2015, the Court granted Respondents' motion for judgment on the pleadings as to the first cause of action without leave to amend, on the grounds that it did not

state facts sufficient to constitute a cause of action. This cause of action was for declaratory and injunctive relief on the basis that SB 819 was a tax and its passage violated article XIII A, section 3, subdivision (a) of the California Constitution because it was not passed by two-thirds of all members of each house of the Legislature. Article XIII A, section 3, subdivision (a) provides,

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

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

Pursuant to Code of Civil Procedure section 473(a)(1),

“The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.”

Generally the Court should allow amendments to operative pleadings. (*Mesler v. Bragg Mgmt. Co.* (1985) 39 Cal.3d 290, 296.) Even in cases of delay in moving to amend, it is “an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment.” (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) In fact, it is “a rare case in which denial of leave to amend can be justified.” (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428.)

In the instant motion for leave to file first amended complaint, Petitioners seek to substitute Betty Yee as State Controller in place of John Chiang as a Defendant/Respondent. Petitioners also seek to add an alternative theory to their sixth cause of action, and plead new seventh, eighth, ninth, and tenth causes of action. (Declaration of Scott M. Franklin, Exhibit 5.) Petitioners' allegations via the new causes of action can be summarized as follows:

7. Declaratory and injunctive relief, violation of California Constitution article XIII, sec. 1(b) – By expanding the activities for which DROS Fee revenues can be

used, SB 819 creates a property tax which must be assessed in proportion to the value of the property being taxed per article XIII, section 1(b) of the California Constitution. DOJ has never evaluated whether SB 819 is assessed in proportion to the value of the property being taxed, and the amount charged is not proportional, which violates article XIII, section 1(b).

8. Declaratory and injunctive relief, violation of California Constitution article XIII, sec. 2 – The DROS Fee revenue use expansion caused by SB 819 creates a tax, which requires a two-thirds vote of the legislature as a differential tax pursuant to article XIII, section 2 of the California Constitution. SB 819 was not enacted by a two-thirds vote, and consequently violates article XIII, section 2.

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

10. Declaratory and injunctive relief, scope of the “possession provision” –DOJ contends that SB 819 allows it to use DROS fee revenue to recoup costs not limited to APPS-based law enforcement activities. DOJ’s use of the DROS fee revenues in this expansive manner is a violation of SB 819.

Respondents oppose the motion for leave to amend on the basis that it is untimely and that granting the motion will prejudice the DOJ defendants.

Discussion

Timeliness

In dismissing the first cause of action, the Court did not make findings concerning any constitutional provisions other than article XIII A, section 3, subdivision (a). The entirety of the parties’ arguments in connection with the motion for judgment on the pleadings focused on article XIII A, section 3, subdivision (a). Now, in opposing the motion for leave to amend, Respondents contend that the Court’s order on the motion for judgment on the pleadings applied to *all* theories that SB 819 is an illegal tax. Consequently, Respondents contend, if Petitioners wanted to assert alternate constitutional violation allegations, they needed to show that they could properly do so as part of their opposition to the motion for judgment on the pleadings. This is incorrect.

The Court’s order only denied leave to amend as to an allegation that SB 819 violates article XIII A, section 3, subdivision (a). This motion is not an attempt to cure the deficiencies of the first cause of action (and alternate theory of the second cause of action) but instead is a motion to amend in order to plead new theories of constitutional violation.

Respondents' argument that the motion is untimely is misplaced.¹

Prejudice

Respondents also argue this litigation has already been through several iterations (starting in a separate matter in federal court that is now on appeal) and allowing amendment at this point would make it "highly unlikely this case will be resolved any time soon."

Any time a petition is amended it is likely to result in a delay of the resolution of a matter. However, Respondents have failed to cite to specific prejudice they will incur as a result of the amendment other than additional discovery and that "there would be no end in sight." (Opposition, p. 9.) Respondents do not cite to any case holding that amending a complaint two years after initiating a matter, and five months after the granting of a motion for judgment on the pleadings, is, by itself, sufficient prejudice to deny leave to amend.

Conclusion

~~The motion for leave to amend and file a first amended complaint is GRANTED.~~

However, the Court will not deem the proffered first amended complaint as having been filed as of the date of this order. The proposed amended complaint improperly still contains the first cause of action and first alternate theory in the second cause of action, both of which were removed from the Petition/Complaint, without leave to amend, via order dated July 20, 2015. Although Petitioners have made reference to this fact via footnotes "11" and "12" this improperly leaves material which has been effectively stricken from the Petition/Complaint, resulting in a confusing operative pleading. Petitioner is ordered to remove the First Cause of Action and first alternate theory from the Second Cause of Action, and properly revise the Complaint.

Petitioners shall file the amended Petition/Complaint within 30 days of the date of this order. Respondents shall file an answer within 30 days of the filing of the Amended Petition.

//

In the event that this tentative ruling becomes the final ruling of the Court, in accordance with Local Rule 1.06, counsel for Petitioners is directed to prepare an order granting the motion and ordering an amended Complaint to be filed, and incorporating this ruling as an exhibit to the order; submit them to counsel for Respondents for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with Rule of Court 3.1312(b).

¹ Respondents do not argue that the proposed causes of action fail to state a claim; consequently, the Court does not address this issue.

EXHIBIT 17

FILED
ENDORSED

2015 MAY 19 AM 11:46

CLERK'S OFFICE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

1 C. D. Michel - S.B.N. 144258
2 Scott M. Franklin - S.B.N. 240254
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Attorneys for Plaintiffs/Petitioners

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 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 vs.

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

Defendants and Respondents.

CASE NO. 34-2013-80001667

OPPOSITION TO DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS

Date: 06/05/15
Time: 9:00 a.m.
Dept.: 31
Judge: Hon. Michael P. Kenny,
Presiding
Action filed: 10/16/13

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BY FAX

1 Dealer Record of Sale Account for the additional, limited purpose of funding
2 enforcement of the Armed Prohibited Persons System.

3 (*Id.* ¶ 11, Ex. 10); (*see* MJOP 3:2-5 [admitting the Armed and Prohibited Person System, i.e.,
4 APPS, was funded with general fund money prior to SB 819].)

5 **B. The Term "Higher Tax" Plainly Includes the Tax Created by SB 819**

6 When construing a provision of the state Constitution brought about by voter
7 initiative, we apply the same interpretive principles governing statutory
8 construction. [O]ur paramount task is to ascertain the intent of those who enacted
9 it. We look first to the provision's language as the best indicator of the voters'
10 intent giving words their ordinary meaning and construing them in the context of
11 the measure as a whole and its overall scheme. Absent ambiguity, we presume that
12 the voters intend the meaning apparent on the face of an initiative measure ... and
13 the court may not add to the statute or rewrite it to conform to an assumed intent
14 that is not apparent in its language.

15 *City of San Buenaventura v. United Water Conservation Dist.*, 235 Cal. App. 4th 228, 243 (2015)

16 (citations omitted) (quotation marks omitted). "Where there is ambiguity in the language of the
17 measure, [b]allot summaries and arguments may be considered when determining the voters'
18 intent and understanding of a ballot measure." (*Id.*) (citation omitted).

19 Defendants are off the mark in claiming "SB 819 simply did not result in any change in
20 state statute resulting in anyone paying a 'higher' amount of anything." (MJOP 6:16-18.) The
21 language of the constitutional provision at issue is simple, and the application here is clear.
22 Before SB 819, DROS Fee payers did not get singled out to pay for law enforcement
23 investigations of those on the APPS list, but after SB 819, they did. SB 819 created a firearm
24 purchaser tax that did not exist before SB 819, and going from zero tax to some amount of tax
25 plainly satisfies the "higher tax" element of a Proposition 26 claim.

26 **1. Proposition 26 Was Intended to Prevent "Revenue-Neutral" Taxes, Like the
27 One Created by SB 819, from Being Enacted on a Bare Majority Vote**

28 Even assuming arguendo that there could be any doubt about whether a "higher tax" exists
in this instance, the intent behind Proposition 26 is crystal clear, and it destroys Defendants' claim
that "Proposition 26 does not apply." (MJOP 6:6-19.) The express purpose of Proposition 26 was
to "broaden[] the definition of a state or local tax to include many payments currently considered
to be fees or charges." (Franklin Decl. ¶ 16, Ex. 15.) The state legislative analysis explained that

1 “[g]enerally, the types of fees and charges that would become taxes under [Proposition 26] are
2 ones that government imposes to address health, environmental, or other societal or economic
3 concerns.” (*Id.*) And the ballot argument in favor of Proposition 26 clearly states that Proposition
4 26 requires “a two-thirds vote of each house of the Legislature to approve laws that increase taxes
5 on any taxpayer, even if the law’s overall fiscal effect does not increase state revenues.” (*Id.* at
6 57) (emphasis added).

7 This requirement was intended “to end the Legislature’s practice of approving by a simple
8 majority vote so-called ‘revenue-neutral’ laws that increased taxes for some taxpayers but
9 decreased taxes for others.” *Schmeer v. Cnty. of Los Angeles*, 213 Cal. App. 4th 1310, 1329
10 (2013). SB 819 was exactly that, i.e., a law intended to “increase taxes for some taxpayers [i.e.,
11 DROS Fee payers,] but decrease [] taxes for others [i.e., all other taxpayers who do not pay the
12 DROS Fee].” SB 819 was exactly the type of “revenue-neutral” shell game that Proposition 26
13 was intended to thwart. Defendants’ failure to address this fact in the MJOP confirms what is
14 shown above: SB 819 created a “higher tax” on DROS Fee payers, and thus the MJOP fails.

15 2. SB 819 Created a Tax, Based on Department of Finance Guidance

16 Finally, Plaintiffs believe it is appropriate to restate something already argued in the
17 context of the underlying discovery dispute:⁶ the California Department of Finance has clearly
18 stated that the funds at issue, “when transferred, may become proceeds of taxes.” (Motion to
19 Compel Further RFA Responses 9:9-27.) This is exactly what happened here: when DROS Fee
20 funds were transferred out of the DROS Special Account pursuant to SB 819 to fund activities
21 that were historically funded out of general tax revenues (e.g., APPS-based law enforcement
22 activities), the transferred DROS Fee funds became “the proceeds of taxes.” (*Id.*) Therefore,
23 although the DROS Fee did not completely change its character (assuming the Department is still
24

25 ⁶ I.e., Plaintiffs’ Motion to Compel Further Responses to Request for Admissions,
26 Set One, Propounded on Defendants Kamala Harris and Stephen Lindley, Memorandum
27 in Support thereof, at Section III.C.4 (*hereinafter* “Motion to Compel Further RFA
28 Responses [.]” dated and filed February 17, 2015); and the Reply filed in support thereof,
at Section II.A.2. (dated and filed April 14, 2015). As stated in these briefs, Defendants’
MJOP arguments arose as a purported justification once Plaintiffs sought to remedy
Defendants’ failure to fully comply with discovery propounded by Plaintiffs.

1 funding the regulatory aspects of the DROS process via DROS Fee funds), the use of DROS Fee
2 funds for APPS-related law enforcement activities pursuant to SB 819 turned at least some
3 portion of the DROS Fee into a tax. If a change in statute causes the proceeds of a fee to become
4 "the proceeds of a tax[.]" that means there is a tax where there was no tax before, and thus there is
5 a "higher tax" as is required for a Proposition 26 claim. SB 819 transformed DROS Fee proceeds
6 into tax proceeds, and that "higher tax" prevents Defendants from prevailing on their MJOP.

7
8 **C. The MJOP Cannot Be Used to Raise or Argue Factual Issues to Be Determined
During Future Merits Briefing**

9 Based on the brevity of and lack of clarity in the MJOP, Plaintiffs are unsure if
10 Defendants are currently arguing only that: (1) Proposition 26 does not apply because the DROS
11 Fee itself was not raised as a result of SB 819, or if they are *also* arguing that (2) it does not apply
12 because the DROS Fee is in no part a tax, and 0% tax cannot be a "higher tax" triggering the
13 requirements of Proposition 26. If Defendants are attempting to argue whether the use of DROS
14 Fee funds for APPS-based law enforcement activities constitutes a tax, that issue is plainly not
15 ripe. To the extent Defendants are conflating the current dispute (whether SB 819 created a
16 "higher" tax), with one of the ultimate questions herein (whether the use of DROS Fee funds for
17 APPS-related activities constitutes a tax), such argument should be ignored at this stage.

18 Article XIII A, section 3(d) of the California Constitution makes it absolutely clear that
19 determining whether the post-SB 819 DROS Fee is a tax hinges on multiple fact questions. That
20 is, in applying the relevant constitutional definition of what is a "tax," the court will have to
21 wrestle with factual issues like whether the levy here falls within one of the factually based
22 exclusions (e.g., is the levy imposed for a specific benefit that non-payers do not receive?) or
23 whether the Department has met its burden to show, among other things, "that the amount is no
24 more than necessary to cover the reasonable costs of the governmental activity[.]" Cal. Const. art
25 XIII A, § 3(a)(1), (d). Motions for judgments on the pleading are plainly *not* the proper mechanism
26 to resolve factual disputes. *See Gerawan Farming, Inc. v. Lyons*, 24 Cal. 4th 468, 504 (2000)
27 (holding that factual allegations are accepted as true and given liberal construction in response to
28 a motion for judgment on the pleadings). Accordingly, to the extent the MJOP includes an

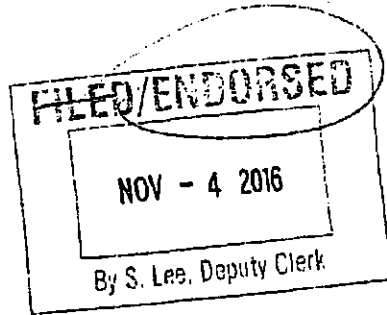
EXHIBIT 18

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Attorney for Plaintiffs/Petitioners

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

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

Plaintiffs and Petitioners,

vs.

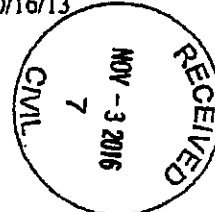
15 KAMALA HARRIS, in Her Official
16 Capacity as Attorney General for the State
17 of California; STEPIEN LINDLEY, in His
18 Official Capacity as Acting Chief for the
19 California Department of Justice, JOHN
20 CHIANG, in his official capacity as State
21 Controller for the State of California, and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

Defendants and Respondents.

CASE NO. 34-2013-80001667

STIPULATION RE: BIFURCATION AND
SETTING PARTIAL MERITS HEARING;
[PROPOSED] ORDER

Date: November 4, 2016
Time: 9:00 a.m.
Dept.: 31
Judge: Hon. Michael P. Kenny
Action filed: 10/16/13



The parties to this Action, through their respective counsel, hereby stipulate and agree to the following.

AVERMENTS

WHEREAS, counsel for Plaintiffs and Defendants participated in an informal discovery conference with this Court on October 28, 2016;

WHEREAS, during that conference, counsel and the Court discussed generally the status of discovery in the action, primarily as to: (1) Plaintiffs' two motions to compel set for hearing on

1 October 28, 2016, and (2) potential motions to compel and/or motions for protective orders that
2 the parties anticipate as to certain recently served discovery requests;

3 WHEREAS, the Court inquired with the parties if they would be amenable to bifurcating
4 the action with the intent to narrow the action and thus potentially reduce the need for further
5 discovery and discovery dispute resolution;

6 WHEREAS, the Court continued the Motion to Compel hearings set to be heard October
7 28, 2016, to November 4, 2016, to give the parties an opportunity to meet-and-confer to
8 determine if they could stipulate to the terms of a proposed order addressing the bifurcation of the
9 action; and

10 WHEREAS, the parties have met and conferred as discussed above, and they are in
11 agreement as stipulated below.

12 **STIPULATION**

13 THEREFORE, based on the foregoing facts, the parties hereby stipulate as follows.

14 1. ~~Plaintiffs' action is to be bifurcated such if either party desires to file a summary~~
15 ~~adjudication/trial brief and separate statement of undisputed facts as to the Fifth or Ninth Cause~~
16 ~~of Action (or both) pleaded in Plaintiffs' First Amended Complaint, such documents must be~~
17 ~~filed by March 10, 2017, with opposition briefs filed no later than March 24, 2017, and reply~~
18 ~~briefs filed no later than March 31, 2017. The Court will set the matter for hearing on April 14,~~
19 ~~2017, or as soon thereafter as this Court's schedule will allow.~~

20 2. Memoranda filed pursuant hereto are subject to a 20-page limitation for motion
21 and opposition briefs, and a 10-page limit for reply briefs.

22 3. If a new material factual allegation is raised for the first time in a response to a
23 particular assertion made in a motion or separate statement of undisputed facts filed pursuant to
24 the bifurcation order, an ex parte application may be made to the Court for a Case Management
25 Conference so that the party may request the Court continue the relevant hearing date so that
26 limited discovery can be performed on the newly raised factual assertions. Cal. R. Court 3.723.
27 The parties making such application shall schedule such matter in good faith, expressly taking
28 into consideration the Court's and the opposing parties' schedule. The parties agree to such

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ORDER

Based on the Stipulation of the parties dated November 3, 2016, the Court ORDERS the Action be bifurcated pursuant to the terms outlined in the abovementioned stipulation. To wit, it is ORDERED that:

1. The hearing of November 4, 2016, is off calendar, and will be rescheduled by the Court if not mooted by the Court's ruling(s) on the partial merits briefing authorized hereby.
2. ~~Plaintiffs' action is to be bifurcated such if either party desires to file a summary adjudication/trial brief and separate statement of undisputed facts as to the Fifth or Ninth cause of Action (or both) in Plaintiffs' First Amended Complaint, such documents must be filed by March 10, 2017, with opposition briefs filed no later than March 24, 2017, and reply briefs filed no later than March 31, 2017. The Court will set the matter for hearing on April 14, 2017, or as soon thereafter as its schedule will allow.~~
3. Memoranda filed pursuant hereto are subject to a 20-page limitation for motion and opposition briefs, and a 10-page limit for reply briefs.
4. If a new material factual allegation is raised for the first time in a response to a particular assertion made in a motion or separate statement of undisputed facts filed pursuant to the bifurcation order, an ex parte application may be made to the Court for a Case Management Conference so that the party may request the Court continue the relevant hearing date so that limited discovery can be performed on the newly raised factual assertions. Cal. R. Court 3.723. The parties making such application shall schedule such matter in good faith, expressly taking into consideration the Court's and the opposing parties' schedule. Counsel may appear at such hearing(s) telephonically.

EXHIBIT 19

FILED
ENCLOSURE

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OF CALIFORNIA
COUNTY OF SACRAMENTO

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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.

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, and DOES 1-10.

Defendants and Respondents.

CASE NO. 34-2013-80001667

FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDAMUS

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

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

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

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

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

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

17 90. DOJ Defendants have a clear, present, and ministerial duty pursuant to California
18 Penal Code sections 28225(a) [12076(e)] and 28225(b) [12076(e)] to determine “the amount
19 necessary to fund” the activities enumerated at Penal Code section 28225(b)(1)-(11)
20 [12076(e)(1)-(10)] and to only charge the DROS Fee at that amount.

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

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

27 93. Since the year 2004, the DROS Special Account, despite expenditures therefrom
28 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 prior
15 to the passage of SB 819, the expansion of the scope of “necessary” costs funded by the DROS
16 Fee resulting from that new use constitutes a major change in circumstance that requires DOJ
17 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 be

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

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

8 137. On information and belief, DOJ Defendants contend that, as a result of SB 819,
9 Penal Code section 28225(c) was amended such that the DOJ can now use the DROS Fee to
10 recoup costs of "firearms-related . . . enforcement . . . activities related to the . . . possession . . . of
11 firearms" including, **but not limited to**, APPS-based law enforcement activities. Penal Code §
12 28225(c).

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

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

24 140. DOJ continues to utilize DROS Fee revenues to fund APPS pursuant to an incorrect
25 interpretation of SB 819, and declaratory relief on the scope of SB 819 is appropriate not only to
26 end improper appropriations currently occurring, but to prevent a multiplicity of litigation
27 concerning other costs alleged to be improperly appropriated based on an incorrect interpretation
28 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

EXHIBIT 20

INITIAL STATEMENT OF REASONS

Specific purpose of the regulations

The purpose of these regulations is to adjust the Department of Justice (DOJ) fee for processing firearms purchase/transfer applications commonly referred to in statute as Dealer's Record of Sale (DROS). ~~The proposed regulations lower the current \$19 DROS fee to \$14, commensurate with the actual cost of processing a DROS. The proposed regulations would also establish a process for DOJ to administratively adjust the DROS fee.~~

Factual basis

DOJ is statutorily authorized to charge a fee to cover its costs for processing Dealer's Records of Sale (DROS). The fees are collected by firearms dealers, from firearm purchasers/transferees and are subsequently submitted to DOJ.

The current DROS fee was set back in November 2004 at \$19, which at the time was believed to be sufficient to cover the cost of the program and maintained an acceptable level of reserve in the DROS account. The estimate of \$19 was based on reviewing the totals from previous year's firearm sales and calculations of anticipated sales within the state. DOJ recently completed a review of the revenues into and expenditures out of the DROS account, and the total number of firearm sales between 2007 and present date. The analysis revealed that the projected gun sale amounts relied upon back in 2004 to set the DROS fee at \$19, were much lower than the actual total of gun sales realized.

Over the past three fiscal years there has been a 30 percent increase in DROS volume. In fiscal year (FY) 06/07 DOJ processed 367,494 DROS compared to 479,772 DROS processed in FY 08/09. The "economy of scale" dictates that the processing cost per DROS decreases as the volume increases. Going back even further, a comparison between FY 03/04 and FY 08/09 reveals a 60 percent increase in DROS volume which demonstrates the extreme volatility in the firearms market and DROS processing costs. DROS volume is extremely difficult to predict and is driven by a variety of factors including civil unrest, natural disasters, crime rates, proposed legislation, and the economy. For example, the Los Angeles riots contributed to an increase in DROS volume to 559,608 in 1992 and a record level of 642,197 the following year. In comparison, in calendar year 2003 the DROS volume dipped to an all-time low of 290,376.

In processing a DROS, DOJ must conduct a Basic Firearms Eligibility Check (BFEC) to ensure that subjects are not prohibited from owning/possessing firearms pursuant to Penal Code sections 12021 and 12021.1, Welfare and Institutions Code sections 8100 and 8103, and Title 18 of the United States Code, section 922, subdivision (t). Depending on various factors, a BFEC may be processed programmatically by the Consolidated Firearms Information System (CFIS) or it may require a more time consuming manual review which is conducted by BOF staff. The percentage of DROS that require a manual review has decreased slightly in recent years due to minor system/program enhancements. Consequently, within the past three fiscal years, although the volume of DROS transactions has increased, the average time spent on each DROS, and thus the processing cost, has decreased. Based on the increased level of gun sales, achieved savings in conducting firearms eligibility background checks, and the increases in the revenue reserves

within the DROS account, DOJ is proposing to reduce the DROS fee from \$19 to \$14. The proposed fee reduction will begin reducing the revenue level in the DROS account and more closely align the program's cost with its revenue source in the future.

Because of the aforementioned volatility in firearm sales and DROS volume from year to year, the process proposed by DOJ for the administrative adjustment of the DROS fee, would require the department to review its DROS revenues and DROS-related expenses at the end of each fiscal year to determine whether it is necessary to adjust the DROS fee. By November 1, 2010 and by November 1st each year thereafter, the department shall publish its determination on the DOJ public website. If the department determines it is necessary to administratively adjust the DROS fee, the department shall provide notice of the amount and date of the adjustment at least 30 days before the adjustment takes effect to all interested parties.

Technical, theoretical, and/or empirical study, report or documents

DOJ did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of the amended regulations.

Specific technologies and new equipment

These regulations do not mandate the use of specific technologies or new equipment.

Reasonable Alternatives to the Regulations and the Agency's Reasons for Rejecting Them

No other reasonable alternatives were presented to or considered by DOJ that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome.

Reasonable Alternatives to the Proposed Regulatory Action That Would Lessen Any Adverse Impact on Small Businesses and the Agency's Reasons for Rejecting Them

DOJ finds that the proposed regulations would not have an adverse impact on small businesses.

Evidence Supporting Finding of No Significant Adverse Economic Impact on Any Business

DOJ determined the proposed regulations will not have a significant adverse economic impact. On the contrary, the proposed regulations may have a positive economic impact on firearms dealers in the form of increased firearm sales due to the \$5 decrease in the DROS fee.

EXHIBIT 21

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO
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13 **DAVID GENTRY, JAMES PARKER,
MARK MID LAM, JAMES BASS, and
14 CALGUNS SHOOTING SPORTS
ASSOCIATION,**

15 Plaintiffs and Petitioners,
16

17 v.

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

22 Defendants and
23 Respondents.

Case No. 34-2013-80001667

**DEFENDANT KAMALA HARRIS AND
STEPHEN LINDLEY'S AMENDED
24 RESPONSES TO FORM
25 INTERROGATORIES, SET THREE
26 PROPOUNDED BY PLAINTIFF**

24 PROPOUNDING PARTY: Plaintiff David Gentry

25 RESPONDING PARTY: Defendants Kamala Harris and Stephen Lindley

26 SET NO.: THREE
27

1 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
2 contact information is above.

3 (a) **Request for Admission No. 122.**

4 (b) The relevant rulemaking file, which has been produced to plaintiffs, shows at least one
5 public comment that the DROS fee should not be reduced. (See, e.g., AGRFP000160.)

6 (c) Stephen Lindley. Mr. Lindley can be contact through counsel, whose contact
7 information is above.

8 (d) Defendants have no additional documents to identify other than the documents
9 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

10 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
11 contact information is above.

12 (a) **Request for Admission No. 126.**

13 (b) Defendants do not recall such a determination having been made.

14 (c) Stephen Lindley. Mr. Lindley can be contact through counsel, whose contact
15 information is above.

16 (d) Defendants have no additional documents to identify other than the documents
17 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

18 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
19 contact information is above.

20 (a) **Request for Admission No. 129.**

21 (b) ~~The decision referred to did not become final until approximately October of 2011,~~
22 ~~when SB 819 became law.~~

23 (c) Stephen Lindley. Mr. Lindley can be contact through counsel, whose contact
24 information is above.


25 (d) Defendants have no additional documents to identify other than the documents
26 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.

27 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
28 contact information is above.

1 Dated: September 3, 2015

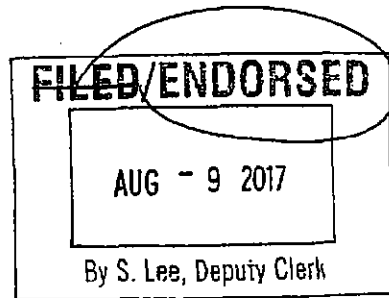
Respectfully Submitted,

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6 
7 ANTHONY R. HAKL
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9 *Attorneys for Defendants Kamala Harris*
10 *and Stephen Lindley*

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EXHIBIT 22



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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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

Plaintiffs and Petitioners,

v.

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

Defendants and Respondents.

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

**RULING ON SUBMITTED MATTER:
MOTIONS FOR ADJUDICATION OF
PLAINTIFFS' FIFTH AND NINTH
CAUSES OF ACTION**

This matter came on regularly for hearing on August 4, 2017. The parties appeared and presented oral argument, after which the Court took the matter under submission. The Court now issues its ruling on the submitted matter which reflects a revision on the Ninth Cause of Action.

I. Introduction

In this matter, Plaintiffs contend Defendants have been improperly imposing a fee, the Dealer's Record of Sale transaction fee (hereinafter the "DRoS Fee") on firearm purchasers without calculating the proper fee amount, and then have been using the funds collected outside

1 necessary.” Defendants have also not identified any activities they claim trigger a DROS Fee
2 review. “Regularly monitors” is vague and provides no indication as to the level of review, steps
3 completed, and Defendants do not identify any sort of documentation produced from the “regular
4 monitoring.”

5
6 The only evidence before the Court is that the last time the DROS Fee was analyzed as to
7 whether it is “no more than necessary” was in 2004 via the rulemaking process. The Court finds
8 evaluating the DROS Fee to make sure it is “no more than necessary” every thirteen years is
9 insufficient to comply with the ministerial duty section 28225 imposes. Plaintiffs’ motion for
10 adjudication is **GRANTED** as to the fifth cause of action. Defendants’ motion for adjudication is
11 **DENIED** as to the fifth cause of action.

12
13 Plaintiffs further argue, to the extent the Department has been calculating the DROS Fee,
14 it has been using an improper Macro Review Process, instead of complying with the statutory
15 direction of section 28225, subdivision (c), including that they consider the “estimated reasonable
16 costs of department firearms-related regulatory and enforcement activities related to the sale,
17 purchase, possession, loan, or transfer of firearms...” Plaintiffs contend the statutory
18 authorization is narrow, and the Department has only looked at the total amount of money going
19 into and out of the DROS Fee account, instead of analyzing the specific categories. However, as
20 the Court has already found, the Department has failed to provide evidence of *any* calculations
21 being done sufficient to discharge the review section 28225 requires. Accordingly, it will not
22 opine as to whether a particular potential calculation method is appropriate.

23
24 **B. Ninth Cause of Action**

25 The ninth cause of action alleges Defendants have been using the DROS Fee funds for
26 activities outside of those statutorily authorized. Plaintiffs seek a declaration that SB 819 does not
27 permit Defendants to use DROS Special Account Funds for “some use other than APPS-based
28

1 The starting point for the task of statutory interpretation is the language of the statute
2 itself, because it generally provides the most reliable indicator of legislative intent. (See, *Murphy*
3 *v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to
4 be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the
5 statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The
6 Court must also consider any uncodified statutory language because “an uncodified section is part
7 of the statutory law.” (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 925.)
8 Although statements of intent “in an uncodified section do not confer power, determine rights, or
9 enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute.”
10
11 (*Id.*)

12 Section 1, subdivision (g) is clear that the Legislature amended section 28225 to include
13 “possession” solely for the “limited purpose of funding enforcement of the Armed Prohibited
14 Persons System.” While subdivisions (d) and (f) may discuss an overall concern with illegal
15 possession of firearms, this general language does not overcome the specific intent declared in
16 subdivision (g). Based on the uncodified declaration of legislative intent, is clear that
17 “possession” as used in section 28225, subdivision (b)(11) is limited to APPS-based activities.
18 Accordingly, Plaintiffs’ motion for adjudication as to the ninth cause of action is **GRANTED**
19 Defendants’ motion for adjudication as to the ninth cause of action is **DENIED**.
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V. Conclusion

The phrase "no more than necessary" as used in section 28225 imposes a ministerial duty to perform a reassessment of the DROS Fee more frequently than every thirteen years. Defendants have failed to perform this duty, consequently Plaintiffs' motion for adjudication is **GRANTED** as to the fifth cause of action, while Defendants' is **DENIED**.

The plain language of subdivision (b)(11) does not specify to what "possession" activities it refers. However, SB 819, section 1, subdivision (g) makes clear that "possession" is limited to APPS-based enforcement. Plaintiffs' motion for adjudication is **GRANTED** as to the ninth cause of action, while Defendants' is **DENIED**.

DATED: August 9, 2017

MICHAEL P. KENNY

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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

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

Superior Court of California,
County of Sacramento

Dated: August 9, 2017

By: S. LEE
Deputy Clerk

EXHIBIT 23

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 Supervising Deputy Attorney General
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF SACRAMENTO

10
 11
 12
 13 **DAVID GENTRY, JAMES PARKER,
 MARK MID LAM, JAMES BASS, and
 14 CALGUNS SHOOTING SPORTS
 ASSOCIATION,**

Case No. 34-2013-80001667

15 Plaintiffs and Petitioners,

**OPPOSITION TO PLAINTIFFS'
 MOTION FOR ADJUDICATION OF
 THE FIFTH AND NINTH CAUSES OF
 ACTION**

16 v.

17
 18 **XAVIER BECERRA, in his official capacity
 as Attorney General for the State of
 19 California; STEPHEN LINDLEY, in his
 official capacity as Director of the California
 20 Department of Justice Bureau of Firearms;
 BETTY T. YEE, in her official capacity as
 21 State Controller, and DOES 1-10,**

Date: August 4, 2017
 Time: 9:00 a.m.
 Dept: 31
 Judge: The Honorable Michael P.
 Kenny
 Action Filed: October 16, 2013

22 Defendants and
 23 Respondents.¹

24
 25
 26
 27 ¹ Defendants respectfully request that Stephen Lindley, in his official capacity as Director
 of the California Department of Justice Bureau of Firearms, be substituted back into this action in
 28 the place of his predecessor Martha Supernor. (See Code Civ. Proc., § 368.5.)

1 “hundreds of thousands of people” shared the interest].) For this additional reason, the Court
2 should deny plaintiffs’ motion as to the fifth cause action.

3 **II. THE COURT SHOULD REJECT PLAINTIFFS’ NARROW CONSTRUCTION OF**
4 **SECTION 28225 AND DISMISS THE NINTH CAUSE OF ACTION.**

5 Turning to the ninth cause of action defendants agree that the central issue is a matter of
6 statutory interpretation. Yet plaintiffs’ interpretation of the relevant statute fails to adhere to the
7 basic tenets of statutory construction. (See *Elsner v. Uveges* (2004) 34 Cal.4th 915, 920 [courts
8 “begin with the language of the statute” to “ascertain the Legislature’s intent so as to effectuate
9 the purpose of the law”].) Plaintiffs narrowly focus on an isolated phrase in the uncodified
10 language of SB 819 to the exclusion of everything else, including the definition of the word
11 “possession,” the actual statutory term at issue. Plaintiffs do not even address the plain meaning
12 of the word “possession” much less explain how the Department’s common sense interpretation
13 of that word (see Defs.’ Opening Brief at pp. 21-24) is in any way inconsistent with that meaning.
14 For this reason alone, plaintiffs’ argument is unavailing.

15 Nor is it relevant, as plaintiffs contend (see Pls.’ Opening Brief at p. 17), what the
16 Department may have “publicly acknowledged” in the legislative run-up to SB 819. (See *In re*
17 *Marriage of Siller* (1986) 187 Cal.App.3d 36, 46, fn. 6 [declining to consider “two documents
18 from the sponsoring entity, the State Bar of California . . . as they are not cognizable indicia of
19 legislative intent”].) It is not relevant what a staffer of the authoring legislator of the bill might
20 have said during the same period in an alleged informational handout intended for an unknown
21 audience. (See *People v. Garcia* (2002) 28 Cal.4th 1166, 1176, fn. 5 [denying request to take
22 judicial notice of authoring legislator’s press releases and letters, explaining “we do not consider
23 the objective of an authoring legislator when there is no reliable indication that the Legislature as
24 a whole was aware of that objective and believed the language of the proposal would accomplish
25 it”]; see also Decl. of Anthony R. Hakl in Supp. of Defs.’ Mot. for Summ. Adjud. (“Hakl Decl.”),
26 Exh. O at pp. 54-58 [discussing the nature of “Q & A” document relied upon by plaintiffs].)
27 And while courts may consider different versions of a bill as a general matter (see *Quintano v.*
28 *Mercury Cas. Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5 (1995) [taking judicial notice of “various

1 versions" of bill)), none of the versions of SB 819 offered by plaintiffs can change the plain
2 meaning of the word "possession," which itself appeared in earlier versions of the bill. Indeed, it
3 is hardly inconsistent for the Legislature to have "intended to address the APPS enforcement
4 issue," as plaintiffs claim (see Pls.' Opening Brief at p. 17), and also more broadly intend to
5 support "enforcement activities related to *possession*" and reduce the number of illegally
6 possessed firearms that "present[] a substantial danger to public safety," which the uncodified
7 language of SB 819 emphasized by plaintiffs also states. (Senate Bill 819 (Leno), Stats. 2010, ch.
8 743, § 1(f), italics added.) On the contrary, these intentions are compatible, APPS being a major
9 component of enforcement activities related to possession.

10 Plaintiffs cursory argument in support of the ninth cause fails to persuade. The Court
11 should deny plaintiffs' motion as to that claim as well.

12 CONCLUSION

13 For the reasons set forth above, the Court should deny plaintiffs' motion in its entirety.

14 Dated: June 30, 2017

Respectfully Submitted,

15 XAVIER BECERRA
16 Attorney General of California
17 STEPAN A. HAYTAYAN
18 Supervising Deputy Attorney General

19 
20 ANTHONY R. HAKL
21 Deputy Attorney General
22 *Attorneys for Defendants and Respondents*

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22 12741874.doc

EXHIBIT 24

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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

16 v.

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
CHIANG, 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 AMENDED 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 DROS FEE to ensure the DROS FEE FUNDS alone will cover both the costs of the DROS
2 PROCESS and the costs of APPS.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

4 Defendants object to this request as vague. As such, defendant is unable to admit or deny
5 the request. Without waiving this objection, defendants respond as follows:

6 Denied.

7 **REQUEST FOR ADMISSION NO. 37:**

8 ~~Admit that the current DROS FEE was set, at least in part, to cover costs of APPS.~~

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 38:**

12 Admit that the PER TRANSACTION COST of the DROS PROCESS is less than \$19.00.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

14 Denied.

15 **REQUEST FOR ADMISSION NO. 39:**

16 Admit that it is CAL DOJ's position that the word "possession" as used in SECTION
17 28225 refers to only illegal possession.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

19 Denied.

20 **REQUEST FOR ADMISSION NO. 40:**

21 Admit that it is CAL DOJ's position that SECTION 28225 provides a source of funding
22 for CAL DOJ to perform law enforcement activities related to the illegal possession of a firearm
23 by a person who has never participated in the DROS PROCESS.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

25 Admitted.

26 **REQUEST FOR ADMISSION NO. 41:**

27 Admit that it is CAL DOJ's position that SECTION 28225 does not provide a source of
28 funding for law enforcement activities related to the illegal possession of a firearm by a person

1 DROS FEE of less than \$19.00 would not cover CAL DOJ's costs arising from the DROS
2 PROCESS.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 73:**

4 Denied.

5 **REQUEST FOR ADMISSION NO. 74:**

6 Admit that the PROPOSAL was not adopted because CAL DOJ determined that a DROS
7 FEE of less than \$19.00 would not both cover the costs of the DROS PROCESS and provide for
8 an acceptable level of reserve funding in the DROS SPECIAL ACCOUNT.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 74:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 75:**

12 Admit that the PROPOSAL was not adopted because CAL DOJ determined that a DROS
13 FEE of less than \$19.00 would not both cover all of the costs referred to in SECTION 28225 and
14 provide for an acceptable level of reserve funding in the DROS SPECIAL ACCOUNT.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 75:**

16 Denied.

17 **REQUEST FOR ADMISSION NO. 76:**

18 Admit that the DROS FEE of \$19.00 was set by CAL DOJ in November 2004.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 76:**

20 Admitted.

21 **REQUEST FOR ADMISSION NO. 77:**

22 Admit that the DROS FEE amount of \$19.00 has not changed since November 2004.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 77:**

24 Admitted.

25 **REQUEST FOR ADMISSION NO. 78:**

26 Admit that the current DROS FEE of \$19.00 was set by CAL DOJ based on a comparison
27 of the historical revenues going into, and expenditures coming out of, the DROS SPECIAL
28 ACCOUNT.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 78:**

2 ~~Admitted, although that comparison was not the sole basis for setting the fee at \$19.00.~~

3 **REQUEST FOR ADMISSION NO. 79:**

4 Admit that, in 2004, CAL DOJ created a written document that utilized specific cost data
5 to provide an explanation as to why a \$19.00 DROS FEE was appropriate.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 79:**

7 Defendants object to this request. The use of the phrase "specific cost data" here is vague
8 and ambiguous. Defendants object to this request because it seeks information protected by the
9 executive privilege, official information privilege, and deliberative process privilege. Without
10 waiving this objection, defendants respond as follows:

11 Admitted.

12 **REQUEST FOR ADMISSION NO. 80:**

13 Admit that, in 2010, CAL DOJ completed a review of the revenues into and expenditures
14 out of the DROS SPECIAL ACCOUNT.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 80:**

16 Defendants object to this request because it seeks information protected by the attorney-
17 client privilege and work product doctrine. The use of the phrase "review" here is vague and
18 ambiguous. Without waiving this objection, defendants respond as follows:

19 Admitted.

20 **REQUEST FOR ADMISSION NO. 81:**

21 Admit that CAL DOJ' s 2010 review of the revenues into and expenditures out of the
22 DROS SPECIAL ACCOUNT included analysis regarding the costs referred to in SECTION
23 28225.

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

25 Defendant objects to this request. It seeks information protected by the attorney-client
26 privilege and work product doctrine. It also incorporates Penal Code section 28225(c) by
27 reference. Thus, the request is not "separate and complete in and of itself," contains subparts, and
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 115:**

2 Admitted, although it should be noted that this was a function of how the DROS special
3 account is maintained.

4 **REQUEST FOR ADMISSION NO. 116:**

5 Admit that, at some time after 2004, funds from the DROS SPECIAL ACCOUNT were
6 used for costs arising from the processing of Certificate of Eligibility applications performed by
7 CAL DOJ.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 116:**

9 Admitted.

10 **REQUEST FOR ADMISSION NO. 117:**

11 Admit APPS' primary use is as an investigatory tool for law enforcement.

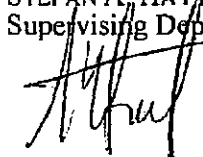
12 **RESPONSE TO REQUEST FOR ADMISSION NO. 117:**

13 Admitted.

14 Dated: January 22, 2015

Respectfully Submitted,

KAMALA D. HARRIS
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 25

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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
CHIANG, in his official capacity as State
20 Controller, and DOES 1-10,**

21 Defendants and Respondents.

Case No. 34-2013-80001667

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

22
23 **PROPOUNDING PARTY: PLAINTIFFS**

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

26 **SET NUMBER: ONE**

1 **RESPONSES TO SPECIAL INTERROGATORIES**

2 **INTERROGATORY NO. 1:**

3 State CAL DOJ's (as used herein, "CAL DOJ" refers to the California Department of
4 Justice, including the office of the Attorney General, and all employees and representatives of the
5 California Department of Justice) best estimate as to the average PER TRANSACTION COST
6 (as used herein, "PER TRANSACTION COST" refers to the average cost of performing a given
7 transaction, including a proportional share of overhead costs) to perform the tasks included in the
8 DROS PROCESS (as used herein, "DROS PROCESS" refers to the background check process
9 that occurs when a firearm purchase or transfer occurs in California; CAL DOJ's own usage of
10 "DROS PROCESS" can be found at <http://oag.ca.gov/firearms/pubfaqs>) regarding the purchase of
11 one handgun.

12 **RESPONSE TO INTERROGATORY NO. 1:**

13 Defendants object to the term "DROS PROCESS" as defined to the extent that Plaintiffs'
14 definition does not comport with its reference to the Defendants' usage of that term on its public
15 website at <http://oag.ca.gov/firearms/pubfaqs>. Defendants' use of the term "DROS PROCESS"
16 on that website only refers to the "front-end" portion of a firearms purchase (i.e., where the
17 purchaser visits a firearms dealer to purchase a firearm). Subject to and without waiving this
18 objection, Defendants respond as follows:

19 Defendants currently do not have the personal knowledge sufficient to respond fully to this
20 interrogatory even after making a reasonable and good faith effort to obtain the information
21 sought.

22 **INTERROGATORY NO. 2:**

23 If CAL DOJ contends that, upon a reasonable and good faith effort, it cannot provide a
24 response to Interrogatory No. 1, please describe, in detail, what barriers, be they financial,
25 factual, or otherwise, prevent the response sought from being provided.

1 **RESPONSE TO INTERROGATORY NO. 2:**

2 While defendants know the approximate number of DROS transactions actually processed
3 per year, defendants are not aware of any calculation showing the total annual cost of the "DROS
4 PROCESS" as defined by plaintiffs.

5 There are a number of barriers to even estimating this cost. For example, the criminal
6 histories of firearms purchasers can fluctuate greatly from purchaser to purchaser. One purchaser
7 may have no criminal history, in which event the approval of the purchase can happen quickly,
8 whereas another purchaser may have an extensive criminal history, requiring considerable time
9 and resources to review and assess.

10 Another example is that the number of DROS transactions to be processed can vary
11 widely over time. Firearms purchasing activity can fluctuate considerably based on a variety of
12 factors, such as the time of year (e.g., holiday season, hunting season) or even certain political
13 events (e.g., elections).

14 Nevertheless, defendants in good faith continue to work with California Department of
15 Justice administrative and program personal to make such an estimate. Defendants will
16 supplement this interrogatory answer accordingly.

17 **INTERROGATORY NO. 3:**

18 List every line item amount, by Object Code, Object Title, or Object Description, that
19 when summed comprised the \$9,204,449 total for Actual Year-End Expenditures for Fiscal Year
20 2011/2012 for the Dealers' Record of Sale program (Unit Code 510).

21 **RESPONSE TO INTERROGATORY NO. 3:**

22 The amounts requested in this interrogatory are listed in the document attached hereto as
23 Exhibit A. Also, note that the correct actual year-end expenditures for the year in question total
24 \$9,292,915.84.

25 **INTERROGATORY NO. 4:**

26 State the Actual Year-End Expenditures for Fiscal Year 2012/2013 for the Dealers'
27 Record of Sale program (Unit Code 510).

28

1 **RESPONSE TO INTERROGATORY NO. 4:**

2 \$12,308,671.47.

3 **INTERROGATORY NO. 5:**

4 List every line item amount, by Object Code, Object Title, or Object Description, that
5 when summed comprised the total for Actual Year-End Expenditures for Fiscal Year 2012/2013
6 for the Dealers' Record of Sale program (Unit Code 510).

7 **RESPONSE TO INTERROGATORY NO. 5:**

8 The amounts requested in this interrogatory are listed in the document attached hereto as
9 Exhibit B.

10

11 Dated: August 1, 2014

Respectfully Submitted,

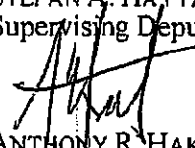
12

KAMALA D. HARRIS
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General

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

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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 SPECIAL INTERROGATORIES (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 1, 2014, at San Diego, California.


STEPHEN LINDLEY

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EXHIBIT 26

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 7 *Attorneys for Defendants and Respondents*

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 10 COUNTY OF SACRAMENTO

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

16 Plaintiffs and Petitioners,

17 v.

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

25 Defendants and Respondents.

Case No. 34-2013-80001667

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

26 **PROPOUNDING PARTY: PLAINTIFFS**

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

SET NUMBER: TWO

1 **INTERROGATORY NO. 13:**

2 If it is CAL DOJ's position that it determined the actual or estimated costs of any of the
3 activities listed in Penal Code section 28225(b)(1)-(11) in the process of setting the DROS FEE at
4 \$19.00, list the name of each such cost and the actual or estimated amount of each cost, in dollars,
5 that was determined.

6 **RESPONSE TO INTERROGATORY NO. 13:**

7 Defendants object to this interrogatory. It is not full and complete in and of itself,
8 contains subparts, and is compound. This interrogatory is also objectionable because it requires
9 referring to other documents in order to respond. The interrogatory is also unlimited with respect
10 to time and therefore vague and overbroad.

11 **INTERROGATORY NO. 14:**

12 ~~If CAL DOJ contends that more than 5% of the people who have paid the DROS FEE~~
13 ~~during the last ten years have been on the APPS list, please provide the calculations, including~~
14 ~~explanation of what is represented by each piece of data used in such calculations, that CAL~~
15 ~~DOJ's contention is based on~~

16 **RESPONSE TO INTERROGATORY NO. 14:**

17 ~~Defendants object to this interrogatory. It is not full and complete in and of itself,~~
18 ~~contains subparts, and is compound. This interrogatory is also objectionable because it requires~~
19 ~~referring to other documents in order to respond. The interrogatory also seeks irrelevant~~
20 ~~information. Also, responding to it would be unduly burdensome in that the interrogatory appears~~
21 ~~to request defendants to conduct detailed calculations covering a ten-year period.~~

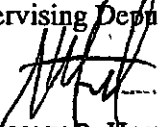
22 ~~Without waiving these objections, defendants currently do not contend that more than 5%~~
23 ~~of the people who have paid the DROS FEE during the last ten years have been on the APPS list.~~

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Dated: September 15, 2015

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
STEPAN A. HAYDAYAN
Supervising Deputy Attorney General



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

SA2013113332

EXHIBIT 27

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XAVIER BECERRA
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Attorneys for Defendants and Respondents

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

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

Plaintiffs and Petitioners,

v.

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

Defendants and
Respondents.

Case No. 34-2013-80001667

**DEFENDANTS ATTORNEY GENERAL
XAVIER BECERRA AND BUREAU OF
FIREARMS DIRECTOR STEPHEN
LINDLEY'S FIRST AMENDED
RESPONSES TO REQUESTS FOR
ADMISSIONS (SET THREE)**

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 169:**

2 Defendants object to this request. It is irrelevant to the causes of action remaining in this
3 case, which challenge the validity of the appropriation of funds under SB 140 (First, Second,
4 Third, and Fourth Causes of Action) and challenge SB 819 as an unlawful "tax" under Article
5 XIII of the California Constitution (Sixth, Seventh, and Eight Causes of Action.) The causes of
6 action related to the amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819
7 (Ninth Cause of Action) have been resolved.

8 Without waiving this objection, defendants respond as follows:

9 Unable to admit or deny. A reasonable inquiry concerning the matter in the particular
10 request has been made, and the information known or readily obtainable is insufficient to enable
11 this party to admit the matter.

12 **REQUEST FOR ADMISSION NO. 189:**

13 ~~Admit that CAL DOJ is unaware of any evidence suggesting that more than ten percent of~~
14 ~~DROS FEE payers are expected to appear on the APPS list.~~

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 189:**

16 ~~Defendants object to this request. It is irrelevant to the causes of action remaining in this~~
17 ~~case, which challenge the validity of the appropriation of funds under SB 140 (First, Second,~~
18 ~~Third, and Fourth Causes of Action) and challenge SB 819 as an unlawful "tax" under Article~~
19 ~~XIII of the California Constitution (Sixth, Seventh, and Eight Causes of Action.) The causes of~~
20 ~~action related to the amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819~~
21 ~~(Ninth Cause of Action) have been resolved.~~

22 ~~Without waiving this objection, defendants respond as follows:~~

23 ~~Unable to admit or deny. A reasonable inquiry concerning the matter in the particular~~
24 ~~request has been made, and the information known or readily obtainable is insufficient to enable~~
25 ~~this party to admit the matter.~~

26 **REQUEST FOR ADMISSION NO. 195:**

27 Admit that, to the extent attorney work has been funded from the DROS SPECIAL
28 ACCOUNT in the last fifteen years, such work was mostly related to litigation.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 195:**

2 Defendants object to this request. It is irrelevant to the causes of action remaining in this
3 case, which challenge the validity of the appropriation of funds under SB 140 (First, Second,
4 Third, and Fourth Causes of Action) and challenge SB 819 as an unlawful "tax" under Article
5 XIII of the California Constitution (Sixth, Seventh, and Eight Causes of Action.) The causes of
6 action related to the amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819
7 (Ninth Cause of Action) have been resolved.

8 It is also cumulative and therefore burdensome and oppressive in light of the deposition
9 testimony of Stephen Lindley (given after plaintiffs propounded this discovery) agreeing with
10 counsel for plaintiffs that "DROS Special Account money has been spent defending firearm-
11 related litigation in . . . the last ten years" and estimating the amount of that expenditure to be in
12 the "millions." (Lindley Depo. at p. 33.) To the extent this fact is relevant to the remaining
13 causes of action, all that is relevant is the existence of this expenditure (as opposed to the details
14 demanded by plaintiffs, which are unnecessary to the resolution of the legal issues before the
15 Court). And searching records covering fifteen years to attempt to answer this question would be
16 unduly burdensome and oppressive.

17 Without waiving this objection, defendants respond as follows:

18 Admitted.

19 **REQUEST FOR ADMISSION NO. 196:**

20 Admit that, as to internal consultant (code no. 3820) expenses paid out of the DROS
21 SPECIAL ACCOUNT in the last 15 years, the largest class of internal consultant expense was
22 legal services.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 196:**

24 Defendants object to this request. It is irrelevant to the causes of action remaining in this
25 case, which challenge the validity of the appropriation of funds under SB 140 (First, Second,
26 Third, and Fourth Causes of Action) and challenge SB 819 as an unlawful "tax" under Article
27 XIII of the California Constitution (Sixth, Seventh, and Eight Causes of Action.) The causes of
28

1 ~~action related to the amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819~~
2 ~~(Ninth Cause of Action) have been resolved.~~

3 ~~It is also cumulative and therefore burdensome and oppressive in light of the deposition~~
4 ~~testimony of Stephen Lindley (given after plaintiffs propounded this discovery) agreeing with~~
5 ~~counsel for plaintiffs that "DROS Special Account money has been spent defending firearm-~~
6 ~~related litigation in . . . the last ten years" and estimating the amount of that expenditure to be in~~
7 ~~the "millions." (Lindley Depo. at p. 33.) To the extent this fact is relevant to the remaining~~
8 ~~causes of action, all that is relevant is the existence of this expenditure (as opposed to the details~~
9 ~~demanding by plaintiffs, which are unnecessary to the resolution of the legal issues before the~~
10 ~~Court). And searching records covering fifteen years to attempt to answer this question would be~~
11 ~~unduly burdensome and oppressive.~~

12 ~~Without waiving this objection, defendants respond as follows:~~

13 ~~Admitted.~~

14 **REQUEST FOR ADMISSION NO. 203:**

15 Admit that, for over ten years, CAL DOJ has used the DROS SPECIAL ACCOUNT to pay
16 for CAL DOJ attorneys to defend lawsuits.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 203:**

18 Defendants object to this request. It is irrelevant to the causes of action remaining in this
19 case, which challenge the validity of the appropriation of funds under SB 140 (First, Second,
20 Third, and Fourth Causes of Action) and challenge SB 819 as an unlawful "tax" under Article
21 XIII of the California Constitution (Sixth, Seventh, and Eight Causes of Action.) The causes of
22 action related to the amount of the DROS Fee (Fifth Cause of Action) and the scope of SB 819
23 (Ninth Cause of Action) have been resolved.

24 It is also cumulative and therefore burdensome and oppressive in light of the deposition
25 testimony of Stephen Lindley (given after plaintiffs propounded this discovery) agreeing with
26 counsel for plaintiffs that "DROS Special Account money has been spent defending firearm-
27 related litigation in . . . the last ten years" and estimating the amount of that expenditure to be in
28 the "millions." (Lindley Depo. at p. 33.) To the extent this fact is relevant to the remaining

1 causes of action, all that is relevant is the existence of this expenditure (as opposed to the details
2 demanded by plaintiffs, which are unnecessary to the resolution of the legal issues before the
3 Court).

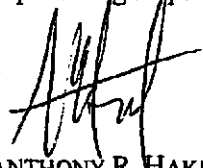
4 Without waiving this objection, defendants respond as follows:

5 Admitted.

6
7 Dated: December 1, 2017

Respectfully Submitted,

8 XAVIER BECERRA
9 Attorney General of California
10 STEPAN A. HAYTAYAN
11 Supervising Deputy Attorney General



12 ANTHONY R. HAKL
13 Deputy Attorney General
14 *Attorneys for Defendants Attorney General
15 Xavier Becerra, in his Official Capacity and
16 Bureau of Firearms Chief Stephen Lindley*

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EXHIBIT 28

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

3 **INTERROGATORY NO. 77:**

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

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

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

12 **INTERROGATORY NO. 78:**

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

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

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

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

22 ~~Plaintiffs' definitions of these terms are also incomplete and vague.~~

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

28

1 Without waiving these objections, defendants respond as follows:

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

7 **INTERROGATORY NO. 79:**

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

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

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

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

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

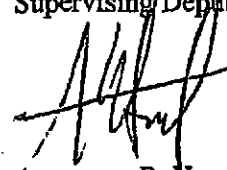
26 Finally, defendants note that some of the above figures may include monies from the
27 Firearms Safety and Enforcement Fund. As indicated in earlier discovery responses, unit code
28

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 29

SENATE COMMITTEE ON Public Safety
 Senator Bruce McPherson, Chair S
 2001-2002 Regular Session B

SB 950 (Brulte)
 As Amended April 16, 2001
 Hearing date: April 24, 2001
 Penal Code
 JM:mc

FIREARMS DATA BASES - TRANSFERS AND PROHIBITED CLASSES

CROSS REFERENCING PERSONS IN THESE DATA BASES

HISTORY

Source: Attorney General

Prior Legislation: AB 491 (Scott) - Ch. 571, Stats. 1999
 AB 1587 (Scott) - Ch. 578, Stats. 1999
 SB 1608 (Brulte) - Ch. 624, Stats. 2000
 SB 29 (Peace) 1999 - vetoed
 SB 31 (Peace) 2000 - vetoed

Support: California District Attorneys' Association

Opposition: California Public Defenders Association

KEY ISSUES

SHOULD LAW ENFORCEMENT AGENCIES BE REQUIRED TO CROSS-REFERENCE DATA BASES CONTAINING THE NAMES OF PERSONS PROHIBITED FROM POSSESSING FIREARMS (FELONS, MISDEMEANANTS, PRIOR MENTAL PATIENTS, ETC.) AND THE RECORDS OF FIREARM TRANSFERS (HANDGUN TRANSFERS ARE CURRENTLY MAINTAINED IN THE SYSTEM AS WELL AS

(More)

ASSAULT WEAPON REGISTRATIONS)?

person to a ban on the possession of a firearm for 10 years.

This bill does not disturb the existing lifetime ban on possession of a firearm by any person previously convicted of assault with a deadly weapon or by force likely to produce great bodily injury.

This bill adds convictions of assault with a firearm upon a peace officer to the list of specific crimes requiring a lifetime firearm ban, and removes the reference to assault on a peace officer by other than a firearm from that list.

COMMENTS

1. Need for This Bill

According to background submitted by the author:

SB 950 creates an online data base (Prohibited Armed Persons File) within the DOJ identifying persons who are prohibited from owning firearms, and, whom the DOJ has received notification that these prohibited persons possess firearms or have registered assault weapons.

The data base will be made available online to all local law enforcement agencies. The information will be provided in a jurisdictional format so law enforcement can pinpoint those in their area. Further, since the information will be coupled with the prohibited person's criminal record, then law enforcement can seek out those who are the greatest threat to the community (i.e., violent felons).

The A.G. is sponsoring the bill in the wake of the mass slaying in February 2000 at Navistar's International Truck and Engine Plant in Melrose Place, Illinois. In that case, the murderer was a twice-convicted felon who had previously, before his convictions, purchased firearms. Thus, even though he

(More)

was prohibited and in possession of firearms, there was no way for law enforcement to find out and he was left to commit murder.

This bill will provide a way for law enforcement to find out which proven felons are still possessing

weapons. The bill was brought to the A.G. at the urging of law enforcement agencies in the state and it will provide them with a tool that will disarm these proven law-breakers before they can break the law again. If the state is going to find that some people are too dangerous to possess a gun, then we should make it as easy as possible for law enforcement to ensure that these laws are enforced.

The bill will also require the Attorney General to provide special agents to assist local law enforcement agencies in the investigation and capture of these prohibited persons in possession of a firearm. This section is pursuant to an appropriation in the Gov.'s Budget for personnel to do it.

Recently, analysts in the DOJ's Firearms unit performed a survey on armed prohibited persons. The initial results are alarming. The DOJ found that of the first 42 denied (thus prohibited) persons in the survey, over one-third (37%) possess firearms obtained prior to their prohibition. This is only taking into account handguns; if rifles were accounted for the numbers would undoubtedly be much higher. Most disturbing is that these 42 prohibited persons possessed 91 guns. The top four possessing 21, 19, 15 and 10 each.

DOJ also provided the following chart:

? How SB 950 will work:

? After the entry into the Automated Criminal History System of a disposition for an offense which makes a person

(More)

SB 950 (Brulte)
Page 10

prohibited to possess a firearm, the DOJ will check this information against the Automated Firearms System (indicates possession on or after 1/1/91).

? If there is a "hit," then the name, birthday, physical description and any other necessary information about that person will be entered into the Prohibited Armed Persons File.

? This File is then supplied to all law enforcement agencies.

2. Creation of Lifetime Prohibition of Firearm Possession by Any Person Ever Convicted of Assault With a Deadly Weapon of by Means of Force Likely Produce Great Bodily Injury

EXHIBIT 30

1 KAMALA D. HARRIS
Attorney General of California
2 STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
3 ANTHONY R. HAKL, State Bar No. 197335
Deputy Attorney General
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P.O. Box 944255
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Telephone: (916) 322-9041
6 Fax: (916) 324-8835
E-mail: Anthony.Hakl@doj.ca.gov
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,
13 MARK MID LAM, JAMES BASS, and
14 CALGUNS SHOOTING SPORTS
ASSOCIATION,**

15 Plaintiffs and Petitioners,

16 v.

17 **KAMALA HARRIS, in Her Official
18 Capacity as Attorney General for the State
19 of California; STEPHEN LINDLEY, in His
20 Official Capacity as Acting Chief for the
California Department of Justice, JOHN
CHIANG, in his official capacity as State
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 THIRD
AMENDED RESPONSES TO FORM
INTERROGATORIES (SET ONE)**

23 **PROPOUNDING PARTY: PLAINTIFFS**

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

26 **SET NUMBER: ONE**
27
28

1 **(a) Request for Admission No. 18.**

2 (b) Depending on the circumstances of a particular case, payment of a DROS fee may
3 ultimately lead to a privilege realized by the payor vis-à-vis the APPS program. For example, a
4 person who pays a DROS fee may later become prohibited from possessing firearms and have
5 firearms recovered as a result of the APPS program.

6 (c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact
7 information is above.

8 (d) Defendants have no additional documents to identify other than the documents
9 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
10 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
11 contact information is above.

12 **(a) Request for Admission No. 19.**

13 ~~(b) Depending on the circumstances of a particular case, payment of a DROS fee may~~
14 ~~ultimately lead to a greater benefit realized by the payor vis-à-vis the APPS program as compared~~
15 ~~to a person who has not paid a DROS fee. For example, a person who pays a DROS fee may later~~
16 ~~become prohibited from possessing firearms and have firearms recovered as a result of the APPS~~
17 ~~program whereas a person who has not paid a DROS fee might not.~~

18 (c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact
19 information is above.

20 (d) Defendants have no additional documents to identify other than the documents
21 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
22 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
23 contact information is above.

24 **(a) Request for Admission No. 21.**

25 (b) Depending on the circumstances of a particular case, payment of a DROS fee may
26 ultimately lead to a service being provided directly to the payor vis-à-vis the APPS program. For
27 example, a person who pays a DROS fee may later become prohibited from possessing firearms
28 and have firearms recovered as a result of the APPS program.

1 inspection requirement of Penal Code section 31110.

2 (c) Stephen Lindley. Mr. Lindley can be contacted through counsel, whose contact
3 information is above.

4 (d) Defendants have no additional documents to identify other than the documents
5 identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No.
6 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose
7 contact information is above.

8 Dated: July 5, 2016

Respectfully Submitted,

9 KAMALA D. HARRIS
10 Attorney General of California
11 STEPAN A. HAYDAYAN
12 Supervising Deputy Attorney General

13 
14 ANTHONY R. HAKL
15 Deputy Attorney General
16 *Attorneys for Defendants and Respondents*

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA

3 COUNTY OF SACRAMENTO

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

7 On December 4, 2018, the foregoing document described as

8 **DECLARATION OF SCOTT M. FRANKLIN**
9 **IN SUPPORT OF PLAINTIFFS' OPENING TRIAL BRIEF**

10 on the interested parties in this action by placing

- 11 the original
12 a true and correct copy

13 thereof enclosed in sealed envelope(s) addressed as follows:

14 Anthony R. Hakl
15 anthony.hakl@doj.ca.gov
16 Deputy Attorney General
17 1300 I Street, Suite 125
18 P.O. Box 944255
19 Sacramento, CA 94244-2550

20 *Attorney for Defendants*

21 **(BY ELECTRONIC MAIL)** As follows: I served a true and correct copy by electronic
22 transmission. Said transmission was reported and completed without error.
23 Executed on December 4, 2018, at Long Beach, California.

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

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

Executed on December 4, 2018, at Long Beach, California.


Laura Palmerin