IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

DAVID GENTRY; JAMES PARKER; MARK MIDLAM; JAMES BASS; AND CALGUNS SHOOTING SPORTS ASSOCIATION, PLAINTIFFS AND APPELLANTS, V. XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA; STEPHEN LINDLEY, IN HIS OFFICIAL CAPACITY AS ACTING CHIEF OF THE CALIFORNIA DEPARTMENT OF JUSTICE; BETTY T. YEE, IN HER OFFICIAL CAPACITY AS STATE CONTROLLER; AND DOES 1-10, DEFENDANTS AND RESPONDENTS.	Case No. C089655

APPELLANTS' APPENDIX
VOLUME V OF XVI
(Pages 1113 to 1392 of 4059)

Superior Court of California, County of Sacramento
Case No. 34-2013-80001667
Honorable Judge Richard K. Sueyoshi

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INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

VOLUME III

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

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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, JOHN 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 **APPENDIX OF DISCOVERY REQUESTS AND DISPUTED RESPONSES THERETO RE: JOINT STATEMENT CONCERNING RENEWED DISCOVERY MOTIONS** Date: (Hearing taken off calendar) Time: N/a Dept.: N/a Judge: Hon. Michael P. Kenny Action filed: 10/16/13

Pursuant to the Court's Minute Order of February 4, 2016, the Parties submit this Appendix for the Court's use in analyzing the arguments made in the Joint Statement Concerning Renewed Discovery Motions. This Appendix includes the text of the discovery requests and responses that are relevant to the renewed discovery motions, i.e., Plaintiffs' Form Interrogatories ("FI"), Set One, No. 17.1(b), as to Requests for Admissions Nos. 18, 19, 21, 22, 83, 84, 85, 86, 88, and 89; and Plaintiffs' Request for Admissions ("RFA"), Set One, Nos. 83, 84, 85, 86, 88, and 89.

I. Relevant Definitions

The following terms are defined as follows for the purpose of this Appendix.

• ***APPS***: the Armed Prohibited Persons System program, i.e., Prohibited Armed Person File (Penal Code section 30000), and enforcement activities based on data derived from APPS.

• ***DROS FEE/DROS FEE FUNDS***: the fee (which is currently set at $19.00) and funds collected pursuant to Penal Code section 28225 and Code of Regulations, title 11, section 4001.

• ***DROS PROCESS***: the background check process that occurs when a firearm purchase or transfer occurs in California.

II. FI 17.1(b) re: RFA Nos. 18, 19, 21, 22, 83-86, and 88-89

[Form Interrogatory No. 17.1(b) asks, in relevant part:] "Is your response to each request for admission served with these Interrogatories an unqualified admission? If not, for each response that is not an unqualified admission . . . state all facts upon which you base your response . . . [.]"

III. Plaintiffs' RFA Nos. 18, 19, 21, 22, 83-86, 88, and 89; Defendants' Responses thereto (where relevant); and Defendants' Responses to FI No. 17.1(b) re: RFA Nos. 18, 19, 21, 22, 83-86, 88, and 89

• **Request No. 18**

Admit that the payment of a DROS FEE does not result in an APPS-related special privilege being granted directly to the payor. [Denied by Defendants]

Defendants' Initial Response to FI 17.1(b) re: RFA No. 18:

[No Initial Response.]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 18:

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

• **Request No. 19**

Admit that a person who has paid a DROS FEE receives no greater benefit from APPS than a person who has not paid a DROS FEE. [Denied by Defendants.]

Defendants' Initial Response to FI 17.1(b) re: RFA No. 19:

[No Initial Response.]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 19:

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

- **Request No. 21**

Admit that the payment of a DROS FEE does not result in an APPS-related service being provided directly to the payor. [Denied by Defendants.]

Defendants' Initial Response to FI 17.1(b) re: RFA No. 21:

[No Initial Response]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 21:

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

- **Request No. 22**

Admit that a person who has paid a DROS Fee receives no different government service by way of APPS than does a person who has not paid a DROS FEE. [Denied by Defendants.]

Defendants' Initial Response to FI 17.1(b) re: RFA No. 22:

[No Initial Response]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 22:

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

- **Request No. 83**

Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS place an unusual burden on the general public as to the illegal possession of firearms. [See footnote 1 herein for Defendants' initial and amended responses to RFA Nos. 83-86, 88, and 89.][1]

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[1] Defendants provided the same initial and amended responses regarding Plaintiffs' RFA Nos. 83-86, 88, and 89, i.e.:

Defendants' Initial Response to FI 17.1(b) re: RFA No. 83:

[No Initial Response.]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 83:

This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not "result[] in any taxpayer paying a higher tax[.]" Cal. Const., art XIIIA § 3(a). Thus, at this time defendants have no position either way on the precise issue identified in this request for admission.

- **Request No. 84**

Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS do not place an unusual burden on the general public as to the illegal possession of firearms. [See footnote 1 for Defendants' responses]

Defendants' Initial Response to FI 17.1(b) re: RFA No. 84:

[No Initial Response]

Initial Response:

Defendants object to this request. It is irrelevant, defendants having admitted that the use of DROS funds does not operate as a tax. The request is also an improper use of the request for admission procedure. The purpose of that procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429; see also *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.) In the event the legal issue implicated by this request becomes relevant, defendants will contest the issue at trial. The request for admission device is not intended to provide a windfall to litigants in granting a substantive victory in the case by deeming material issues admitted. *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783-784. Section 2033 is "calculated to compel admissions as to all things that cannot reasonably be controverted" not to provide "gotcha," after-the-fact penalties for pressing issues that were legitimately contested. (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 235 ["Although the admissions procedure is designed to expedite matters by avoiding trial on undisputed issues, the request at issue here did not include issues as to which the parties might conceivably agree."], superseded by statute on another basis as described in *Tackett v. City of Huntington Beach* 91944) 22 Cal.App.4th 60, 64-65.)

Amended Response:

[the forgoing response is restated, with the following addition:] Without waving this objection, defendants respond as follows: Unable to admit or deny.

Defendants' Amended Response to FI 17.1(b) re: RFA No. 84:

This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not "result[] in any taxpayer paying a higher tax[.]" Cal. Const., art XIIIA § 3(a). Thus, at this time defendants have no position either way on the precise issue identified in this request for admission.

- **Request No. 85**

Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS pose no greater burden on the public as to illegal firearm possession than do law abiding citizens who have not participated in the DROS PROCESS. [See footnote 1 for Defendants' responses]

Defendants' Initial Response to FI 17.1(b) re: RFA No. 85:

[No Initial Response]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 85:

This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not "result[] in any taxpayer paying a higher tax[.]" Cal. Const., art XIIIA § 3(a). Thus, at this time defendants have no position either way on the precise issue identified in this request for admission.

- **Request No. 86**

Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS pose a greater burden on the public as to illegal firearm possession than do law abiding citizens who have not participated in the DROS PROCESS.

Defendants' Initial Response to FI 17.1(b) re: RFA No. 86:

[No Initial Response]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 86:

This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not "result[] in any taxpayer paying a higher tax[.]" Cal. Const., art XIIIA § 3(a). Thus, at this time defendants have no position either way on the precise issue identified in this request for admission.

- **Request No. 88**

Admit that it is the position of CAL DOJ that law-abiding firearm owners have a greater interest, as compared to other law-abiding citizens who do not own firearms, in insuring firearms are not in the possession of persons who are not

legally permitted to posses a firearm.

Defendants' Initial Response to FI 17.1(b) re: RFA No. 88:

[No Initial Response]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 88:

This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not "result[] in any taxpayer paying a higher tax[.]" Cal. Const., art XIIIA § 3(a). Thus, at this time defendants have no position either way on the precise issue identified in this request for admission.

- **Request No. 89**

Admit that it is the position of CAL DOJ that law-abiding firearms owners do not have a greater interest, as compared to other law-abiding citizens who do not own firearms, in insuring firearms are not in the possession of persons who are not legally permitted to posses a firearm.

Defendants' Initial Response to FI 17.1(b) re: RFA No. 89:

[No Initial Response]

Defendants' Amended Response to FI 17.1(b) re: RFA No. 89:

This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not "result[] in any taxpayer paying a higher tax[.]" Cal. Const., art XIIIA § 3(a). Thus, at this time defendants have no position either way on the precise issue identified in this request for admission.

Dated: April 14, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin
Attorneys for the Plaintiffs/Petitioners

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

On April 14 2016, the foregoing document(s) described as

APPENDIX OF DISCOVERY REQUESTS AND DISPUTED RESPONSES THERETO RE: JOINT STATEMENT CONCERNING RENEWED DISCOVERY MOTIONS

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit. Executed on April 14, 2016, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on April 14, 2016, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed April ___, 2016, at Long Beach, California.

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

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

LAURA L. QUESADA

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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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY; MEMORANDUM IN SUPPORT THEREOF** Date: 10/28/16 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 28, 2016, at 9:00 a.m. or as soon thereafter as the matter may be heard, in Department 31 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and Calguns Shooting Sports Association (collectively "Plaintiffs") will and hereby do move this Court for an order compelling Defendants/Respondents Kamala Harris and

Stephen Lindley (collectively "Defendants") to produce further responses to Plaintiffs' Requests for Production of Documents (Set Three) propounded on Defendants on September 4, 2015.

This Motion is brought pursuant to Code of Civil Procedure section 2031.310, subdivisions (a)(1) and (a)(3) on the grounds that Defendants have provided responses that include unfounded objections and statements that are evasive and incomplete. A declaration in conformance with Code of Civil Procedure section 2016.040 is provided herewith.

This Motion is based upon this notice, the attached memorandum of points and authorities, the supporting Declaration of Scott M. Franklin, the separate statement of disputed issues concurrently served and filed with this Motion, all papers and pleadings currently on file with the Court, and such oral and documentary evidence as may be presented to the Court at the time of the hearing.

Please take further notice that pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the Court's website. If the party does not have online access, they may call the dedicated phone number for the department referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for Plaintiffs

TABLE OF CONTENTS

TABLE OF CONTENTS (cont.)

TABLE OF AUTHORITIES

I. INTRODUCTION

This Motion concerns Defendants' responses to Plaintiffs' Requests for Production of Documents ("RFPs") Nos. 53, 63, 64, 65, 66, 74, and 75. Because Defendants' responses are improperly evasive and their boilerplate objections are without merit, this Motion should be granted.

II. STATEMENT OF FACTS

A. Factual Background of this Case

This case concerns the California Department of Justice's (the "Department") use of money collected under the guise of the Dealers' Record of Sale ("DROS") fee and placed in the DROS Special Account. (Compl. ¶ 1.) The Department uses money from the DROS Special Account to fund law enforcement activities based on data produced by the Armed and Prohibited Person System ("APPS"[1]), e.g., special agents traveling to a residence to seize firearms from a person identified by way of APPS. (*Id.* ¶¶ 6-7.) And yet, it appears the Defendants are using DROS fee money to fund general law enforcement activities that are, at most, tangentially related to APPS.[2] Plaintiffs claim, among other things, that the Department has failed to properly set the amount of the DROS fee and that the Department is illegally imposing a tax via the DROS fee. (*Id.* ¶¶ 96,110.)

B. History of the Current Discovery Dispute

Plaintiffs served a third set of RFPs on Defendants on September 4, 2015. (Declaration of Scott M. Franklin in Support of Motion to Compel Further Responses to Special Interrogatories, Set Three, Propounded on Defendants Kamala Harris and Stephen Lindley [the "Franklin Decl."] ¶ 2.) Pursuant to a courtesy extension granted by Plaintiffs, Defendants provided responses on October 19, 2015. (*Id.* ¶ 3.) Soon thereafter, Plaintiffs counsel evaluated the responses and determined them to be insufficient, and accordingly, sent a letter on December 14, 2015, explaining in detail how the responses provided were insufficient. (*Id.* ¶ 4.) Counsel for the

[1] The APPS database is derived by cross-checking certain governmental records with the intent of identifying people who obtained a firearm legally but then kept the firearm after becoming legally ineligible to do so. (Compl. ¶ 66.)

[2] See *supra* Section III.B.

parties telephonically discussed the sufficiency of Defendants' responses on December 16, 2016, and Defendants' counsel ultimately agreed to consider providing amended responses. (*Id.* ¶ 5.)

On January 6, 2016, and again on January 13, 2016, Defendants provided additional documents in response to Plaintiffs' RFPs. (*Id.* ¶ 6.) Nonetheless, Plaintiffs thereafter still believed Defendants had not properly responded to several RFPs, so Plaintiffs' counsel sent a second meet-and-confer letter to Defendants counsel on February 19, 2016. (*Id.* ¶ 7.) Defendants provided an amended privilege log ("Privilege Log") on March 10, 2016, that, unlike its predecessor, specified which requests were relevant to each specific item on the Privilege Log that was purportedly subject to a privilege. (*Id.* ¶ 8.) The Privilege Log did not, however, include any update as to the baseline budgets requested in RFP No. 63; Plaintiffs' counsel understood that such update would be provided as the result of a meet-and-confer teleconference that occurred on March 1, 2016. (*Ibid.*)

As a result of the parties good faith meet-and-confer efforts, all of Defendants' disputed responses have been resolved except the seven responses that are the basis for this Motion. (*Id.* ¶ 9.) The parties have agreed in writing to a filing deadline of April 25, 2016, so this Motion is timely under Code of Civil Procedure section 2030.300, subdivision (c). (*Id.* ¶ 10.)

III. ARGUMENT

A. Standard for Compelling Further Responses to RFPs

> On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:
>
> (1) A statement of compliance with the demand is incomplete.
>
> (2) A representation of inability to comply is inadequate, incomplete, or evasive.
>
> (3) An objection in the response is without merit or too general.

(Code Civ. Proc., § 2031.310, subd. (a)(1)-(3).)[3] A party responding to an RFP may object to an entire RFP, or just a portion of a particular RFP. (§§ 2031.210, subd. (a)(3), 2031.240.)

B. Background Law Applicable to Repeatedly Raised Boilerplate Objections

1. Relevance

[3] All statutory cites are to the Code of Civil Procedure, except as expressly stated.

> [A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence

(Code of Civ. Proc., § 2017.010.) "For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement[.]'" (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.) "Any doubts regarding relevance are generally resolved in favor of allowing the discovery." (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 98.)

2. Attorney Work Product Doctrine

Code of Civil Procedure section 2018.030 states

> A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances[, and t]he work product of an attorney, other than a writing described [above], is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

The attorney work product doctrine only potentially applies to information derived from an attorney's work; i.e., it does not protect against the production of non-derivative information. (*See Southern Pac. Co. v. Superior Court*, (1969) 3 Cal.App.3d 195, 198-199 ["The facts sought, those presently relied upon by plaintiffs to prove their case, are discoverable no matter how they came into the attorney's possession."].) When determining whether non-disclosure of attorney work product "will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice[,]" "the court should determine whether a substantial need for the discovery exists (e.g., the information is relevant and cannot be obtained from any other source)[.]" (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1620.)

3. Lawyer-client Privilege

California Evidence Code section 954 states that a client may refuse to disclose (1) confidential communications (2) between the client and the attorney. (Evid. Code, § 954.) Section 954 only applies to communications; the attorney-client privilege does not apply to facts, even if the facts are mentioned in, or relevant to, an attorney-client communication. (*See Benge v.*

Superior Court (1982) 131 Cal.App.3d 336, 349.) Furthermore, the privilege does not apply to communications between an attorney and a client regarding business advice, i.e., advice outside the normal scope of legal services provided by an attorney. (*See Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 735). "The party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship." (*Id.* at 733.)

4. Official Information Privilege

Defendants' law enforcement, official information, deliberative process, and executive privilege claims are all subject to the same standard of review, which is found in Evidence Code section 1040. (See *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1126-1127 [using the standard set forth in Evidence Code section 1040 to evaluate claims made under the common law privilege known as the executive or deliberative process privilege and stating that Evidence Code section 1040 "represents the exclusive means by which a public entity may assert a . . . privilege based on the necessity for secrecy"].)

Evidence Code section 1040 states, in pertinent part, that

> [a] public entity has a privilege to refuse to disclose official information [if d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. . . . In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

(See also *Cal. First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172 ["Only if the public interest in nondisclosure clearly outweighs the public interest in disclosure does the deliberative process privilege spring into existence."].) The burden is on the Defendants to prove the official this privilege applies. (See *Marylander*, *supra*, 81 Cal.App.4th at1128.)

C. <u>Defendants Ignore the Import of this Court's Order of June 1, 2015, in Failing to Produce the Documents Sought via RFP No. 53</u>

RFP No. 53 seeks the production of documents evidence communications between the Department and the Department of Finance ("DOF") regarding how a surplus in the DROS

Special Account could be reduced. None of Defendants' objections to RFP No. 53 withstand scrutiny.

1. Relevance

Defendants claim RFP No. 53 "seeks information not relevant to the subject matter or likely to lead to discovery of admissible evidence." (Sep. Statement at p. 2.) In reality, the class of documents sought clearly meet the relevancy standard discussed *supra* in Section III.B.1. The Order of June 1, 2015 (the "Production Order"), is on point. As to Defendants' "budget and expenditure decisions related to the setting and continuation of the DROS fee[; this Court held t]he public clearly has an interest in disclosure of documents which identify the budgetary analyses performed by Respondents to support the amount of the DROS fee." (Production Order, at 4:1-4.) This Action is a manifestation of the public interest identified by the Court. Accordingly, any documents referring to the potential reduction of the DROS Special Account are relevant in light of the fact that this lawsuit specifically concerns the way in which the DROS Special Account surplus was ultimately reduced. Thus, Defendants' relevancy objection should be ignored.

2. Lawyer-client Privilege

Defendants have provided no evidence that the relevant documents should be considered protected by the lawyer-client privilege explained *supra* in Section III.B.3. The documents sought are plainly budgetary documents; Defendants have provided no reason to believe that budget documents, presumably created by a budget analyst—and not a lawyer—would constitute or even include lawyer-client communications. (*See* Evid. Code, § 952;[4] *Costco*, *supra*, 47 Cal.4th at 735;

[4] Evidence Code section 952 states that, as to the lawyer-client privilege,

> 'confidential communication between client and lawyer' means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than

Chicago Title Ins. Co. v. Superior Court (1985) 174 Cal.App.3d 1142, 1151.) Further, even if an attorney somehow is involved with the documents sought, communications between the Department and the DOF on budgetary matters are not attorney-client communications between the Department and the DOF. I.e., the Department certainly employs attorneys, but even if a Department attorney was involved in the creation of a baseline budget, the DOF is certainly not acting as an attorney's client when it receives and analyzes budgetary documents. (Evid. Code, § 951 [stating that, for purpose of lawyer-client privilege, "'client" means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity"].)

And finally, assuming arguendo Defendants contend the Department has attorney-client privilege with itself or a subdivision thereof, the disclosure relevant documents to DOF, which was required for budgetary purposes—not as a part of obtaining legal advice—waived any attorney-client privilege held by the Department. (Evid. Code, § 912(a) [waiver of attorney-client privilege occurs when "any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone.") Accordingly, Defendants' lawyer-client objection should be overruled.

3. Work Product Doctrine

As with all of Defendants' objections, their objection based on the work product doctrine is without any factual context or support. As explained in the preceding subsection, there is no apparent reason that an attorney would create, or procure the creation of, budgetary documents. The work product doctrine only "applies to documents related to legal work performed for a client[,]" and the nature of the baseline budgets raises a strong presumption that they are well outside the scope of the "privilege" stated in Evidence Code section 954. (See *Watt Industries,*

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those who are present to further the interest of the client in the consultation

Inc. v. Superior Court (1981) 115 Cal.App.3d 802, 805.) Based on the foregoing, the Court should rule the work product doctrine is inapplicable to the documents sought.

5. Official Information Privilege

This Court's Production Order, discussed *supra* in Section III.C.1, addresses Defendants' previous attempt to withhold budgetary documents pursuant to variations of the official information privilege. As the Court noted, Defendants contend that budget reports, draft letters concerning budgetary issues, and budget analysts' analyses are subject to the deliberative process privilege, and cannot be disclosed because "disclosure . . . would chill the full and candid assessment of departmental budget issues[.]" (Production Order at 2:9-14.) After citing relevant authority, the Production Order unambiguously states that if Defendants "are engaging in budgetary and other calculations concerning the appropriate amount of the DROS fee, these records are discoverable in this matter." (*Id.* at 4:7-8.)

The propriety of the DROS fee is inextricably intertwined with how money from the DROS Special Fund is being spent—as the Court put it, "the Department is required to perform certain budgetary calculations in order to determine the proper amount of the [DROS] fee[.]" (Production Order at 2:7-8.) To the extent the relevant documents include information regarding the potential or actual use of funds from the DROS Special Account or expenses no longer funded from that source, it is inescapable that the public's interest will be best served if the relevant budgetary documents are disclosed. (See *Cal. First Amendment Coalition*, *supra*, 67 Cal.App.4th at 172.) Therefore, the Court should order the production of the baseline budgets.

D. <u>Defendants Ignore the Import of this Court's Order of June 1, 2015, in Failing to Produce, or Even Properly Identify, the Baseline Budgets Sought via RFP No. 63</u>

Much of the analysis provided *supra* regarding Defendants' response to RFP No. 53 is applicable to Defendants' boilerplate objections to the remaining disputed responses. Thus, rather

than discuss these issues ad nasuem herein (as is the case in the Separate Statement provided herewith), the discussion below concerning Defendants' objections related to RFP Nos. 63, 64, 65, 66, 74, and 75 are streamlined to focus on issues of particular interest that are somehow distinct from the issues discussed *supra* in the preceding subsection.

The baseline budgets clearly meet the relevancy standard discussed *supra* in Section III.B.1. Indeed, unless Defendants are willing to allege that the baseline budgets do not include any reference to the DROS fee or the multimillion dollar DROS Special Account at the heart of this lawsuit, there is no basis for their objection.[5] (*See* Section II.A., *supra*.) The Production Order is on point, and Defendants' relevance objection should be overruled.(Production Order, at 4:1-4.)

Defendants have provided no evidence that the baseline budgets should be considered protected by the lawyer-client privilege explained *supra* in Section III.B.3. The baseline budgets are plainly budgetary documents; Defendants have failed to identify any reason to believe a lawyer was or should have been involved in the creation of the baseline budgets. (*See* Evid. Code, § 952;[6] *Costco*, *supra*, 47 Cal.4th at 735; *Chicago Title Ins. Co. v. Superior Court* (1985) 174 Cal.App.3d 1142, 1151; Evid. Code, § 951 [stating, for purpose of lawyer-client privilege, that "'client' means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity"].)

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[5] And if Defendants *do* claim the documents are irrelevant, Plaintiffs will request the Court review the documents in camera to evaluate the veracity of Defendants' claim.

[6] Evidence Code section 952 states that, as to the lawyer-client privilege,

> 'confidential communication between client and lawyer' means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation

The Department provides baseline budgets to the DOF for review as a part of the State's budget process. (Franklin Decl. ¶ 12.) Thus, baseline budgets are not attorney-client communications between the Department and the DOF: the Department certainly employs attorneys, but even if a Department attorney was involved in the creation of a baseline budget, the DOF is certainly not acting as an attorney's client when it receives and analyzes budgetary documents. And assuming arguendo the Defendants contend the Department has attorney-client privilege with itself or a subdivision thereof, the disclosure to DOF, which is required for budgetary purposes, not as a part of obtaining legal advice, waived any attorney-client privilege held by the Department. (Evid. Code, § 912(a) [waiver of attorney-client privilege occurs when "any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone.") Defendants' lawyer-client objection should be overruled.

Defendants have failed to produce any explanation as to why an attorney would be involved in budgeting matters and have failed to explain why the documents sought should be characterized as"related to legal work performed for a client. Given the foregoing and the nature of the baseline budgets, there is a strong presumption that the baseline budgets are well outside the scope of the "privilege" stated in Evidence Code section 954. (See *Watt Industries, Inc. v. Superior Court* (1981) 115 Cal.App.3d 802, 805.) Based on the foregoing, the Court should rule the work product doctrine is inapplicable to the baseline budgets.

Further, the Production Order explains why budgeting materials related to the DROS fee are subject to disclosure. Because the baseline budgets are squarely within the intent and balancing described in the Production Order, Defendants' official information objection to RFP No. 63 should be ignored. (*Marylander*, *supra*, 81 Cal.App.4th at pp. 1126-1127.)

Finally, Defendants' also fail in arguing that the relevant "request is oppressive and burdensome in that it seeks information spanning a period of approximately twelve years." (Sep. Statement at p. 5.) The number of years at issue is irrelevant if the number of documents, and the amount of hours required to locate them, are minimal. Defendants were given the opportunity to explain why they contend the production of documents up to twelve years old would result in undue prejudice or oppression—but they failed to do so. (Franklin Decl. at ¶ 7.) Defendants have not produced any evidence that the claimed objection actually relates to a specific potential burden or oppression, thus Defendants must either produce the baseline budgets or provide a further response to this request per Code of Civil Procedure section 2031.310, subdivisions (a)(3) and (b)(1).

E. Plaintiffs Have Good Reason to Request Documents Using the Term "DROS Enforcement Activities[;]" Defendants' Objections to RFP No. 64 Are Meritless

To determine whether the DROS fee is properly calculated and not being used as a tax, Plaintiffs must investigate whether the DROS fee is being used to fund payer-related costs (e.g., background checks), general fund obligations (e.g., performing law enforcement activities in the field), or a specific mix thereof. The term "DROS enforcement activities" indicates that some law enforcement activities are being funded out of DROS. Plaintiffs need to see documents using the relevant phrase to first help identify the universe of law enforcement costs being funded from the DROS Special Account, and then to analyze which costs are general fund costs that are being used in lieu of general fund money. (See Code of Civ. Proc., § 2017.010; *Gonzalez*, *supra*, 33 Cal.App.4th at p. 1546.) Therefore, Defendants' relevance objection fails.

Defendants' one-sentence description for the Privilege Log items at issue (18 and 19) is detailed enough to show that, under the official information balancing test of Evidence Code section 1040, the balance tips in favor of disclosure. Both documents, dated May 8, 2011, are

captioned "BCP Concept Paper-APPS, Response to Anson's Questions." Clearly, the documents have to do with the Department's plan to use Budget Change Proposals to obtain funding related to APPS. Inasmuch as money from the DROS Special Account was used to fund APPS prior to fiscal year 2012-2013, the connection to Plaintiffs' claims concerning improper use of the DROS Special Account is not difficult to see. (Franklin Decl. ¶ 11). Because the identified documents are squarely within the intent and balancing described in the Production Order, Defendants' official information objection to RFP No. 64 should be ignored. (*Marylander*, *supra*, 81 Cal.App.4th at pp. 1126-1127.)

Further, the description provided indicates that the documents were not created in the context of an attorney-client relationship, or that the documents should be reasonably expected to contain attorney-client material. Because Defendants have not provided an evidence as to why these rules of exception should apply, the Court should order the production of these two documents. (§§ 2018.030, 2031.240, subd. (c)(1); Evid. Code, §§ 912, 954.)

Finally, Defendants also fail in arguing that the relevant "request is oppressive and burdensome in that it seeks information spanning a period of approximately twelve years." (Sep. Statement at p. 8.) The number of years at issue is irrelevant if the number of documents, and the amount of hours required to locate them, are minimal. Defendants were given the opportunity to explain why they contend the production of documents up to twelve years old would result in undue prejudice or oppression, but they failed to do so. (Franklin Decl. ¶ 7].) Defendants have not produced any evidence that the claimed objection actually relates to a specific potential burden or oppression, thus Defendants must either produce the baseline budgets or provide a further response to this request per Code of Civil Procedure section 2031.310, subdivisions (a)(3) and (b)(1).

F. <u>Plaintiffs Have Good Reason to Request Documents Using the Term "Enforcement Activities[;]" Defendants' Objections to RFP No. 65 Are Meritless</u>

RFP No. 65 is very similar to RFP No. 64. They both seek information related to what law enforcement activities are being funded from the DROS Special Account. The only real differences are the "keyword phrases" being used (i.e., "DROS enforcement activities" versus "enforcement activities"), the fact that RFP No. 35 has an express substantive limitation clause (RFP No. 35 seeks documents using the phrase "enforcement activities" *that also* discuss those activities "being funded from the DROS Special Account"), and different limitations regarding the time frame in which responsive documents appear to have been created. Thus, in light of the extreme similarity of these two requests, Plaintiff believes the Court will not be assisted in repeating in this subsection the exact same arguments that are described *supra* in Section III.E. and in the separate statement. As previously explained in the context of RFP No. 64, the Court should order production in response to RFP No. 65.

G. Defendants' Response to RFP No. 66 Is Insufficient; Defendants Have Failed to Raise Sufficient Grounds to Deny a Request for the Budgetary Records Sought

RFP No. 66 is a counterpart to RFP No. 53. RFP No. 53 concerns documents evidencing the Department and DOF's discussions about reducing the DROS Special Account surplus. RFP No. 66, which also seeks communications between the Department and DOF, is broader thatn RFP No. 53, as RFP No. 66 seeks *any* document wherein the DROS Special Account is mentioned, not just any document that mentions how the Department might reduce the DROS Special Account surplus. Thus, because these requests are conceptually extremely similar, Plaintiffs will not reiterate the arguments made regarding Defendants' response to RFP No. 53 or the arguments made in the Separate Statement regarding that response.

Plaintiff does note, however, that the descriptions provided for Privilege Log items 15, 16, and 17 confirm the documents at issue are relevant and that disclosure of these documents is in the public interest and that withholding them is not. Documents 15 and 16 are titled "DOJ Finance Letter Concepts[.]"[1] Based on the document titles and the requirements of the request at issue, these two documents appear to embody the Department's conceptual budgetary ideas that were somehow related to the DROS fee, which is likely relevant to Plaintiffs' claims about the

[1] See, *supra*, footnote 1 and related text.

DROS fee being maintained at an unreasonably high amount. In fact, these documents may be of extreme relevance because of the date they appear to have been created (approximately 2007-2008); if the Department was discussing the surplus in the DROS Special Account in 2008 (as Defendants have effectively admitted in their response to RFP No. 53), that is relevant to the question of how often, or based on what factual scenario, the Department is required to change the DROS fee so that it does not exceed the amount "necessary" to cover the expenses identified in Penal Code section 28225. Plaintiffs seek injunctive relief requiring the Department to properly calculate what the DROS fee should be set at, so Privilege Log items Nos. 15 and 16 are clearly relevant.

Privilege Log item no. 17, as described, has similar indicia of relevance. This document's subtitle—"Automated Firearms System Redesign BCP-Responses to Questions from the Department of Finance"—shows that the Department knew was considering the DROS fee as a potential funding source for the redesign of the Automated Firearm System, which may have been based on a general law enforcement need, rather than a regulatory need (e.g., to improve the DROS process itself). Accordingly, the discussion concerning potential use or non-use of DROS fee money for such a project is likely to shed light on the budgetary decisions that are relevant to this action. Furthermore, the Production Order explains why budgeting materials—like the three documents identified on the privilege log as responsive hereto—related to the DROS fee are subject to disclosure. Because these budgetary documents are squarely within the intent and balancing described in the Production Order, Defendants' official information objection to RFP No. 66, like all of their objections to RFP No. 66, should be overruled. (*Marylander*, *supra*, 81 Cal.App.4th at pp. 1126-1127.)

H. <u>Defendants' Boilerplate Objections to RFP No. 74 Are all Meritless, But their Attorney-Client and Attorney Work Product Objections Seem Especially Inapt</u>

RFP No. 74, like RFP Nos. 53 and 66, seeks budgetary documents referencing communications between the Department and DOF. RFP No. 74 is specifically focused on communications (1) appearing to have originated from the Department's Budget Office and (2) mentioning both the DROS Special Account and APPS. For brevity's sake, Plaintiff will refer to

the argument previously raised herein and in the Separate Statement, with one addition, to show that Defendants' objections should not be sustained.

That addition has to do with Defendants' objection based on the lawyer-client privilege, work product doctrine, and potentially, law enforcement privilege. Request No. 74 is limited to documents concerning communications coming directly from the Department's Budget Office. Presumably, the Budget Office neither has nor—more importantly— needs an attorney to be involved in submitting budgetary information to the DOF. Similarly, though the Plaintiffs have no particular information about the withheld documents, save the description provided by Defendants, they suspect that, at least as to the information Plaintiffs are interested in, it is extremely unlikely that there is confidential law enforcement information in budgetary documents that should be withheld. To be clear, Plaintiffs recognize the theoretical possibility that law enforcement interests could justify withholding some information in budgetary documents. But because Defendants provided no factual support for these three objections, even after Plaintiffs clearly raised this issue during the meet-and-confer process, the evidence available indicates there is no meritorious law enforcement privilege-based claim to be made.

For the reasons stated above and in the separate statement, Defendants should be ordered to produce the documents that were withheld from production even though they are responsive to RFP No. 74.

I. Defendants' Boilerplate Objections to RFP No. 75 Are All Meritless, but their Lawyer-Client and Attorney Work Product Objections Seem Especially Inapt

RFP No. 75 is almost exactly the same as RFP No. 74. The only difference is that RFP No. 74 seeks the production of a certain class of documents appearing to have been created by the Department's Budget Office, whereas RFP No. 75 seeks the same, but as to documents appearing to have been created by the Department's Accounting Office. Because the pertinent issues have already been fully addressed in the separate statement and in the discussion above regarding RFP Nos. 53 and 74, Plaintiff will not rehash the issue again in the context of RFP No. 75. Defendants' boilerplate objections are without merit, and the Motion should be granted as to RFP No. 75.

IV. CONCLUSION

Based on the information available to Plaintiffs, all of Defendants' boilerplate objections are without merit. Furthermore, even if Defendants now produce evidence that is claimed to support such objections, it would be unfair to rely on such evidence in ruling on this Motion. Defendants should not be allow to let Plaintiffs go to the trouble and expense of preparing and arguing a motion to compel if the timely production of factually grounded objections could have mooted some or all of such motion. Plaintiffs and Defendants have both provided extensions and courtesy accommodations in this case, so Defendants cannot claim an inability to put forth robust objections. Plaintiffs respectfully request the Court grant the Motion in full. To the extent the Court sustains one or more privilege or work product doctrine claim based on information Defendants did not include in their initial response, Plaintiffs expressly reserve their right to seek sanctions pursuant to Code of Civil Procedure, section 2023.010, subdivision (f).

Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for the Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On April 25, 2016, the foregoing document(s) described as

NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY; MEMORANDUM IN SUPPORT THEREOF

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 25, 2016, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on April 25, 2016, at Long Beach, California.

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

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

LAURA L. QUESADA

C. D. Michel – S.B.N. 144258
Scott M. Franklin – S.B.N. 240254
Sean A. Brady – S.B.N. 262007
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
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Attorneys for Plaintiffs

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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY** Date: October 28, 2016 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

Plaintiffs request the Court take judicial notice, pursuant to Evidence Code section 452, subdivisions (c), (h), and section 453, of the following facts, which are relevant to Plaintiffs' abovementioned discovery motion as described therein.[1]

1. That the Department of Finance's ("DOF") Glossary of Budget Terms defines "baseline budget" as follows.

[1] All statutory references herein are to the Evidence code, except where noted.

> A baseline budget reflects the anticipated costs of carrying out the current level of service or activities as authorized by the Legislature. It may include an adjustment for cost increases, but does not include changes in level of service over that authorized by the Legislature.

Exhibit 5 to the Declaration of Scott M. Franklin in Support of Plaintiffs' Motion to Compel Further Responses to Requests for Production, Set Three (the "Franklin Decl.") is a true and correct copy of DOF's Glossary of Budget Terms's definition of "baseline budget[,]" which was obtained from http://www.dof.ca.gov/html/bud_docs/glossary.pdf in April 2016. (§ 452, subds. (c), (h).)

2. That DOF's Finance Glossary of Accounting and Budgeting Terms defines "Baseline Budget" as synonymous with "Workload Budget[.]" DOF's Glossary of Budget Terms was available online, as of April 11, 2016, at http://www.dof.ca.gov/html/bud_docs/glossary.pdf. Exhibit 6 to the Franklin Decl. includes a true and correct copy of DOF's statement in its Finance Glossary of Accounting that "baseline budget" is synonymous with "workload budget." (§ 452, subds. (c), (h).)

3. That DOF's Finance Glossary of Accounting and Budgeting Terms defines "Workload Budget" as follows.

> The budget year cost of currently authorized services, adjusted for changes in enrollment, caseload, population, statutory cost of living adjustments, chaptered legislation, one-time expenditures, full-year costs of partial-year programs, costs incurred pursuant to Constitutional requirements, federal mandates, court-ordered mandates, state employee merit salary adjustments, and state agency operating expense and equipment costs adjusted to reflect inflation.

DOF's Glossary of Budget Terms was available online, as of April 11, 2016, at http://www.dof.ca.gov/html/bud_docs/glossary.pdf. Exhibit 6 to the Franklin Decl. includes a true and correct copy of the definition of "workload budget" found in the Glossary of Budget Terms. (§ 452, subds. (c), (h).)

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Finally, Plaintiffs wish to make it clear that they believe all of the facts described above cannot be reasonably disputed because of the context in which they arose. If, however, Defendants raise a facially plausible basis upon which to dispute one or more of the facts described above, Plaintiffs will withdraw the relevant request(s) for judicial notice and then perform discovery to verify the veracity of Defendants' position on any such issues.

Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for the Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On April 25, 2016, the foregoing document(s) described as

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

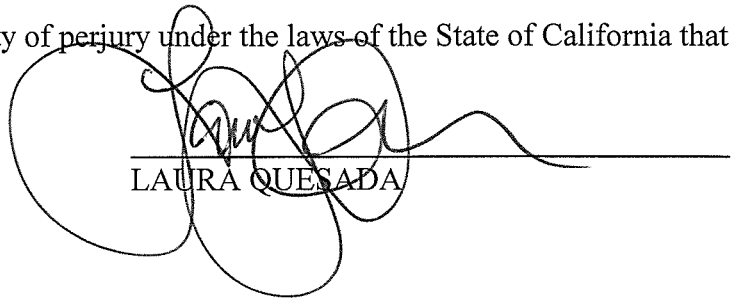
___ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 25, 2016, at Long Beach, California.

X (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on April 25, 2016, at Long Beach, California.

___ (PERSONAL SERVICE) I caused said document(s) to be personally delivered by a courier to each addressee.
Executed on April 25, 2016, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on April 25, 2016, at Long Beach, California.

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



LAURA QUESADA

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Attorneys for Plaintiffs

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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY** Date: 10/28/16 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

DECLARATION OF SCOTT M. FRANKLIN

I, Scott M. Franklin, declare:

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

2. My office served a third set of Requests for Production ("RFPs") on Defendants on September 4, 2015.

3. Defendants provided responses to the abovementioned discovery on October 19, 2015, based on a courtesy extension I provided.

4. When I evaluated the responses provided on October 19, 2015, I determined them to be insufficient. Accordingly, I sent a letter to Defendants' counsel on December 14, 2015, explaining in detail how the responses provided were insufficient. Exhibit 1 to this Declaration is a true and correct copy of my letter dated December 14, 2015.

5. On December 16, 2015, I had a phone call with opposing counsel Anthony Hakl, and during that call he agreed that his clients would consider amending the responses they provided on October 19, 2015.

6. On January 6 and 19, 2016, Defendants provided additional documents in response to the relevant discovery.

7. Even after the two productions mentioned in the previous paragraph, I still believed Defendants' responses and production were insufficient. Accordingly, I sent a letter to Defendants' counsel on February 19, 2016, explaining in detail how certain responses provided were insufficient. Exhibit 2 to this Declaration is a true and correct copy of my letter dated February 19, 2016.

8. On March 10, 2016, Defendants provided further responsive documents and an amended privilege log (the "Privilege Log"); unlike its predecessor, the Privilege Log specified which requests were relevant to each specific item on the Privilege Log that was purportedly subject to a privilege. The Privilege Log did not include any information on the baseline budgets,

which I expected because opposing counsel and I had previously discussed the issue and it was clear to me Defendants were claiming the baseline budgets were privileged. Exhibit 3 to this Declaration is a true and correct copy of the Privilege Log.

9. After I received the documents provided on March 10, 2016, I determined three responses therein were still deficient. Thereafter, I communicated with opposing counsel and we determined that we were at an impasse as to seven responses.

10. Throughout the lengthy meet and confer process described above, I obtained extensions of the deadline for filing a motion to compel on this matter, most recently getting an extension so that the deadline for filing is April 25, 2016.

11. Exhibit 4 to this Declaration is a true and correct copy of excerpts of Defendants' Amended Response to Requests for Production (Set Three) served in this Action.

12. Exhibit 5 to this Declaration is a true and correct copy of the Department of Finance's ("DOF") Glossary of Budget Terms's definition of "baseline budget[,]" which was obtained at http://www.dof.ca.gov/html/bud_docs/glossary.pdf in April 2016.

13. Exhibit 6 to this Declaration is true and correct excerpts of statements in DOF's Finance Glossary of Accounting. DOF's Finance Glossary of Accounting was obtained at http://www.dof.ca.gov/fisa/bag/documents/FinanceGlossary.pdf in April 2016.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on April 25, 2015, at Long Beach, California.

Scott M. Franklin

EXHIBIT "1"

·SENIOR COUNSEL
C. D. MICHEL*

SPECIAL COUNSEL
JOSHUA R. DALE
ERIC M. NAKASU
W. LEE SMITH

ASSOCIATES
ANNA M. BARVIR
MICHELLE BIGLARIAN
SEAN A. BRADY
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December 14, 2015

VIA EMAIL & U.S. MAIL

Mr. Anthony R. Hakl
Deputy Attorney General
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Re: ***Follow-up Regarding Impact of Motion for Leave Being Granted and Meet-and-Confer Concerning Disputed Discovery Responses in Gentry v. Harris***

Mr. Hakl:

I write to discuss the impact of the Court's recent ruling granting Plaintiffs' motion for leave to amend, and to meet and confer about Defendants' responses to Special Interrogatories (Set Two) and Requests for Admissions (Set Two) that you emailed to me on October 19, 2015.

Issues Re: Motion for Leave to Amend Being Granted

First, my assistant sent you a copy of the proposed order we would like to file, pursuant to California Rules of Court, Rule 3.1312(a). Please let me know if it meets with your approval, and thereafter we will file it as soon as possible.

Second, I have attached hereto a draft of the Amended Complaint we intend to file. It has been modified to reflect the specific requirements set out in the Court's tentative ruling of December 10, 2015. Though I don't think there will be any dispute as to whether the Amended Complaint has been properly revised to meet the Court's expectations, I want to give you a copy before it is filed to iron out any problems that can be resolved without dispute.

Third, because Amended Complaint includes new arguments grounded on the allegation that the DROS Fee is being use as an illegal tax, the discovery requests previously ruled moot by the Court on August 31, 2015 (as a result of Defendant's Motion for Judgment on the Pleadings being granted), are no longer moot. Thus, we request that Defendants produce substantive responses to the "unmooted"

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form interrogatories and requests for Admissions[1] 60 days after the Amended Complaint is filed and served.

If Defendants are not willing to comply with the request stated above, there are a few ways we can deal with this situation. Plaintiffs could propound the relevant discovery as "new" requests and go through another motion to compel, but I think that would only waste the parties'—and the court's—time: this issue has been fully briefed for the Court. Accordingly, I think that it would be proper, and much, much more efficient,[2] to make a renewal motion under Code of Civil Procedure Section 1008(b); the new illegal tax claims in the Amended Complaint constitute new facts that justify the renewal of Plaintiffs' Motions to Compel. Civ. Proc. Code § 1008(b). Indeed, because the Court does not need a second round of briefing on this issue, my preference is to make a motion under Section 1008(b) with a stipulation that the Court consider the issue on the previously filed briefs and issue a ruling without further argument. Please let me know if Defendants will produce substantive additional responses, and if not, whether Defendants are willing to enter into the type of stipulation mentioned above.

Request for Production of Documents ("RFP")

RFP No. 63

This request seeks baseline budgets submitted by the California Department of Justice (the "Department") to the California Department of Finance. The boiler plate objections provided are without merit. Specifically, Defendants provide no explanation as to why these documents would be protected under the attorney-client privilege, the work product doctrine, or the executive and deliberative process privileges. Indeed, these claims ring hollow. The budget documents sought are day-to-day budget documents, they have nothing to do with legal services being provided. Similarly, the response provided does not explain how a deliberative or executive process privilege could have be maintained here, as the documents requested are specifically ones that were, without exception,

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[1] I.e., Request for Admissions Nos. 83-86, 88, and 89, and Form Interrogatory 17.1(b) as to Requests for Admissions Nos. 18-22, 83-86, 88, and 89.

[2]For comparison, I note that the core of Defendants' recent Opposition brief—i.e., the claim that the Order After Hearing precluded Plaintiffs from adding newly identified illegal tax arguments to their complaint—was an issue that Plaintiffs attempted to resolve by proposing an clarification amendment to Defendants' first draft of the proposed Order After Hearing. (*See* Letter to Anthony Hakl dated June 30, 2015, at 2). As you recall, Defendants refused that proposed change, and then Defendants later opposed Plaintiffs' motion for leave based on an argument that should have been disposed of when the Order After Hearing was issued. Adding a clarification that two causes of action were being dismissed for the reasons "stated in Defendants' Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings at 5:20-7.11" would have worked no unfair prejudice to Defendants, and it would have resolved the issue that resulted in three unnecessary briefs (i.e., the recent motion for leave briefing) and court order. Here, I am similarly trying to streamline things, and I don't think going through an entire new round of discovery and motion practice makes sense, as the issue has already been fully briefed.

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circulated beyond a "control" or "executive" group, meaning there is no apparent justification for these objections. And in any event, as we have previously discussed, these type of claims are always going to be subject to a balancing test, and I see no reason why the Department will prevail in this instance. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 68

In response to this request, Defendants proposed the parties confer regarding the possibility of narrowing the scope of thereof. Defendants also state that the information sought is equally available to the requesting party. Accordingly, if Defendants can provide an explanation as to how Plaintiffs can obtain the information sought as easily as having it produced by Defendants in discovery, then we will look into obtaining it through that route.

Otherwise, the statement that this request seeks "*potentially* hundreds" of documents does not, in and of itself, convince us that a limitation of this request is warranted. Nonetheless, we are open to an explanation as to why this request is overburdensome, and how it might be tailored to meet our needs without any loss of substance.

RFP No. 72

First, I note that Defendants' characterization of this request as "oppressive and burdensome" is based on a false premise. That is, Defendants claim "compliance would be unreasonably difficult and expensive because it purports to seek 'each and every' such document within the entire Department of Justice[.]" But on some level, *every* document production request seeks analysis of the entirety the Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we have added multiple limiting attributes that, based on information available to us, should lead to a manageable production. If Defendants can offer a legitimate justification as to why we should amend this request, which hinges on (1) a mention of the DROS Special Account and (2) the use of the phrase "government law[,]" we are open to changing the request. But without that, a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The information sought is more akin to budgetary data, and that is plainly not going to be privileged; I think the Court's previous discovery ruling indicates as much. (Order of June 1, 2015, at 4). Similarly, the deliberative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 73

First, I note that Defendants' characterization of this request as "oppressive and burdensome" is based on a false premise. That is, Defendants claim "compliance would be unreasonably difficult and expensive because it purports to seek 'each and every' such document within the entire Department of Justice[.]" But on some level, *every* document production request seeks analysis of the entirety the

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Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we are asking for training or guidance documents including or referring to a particular policy statement: the limitations provided should lead to a manageable production. If Defendants can offer a legitimate justification as to why we should amend this request, we are open to changing the request. But without that, a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought are used by employees when learning to track employee time, and that type of document has noting to do with attorney work nor privileged communications. Similarly, the delibrative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 89

First, I note that Defendants' characterization of this request as "oppressive and burdensome" is based on a false premise. That is, Defendants claim "compliance would be unreasonably difficult and expensive because it purports to seek 'each and every' such document within the entire Department of Justice[.]" But on some level, *every* document production request seeks analysis of the entirety the Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we are asking for documents related to the Department's process of converting an employment position from being funded from one specific source to another specific source. Unless and until the Department is prepared to show that it has already spent a substantial amount of time, and located a substantial amount of responsive documents, Defendants' oppression objection is without impact, and a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought refer to staffing and budgetary decisions, and those type of documents have noting to do with attorney work nor privileged communications. Similarly, the delibrative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

Special Interrogatories ("SI")

SI No. 19

This request contains a clerical error; the term "department of legal services" should have read "Government Law Section of the Division of Civil Law[.]" With this information, Defendants should be able to respond to this interrogatory.

Defendants claim the following passage, from the instant request, is vague an ambiguous: "obtains funding to cover the cost of providing lawyers when it provides lawyers to defend employees of Bureau of Firearms." Though Plaintiffs believe the interrogatory is clear with the above-noted

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correction, Plaintiffs will illuminate their inquiry. Defendant want to know how the Division of Civil Law obtains funding to pay the salaries of attorneys who represent Bureau of Firearms employees (e.g., Chief Lindley), which presumably has happened pursuant to Government Code section 11040. If, however, it is the case that the Division of Civil Law has never represented a Bureau employee, that information would also be part of an appropriate response to this interrogatory.

SI No. 25

This interrogatory asks for the basis of Defendants' response to SI No. 24, which is that "Defendants are unable to answer this interrogatory." Defendants' response to SI No. 25, however, does not explain Defendants' claimed inability to response to SI No. 24. Rather, it refers to why the Department can't repeat the calculation it did in 2002, which is not a pre-requisite for providing the calculation asked for. That is, SI No. 25 did not ask the Department to repeat a previous calculation, meaning Defendants' response to SI No. 25 is evasive. Defendants have already said they cannot "State the total amount of expenditures attributed to tasks referred to in Penal Code Section 28225 for the fiscal year 2013-2014;[,]" and now they must explain why. Failure to do so will evince a lack of good faith and justification for, at the least, a motion to compel being granted. A further response should be provided.

SI Nos. 27 & 28

Defendants claim the term "accounting designation" is vague and ambiguous, apparently as a basis for not providing a substantive response to SI Nos. 27 and 28. Though Plaintiffs disagree, Plaintiffs further explain that the term "accounting designation" was meant to refer to any line-item title, like "Firearms Database Audits[,]" that was used to identify a program that was funded by a certain source (here, the DROS Special Account).

SI No. 27 seeks an "accounting designation," e.g., title, for any program that was funded from the DROS Fund during the relevant time frame *but* excepting any class of program that turned on the "possession" of a firearm. "Possession" as used herein has the same meaning as the Department gives that word when interpreting Penal Code section 28225. Plaintiffs assume that "DROS Enforcement Activities" would *not* be a responsive "accounting designation" as to SI No. 27, though it *would* be responsive to SI No. 28, which seeks *only* accounting designations related to programs that turn on the possession of a firearm. With the foregoing information, Plaintiffs believe Defendants are capable of providing substantive responses to SI Nos. 27 and 28.

SI Nos. 29 & 30

The Department claims the two incidents at issue are "APPS cases[,]" but the facts provided suggest otherwise. As you know, one of our clients' concerns is that DROS Fees are being used to fund general law enforcement activites via the APPS program. Based on these "APPS cases[,] however, it appears the name APPS is being applied to law enforcement activities that are not even derived from APPS-based data. If that is the case, one of my clients' primary arguments (i.e., that the DROS Fee is no longer a fee, but a general law enforcement tax being foisted upon legal gun purchasers) becomes much stronger. Thus, Defendants are plainly wrong in claiming the information sought is "irrelevant."

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As to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought refer to staffing and budgetary decisions, and those type of documents have noting to do with attorney work nor privileged communications. Similarly, the executive privilege and official information objections seems inapplicable (who is the executive claiming the privilege?), but even if one of them is theoretically applicable, I do not see how the balance tips in the favor of nondisclosure when information sought will confirm or refute whether the Department is improperly characterizing general law enforcement work as APPS work. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

Finally, I am hesitant to believe that the law enforcement privilege claim (really just an official information claim raised in the guise of police records) will succeed. First, if the investigation of either case is over, then the weight in favor of non-disclosure is very light. *See, e.g., Cnty. of Orange v. Super. Ct.*, 79 Cal. App. 4th 759, 768 (2000) (noting that the qualified privilege that applies to police records disappears at some point). Further, Defendants have already publically touted the cases at issue as "APPS cases," meaning they will have a hard time convincing the Court that the Department is actively trying to keep facts related to those cases "under wraps." Second, because this is a question of balancing, I believe my clients have a strong argument: Defendants should not be able to publically claim certain cases are "APPS cases" and then deny requests for confirmation. Such a result runs contrary to the California Constitution. Cal. Const. art. 1, § 3(b) ("The people have the right of access to information concerning the conduct of the people's business[.]").

Defendants do not seek any person information or strategic information, they just want to know how it is that the Department can claim the two matters at issue are "APPS cases" when, based on the facts provided, they are not. Defendants knowingly put these two cases up to public scrutiny when the Department chose to use them as exemplars of APPS success stories, and the Department cannot reasonably take the position that the public has no ability to verify the Departments' claims.

Please do not hesitate to contact me if you have any questions regarding the foregoing, and I look forward to speaking with you on Wednesday.

Sincerely,

Michel & Associates, P.C.

Scott M. Franklin

Enclosure: (Revised Draft First Amended Complaint)

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EXHIBIT "2"

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February 19, 2016

VIA EMAIL & U.S. MAIL

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Re: Status of Pending Discovery and Litigation Issues (*Gentry v. Harris*, Case No. 34-2013-80001667)

Dear Mr. Hakl:

I write to follow up on a few disputed responses Defendants provided in response to Plaintiffs' third set of Special Interrogatories and third set of Requests for Production of Documents. I believe we are at an impasse in the meet-and-confer process as to the responses at issue, but I am sending this letter to memorialize my clients' position and confirm whether further informal discussions are justified. As we have previously discussed by e-mail, I have scheduled time on February 29, 2016, at 2:00 p.m., for a teleconference on this matter. If we are indeed at an impasse, I believe we can use the abovementioned call to discuss the possibility of seeking expedited review of this dispute as we have in the past. And to the extent Plaintiffs request further information hereby, Plaintiffs also request any further responses or additional information be produced to me by close of business on February 28, 2016.

Finally, before getting to the meat of this letter, there are a few "housekeeping" matters to attend to. First, I request that Defendants provide "cleaner" copies of the documents Bates-stamped AGRFP000640 and AGRFP000644. The text on these documents is very small and difficult to decipher in a low-resolution format. Second, Plaintiffs request that Defendants supplement the January 13, 2016, privilege log so that Plaintiffs can determine which request(s) are applicable to each withheld document that is described on the log.

Requests for Production

Request for Production No. 55-56

Defendants still claim they cannot produce even exemplars of the documents that are responsive to these requests. The documents seem to fall within a very small class (documents that are specifically in the records of the Department's Administrative Services Division, Budget Office, that *also* refer to the DROS FEE), so it is hard for Plaintiffs to understand why Defendants have yet to comply with this request. Unless Defendants are willing to confirm that they believe responding to these requests will result in the production of more than 1,000 pages of documents (along with an explanation of the basis for that belief), Plaintiffs plan to seek judicial relief regarding this issue. If, however, Defendants provide a reasonable explanation for why they expect the production would be over 1,000 pages, then Plaintiffs are open to selecting particular date ranges to help expedite the production of at least some of the responsive documents that should be produced in response to Request for Production Nos. 55-56.

Alternatively, to the extent Defendants intend to rely on the objections provided in response to Request for Production Nos. 55-56, Plaintiffs incorporate herein their response to Defendants' objections to Request for Production No. 63, stated below.

Request for Production No. 63

Defendants have never produced any information to support their bare objections. Regardless, Plaintiffs will attempt to explain why Defendnats' objections are without merit. Defendants' relevance objection is patently unreasonable; this case is primarily about how the Department of Justice (the "Department") spends income that is specifically related to firearms, e.g., DROS fees. Baseline budgets submitted to the Department of Finance appear likely to provide information that is relevant. The Court's order of June 1, 2015, is on point. "Respondents' budget and expenditure decisions related to the setting and continuation of the DROS fee. The public clearly has an interest in disclosure of documents which identify the budgetary analyses performed by Respondents to support the amount of the DROS fee." (Order of June 1, 2015 [the "Order"], at 4:1-4.)

Defendants' claim that the request is burdensome because it covers a period of twelve years is without merit. The number of years at issue is irrelevant if the number of documents, and the amount of hours required to locate them, are minimal. Unless Defendants provide actual evidence of the supposed burden at issue, this objection will fail. Defendants are requested to either comply with this request as written, or quickly produce evidence to support their undue burden objection.

Defendants claim that these documents are covered by the attorney-client privilege and the attorney work product doctrine. As the documents at issue are clearly budgetary documents (they are referred to as "baseline budgets[,]" after all), Defendants have shown no attorney interaction that could potentially justify the documents being withheld. Further, Defendants know that the proper course of action to support an attorney-client privilege claim is to provide "sufficient factual information[,]" e.g., a privilege log, to allow Plaintiffs to evaluate Defendants' privilege claims. Civ. Proc. Code

§ 2031.240(c)(1). Defendants have done this for other responses, but not for their response to Request for Production No. 63, indicating the attorney-based objections used here are unfounded boilerplate. Similarly, to the extent attorney work product is shown to be at issue regarding this request, the nature of the documents sought, which are not the type of material attorneys generally produce (and are unlikely to include completely privileged "brain work"), strongly suggest that the objection will fail when subjected to the relevant standard. Civ. Proc. Code § 2018.030.

Finally, Defendants claim the executive process and deliberative process doctrines (both which fall within the "government information" privilege found at Evidence Code section 1040) apply, but without explanation. Given the Court's analysis and ruling in the Order, and the applicable balancing test (see, e.g., *Cal. First. Am. Coal. v. Super. Ct.*, 67 Cal. App. 4th 159, 172 (1998)), this objection appears to be without merit.

Request for Production No. 64

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production No. 63 as stated above. The documents at issue, as described, appear to be either operational documents that will indicate how DROS fee funds are used or are related to budgetary work that is relevant to this action. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 64 will withstand a motion to compel, please immediately provide an explanation for that claim.

Further, to the extent Defendants claim the documents at issue are contain "confidential law enforcement information protected by the official information, law enforcement, and executive privileges[,]" Plaintiffs contend that such unexplained objections are insufficient to tip the balance in favor of non-disclosure. Unless Defendants provide an actual explanation for these objections in the near future, Plaintiffs intend to seek judicial relief.

Finally, it is worth noting that, as written, Defendants' burden-based objection is patently unreasonable. Defendants claim an unfair burden will result because the request seeks "each and every" document within a particular description. Counsel is surely aware that the use of the phrase "each and every" is common in requests for production, and that the total production of "each and every" document can be zero or any other number, meaning the usage of the phrase has literally no relevance to whether a request is unduly burdensome or not. If Defendants do not now provide a cogent explanation, including an non-evasive response, as to the specifics of why they should not be required to comply with this relevant request, Plaintiff is confident the Court will overrule this objection and order the withheld documents produced.

Request for Production No. 65

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to indicate how DROS fee funds are used—an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 65 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production No. 66

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to concern the DROS account and budget activities related thereto, an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 66 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production No. 68

Pursuant to our previous discussion, Plaintiffs seek responsive documents that refer to the following funds: General Fund, Dealers' Record of Sale Fund, Firearms Safety & Enforcement Fund, and the Legal Services Revolving Fund.

Request for Production No. 72

Your letter of January 13, 2016, states your "understanding is that there are no outstanding issues to address in light of defendants' production of the relevant invoices on January 6, 2016." I do not think that statement is correct. The invoices at issue do not appear to be responsive to this request, which seeks documents that use the phrase "government law[,]" and the invoices at issue do not mention the phrase "government law[.]" If your letter included an error regarding this matter, please advise us of your intended response as soon as possible.

Otherwise, Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to indicate how DROS fee funds are used— an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 72 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production Nos. 74-75

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to concern how the Department's budgeting and accounting divisions were discussing the use of DROS fee funds, an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production Nos. 74-75 will withstand a motion to compel, please immediately provide an explanation for that claim.

Special Interrogatories

Special Interrogatory Nos. 24 and 25

Defendants originally claimed that they could not provide a response to Special Interrogatory No. 24, which asks Defendants to "[s]tate the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014." But, in their most recent response to this question, Defendants responded, "[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014 was $29,144,382. Because this interrogatory did not ask what "[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014 was[,]" the response appears non-responsive. It is possible, however, that the "total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014" is the same as the "[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014[:]" $29,144,382. If Defendants confirm this is correct, then no further response will be sought. If Defendants state the foregoing is not correct, then Defendants need to either stand on their original response to Special Interrogatory No. 24, or provide a different response regarding "the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014."

And as to Defendants' response to Special Interrogatory No. 25, confirmation that $29,144,382 is "the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014" will prevent the need for a further response to Special Interrogatory No. 25. Otherwise, Defendants' response to that interrogatory needs to be revised to address the issue in the preceding paragraph.

Special Interrogatory Nos. 29 and 30

Defendants blithely claim that these interrogatories seek information that is irrelevant, which is not true. Both of these interrogatories seek information about specific matters that the Department has used in publicizing the APPS program and successes supposedly resulting therefrom, but the matters appear to be general law enforcement cases not connected to APPS in any causal way. Inasmuch as Plaintiffs contend that Defendants are improperly using DROS funds to not only fund APPS, but to fund general law enforcement activities beyond APPS, the information sought is plainly relevant.

The boilerplate objections provided to these interrogatories are completely unexplained. Thus, Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above.

Plaintiffs do believe the "law enforcement" privilege, which is really just the governmental information privilege, *could* potentially be applicable—and justify Defendants' reliance thereon— *if* the two cases at issue are *incomplete* criminal investigations. Ongoing criminal investigations provide the only conceivable reason why the law enforcement privilege might actually justify the withholding of the information sought. *See Cnty. of Orange v. Super. Ct.*, 79 Cal. App. 4th 759, 768-69 (2000). Plaintiff suspect these two cases are not ongoing investigations because: (1) they both concern seizures occurring more than two years ago, and (2) the Department chose to use these cases as exemplars in the

2013-2014 Biennial Report, and Plaintiffs presume the Department would not have made that choice if the Department believed doing so would harm an ongoing investigation.

Nonetheless, if Defendants are willing to state that the two matters at issue are ongoing criminal investigations that were used in the Department's last biennial report, then Plaintiffs will not seek judicial assistance regarding these two interrogatories. If no such statement is timely made, Plaintiffs plan to move to compel the production of this information pursuant to relevant balancing standard. *Id.*

Privilege Log

Without knowing the specific request(s) at issue for each item listed on the privilege log, it is somewhat difficult to respond to the unexplained objections stated therein. Nonetheless, please consider the following.

Document Nos. 15-16

The Department states the documents being withheld are titled "DOJ Finance Letter Concepts" with unknown authors and recipients. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. Finance Letters appear to be "follow up" documents submitted to the Department of Finance with the intent of amending a particular year's proposed budget. Thus, "Finance Letter Concepts" appear to be directly related to the creation of budgets, and to the extent the documents mention APPS or DROS (which they presumably do, though Plaintiffs cannot know for sure until Defendants identify which request[s] the withheld documents are relevant to), the balance plainly tips in the favor of disclosure. (*See* Order at 3:22-4:4.)

Document No. 17

The tile of the document here expressly shows that the withheld document concerns the Department of Finance's questions regarding a "BCP" (Budget Change Proposal) that the Department appears to have submitted. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 18

The tile of the document here expressly shows that the withheld document concerns a BCP specifically related to APPS. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 19

The tile of the document here expressly shows that the withheld document concerns a BCP specifically related to APPS. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 20

Presumably, if Defendants know which interlineations were made by an attorney and intended as a client communication, such interlineations are unavailable to Plaintiffs. Thus, if Defendants can identify the actual attorney or attorneys making interlineations or supposedly intended recipient attorneys, Plaintiffs will not challenge the attorney-client privilege claim as applied to those interlineations. If Defendants cannot identify which statements were made in the course of an attorney-client relationship, then that strongly suggests no attorney-client privilege or attorney work product-based objection can succeed. Because the interlineations presumably have to do with the funding of the APPS program, the balance tips in the favor of disclosing interlineations that are not privileged attorney-client communications.

And as to the agenda itself, it is unclear if it was actually authored by Gill Cedillo or if he was simply the Chair of the committee for which the agenda was created.[1] Assuming it is a document that is available online, Plaintiffs do not seek the production of the agenda itself.

Document No. 21

The title of this document does not provide sufficient factual information for Plaintiff to fully respond to the three privileges claimed here (which are all, in effect, variations of an Official Information privilege claim). Nonetheless, considering the fact that the Division of Law enforcement had a $71 million budget cut in 2010-2011 (as stated in the relevant biennial report), it appears the "DLE restoration" being referred to may relate to costs being shifted from the general fund to the DROS and other special funds. Documents showing the contours of that process would clearly be relevant to Plaintiffs' case. Because the balance tips in the favor of Plaintiffs, Defendants should provide the withheld document. (*See* Order at 3:22-4:4.)

Document No. 22

The tile of the document here expressly shows that the withheld document concerns a BCP, and the fact that Defendants have identified it on a privilege log suggests it is relevant, e.g., that it concerns the potential or actual use of DROS fees for a purpose Plaintiffs claim is inappropriate. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears

[1] Plaintiffs assume the agenda at issue, save interlineations, is the one available at http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/April%2025%20PUBLIC%20Agenda.pdf.

this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 23

Defendants have not provided sufficient factual information for Plaintiff to fully respond to the three privileges claimed here (which are all, in effect, variations of an Official Information privilege claim). Nonetheless, considering the fact that the Division of Law enforcement had a $71 million budget cut in 2010-2011 (as stated in the relevant biennial report), that the supposed parties to this document are the Department's legislative, budget, and/or office staff, and that money was being shifted from the general fund to the DROS and other special funds to cover the budget cut, it seems reasonable to believe the document sought is relevant. Documents showing the contours of that process would clearly be relevant to Plaintiffs' case. Because the balance tips in the favor of Plaintiffs, Defendants should provide the withheld document. (*See* Order at 3:22-4:4.)

Document No. 24

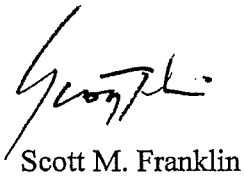
Defendants have not provided sufficient factual information for Plaintiff to fully respond to the five privileges claimed here. Sufficed to say, however, that if the document is a summary report that concerns all of the Department, Plaintiffs have no interest in the report except as it relates to use of the DROS Special Account, the funding of law enforcement activities performed by the Bureau of Firearms (e.g., APPS), and the Departments' involvement in any legislation bearing on those two issues. If Defendants are willing to produce the sections of the Transition Report that pertain to the areas described above, then there is nothing further to dispute regarding this document.

If, however, Defendants claim that the selected portions of the Transition Report are privileged, Plaintiffs request Defendants explain, with specificity, the titles and authors of the relevant sections. Additionally, Plaintiffs request clarification as to what is meant by "DOJ Executive Office," i.e., is it a report intended for just the Attorney General and her immediate staff, an entire department, etc.

As always, please do not hesitate to contact me if you have questions regarding the foregoing.

Sincerely,

Michel & Associates, P.C.



Scott M. Franklin

EXHIBIT "3"

Gentry, David, et al. v. Kamala Harris, et al.
Superior Court of California, County of Sacramento, Case No. 34-2013-80001667

Defendants' Amended Privilege Log – March 10, 2016

Document description	Author	Recipient	Document Date	Applicable Privileges
15. 5-page document titled "DOJ Finance Letter Concepts" (Potentially responsive to RFP Nos. 53 & 66.)	Unknown, but most likely Budget Office staff	Unknown, if any	Approx. 2007-2008	Executive Privilege. Official Information Privilege. Deliberative Process Privilege.
16. 6-page document titled "DOJ Finance Letter Concepts" (Potentially responsive to RFP Nos. 53 & 66.)	Unknown, but most likely Budget Office staff	Unknown, if any	Approx. 2007-2008	Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

17. 4-page document titled "Division of Law Enforcement, Bureau of Firearms, September 2007" and subtitled "Automated Firearms System Redesign BCP – Responses to Questions from the Department of Finance" (Potentially responsive to RFP Nos. 53 & 66.)	Unknown, but likely jointly authored by Department of Finance staff and DOJ Budget Office Staff.	Unknown, but likely Department of Finance staff and DOJ Budget Office Staff.	September 2007	Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

18. 2-page document captioned "BCP Concept Paper – APPS, Response to Anson's Questions." (Potentially responsive to RFP Nos. 64 & 65.)	Unknown, but likely "Anson" (a Budget Office analyst) and Bureau of Firearms staff	Unknown, but likely "Anson" (a Budget Office analyst) and Bureau of Firearms staff	May 8, 2011	Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

19. 2-page document captioned "BCP Concept Paper – APPS, Response to Anson's Questions." (Potentially responsive to RFP Nos. 64 & 65.)	Unknown, but likely "Anson" (a Budget Office analyst) and Bureau of Firearms staff	Unknown, but likely "Anson" (a Budget Office analyst) and Bureau of Firearms staff	May 8, 2011	Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

20. 15-page Agenda of Assembly Budget Subcommittee No. 5 on Public Safety, with interlineated notes (Potentially responsive to RFP Nos. 74 & 75.)	Assemblymember Gil Cedillo, with interlineated notes by DOJ Budget Office staff and DOJ attorneys	The interlineated notes were intended for the Executive Office, including attorneys	Agenda date: April 25, 2012	Attorney-Client Privilege. Attorney Work Product. Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

21. 4-pages of notes in the form of questions and answers titled "DLE Restoration" (Potentially responsive to RFP Nos. 74 & 75.)	Unknown, but likely the Legislative Analyst's Office, or legislative budget staff, and DOJ Budget Office staff	Unknown, but likely the Legislative Analyst's Office, or legislative budget staff, and DOJ Budget Office staff	Approx. 2010-2011	Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

22. 4-page document titled "Analysis of Problem" and concerning a Budget Change Proposal (BCP) (Potentially responsive to RFP Nos. 74 & 75.)	Unknown, but likely Budget Office Staff	Unknown	Approx. 2011	Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

23. 4-page document of notes in the form of questions and answers (Potentially responsive to RFP Nos. 74 & 75.)	Unknown, but likely the Legislative Analyst's Office, or legislative budget staff, and DOJ Budget Office staff	Unknown, but likely the Legislative Analyst's Office, or legislative budget staff, and DOJ Budget Office staff	Approx. 2009-2010	Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

24. 101-page document titled "Transition Report" (Potentially responsive to RFP Nos. 74 & 75.)	Various Department of Justice staff, including attorneys	DOJ Executive Office	December 2010	Attorney-Client Privilege. Attorney Work Product. Executive Privilege. Official Information Privilege. Deliberative Process Privilege.

EXHIBIT "4"

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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.

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

Defendants and Respondents.

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)

PROPOUNDING PARTY:	**PLAINTIFFS**
RESPONDING PARTY:	**DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY**
SET NUMBER:	**ONE**

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Admitted.

REQUEST FOR ADMISSION NO. 4:

Admit that prior to Fiscal Year 2012-2013, money from the DROS SPECIAL ACCOUNT (as used herein, "DROS SPECIAL ACCOUNT" refers to the portion of the state's General Fund wherein DROS FEE FUNDS are deposited) was used to fund some aspect of APPS.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Admitted.

REQUEST FOR ADMISSION NO. 5:

Admit that a General Fund special account other than the DROS SPECIAL ACCOUNT was the source of some funds used by APPS between 2005 and 2014 (inclusive).

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Admitted.

REQUEST FOR ADMISSION NO. 6:

Admit that APPS has been funded by no source other than: 1) the GENERAL FUND (as used herein, the term "GENERAL FUND" refers to the General Fund for the state of California, excluding any special accounts that are normally considered to be within the General Fund) and 2) the DROS SPECIAL ACCOUNT.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Denied.

REQUEST FOR ADMISSION NO. 7:

Admit that when deposited into the DROS SPECIAL ACCOUNT, money collected as DROS FEES (as used herein, "DROS FEE(S)" refers to the charge collected pursuant to SECTION 28225) is not segregated in any way from funds obtained from non-DROS FEE sources.

EXHIBIT "5"

Glossary of Budget Terms

The following budgetary terms are used frequently throughout the Governor's Budget, the Governor's Budget Summary and the annual Budget (Appropriations) Bill. Definitions are provided for terminology which is common to all publications. For definitions of terms unique to a specific program area, please refer to the individual budget presentation of interest.

Administration Program:

The general program name used by departments for an accounting of central management costs such as the Director's Office, Legal Office, Personnel Office, Accounting and Business Services functions that generally serve the whole department, i.e., indirect or overhead costs.

"Administration-distributed" is the general program name for the distribution of indirect costs to the direct program activities of a department. In most departments, all administrative costs are distributed to other programs.

Allocation:

A distribution of funds, or an expenditure limit established for an organizational unit or function.

Appropriation:

An authorization from a specific fund to a specific agency or program to make expenditures/incur obligations for a specified purpose and period of time. The Budget Act contains many appropriations, or items. These appropriation items are limited to one year, unless otherwise specified. Appropriations are made by the Legislature in the annual Budget Act and in other legislation. Continuous appropriations (see definition below) can be provided for by legislation or the California Constitution.

Augmentation:

An increase to an appropriation as provided by various control sections, Budget Bill language, or legislation.

Authorized Positions:

Those ongoing positions approved in the final budget of the preceding year less positions abolished because of continued, extended vacancy. The detail of authorized positions by classification is published in the Salaries and Wages Supplement for state organizations. Changes in authorized positions are listed following each department's budget presentation in the Governor's Budget. (See Proposed New Positions.)

Balance Available:

Generally, the portion of a fund balance which is available for appropriation. It is the excess of assets of a fund over its liabilities and reserves; or commonly called amount available for appropriation. It is also the unobligated balance of an appropriation.

Baseline Budget:

A baseline budget reflects the anticipated costs of carrying out the current level of service or activities as authorized by the Legislature. It may include an adjustment for cost increases, but does not include changes in level of service over that authorized by the Legislature.

Budget, Program/Traditional:

A plan of operation for a specific period of time expressed in financial terms. A *program budget* expresses the operating plan in terms of the costs of activities to be undertaken to achieve specific goals and objectives. A *traditional budget* expresses the plan in terms of the costs of the goods or services to be used to perform specific functions.

The Governor's Budget is primarily a program budget. However, a summary of proposed expenditures for goods and services (Summary by Object) is included for State Operations.

Budget Bill/Act:

The initial Budget Bill is prepared by the Department of Finance and is submitted to the Legislature in January accompanying the Governor's Budget. It is the Governor's proposal for spending authorization for the subsequent fiscal year. The Constitution requires the Legislature to pass the Budget Bill and forward it by June 15 to the Governor for signature. After signature by the Governor, the Budget Bill becomes the Budget Act. The Budget Act is the main legal authority to spend or obligate funds.

Budget Change Proposal (BCP):

A BCP is a proposal to change the level of service or funding sources for activities authorized by the Legislature, or to propose new program activities not currently authorized.

EXHIBIT "6"

Finance Glossary of Accounting and Budgeting Terms

The following terms are used frequently throughout the Governor's Budget, the Governor's Budget Summary, the annual Budget (Appropriations) Bill, and other documents. Definitions are provided for terms that are common to many of these publications. For definitions of terms unique to a specific program area, please refer to the individual budget presentation. Certain terms may be interpreted or used differently depending on the context, the audience, or the purpose.

Abatement
A reduction to an expenditure that has already been made. In state accounting, only specific types of receipts are accounted for as abatements, including refund of overpayment of salaries, rebates from vendors or third parties for defective or returned merchandise, jury duty and witness fees, and property damage or loss recoveries. (See *SAM 10220* for more detail.)

Abolishment of Fund
The closure of a fund pursuant to the operation of law. Funds may also be administratively abolished by the Department of Finance with the concurrence of the State Controller's Office. When a special fund is abolished, all of its assets and liabilities are transferred by the State Controller's Office to successor fund, or if no successor fund is specified, then to the General Fund. *(GC 13306, 16346.)*

Accruals
Revenues or expenditures that have been recognized for that fiscal year but not received or disbursed until a subsequent fiscal year. Annually, accruals are included in the revenue and expenditure amounts reported in departments' budget documents and year-end financial statements. For budgetary purposes, departments' expenditure accruals also include payables and outstanding encumbrances at the end of the fiscal year for obligations attributable to that fiscal year.

Accrual Basis of Accounting
The basis of accounting in which transactions are recognized in the fiscal year when they occur, regardless of when cash is received or disbursed. Revenue is recognized in the fiscal year when earned, and expenditures are recognized in the fiscal year when obligations are created (generally when goods/services are ordered or when contracts are signed). Also referred to as the full accrual basis of accounting.

Administration
Refers to the Governor's Office and those individuals, departments, and offices reporting to it (e.g., the Department of Finance).

Administration Program Costs
The indirect cost of a program, typically a share of the costs of the administrative units serving the entire department (e.g., the Director's Office, Legal, Personnel, Accounting, and Business Services). "Distributed Administration" costs represent the distribution of the indirect costs to the various program activities of a department. In most departments, all administrative costs are distributed. (See also "Indirect Costs" and "Statewide Cost Allocation Plan.")

Administratively Established Positions
Positions authorized by the Department of Finance during a fiscal year that were not included in the Budget and are necessary for workload or administrative reasons. Such positions terminate at the end of the fiscal year, or in order to continue, must meet certain criteria under Budget Act Control Section 31.00. *(SAM 6406, CS 31.00.)*

Agency
A legal or official reference to a government organization at any level in the state organizational hierarchy. (See the *UCM* for the hierarchy of State Government Organizations.)

Assembly
California's lower house of the Legislature composed of 80 members. As a result of Proposition 140 (passed in 1990) and Proposition 28 (passed in 2012), members elected in or after 2012 may serve 12 years in the Legislature in any combination of four-year state Senate or two-year state Assembly terms. Prior to Proposition 28, Assembly members could serve two-year terms and a maximum of three terms. *(Article IV, § 2 (a).)*

Audit
Typically a review of financial statements or performance activity (such as of an agency or program) to determine conformity or compliance with applicable laws, regulations, and/or standards. The state has three central organizations that perform audits of state agencies: the State Controller's Office, the Department of Finance, and the California State Auditor's Office. Many state departments also have internal audit units to review their internal functions and program activities. *(SAM 20000, etc.)*

Augmentation
An increase to a previously authorized appropriation or allotment. This increase can be authorized by Budget Act provisional language, control sections, or other legislation. Usually a Budget Revision or an Executive Order is processed to implement the increase.

Authorized
Given the force of law (e.g., by statute). For some action or quantity to be authorized, it must be possible to identify the enabling source and date of authorization.

Authorized Positions
As reflected in the Governor's Budget (Expenditures by Category and Changes in Authorized Positions), corresponds with the "Total, Authorized Positions" shown in the Salaries and Wages Supplement (Schedule 7A).

In these documents, for past year, authorized positions represent the number of actual positions filled for that year. For current year, authorized positions include all regular ongoing positions approved in the Budget Act for that year, less positions abolished by the State Controller per Government Code section 12439, adjustments to limited term positions, and positions authorized in enacted legislation. For budget year, the number of authorized positions is the same as current year except for adjustments to remove expiring positions. *(GC 19818; SAM 6406.)*

Availability Period
The time period during which an appropriation may be encumbered (i.e., committed for expenditure), usually specified by the law creating the appropriation. If no specific time is provided in legislation, the period of availability is three years. Unless otherwise provided, Budget Act appropriations are available for one year. However, based on project phase, capital outlay projects may have up to three years to encumber. An appropriation with the term "without regard to fiscal year" has an unlimited period of availability and may be encumbered at any time until the funding is exhausted.
(See also "Encumbrances.")

Balance Available
In regards to a fund, it is the excess of resources over uses. For budgeting purposes, the balance available in a fund condition is the carry-in balance, net of any prior year adjustments, plus revenues and transfers, less expenditures. For accounting purposes, the balance available in a fund is the net of assets over liabilities and reserves that are available for expenditure.

For appropriations, it is the unobligated, or unencumbered, balance still available.

Baseline Adjustment
Also referred as Workload Budget Adjustment. (See "Workload Budget Adjustment.")

Baseline Budget
Also referred as Workload Budget. (See "Workload Budget.")

Unscheduled Reimbursements
Reimbursements collected by an agency that were not budgeted and are accounted for by a separate reimbursement category of an appropriation. To expend unscheduled reimbursements, a budget revision must be approved by the Department of Finance, subject to any applicable legislative reporting requirements (e.g., CS 28.50).

Urgency Statute/Legislation
A measure that contains an "urgency clause" requiring it to take effect immediately upon the signing of the measure by the Governor and the filing of the signed bill with the Secretary of State. Urgency statutes are generally those considered necessary for immediate preservation of the public peace, health or safety, and such measures require approval by a two-thirds vote of the Legislature, rather than a majority. *(Article IV, § 8 (d))*. However, the Budget Bill and other bills providing for appropriations related to the Budget Bill may be passed by a majority vote to take effect immediately upon being signed by the Governor or upon a date specified in the legislation. *(Article IV § 12 (e) (1).)*

Veto
The Governor's Constitutional authority to reduce or eliminate one or more items of appropriation while approving other portions of a bill. *(Article IV, §10 (e); SAM 6345.)*

Victim Compensation and Government Claims Board, California
An administrative body in state government exercising quasi-judicial powers (power to make rules and regulations) to establish an orderly procedure by which the Legislature will be advised of claims against the state when no provision has been made for payment. This board was known as the Board of Control prior to January 2001. The rules and regulations adopted by the former Board of Control are in the California Code of Regulations, Title 2, Division 2, Chapter 1.

Warrant
An order drawn by the State Controller directing the State Treasurer to pay a specified amount, from a specified fund, to the person or entity named. A warrant generally corresponds to a bank check but is not necessarily payable on demand and may not be negotiable. *(SAM 8400 et seq.)*

Without Regard To Fiscal Year (WRTFY)
Where an appropriation has no period of limitation on its availability.

Working Capital and Revolving Fund
For legal basis accounting purposes, fund classification for funds used to account for the transactions of self-supporting enterprises that render goods or services for a direct charge to the user, which is usually another state department/entity. Self-supporting enterprises that render goods or services for a direct charge to the public account for their transactions in a Public Service Enterprise Fund.

Workload
The measurement of increases and decreases of inputs or demands for work, and a common basis for projecting related budget needs for both established and new programs. This approach to BCPs is often viewed as an alternative to outcome or performance based budgeting where resources are allocated based on pledges of measurable performance.

Workload Budget
Workload Budget means the budget year cost of currently authorized services, adjusted for changes in enrollment, caseload, population, statutory cost-of-living adjustments, chaptered legislation, one-time expenditures, full-year costs of partial-year programs, costs incurred pursuant to Constitutional requirements, federal mandates, court-ordered mandates, state employee merit salary adjustments, and state agency operating expense and equipment cost adjustments to reflect inflation. The compacts with Higher Education and the Courts are commitments by this Administration and therefore are included in the workload budget and considered workload adjustments. A workload budget is also referred to as a baseline budget. *(GC 13308.05.)*

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On April 25, 2016, the foregoing document(s) described as

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

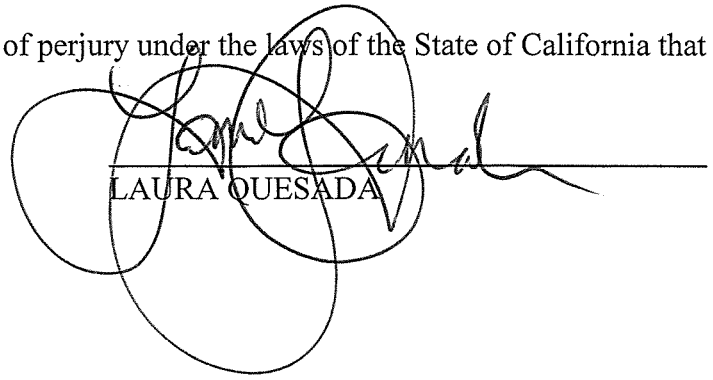
___ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 25, 2016, at Long Beach, California.

X (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on April 25, 2016, at Long Beach, California.

__ (PERSONAL SERVICE) I caused said document(s) to be personally delivered by a courier to each addressee.
Executed on April 25, 2016, at Long Beach, California.

X (VIA ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on April 25, 2016, at Long Beach, California.

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



LAURA QUESADA

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Attorneys for Plaintiffs

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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY; MEMORANDUM IN SUPPORT THEREOF** Date: 10/28/16 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 28, 2016, at 9:00 a.m. or as soon thereafter as the matter may be heard, in Department 31 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and Calguns Shooting Sports Association (collectively "Plaintiffs") will and hereby do move this Court for an order compelling Defendants/Respondents Kamala Harris and Stephen Lindley (collectively "Defendants") to produce further responses to Plaintiffs' Special

Interrogatories, Set Three, propounded on Defendants on September 4, 2015.

This Motion is brought pursuant to Code of Civil Procedure sections 2030.220, subdivision (a), and 2030.300, subdivisions (a)(1) and (a)(3), on the grounds that Defendants have provided interrogatory responses that include unfounded objections and statements that are evasive and incomplete. A declaration in conformance with Code of Civil Procedure section 2016.040 is provided herewith.

This Motion is based upon this notice, the attached memorandum of points and authorities, the Request for Judicial Notice, the supporting Declaration of Scott M. Franklin, the separate statement of disputed issues concurrently served and filed with this Motion, all papers and pleadings currently on file with the Court, and such oral and documentary evidence as may be presented to the Court at the time of the hearing.

Please take further notice that pursuant to Local Rule 1.06(A), the Court will make a tentative ruling on the merits of this matter by 2:00 p.m., the Court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the Court's website. If the party does not have online access, they may call the dedicated phone number for the department referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

REGULATIONS

TABLE OF AUTHORITIES (cont.)

Page(s)

Constitutional Provisions

I. INTRODUCTION

This Motion concerns Defendants' responses to Plaintiffs' Special Interrogatory ("SI") Nos. 25, 29, and 30. Because Defendants' responses are improperly evasive and their boilerplate objections are without merit, this Motion should be granted.

II. STATEMENT OF FACTS

A. Factual Background of this Case

This case concerns the California Department of Justice's (the "Department") use of money collected under the guise of the Dealers' Record of Sale ("DROS") fee and placed in the DROS Special Account. (Compl. ¶ 1.) The Department uses money from the DROS Special Account to fund law enforcement activities based on data produced by the Armed and Prohibited Person System ("APPS"[1]), e.g., special agents traveling to a residence to seize firearms from a person identified by way of APPS. (*Id.* ¶¶ 6-7.) And yet, it appears the Defendants are using DROS fee money to fund general law enforcement activities that are, at most, tangentially related to APPS.[2] Plaintiffs claim, among other things, that the Department has failed to properly set the amount of the DROS fee and that the Department is illegally imposing a tax via the DROS fee. (*Id.* ¶¶ 96,110.)

B. History of the Current Discovery Dispute

Plaintiffs served a third set of SIs on Defendants on September 4, 2015. (Declaration of Scott M. Franklin in Support of Motion to Compel Further Responses to Special Interrogatories, Set Three, Propounded on Defendants Kamala Harris and Stephen Lindley [the "Franklin Decl."] ¶ 2.) Pursuant to a courtesy extension granted by Plaintiffs, Defendants provided responses on October 19, 2015. (*Id.* ¶ 3.) Soon thereafter, Plaintiffs' counsel evaluated the responses and determined them to be insufficient, and accordingly, he sent a letter to Defendants' counsel on December 14, 2015, explaining in detail how the responses provided were insufficient. (*Id.* ¶ 4.) Counsel for the parties telephonically discussed the sufficiency of Defendants' responses on

[1] The APPS database is derived by cross-checking certain governmental records with the intent of identifying people who obtained a firearm legally but then kept the firearm after becoming legally ineligible to do so. (Compl. ¶ 66.)

[2] See *supra* Section III.B.

December 16, 2016, and Defendants' counsel ultimately agreed to consider providing amended responses. (*Id.* ¶ 5.)

On January 22, 2016, Defendants provided an amended response to relevant discovery. (Franklin Decl. ¶ 6.) And on January 29, 2016, Defendants provided a second amended response to the relevant discovery. (*Id.* ¶ 7.) Nonetheless, Plaintiffs thereafter still believed Defendants had not properly responded to several SIs, so Plaintiffs' counsel sent a second meet-and-confer letter to Defendants counsel on February 19, 2016. (*Id.* ¶ 8.) Defendants provided a third amended response to the relevant discovery on March 25, 2016. (*Id.* ¶ 9.) As a result of the parties good faith meet-and-confer efforts, all of Defendants' disputed responses have been resolved except the three that are the basis for this Motion. (*Id.* ¶ 10.) The Motion was filed within forty-five days of the production of Defendants' most recent response, and the parties have also agreed in writing to a filing deadline of April 25, 2016, so this Motion is timely under Code of Civil Procedure section 2030.300, subdivision (c). (*Id.* ¶ 11.)

III. ARGUMENT

A. Standard for Compelling Further Responses to Interrogatories

"On receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that [the] answer to a particular interrogatory is evasive or incomplete [or if a]n objection to an interrogatory is without merit or too general." (Code Civ. Proc., § 2030.300, subd. (a)(1)-(3).)[3] Evasive and incomplete interrogatory responses violate the responding party's duty to provide responses that are "as complete and straightforward as the information reasonably available to the responding party permits." (§ 2030.220(a); *accord Guzman v. General Motors Corp.* (1984) 154 Cal.App.3d 438, 442 [noting a responding party must "state the truth, the whole truth, and nothing but the truth in answering written interrogatories"].)

/ / /

[3] All statutory cites are to the Code of Civil Procedure, except as expressly stated.

B. Defendants Should Not be Allowed to Publically Tout Specific Cases as "APPS Cases" without the Basis of Such Claim Being Subject to Reasonable Discovery

1. Background About the So-Called "APPS Cases" and Why the Department's Statements About them Are Relevant

The Department's 2013-2014 Biennial Report[4] includes a list of a dozen "[s]ignificant APPS cases[.]" (Franklin Decl. ¶ 12.) Some of the cases on the list appear to be within a reasonable understanding of the term "APPS case[;]" e.g., when Department agents investigated an APPS subject who had a prohibiting event (an involuntary mental health commitment) and sixty-six handguns registered in his name, resulting in the seizure of over 200 firearms, that definitely appears to be an "APPS case." (*Ibid.*) But the majority of the cases on the list, as described, do not appear to have any reasonable connection to APPS. (*Ibid.*) If non-APPS cases are being funded via the DROS fee, or non-APPS cases are being portrayed as APPS successes to justify spending DROS fee money on APPS, either would be relevant to how the Department is obtaining and using money from the DROS Special Account—the core issue in this Action. (Compl. ¶¶ 95-100, *passim.*)

In light of the apparent disconnect between the so-called "APPS cases" and the implementation of APPS, Defendants propounded interrogatories seeking an explanation as to why two specific "APPS cases[,]" as described, have no connection to APPS. As to SI No. 29, that "APPS case" was not based on a "hit" in the APPS system being investigated, it resulted from an anonymous tip that a felon was working at a shooting range. (Sep. Statement at p. 4.) The fact that a felon worked at a shooting range does not implicate APPS at all; in fact, nothing in the description of this "APPS case" refers to the Department removing firearms identified via APPS from the felon. (*Id.* at pp. 4-5)

Similarly, in SI No. 30 the "APPS case" concerned an alleged "straw purchase" whereby a non-prohibited person legally bought a firearm and then provided that firearm to a prohibited person. (*Id.* at p. 5.) Again, as described, this activity has nothing to do with APPS. The firearm that was the subject of the alleged straw purchase would not have given a "hit" as to the alleged straw purchaser, as he was not the recorded purchaser. If the Department was specifically

[4] The Department is statutorily required to provide a "written report of its activities" to the Governor every other year. (Gov. Code, § 11091.)

following up on the straw purchase, then by definition, APPS was not involved, as it was the legal purchaser, not the intended ultimate recipient (the prohibited person), that was "associated" with the relevant firearm in the firearm transfer records cross-checked via APPS.

During the meet-and-confer process, Plaintiffs' counsel indicated that, if the "APPS cases" discussed in SI Nos. 29 and 30 were ongoing, that might impact the analysis of whether information related thereto was privileged under Evidence Code section 1040. (Franklin Decl. ¶ 8.) Defendants' counsel responded that "the investigations referred to in those interrogatories are not ongoing[, but that n]evertheless, [D]efendants stand on their objections." (*Ibid.*)

2. Defendants' Boilerplate Objections Are Without Merit

Defendants provided the same objections to Interrogatories No. 29 and 30, viz., that the information sought is irrelevant, and they conflict with the work product doctrine and the attorney-client, official information, law enforcement, and executive privileges. (Sep. Statement at pp. 4-5). In reality, these objections boil down to a relevancy-based objection (which is clearly defeated *infra* in Section III.B.2.iii.) and: (1) an attorney-client privilege-based objection, (2) an attorney work product doctrine-based objection, and (3) an Evidence Code section 1040 official information-based objection. (*See Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1126 [re-affirming that, in litigation, Evidence Code section 1040 "represents the exclusive means by which a public entity may assert a . . . privilege based on the necessity for secrecy"].) The objections are all unfounded and should be ignored.

i. Defendants' Attorney-Client Privilege Claim Is Without Merit

California Evidence Code section 954 states that a client may refuse to disclose (1) confidential communications (2) between the client and the attorney. Evidence Code section 954 only applies to communications; the attorney-client privilege does not apply to facts, even if the facts are mentioned in, or relevant to, an attorney-client communication. (See *Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 349.) Furthermore, the privilege does not apply to communications between an attorney and a client regarding business advice, i.e., advice outside the normal scope of legal services provided by an attorney. (*See Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 735.) Finally, the privilege does not apply to where it has

been waived by the disclosure of a significant part of the relevant communication. (Evid. Code, § 912(a); *see Southern Cal. Gas Co. v. California Pub. Util. Com.* (1990) 50 C.3d 31, 46 [holding that a "significant part" means disclosure of enough substantive information as to reveal the specific content of the alleged confidential communication].)

Defendants' bare attorney-client objection fails on its face, as Defendants provide no factual information as to how the information sought falls within Evidence Code section 954's definition of attorney-client communications. On the other hand, the Biennial Report's discussion of "APPS cases" provides sufficient evidence that Defendants' attorney-client objection must fail.

First, there is no dispute that the Department made factual statements identifying that the two cases at issue are "APPS cases." Disclosure of the *facts* upon which those statements were made—if any—does not require the disclosure of any *communication*, even assuming the relevant facts were discussed as part of an attorney-client communication. (*Benge*, *supra*, 131 Cal.App.3d at 349.) "[T]he attorney-client privilege only protects disclosure of *communications* between the attorney and the client; it does not protect disclosure of underlying facts which may be referenced within a qualifying communication." (*State Farm Fire & Casualty Co. v. Superior Court* (1997) 54 Cal.App.4th 625, 639.) Indeed, if these two cases were truly "APPS cases," then (1) the information analysts who processed the relevant APPS data after a "hit," and (2) the special agents who did the fieldwork described in the Biennial Report would all be privy to the relevant facts *without any* communication with a Department lawyer. (See Compl. ¶¶ 66, 68 [discussing how APPS works and that how law enforcement uses certain funds on APPS-related law enforcement activities].) That is, the pertinent information would exist outside any attorney-client communication wherein the information was discussed. The Department does not get to cloak this operational information in the attorney-client privilege just because the information may have been known to an attorney in the Department. (See *Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th at 735.)

Second, the publication of the fact that a case is an "APPS case" requires no legal advice, so Defendants' attorney-client privilege claim is dubious. Whether or not the two salient cases were based on, or somehow used, APPS data is not a question that an attorney would have an

answer to, at least not an answer that is dependent upon the attorney's attorney-client relationship with a client. Thus, if this matter somehow turns on advice provided by an attorney (and Plaintiffs contend it does not), that advice would concern the business of law enforcement based on the use of APPS data, which is outside the scope of Evidence Code section 954's protection.

Third, it was Defendants who opened this discussion by claiming the germane cases are "APPS cases." The Department's decision to identify specific matters as "APPS cases" occurred voluntarily and completely outside the scope of litigation. Further, there is only one reasonable way to define the term "APPS case" as it relates to law enforcement activities: the investigation and potential seizure of firearms from people who are identified as armed and prohibited via the operation of APPS. Accordingly, unless Defendants can convincingly argue that "APPS case" has some other reasonable definition, Defendants have already made a "significant part" of the relevant information public, i.e., they stated the "APPS cases" were APPS cases. Whatever attorney-client privilege that might have applied regarding how the "APPS cases" were characterized vanished when the Department publically identified them as "APPS cases." (Evid. Code, § 912(a).)

Because the attorney-client privilege is not applicable to SI Nos. 29 and 30 for the reasons stated above, Defendants' objection fails.

ii. Application of the Attorney Work Product Doctrine will Unjustly Stymie Legitimate Discovery

California's attorney work product doctrine, codified in Code of Civil Procedure section 2018.020, states the general policy protecting an attorney's work product from being unfairly exposed. The doctrine provides absolute protection for an attorney's "brain work" (e.g., opinions, conclusions, impressions), but for other attorney work product, like notes of a witness interview, such material can be obtained upon a showing "that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (§ 2018.030.) The information sought in SI Nos. 29 and 30 cannot justifiably be withheld under either aspect of the attorney work product doctrine.

/ / /

The information sought is clearly not attorney "brain work." Plaintiffs seek information about how APPS data was used, if at all, in two specific "APPS cases." Whether or not a particular investigation resulted from the processing of a specific APPS "hit" is a matter of fact, not "brain work," and thus, the information sought is not protected under the first class of information identified in section 2018.020.

As to the second class of information described *supra* at Section II.A., attorneys are not part of the APPS process, so there is no inherent reason why Department attorneys would have the information sought. Regardless, if an attorney somehow generated work product that provides the information sought, that information would have been obtained directly from data processing staff or the law enforcement agents who were actually involved in the field work described in the Biennial Report. Therefore, assuming the information sought actually exists, only two scenarios are possible regarding non-"brain work" attorney work product: (1) Defendants are aware of the original source of the information sought, but they are knowingly not identifying that source, or (2) the only source of the information sought is attorney work product. Either way, the second work product doctrine does not protect the information sought, for at least two reasons.

First, as Plaintiffs seek only non-derivative information (i.e., Plaintiffs do not want anything an attorney reasonably had a hand in creating), the attorney work product doctrine does not reach the information sought. (Cf. *Southern Pac. Co. v. Superior Court*, (1969) 3 Cal.App.3d 195, 198-199 ["The facts sought, those presently relied upon by plaintiffs to prove their case, are discoverable no matter how they came into the attorney's possession."].) Second, even if the foregoing is incorrect, there is no adequate substitute for the information sought, and the Department is presumably the only source for the salient information. Because the information sought will tend to prove or disprove an important issue in this case—i.e., whether the Department is spending funds for general law enforcement activities but accounting for them as if they were APPS-related—Plaintiffs can meet the burden to overcome the conditional privilege stated in section 2018.030. If the Department can publically state that non-APPS cases are actually APPS cases but Plaintiffs are denied very narrow discovery regarding that issue, "that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's

claim or defense or will result in an injustice." (§ 2018.030, subd. (b).) Accordingly, the work product doctrine provides no basis upon which Defendants can avoid producing the salient information.

iii. No Governmental Privilege Justifies Defendants' Attempt to Withhold the Information Sought

Defendants' official information, law enforcement, and executive privilege objections are all subject to the same standard of review, which is found in Evidence Code section 1040. (See *County of Orange v. Superior Court* (2000) 79 Cal.App. 4th 759, 765-768 [evaluating law enforcement's claim of privilege regarding investigative file for an active murder investigation under Evidence Code section 1040]; *Marylander*, *supra*, 81 Cal.App.4th at p. 1125 [using the standard set forth in Evidence Code section 1040 to evaluate claims made under the common law privilege known as the executive or deliberative process privilege].) Evidence Code section 1040 states, in pertinent part, that

> [a] public entity has a privilege to refuse to disclose official information [if d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. . . . In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

(Evid. Code, § 1040, subd. (b).)

Here, the information sought is nothing more than confirmation of whether two "APPS cases" are really APPS-based. If the "APPS cases" are APPS-based—as the label clearly implies—then the information sought is nothing more than confirmation that the Department's labeling of "APPS cases" was correct. Assuming Defendants will stand behind the claim that these two cases are reasonably identified as "APPS cases," then there is zero "necessity for preserving the confidentiality of the information[:]" the Department already disclosed the relevant facts by labeling the "APPS cases" with that name. Furthermore, the two cases at issue are closed, so there is no law enforcement-related reason to keep any relevant information privileged. (See *County of Orange*, *supra*, 79 Cal.App. at pp. 768-769.)

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If, however, Defendants circulated a report to the public and the governor wherein non-APPS cases were referred to as "APPS cases[,]" disclosure of that fact is plainly in the public interest, for at least three reasons. First, if the Department is funding non-APPS-based law enforcement activities under the auspices of APPS, that maneuver makes it impossible to tell what is really being spent on APPS-based enforcement. This is a *critical* issue at this moment in time—Defendant Harris is currently in the process of lobbying the legislature to make a permanent, multi-million dollar funding decision based on the costs allegedly attributable to APPS and APPS enforcement activities. (Franklin Decl. ¶ 13.)

It was only a few years ago that the Governor slashed approximately $59,000,000 from the Division of Law Enforcement's budget, which was about one-quarter of its budget for fiscal year 2012-2013. (Franklin Decl. ¶ 14.) The Bureau of Firearms, which performs the Department's APPS-based law enforcement activities, is part of the Division of Law Enforcement. (*Id.* ¶ 14.) If the Department is inflating the costs attributed to APPS with costs related to non-APPS cases, that is information the public and the legislature has a right, and a current need, to access. (Cal. Const., art. I, § 3, subd. (b)(1) ["The people have the right of access to information concerning the conduct of the people's business"].) Similarly, if extreme non-APPS cases—e.g., the case the Department described as "Parents Jailed after Agents Find Guns and Drugs in Home with Small Children"—are being identified as "APPS cases," that misleads the public as how APPS works and what results are actually APPS-based. (Franklin Decl. ¶ 12.)

Second, regardless of whether the misrepresentation was intentional or not, the public generally has a strong interest in holding the government accountable for careless or misleading statements. (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 164 ["Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files."].)

Third, as is specifically relevant hereto, the misrepresentation of non-APPS cases as "APPS cases" raises concerns about whether such funding is statutorily authorized and whether it improperly impacts the amount of the DROS fee being charged, and therefore all DROS fee payers. Again, intermingling APPS-based and non-APPS costs make it difficult, if not impossible,

to determine how much money is actually being taken from the DROS Special Account pursuant to the 2011 change in Penal Code section 28225 that was intended to provide funding for one specific thing: APPS-based law enforcement activities. (Stats. 2011, ch. 743, § 1, subd. (g) ["it is the intent of the Legislature . . . to allow the DOJ to utilize the Dealer Record of Sale Account for the additional, limited purpose of funding enforcement of (APPS)"].)

The facts plainly weigh in favor of disclosure, especially in light of the fact that Plaintiffs seek little more than confirmation that two statements made by the Department in a statutorily required report were accurate. Indeed, Defendants cannot refuse to respond to the SIs because it might undercut Defendants' arguments in this litigation; that kind of interest is irrelevant under Evidence Code section 1040, subdivision (b). Plaintiffs cannot identify any way in which the public could conceivably benefit from the relevant information being kept secret. The two criminal cases at issue are closed, so there is no investigatory need to keep the information secret, if it even can be considered secret after being implicitly disclosed in the 2013-2014 Biennial Report. In light thereof, all of Defendants' governmental privilege objections, just like all of their boilerplate objections, should be disregarded.

C. Defendants Are Attempting to Evade Responding to an Interrogatory Concerning a Matter at the Heart of this Action

Interrogatory No. 25 ask Defendants the basis for their response to Interrogatory No. 24, which ask Defendants to "[s]tate the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014[.]" (Sep. Statement at p. 2.) Defendants claim they "are unable to answer this interrogatory[.]" (*Id* at pp. 2-3.) Accordingly, Defendants' response to Interrogatory No. 25 should be an explanation of why they purportedly cannot respond. But instead, Defendants' response to Interrogatory No. 25 refers to the calculation of $29,144,382, which is a total of DROS money spent in fiscal year 2013-2014 on eight different "programs" within the Department. (*Id.* at p. 3; Franklin Decl. ¶ 15.) What Plaintiffs asked, and what Defendants responded to, concern two very different things, and Defendants' response to Interrogatory No. 25 blurs the line between the two. The distinction—and the relevance thereof—might not be obvious on first glance, but Defendants' evasive response goes to the

dispute at the center of this Action.

By providing a response to Interrogatory No. 25 based on program-wide expenditure subtotals and not the specific expenditure classes described in Penal Code section 28225, Defendants are avoiding taking a position on a key factual issue in this case. Plaintiffs' First Amended Complaint specifically alleges that since at least 2004, the Department has failed to perform its duty to review the amount of the DROS fee and ensure it is "no more than is necessary to fund" the activities listed in Penal Code section 28225. (Compl. ¶¶ 89-100; Penal Code, § 28225.)

Plaintiffs asked Defendants to identify "the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014" so Plaintiffs could attempt to calculate if the DROS fee is actually "no more than is necessary to fund" the activities listed in Penal Code section 28225. (Penal Code, § 28225, subd. (b).) Defendants' response to Interrogatory No. 25 ignores the fact that costs other than section 28225 costs are being funded out of the DROS Special Account, so the total "program" expenditures coming out of the DROS Special Account in fiscal year 2013-14 do not equal the total costs of the tasks referred to in 28225 regarding the same fiscal year.

For example, section 28225 does not address costs for attorneys, but the Department spent approximately $181,000 of DROS Special Account funds on attorneys in fiscal year 2013-14. (Franklin Decl. ¶ 16.) Plaintiffs have not yet confirmed what work the DROS Special Account-funded attorneys were doing during fiscal year 2013-2014, but it appears that in the two fiscal years preceding fiscal year 2013-2014, money was going out of the DROS Special Account to pay for attorneys representing the Bureau of Firearms, or employees thereof, in lawsuits "related to Penal Codes and CCW's [sic, permits to carry concealed carry weapon]." (*Id.* ¶ 17.)

Defendants' responses to Interrogatories No. 24 and 25 refute one another, meaning Defendants' responses are clearly not "as complete and straightforward as the information reasonably available to the responding party permits." (§ 2030.220, subd. (a).) Therefore, Defendants should be ordered to provide a further response to Interrogatory No. 25 that actually explains why Defendants cannot provide a response to Interrogatory No. 24.

IV. CONCLUSION

As explained above, the disputed responses concern key aspects of this action, and Defendants' responses are incomplete and appear impermissibly crafted to evade. Plaintiffs respectfully request the Court grant this Motion and provide the relief requested hereby.

Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for the Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On April 25, 2016, the foregoing document(s) described as

NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY; MEMORANDUM IN SUPPORT THEREOF

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 25, 2016, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on April 25, 2016, at Long Beach, California.

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

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

LAURA L. QUESADA

C. D. Michel – S.B.N. 144258
Scott M. Franklin – S.B.N. 240254
Sean A. Brady – S.B.N. 262007
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
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Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY** Date: October 28, 2016 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

Plaintiffs request the Court take judicial notice, pursuant to Evidence Code section 452, subdivisions (c), (h), and section 453, of the following facts, which are relevant to Plaintiffs' abovementioned discovery motion as described therein.[1]

1. That the excerpts of the 2013-2014 Biennial Report attached as Exhibit 3 to the Declaration of Scott M. Franklin in Support of Plaintiffs' Motion to Compel Further Responses to

[1] All statutory references herein are to the Evidence code, except where noted.

Special Interrogatories, Set Three ("Franklin Decl.") are true and correct excerpts of a report published by the California Department of Justice (the "Department") under the title Biennial Report[-]Major Activities 2013-2014. (See § 452, subds. (c), (h).)

2. That Defendant Kamala Harris sent a letter to the members of the California Legislature dated January 21, 2016, wherein she requested that a temporary funding allocation, to be used for enforcing the Armed and Prohibited Person System ("APPS"), be made permanent, as is evidenced by a true and correct copy of that letter attached as Exhibit 4 to the Franklin Decl. (§ 452, subd.(c).)

3. That in July 2012, the Governor cut approximately $59,000,000 out of the Department of Law Enforcement's budget, as is evidenced by true and correct excerpts of the report titled "California Department of Justice Biennial Report[-]Major Activities[-]2011-2012[,]" which are attached as Exhibit 5 to the Franklin Decl. (§ 452, subds. (c), (h).)

4. That the Department of Law Enforcement's budget was $189,882,000 for the fiscal year 2012-2013, as is evidenced by true and correct excerpts of the report titled "California Department of Justice Biennial Report[-]Major Activities[-]2011-2012[,]" which are attached as Exhibit 5 to the Franklin Decl. (§ 452, subds. (c), (h).)

5. That the total amount of expenditures for Department programs funded via the Dealers' Record of Sale ("DROS") Special Account for fiscal ear 2013-2014 was $29,144,382, as is stated in the budget record produced in response to a discovery request propounded on Defendants in this Action, which is attached to the Franklin Decl. as Exhibit 6. (§ 452, subd. (h).)

6. That the total amount of expenditures for attorney salaries, including benefits, funded via the DROS Special Account for fiscal year 2013-2014 was approximately $181,486.29, as is stated in Defendant's Third Amended Responses to [Plaintiffs'] Special Interrogatory (Set Three); true and correct excerpts of that document are attached to the Franklin Decl. at Exhibit 7. (§ 452, subd. (h).)

7. That at some point during fiscal years 2011-2012 and 2012-2013, the DROS Special Account was used to fund costs related to the Department's Government Law division having provided attorneys to work on a lawsuit described by a Department employee as "related

to Penal Codes and CCW's [sic][,]" i.e., permits to carry a concealed weapon, as is indicated in the budget record produced in response to a discovery request propounded on Defendants in this Action, which is attached to the Franklin Decl. as Exhibit 8. (§ 452, subd. (h).)

Finally, Plaintiffs wish to make it clear that they believe all of the facts described above cannot be reasonably disputed because of the context in which they arose. If, however, Defendants raise a facially plausible basis upon which to dispute one or more of the facts described above, Plaintiffs will withdraw the relevant request(s) for judicial notice and then perform discovery to verify the veracity of Defendants' position on any such issues.

Dated: April 25, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for the Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On April 25, 2016, the foregoing document(s) described as

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Kamala D. Harris, Attorney General of California
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Anthony Hakl, Deputy Attorney General
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Executed on April 25, 2016, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on April 25, 2016, at Long Beach, California.

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

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

LAURA L. QUESADA

C. D. Michel – S.B.N. 144258
Scott M. Franklin – S.B.N. 240254
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Attorneys for Plaintiffs

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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY** Date: 10/28/16 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

DECLARATION OF SCOTT M. FRANKLIN

I, Scott M. Franklin, declare:

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

2. My office served a third set of Special Interrogatories ("SIs") on Defendants on September 4, 2015.

3. Defendants provided responses to the abovementioned discovery on October 19, 2015, based on a courtesy extension I provided.

4. When I evaluated the responses provided on October 19, 2015, I determined them to be insufficient. Accordingly, I sent a letter to Defendants' counsel on December 14, 2015, explaining in detail how the responses provided were insufficient. Exhibit 1 to this Declaration is a true and correct copy of my letter dated December 14, 2015.

5. On December 16, 2015, I had a phone call with opposing counsel Anthony Hakl, and during that call, he agreed that his clients would consider amending the responses they provided on October 19, 2015.

6. On January 22, 2016, Defendants provided an amended response to the relevant discovery.

7. On January 29, 2016, Defendants provided a second amended response to the relevant discovery.

8. I evaluated the responses provided on January 29, 2016, and determined them to be insufficient. Accordingly, I sent a letter to Defendants' counsel on February 19, 2016, explaining in detail how certain responses provided were insufficient. I was around this time that I spoke to opposing counsel and told him that, if the "APPS cases" discussed in SI Nos. 29 and 30 were ongoing, that might impact my analysis of whether information related thereto was privileged under Evidence Code section 1040. Exhibit 2 to this Declaration is a true and correct copy of my

letter dated February 19, 2016.

9. On March 25, 2016, Defendants provided a third amended response to relevant discovery.

10. After I received the responses provided on March 25, 2016, I determined three responses therein were still deficient. Thereafter, I communicated with opposing counsel and we determined that we were at an impasse as to three specific SI responses.

11. Throughout the lengthy meet and confer process described above, I obtained extensions of the deadline for filing a motion to compel on this matter, most recently getting an extension so that the deadline for filing is April 25, 2016. This extension was memorialized in an email.

12. Exhibit 3 to this Declaration is a true and correct copy of excerpts of the 2013-2014 Biennial Report, a report published by the California Department of Justice (the "Department") under the title "Biennial Report[-]Major Activities 2013-2014."

13. Exhibit 4 to this Declaration is a true and correct copy of Defendant Kamala Harris' letter to the California Legislature dated January 21, 2016, asking the Legislature to establish permanent funding for the Armed Prohibited Person System ("APPS").

14. Exhibit 5 to this Declaration is a true and correct copy of excerpts of the 2011-2012 Biennial Report, a report published by the Department under the title "California Department of Justice[-]Biennial Report[-]Major Activities[-]2011-2012."

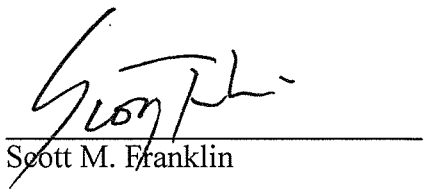
15. Exhibit 6 to this Declaration is a true and correct copy of the Departments' tally of Department "Programs Funded with DROS Special Fund" for fiscal year 2013-2014, which was produced herein by Defendants in response to a request for production of documents.

16. Exhibit 7 to this Declaration is a true and correct copy of excerpts from Defendants' Third Amended Responses to Special Interrogatories (Set Three).

17. Exhibit 8 to this Declaration is a true and correct copy of a budgetary document titled "FY 2012/13 - 1st Quarter Fiscal Monitoring" that Dependants were ordered to produce in this Action.

I declare under penalty of perjury under the laws of California that the foregoing is true

and correct, and that this declaration was executed on April 25, 2015, at Long Beach, California.



Scott M. Franklin

Exhibit 1

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December 14, 2015

VIA EMAIL & U.S. MAIL

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Re: ***Follow-up Regarding Impact of Motion for Leave Being Granted and Meet-and-Confer Concerning Disputed Discovery Responses in Gentry v. Harris***

Mr. Hakl:

I write to discuss the impact of the Court's recent ruling granting Plaintiffs' motion for leave to amend, and to meet and confer about Defendants' responses to Special Interrogatories (Set Two) and Requests for Admissions (Set Two) that you emailed to me on October 19, 2015.

Issues Re: Motion for Leave to Amend Being Granted

First, my assistant sent you a copy of the proposed order we would like to file, pursuant to California Rules of Court, Rule 3.1312(a). Please let me know if it meets with your approval, and thereafter we will file it as soon as possible.

Second, I have attached hereto a draft of the Amended Complaint we intend to file. It has been modified to reflect the specific requirements set out in the Court's tentative ruling of December 10, 2015. Though I don't think there will be any dispute as to whether the Amended Complaint has been properly revised to meet the Court's expectations, I want to give you a copy before it is filed to iron out any problems that can be resolved without dispute.

Third, because Amended Complaint includes new arguments grounded on the allegation that the DROS Fee is being use as an illegal tax, the discovery requests previously ruled moot by the Court on August 31, 2015 (as a result of Defendant's Motion for Judgment on the Pleadings being granted), are no longer moot. Thus, we request that Defendants produce substantive responses to the "unmooted"

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form interrogatories and requests for Admissions[1] 60 days after the Amended Complaint is filed and served.

If Defendants are not willing to comply with the request stated above, there are a few ways we can deal with this situation. Plaintiffs could propound the relevant discovery as "new" requests and go through another motion to compel, but I think that would only waste the parties'—and the court's—time: this issue has been fully briefed for the Court. Accordingly, I think that it would be proper, and much, much more efficient,[2] to make a renewal motion under Code of Civil Procedure Section 1008(b); the new illegal tax claims in the Amended Complaint constitute new facts that justify the renewal of Plaintiffs' Motions to Compel. Civ. Proc. Code § 1008(b). Indeed, because the Court does not need a second round of briefing on this issue, my preference is to make a motion under Section 1008(b) with a stipulation that the Court consider the issue on the previously filed briefs and issue a ruling without further argument. Please let me know if Defendants will produce substantive additional responses, and if not, whether Defendants are willing to enter into the type of stipulation mentioned above.

Request for Production of Documents ("RFP")

RFP No. 63

This request seeks baseline budgets submitted by the California Department of Justice (the "Department") to the California Department of Finance. The boiler plate objections provided are without merit. Specifically, Defendants provide no explanation as to why these documents would be protected under the attorney-client privilege, the work product doctrine, or the executive and deliberative process privileges. Indeed, these claims ring hollow. The budget documents sought are day-to-day budget documents, they have nothing to do with legal services being provided. Similarly, the response provided does not explain how a deliberative or executive process privilege could have be maintained here, as the documents requested are specifically ones that were, without exception,

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[1] I.e., Request for Admissions Nos. 83-86, 88, and 89, and Form Interrogatory 17.1(b) as to Requests for Admissions Nos. 18-22, 83-86, 88, and 89.

[2]For comparison, I note that the core of Defendants' recent Opposition brief—i.e., the claim that the Order After Hearing precluded Plaintiffs from adding newly identified illegal tax arguments to their complaint—was an issue that Plaintiffs attempted to resolve by proposing an clarification amendment to Defendants' first draft of the proposed Order After Hearing. (*See* Letter to Anthony Hakl dated June 30, 2015, at 2). As you recall, Defendants refused that proposed change, and then Defendants later opposed Plaintiffs' motion for leave based on an argument that should have been disposed of when the Order After Hearing was issued. Adding a clarification that two causes of action were being dismissed for the reasons "stated in Defendants' Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings at 5:20-7.11" would have worked no unfair prejudice to Defendants, and it would have resolved the issue that resulted in three unnecessary briefs (i.e., the recent motion for leave briefing) and court order. Here, I am similarly trying to streamline things, and I don't think going through an entire new round of discovery and motion practice makes sense, as the issue has already been fully briefed.

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circulated beyond a "control" or "executive" group, meaning there is no apparent justification for these objections. And in any event, as we have previously discussed, these type of claims are always going to be subject to a balancing test, and I see no reason why the Department will prevail in this instance. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 68

In response to this request, Defendants proposed the parties confer regarding the possibility of narrowing the scope of thereof. Defendants also state that the information sought is equally available to the requesting party. Accordingly, if Defendants can provide an explanation as to how Plaintiffs can obtain the information sought as easily as having it produced by Defendants in discovery, then we will look into obtaining it through that route.

Otherwise, the statement that this request seeks "*potentially* hundreds" of documents does not, in and of itself, convince us that a limitation of this request is warranted. Nonetheless, we are open to an explanation as to why this request is overburdensome, and how it might be tailored to meet our needs without any loss of substance.

RFP No. 72

First, I note that Defendants' characterization of this request as "oppressive and burdensome" is based on a false premise. That is, Defendants claim "compliance would be unreasonably difficult and expensive because it purports to seek 'each and every' such document within the entire Department of Justice[.]" But on some level, *every* document production request seeks analysis of the entirety the Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we have added multiple limiting attributes that, based on information available to us, should lead to a manageable production. If Defendants can offer a legitimate justification as to why we should amend this request, which hinges on (1) a mention of the DROS Special Account and (2) the use of the phrase "government law[,]" we are open to changing the request. But without that, a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The information sought is more akin to budgetary data, and that is plainly not going to be privileged; I think the Court's previous discovery ruling indicates as much. (Order of June 1, 2015, at 4). Similarly, the deliberative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 73

First, I note that Defendants' characterization of this request as "oppressive and burdensome" is based on a false premise. That is, Defendants claim "compliance would be unreasonably difficult and expensive because it purports to seek 'each and every' such document within the entire Department of Justice[.]" But on some level, *every* document production request seeks analysis of the entirety the

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Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we are asking for training or guidance documents including or referring to a particular policy statement: the limitations provided should lead to a manageable production. If Defendants can offer a legitimate justification as to why we should amend this request, we are open to changing the request. But without that, a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought are used by employees when learning to track employee time, and that type of document has noting to do with attorney work nor privileged communications. Similarly, the delibrative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

RFP No. 89

First, I note that Defendants' characterization of this request as "oppressive and burdensome" is based on a false premise. That is, Defendants claim "compliance would be unreasonably difficult and expensive because it purports to seek 'each and every' such document within the entire Department of Justice[.]" But on some level, *every* document production request seeks analysis of the entirety the Department's records for each responsive record, and this request is limited such that Defendants' characterization does not make sense. Here, we are asking for documents related to the Department's process of converting an employment position from being funded from one specific source to another specific source. Unless and until the Department is prepared to show that it has already spent a substantial amount of time, and located a substantial amount of responsive documents, Defendants' oppression objection is without impact, and a further response is required.

Second, as to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought refer to staffing and budgetary decisions, and those type of documents have noting to do with attorney work nor privileged communications. Similarly, the delibrative process objection seems inapplicable, but even if it is, I do not see how the balance tips in the favor of nondisclosure when the documents sought have to do with how taxpayer money is being spent. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

Special Interrogatories ("SI")

SI No. 19

This request contains a clerical error; the term "department of legal services" should have read "Government Law Section of the Division of Civil Law[.]" With this information, Defendants should be able to respond to this interrogatory.

Defendants claim the following passage, from the instant request, is vague an ambiguous: "obtains funding to cover the cost of providing lawyers when it provides lawyers to defend employees of Bureau of Firearms." Though Plaintiffs believe the interrogatory is clear with the above-noted

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correction, Plaintiffs will illuminate their inquiry. Defendant want to know how the Division of Civil Law obtains funding to pay the salaries of attorneys who represent Bureau of Firearms employees (e.g., Chief Lindley), which presumably has happened pursuant to Government Code section 11040. If, however, it is the case that the Division of Civil Law has never represented a Bureau employee, that information would also be part of an appropriate response to this interrogatory.

SI No. 25

This interrogatory asks for the basis of Defendants' response to SI No. 24, which is that "Defendants are unable to answer this interrogatory." Defendants' response to SI No. 25, however, does not explain Defendants' claimed inability to response to SI No. 24. Rather, it refers to why the Department can't repeat the calculation it did in 2002, which is not a pre-requisite for providing the calculation asked for. That is, SI No. 25 did not ask the Department to repeat a previous calculation, meaning Defendants' response to SI No. 25 is evasive. Defendants have already said they cannot "State the total amount of expenditures attributed to tasks referred to in Penal Code Section 28225 for the fiscal year 2013-2014;[,]" and now they must explain why. Failure to do so will evince a lack of good faith and justification for, at the least, a motion to compel being granted. A further response should be provided.

SI Nos. 27 & 28

Defendants claim the term "accounting designation" is vague and ambiguous, apparently as a basis for not providing a substantive response to SI Nos. 27 and 28. Though Plaintiffs disagree, Plaintiffs further explain that the term "accounting designation" was meant to refer to any line-item title, like "Firearms Database Audits[,]" that was used to identify a program that was funded by a certain source (here, the DROS Special Account).

SI No. 27 seeks an "accounting designation," e.g., title, for any program that was funded from the DROS Fund during the relevant time frame *but* excepting any class of program that turned on the "possession" of a firearm. "Possession" as used herein has the same meaning as the Department gives that word when interpreting Penal Code section 28225. Plaintiffs assume that "DROS Enforcement Activities" would *not* be a responsive "accounting designation" as to SI No. 27, though it *would* be responsive to SI No. 28, which seeks *only* accounting designations related to programs that turn on the possession of a firearm. With the foregoing information, Plaintiffs believe Defendants are capable of providing substantive responses to SI Nos. 27 and 28.

SI Nos. 29 & 30

The Department claims the two incidents at issue are "APPS cases[,]" but the facts provided suggest otherwise. As you know, one of our clients' concerns is that DROS Fees are being used to fund general law enforcement activites via the APPS program. Based on these "APPS cases[,] however, it appears the name APPS is being applied to law enforcement activities that are not even derived from APPS-based data. If that is the case, one of my clients' primary arguments (i.e., that the DROS Fee is no longer a fee, but a general law enforcement tax being foisted upon legal gun purchasers) becomes much stronger. Thus, Defendants are plainly wrong in claiming the information sought is "irrelevant."

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As to the claim that this request seeks attorney-client communications or work product, I am dubious. The documents sought refer to staffing and budgetary decisions, and those type of documents have noting to do with attorney work nor privileged communications. Similarly, the executive privilege and official information objections seems inapplicable (who is the executive claiming the privilege?), but even if one of them is theoretically applicable, I do not see how the balance tips in the favor of nondisclosure when information sought will confirm or refute whether the Department is improperly characterizing general law enforcement work as APPS work. *See Marylander v. Super. Ct.*, 81 Cal. App. 4th 1119, 1126 (2000). At the least, a privilege log is called for. Civ. Proc. Code § 2031240(c)(1).

Finally, I am hesitant to believe that the law enforcement privilege claim (really just an official information claim raised in the guise of police records) will succeed. First, if the investigation of either case is over, then the weight in favor of non-disclosure is very light. *See, e.g., Cnty. of Orange v. Super. Ct.*, 79 Cal. App. 4th 759, 768 (2000) (noting that the qualified privilege that applies to police records disappears at some point). Further, Defendants have already publically touted the cases at issue as "APPS cases," meaning they will have a hard time convincing the Court that the Department is actively trying to keep facts related to those cases "under wraps." Second, because this is a question of balancing, I believe my clients have a strong argument: Defendants should not be able to publically claim certain cases are "APPS cases" and then deny requests for confirmation. Such a result runs contrary to the California Constitution. Cal. Const. art. 1, § 3(b) ("The people have the right of access to information concerning the conduct of the people's business[.]").

Defendants do not seek any person information or strategic information, they just want to know how it is that the Department can claim the two matters at issue are "APPS cases" when, based on the facts provided, they are not. Defendants knowingly put these two cases up to public scrutiny when the Department chose to use them as exemplars of APPS success stories, and the Department cannot reasonably take the position that the public has no ability to verify the Departments' claims.

Please do not hesitate to contact me if you have any questions regarding the foregoing, and I look forward to speaking with you on Wednesday.

Sincerely,

Michel & Associates, P.C.

Scott M. Franklin

Enclosure: (Revised Draft First Amended Complaint)

Exhibit 2

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February 19, 2016

VIA EMAIL & U.S. MAIL

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Re: Status of Pending Discovery and Litigation Issues (*Gentry v. Harris*, Case No. 34-2013-80001667)

Dear Mr. Hakl:

I write to follow up on a few disputed responses Defendants provided in response to Plaintiffs' third set of Special Interrogatories and third set of Requests for Production of Documents. I believe we are at an impasse in the meet-and-confer process as to the responses at issue, but I am sending this letter to memorialize my clients' position and confirm whether further informal discussions are justified. As we have previously discussed by e-mail, I have scheduled time on February 29, 2016, at 2:00 p.m., for a teleconference on this matter. If we are indeed at an impasse, I believe we can use the abovementioned call to discuss the possibility of seeking expedited review of this dispute as we have in the past. And to the extent Plaintiffs request further information hereby, Plaintiffs also request any further responses or additional information be produced to me by close of business on February 28, 2016.

Finally, before getting to the meat of this letter, there are a few "housekeeping" matters to attend to. First, I request that Defendants provide "cleaner" copies of the documents Bates-stamped AGRFP000640 and AGRFP000644. The text on these documents is very small and difficult to decipher in a low-resolution format. Second, Plaintiffs request that Defendants supplement the January 13, 2016, privilege log so that Plaintiffs can determine which request(s) are applicable to each withheld document that is described on the log.

Requests for Production

Request for Production No. 55-56

Defendants still claim they cannot produce even exemplars of the documents that are responsive to these requests. The documents seem to fall within a very small class (documents that are specifically in the records of the Department's Administrative Services Division, Budget Office, that *also* refer to the DROS FEE), so it is hard for Plaintiffs to understand why Defendants have yet to comply with this request. Unless Defendants are willing to confirm that they believe responding to these requests will result in the production of more than 1,000 pages of documents (along with an explanation of the basis for that belief), Plaintiffs plan to seek judicial relief regarding this issue. If, however, Defendants provide a reasonable explanation for why they expect the production would be over 1,000 pages, then Plaintiffs are open to selecting particular date ranges to help expedite the production of at least some of the responsive documents that should be produced in response to Request for Production Nos. 55-56.

Alternatively, to the extent Defendants intend to rely on the objections provided in response to Request for Production Nos. 55-56, Plaintiffs incorporate herein their response to Defendants' objections to Request for Production No. 63, stated below.

Request for Production No. 63

Defendants have never produced any information to support their bare objections. Regardless, Plaintiffs will attempt to explain why Defendnats' objections are without merit. Defendants' relevance objection is patently unreasonable; this case is primarily about how the Department of Justice (the "Department") spends income that is specifically related to firearms, e.g., DROS fees. Baseline budgets submitted to the Department of Finance appear likely to provide information that is relevant. The Court's order of June 1, 2015, is on point. "Respondents' budget and expenditure decisions related to the setting and continuation of the DROS fee. The public clearly has an interest in disclosure of documents which identify the budgetary analyses performed by Respondents to support the amount of the DROS fee." (Order of June 1, 2015 [the "Order"], at 4:1-4.)

Defendants' claim that the request is burdensome because it covers a period of twelve years is without merit. The number of years at issue is irrelevant if the number of documents, and the amount of hours required to locate them, are minimal. Unless Defendants provide actual evidence of the supposed burden at issue, this objection will fail. Defendants are requested to either comply with this request as written, or quickly produce evidence to support their undue burden objection.

Defendants claim that these documents are covered by the attorney-client privilege and the attorney work product doctrine. As the documents at issue are clearly budgetary documents (they are referred to as "baseline budgets[,]" after all), Defendants have shown no attorney interaction that could potentially justify the documents being withheld. Further, Defendants know that the proper course of action to support an attorney-client privilege claim is to provide "sufficient factual information[,]" e.g., a privilege log, to allow Plaintiffs to evaluate Defendants' privilege claims. Civ. Proc. Code

§ 2031.240(c)(1). Defendants have done this for other responses, but not for their response to Request for Production No. 63, indicating the attorney-based objections used here are unfounded boilerplate. Similarly, to the extent attorney work product is shown to be at issue regarding this request, the nature of the documents sought, which are not the type of material attorneys generally produce (and are unlikely to include completely privileged "brain work"), strongly suggest that the objection will fail when subjected to the relevant standard. Civ. Proc. Code § 2018.030.

Finally, Defendants claim the executive process and deliberative process doctrines (both which fall within the "government information" privilege found at Evidence Code section 1040) apply, but without explanation. Given the Court's analysis and ruling in the Order, and the applicable balancing test (see, e.g., *Cal. First. Am. Coal. v. Super. Ct.*, 67 Cal. App. 4th 159, 172 (1998)), this objection appears to be without merit.

Request for Production No. 64

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production No. 63 as stated above. The documents at issue, as described, appear to be either operational documents that will indicate how DROS fee funds are used or are related to budgetary work that is relevant to this action. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 64 will withstand a motion to compel, please immediately provide an explanation for that claim.

Further, to the extent Defendants claim the documents at issue are contain "confidential law enforcement information protected by the official information, law enforcement, and executive privileges[,]" Plaintiffs contend that such unexplained objections are insufficient to tip the balance in favor of non-disclosure. Unless Defendants provide an actual explanation for these objections in the near future, Plaintiffs intend to seek judicial relief.

Finally, it is worth noting that, as written, Defendants' burden-based objection is patently unreasonable. Defendants claim an unfair burden will result because the request seeks "each and every" document within a particular description. Counsel is surely aware that the use of the phrase "each and every" is common in requests for production, and that the total production of "each and every" document can be zero or any other number, meaning the usage of the phrase has literally no relevance to whether a request is unduly burdensome or not. If Defendants do not now provide a cogent explanation, including an non-evasive response, as to the specifics of why they should not be required to comply with this relevant request, Plaintiff is confident the Court will overrule this objection and order the withheld documents produced.

Request for Production No. 65

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to indicate how DROS fee funds are used—an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 65 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production No. 66

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to concern the DROS account and budget activities related thereto, an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 66 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production No. 68

Pursuant to our previous discussion, Plaintiffs seek responsive documents that refer to the following funds: General Fund, Dealers' Record of Sale Fund, Firearms Safety & Enforcement Fund, and the Legal Services Revolving Fund.

Request for Production No. 72

Your letter of January 13, 2016, states your "understanding is that there are no outstanding issues to address in light of defendants' production of the relevant invoices on January 6, 2016." I do not think that statement is correct. The invoices at issue do not appear to be responsive to this request, which seeks documents that use the phrase "government law[,]" and the invoices at issue do not mention the phrase "government law[.]" If your letter included an error regarding this matter, please advise us of your intended response as soon as possible.

Otherwise, Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to indicate how DROS fee funds are used— an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production No. 72 will withstand a motion to compel, please immediately provide an explanation for that claim.

Request for Production Nos. 74-75

Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above. The documents at issue, as described, appear to concern how the Department's budgeting and accounting divisions were discussing the use of DROS fee funds, an issue at the center of Plaintiffs' case. There is no reason to believe they are not relevant. To the extent Defendants claim that their objections to Request for Production Nos. 74-75 will withstand a motion to compel, please immediately provide an explanation for that claim.

Special Interrogatories

Special Interrogatory Nos. 24 and 25

Defendants originally claimed that they could not provide a response to Special Interrogatory No. 24, which asks Defendants to "[s]tate the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014." But, in their most recent response to this question, Defendants responded, "[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014 was $29,144,382. Because this interrogatory did not ask what "[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014 was[,]" the response appears non-responsive. It is possible, however, that the "total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014" is the same as the "[t]he total amount of DROS Funds expenditures for fiscal year 2013-2014[:]" $29,144,382. If Defendants confirm this is correct, then no further response will be sought. If Defendants state the foregoing is not correct, then Defendants need to either stand on their original response to Special Interrogatory No. 24, or provide a different response regarding "the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014."

And as to Defendants' response to Special Interrogatory No. 25, confirmation that $29,144,382 is "the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014" will prevent the need for a further response to Special Interrogatory No. 25. Otherwise, Defendants' response to that interrogatory needs to be revised to address the issue in the preceding paragraph.

Special Interrogatory Nos. 29 and 30

Defendants blithely claim that these interrogatories seek information that is irrelevant, which is not true. Both of these interrogatories seek information about specific matters that the Department has used in publicizing the APPS program and successes supposedly resulting therefrom, but the matters appear to be general law enforcement cases not connected to APPS in any causal way. Inasmuch as Plaintiffs contend that Defendants are improperly using DROS funds to not only fund APPS, but to fund general law enforcement activities beyond APPS, the information sought is plainly relevant.

The boilerplate objections provided to these interrogatories are completely unexplained. Thus, Plaintiffs incorporate by reference all of their responses to the objections discussed in response to Request for Production Nos. 63 and 64 as stated above.

Plaintiffs do believe the "law enforcement" privilege, which is really just the governmental information privilege, *could* potentially be applicable—and justify Defendants' reliance thereon— *if* the two cases at issue are *incomplete* criminal investigations. Ongoing criminal investigations provide the only conceivable reason why the law enforcement privilege might actually justify the withholding of the information sought. *See Cnty. of Orange v. Super. Ct.*, 79 Cal. App. 4th 759, 768-69 (2000). Plaintiff suspect these two cases are not ongoing investigations because: (1) they both concern seizures occurring more than two years ago, and (2) the Department chose to use these cases as exemplars in the

2013-2014 Biennial Report, and Plaintiffs presume the Department would not have made that choice if the Department believed doing so would harm an ongoing investigation.

Nonetheless, if Defendants are willing to state that the two matters at issue are ongoing criminal investigations that were used in the Department's last biennial report, then Plaintiffs will not seek judicial assistance regarding these two interrogatories. If no such statement is timely made, Plaintiffs plan to move to compel the production of this information pursuant to relevant balancing standard. *Id.*

Privilege Log

Without knowing the specific request(s) at issue for each item listed on the privilege log, it is somewhat difficult to respond to the unexplained objections stated therein. Nonetheless, please consider the following.

Document Nos. 15-16

The Department states the documents being withheld are titled "DOJ Finance Letter Concepts" with unknown authors and recipients. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. Finance Letters appear to be "follow up" documents submitted to the Department of Finance with the intent of amending a particular year's proposed budget. Thus, "Finance Letter Concepts" appear to be directly related to the creation of budgets, and to the extent the documents mention APPS or DROS (which they presumably do, though Plaintiffs cannot know for sure until Defendants identify which request[s] the withheld documents are relevant to), the balance plainly tips in the favor of disclosure. (*See* Order at 3:22-4:4.)

Document No. 17

The tile of the document here expressly shows that the withheld document concerns the Department of Finance's questions regarding a "BCP" (Budget Change Proposal) that the Department appears to have submitted. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 18

The tile of the document here expressly shows that the withheld document concerns a BCP specifically related to APPS. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 19

The tile of the document here expressly shows that the withheld document concerns a BCP specifically related to APPS. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 20

Presumably, if Defendants know which interlineations were made by an attorney and intended as a client communication, such interlineations are unavailable to Plaintiffs. Thus, if Defendants can identify the actual attorney or attorneys making interlineations or supposedly intended recipient attorneys, Plaintiffs will not challenge the attorney-client privilege claim as applied to those interlineations. If Defendants cannot identify which statements were made in the course of an attorney-client relationship, then that strongly suggests no attorney-client privilege or attorney work product-based objection can succeed. Because the interlineations presumably have to do with the funding of the APPS program, the balance tips in the favor of disclosing interlineations that are not privileged attorney-client communications.

And as to the agenda itself, it is unclear if it was actually authored by Gill Cedillo or if he was simply the Chair of the committee for which the agenda was created.[1] Assuming it is a document that is available online, Plaintiffs do not seek the production of the agenda itself.

Document No. 21

The title of this document does not provide sufficient factual information for Plaintiff to fully respond to the three privileges claimed here (which are all, in effect, variations of an Official Information privilege claim). Nonetheless, considering the fact that the Division of Law enforcement had a $71 million budget cut in 2010-2011 (as stated in the relevant biennial report), it appears the "DLE restoration" being referred to may relate to costs being shifted from the general fund to the DROS and other special funds. Documents showing the contours of that process would clearly be relevant to Plaintiffs' case. Because the balance tips in the favor of Plaintiffs, Defendants should provide the withheld document. (*See* Order at 3:22-4:4.)

Document No. 22

The tile of the document here expressly shows that the withheld document concerns a BCP, and the fact that Defendants have identified it on a privilege log suggests it is relevant, e.g., that it concerns the potential or actual use of DROS fees for a purpose Plaintiffs claim is inappropriate. The three privileges claimed are all, in effect, variations of an Official Information privilege claim. As it appears

[1] Plaintiffs assume the agenda at issue, save interlineations, is the one available at http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/April%2025%20PUBLIC%20Agenda.pdf.

this document consists of budgetary analysis that concerns issues relevant to the claims made by Plaintiffs herein, the balance plainly tips in the favor of disclosure. (*See id.*)

Document No. 23

Defendants have not provided sufficient factual information for Plaintiff to fully respond to the three privileges claimed here (which are all, in effect, variations of an Official Information privilege claim). Nonetheless, considering the fact that the Division of Law enforcement had a $71 million budget cut in 2010-2011 (as stated in the relevant biennial report), that the supposed parties to this document are the Department's legislative, budget, and/or office staff, and that money was being shifted from the general fund to the DROS and other special funds to cover the budget cut, it seems reasonable to believe the document sought is relevant. Documents showing the contours of that process would clearly be relevant to Plaintiffs' case. Because the balance tips in the favor of Plaintiffs, Defendants should provide the withheld document. (*See* Order at 3:22-4:4.)

Document No. 24

Defendants have not provided sufficient factual information for Plaintiff to fully respond to the five privileges claimed here. Sufficed to say, however, that if the document is a summary report that concerns all of the Department, Plaintiffs have no interest in the report except as it relates to use of the DROS Special Account, the funding of law enforcement activities performed by the Bureau of Firearms (e.g., APPS), and the Departments' involvement in any legislation bearing on those two issues. If Defendants are willing to produce the sections of the Transition Report that pertain to the areas described above, then there is nothing further to dispute regarding this document.

If, however, Defendants claim that the selected portions of the Transition Report are privileged, Plaintiffs request Defendants explain, with specificity, the titles and authors of the relevant sections. Additionally, Plaintiffs request clarification as to what is meant by "DOJ Executive Office," i.e., is it a report intended for just the Attorney General and her immediate staff, an entire department, etc.

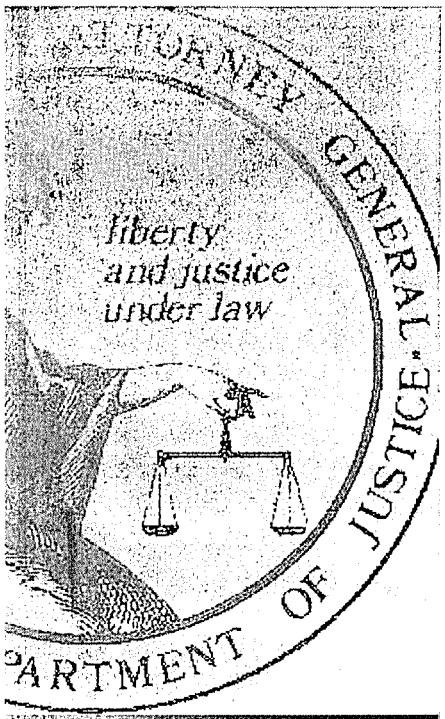
As always, please do not hesitate to contact me if you have questions regarding the foregoing.

Sincerely,

Michel & Associates, P.C.

Scott M. Franklin

Exhibit 3



Biennial Report

Major Activities
2013 - 2014

California
Department of
Justice

Kamala D. Harris
Attorney General

When telephone numbers are queried or uploaded into the MTI, matches from existing cases generate a hit report. This technology uncovers possible links between suspects that otherwise would not have been found. The MTI database currently has more than 20 million call records and 270,000 subscribers.

Bureau of Firearms

The Bureau of Firearms ensures the state's firearms laws are administered fairly, enforced consistently, and understood uniformly throughout California. The bureau is a leader in innovation and collaboration, providing firearms expertise and information to law enforcement, legislators and the general public, in a comprehensive program designed to promote legitimate and responsible firearms possession and use by California residents. Law enforcement and program services are extended to all 58 counties through two regional offices, four field offices, two program offices, and one headquarters office.

On-Line Mental Health Firearms Prohibition System (MHFPS). MHFPS is an electronic application that enables public and private mental health facilities statewide to electronically report individuals who, because of mental health issues, are prohibited under state or federal law from owning/possessing firearms. This new application minimizes delays caused by the previous system, which required manual entry. In April 2014, MHFPS was expanded to allow state courts and law enforcement agencies to submit mental health prohibitions electronically.

Implementation of Mobile Justice Software. The bureau worked collaboratively with the Hawkins Data Center in the conceptualization, construction, and implementation of Mobile Justice, portable Finger Print Scanners, and the use of iPads and iPhones to improve enforcement efficiency.

Increased Personnel to Address 21,000 Persons in APPS Database. In 2013, Senate Bill 140 (Leno) appropriated $24 million to DOJ from the Dealer Record of Sale account. The additional funding was allocated specifically to reduce 21,000 prohibited persons in the Armed Prohibited Persons System (APPS) database over a three-year period. This funding created new APPS enforcement teams at each regional office, consisting of 36 agents, six Criminal Intelligence Specialists, and six Office Technicians. In 2013, the bureau investigated 4,156 subjects and seized 3,548 firearms, and in 2014, the bureau expects to handle over 8,000 APPS investigations.

Significant APPS cases include the following:

Information Received from the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) Leads to Assault Weapons Seizure in California. In January 2013, agents received information from ATF regarding a subject who purchased three AR-15 assault rifles, two short-barreled shotguns, and a Glock 17 handgun in Arizona, using Arizona and California driver licenses. A search warrant of the subject's residence and vehicle resulted in the seizure of one AR-15 assault rifle, two Bushmaster rifles, two short-barreled shotguns, two handguns, five high-capacity magazines, two high-capacity Glock handgun magazines, one bullet button for an AR-15, one forward grip, one pistol grip, one AR-15 charging handle, one .45 caliber magazine,

and miscellaneous ammunition. The subject was arrested on weapons violations including transportation of assault weapons.

Glendale Gun Show Investigation Leads to Arrest of Convicted Felon in Possession of Assault Weapon. In March 2013, agents identified a convicted felon attempting to sell an AR-15 upper receiver at the "Crossroads of the West" gun show in Glendale. Agents followed the subject to the Moreno Valley area and conducted a consent search of his residence, where they seized one WASR-10 (AK-47 style) assault rifle, one Palmetto AR-15 lower receiver, one Glock 9mm handgun, eight high-capacity magazines, and 346 rounds of ammunition. The subject was arrested and charged with possession of assault weapons and being an ex-felon in possession of a firearm and ammunition.

202 Firearms Seized from APPS Subject. In May 2013, agents investigated an APPS subject who was prohibited from owning or possessing firearms due to an involuntary mental health commitment. The DOJ's Automated Firearms System (AFS) Dealer Record of Sales (DRO$) had 66 handguns registered in the subject's name. A consensual search of his residence resulted in the seizure of 202 firearms found in a safe.

Long Beach Felon Illegally in Possession of Guns and Ammo. In May 2013, agents of the Long Beach Police Department contacted an APPS subject at his residence. The subject was prohibited from owning or possessing firearms for a period of ten years due to a 2013 conviction for corporal injury to his spouse and a restraining order. The subject initially gave consent to search his residence, but later reversed his decision. By the time his consent was revoked, agents had observed enough ammunition and other evidence to obtain a search warrant. During the subsequent search, the subject was found to be in possession of two handguns, one bolt action rifle, approximately 5,000 rounds of ammunition, and a large quantity of ammunition reloading supplies. The subject was arrested and charged as an ex-felon in possession of a firearm and ammunition.

Ex-Felon in Possession of Firearm at Local Gun Range. In June 2013, agents received an anonymous tip that an ex-felon was working as the manager and firearms instructor at his family's shooting range in Corona. The business is located on a 1,200-acre ranch and is well-known to local shooting enthusiasts. Agents confirmed the subject worked at the business and was in possession of firearms and ammunition, and obtained search warrants for the business and the subject's residence. In August 2013, agents executed search warrants and seized 28 rifles, 50 shotguns, 10 handguns, and over 10,000 rounds of ammunition. The subject was arrested and charged as being an ex-felon in possession of firearms and ammunition.

Two Men Arrested on Weapons Charges, 412 Guns and Two WWII Grenades Seized. In September 2013, agents investigated a gun show vendor from Oildale, California. An undercover agent purchased a handgun from the vendor without going through the proper procedures. The undercover agent purchased two California-banned assault weapons from the vendor and a co-conspirator. Arrest and search warrants were obtained for the suspects and their residences. Agents seized two WWII-era grenades, one mortar round, and 412 firearms, including four assault weapons that are banned in California.

Undercover Operations Net C-4, Rocket Launcher Tube, Grenade Igniters, 39 Illegal Assault Rifles and 170 Handguns. An undercover agent was contacted by an individual who offered to sell an illegal "Galil" assault rifle and large-capacity magazines. The agent met the subject in a parking lot in the City of Ontario in November 2013, and purchased a rifle and magazines for $3,500. The subject was arrested and found to be armed with two loaded handguns. Agents subsequently executed a search warrant at the subject's residence in Eastvale and seized 36.4 grams of C-4 explosive, eight M228 grenade fuses, one igniter time blasting fuse, one fully automatic machine gun, one fully automatic lower receiver, one short barrel shotgun, two Browning M-1919 .30 cal. rifles, one AT4 rocket launcher tube, and 39 illegal assault rifles. An additional 170 handguns and rifles and large capacity magazines were also seized. Two firearms were reported stolen. The subject was booked for possession of explosives and destructive devices, sale of an assault weapon, and related weapons violations.

Fifty Firearms Possessed by Person who had Previously Been Committed. In November 2013, agents initiated an APPS investigation of a subject in the Sacramento area who was prohibited from owning or possessing firearms due to an involuntary mental health commitment. Agents seized 50 firearms and over 10,000 rounds of ammunition from the subject, who had been buying, trading and selling firearms for the past 30 years.

Parents Jailed after Agents Find Guns and Drugs in Home with Small Children. In November 2013, agents followed up on a possible "straw purchase." This term refers to the purchase of a firearm by a "straw buyer" on behalf of someone who is either legally prohibited from making the purchase or wishes to acquire the firearm anonymously. Agents executed a search warrant on the straw buyer's residence and recovered the handgun in question, a second stolen handgun and a shotgun, and discovered a marijuana extraction lab and marijuana. The loaded firearms, lab, and marijuana were accessible to three minor children. The straw buyer and prohibited person (wife and husband, respectively) were arrested and charged with furnishing a firearm to a prohibited person, being a felon in possession of a firearm, operating a chemical extraction of a controlled substance lab, and child endangerment.

Ex-Felon/Gang Member Arrested after Attending Reno Gun Show. In April 2014, agents identified a subject on probation who was shopping for gun items at the Reno Gun Show. He was with a group of males who were subsequently detained and found to be in possession of nine large-capacity handgun magazines, one 60-round .223 rifle magazine, and one 100-round 5.56 mm rifle drum magazine. A follow-up search warrant was executed at the subject's residence in Santa Rosa, where agents seized one S&W M&P, .40 Caliber handgun, three pounds of processed marijuana, and 104 mature marijuana plants that averaged four-and-a-half feet tall. The subject was arrested for being an ex-felon with a firearm, engaging in a felony while on bail, active felonious participation in gang activity, and cultivating marijuana.

Two Bay Area Norteño Gang Members Arrested for Possessing an AK-47. In April 2014, agents observed two documented San Francisco Norteño gang members purchasing a high-capacity 100-round drum magazine at a Reno Gun Show. A vehicle stop resulted in the seizure of a loaded .40 caliber semi-auto handgun with two magazines containing 10 rounds each, an AR-15 high-capacity 100-round drum magazine, an AK-47 high-capacity 75-round drum magazine and a partial AK-47 lower receiver. One of the subjects was arrested for transporting a loaded firearm and high capacity magazine into the state.

In May 2014, agents executed search warrants at both subjects' residences in Alameda County. Both of them are documented gang members. At one residence, agents found an AK47, fully loaded with a "banana" style high-capacity magazine in the subject's girlfriend's bedroom. The subject and the girlfriend were both arrested as ex-felons in possession of an assault weapon, ex-felons in possession of a firearm, and violation of probation.

Delta Mob Outlaw Motorcycle Gang Member and Girlfriend Arrested on Firearms Violations. In April 2014, agents from the Contra Costa County Anti-Violence Support Effort (CASE) conducted a probation search on a member of the Delta Mob outlaw motorcycle gang (which is a sanctioned farm club to the Richmond Hells Angels), who was prohibited in APPS due to a battery conviction. A search of the subject's girlfriend's residence resulted in the seizure of a loaded H&K USP .40 caliber semi-automatic pistol, one S&W .12 gauge shotgun, one AR-15 style lower receiver, one incomplete 7.62 caliber AK-47 style rifle, and 274 rounds of pistol ammunition. In April 2014, agents obtained felony arrest warrants from the Contra Costa District Attorney's Office for both the subject and his girlfriend, who were charged with four counts of illegal possession of firearms and ammunition.

Firearms Purchaser Clearance Section. The Firearms Purchaser Clearance Section (FPCS) serves as a vital public service by ensuring that no retail or private party firearms transaction results in firearms being placed in the hands of persons who are prohibited from owning a firearm. Additionally, the section identifies and notifies the employer and/or licensing authority regarding peace officers, armed security guards, and carry concealed weapon (CCW) permit holders who have subsequently become prohibited from owning/possessing firearms.

This section encompasses the following programs: the DROS Unit, Phone Resolution Unit, Law Enforcement Gun Release and the Employment & Subsequent Notification Unit.

In 2013, the section received and processed 960,179 DROS applications, and denied 7,445 applicants due to existing prohibitions. This unit also processed 50,874 DROS-related DMV mismatched transactions in 2013 (e.g., the name supplied on the DROS application did not match the applicant's DMV issued Driver License/Identification Card resulting in rejection of the transaction). The DROS unit processed 16,749 other firearms-related applications and documents in 2013.

From January to April 2014, the section received and processed 312,477 DROS applications and denied 2,643 applicants due to existing prohibitions. This section also processed 19,548 DROS-related DMV mismatched transactions and 7,890 other firearms-related applications and documents.

Dealer's Record of Sale (DROS) Entry System Customer Support Center. The DROS Entry System (DES) was established by statute in 1997 to allow dealers to transmit firearms purchase/transfer information electronically to the DOJ. The DES and associated customer support center were administered by Verizon Business Services. In December 2011, Verizon notified the Department that they would no longer administer the DES and the contract would lapse when it expired on December 31, 2013. Consequently, the Department assumed the duties previously administered by Verizon Business Services as of January 1, 2014.

Exhibit 4

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.

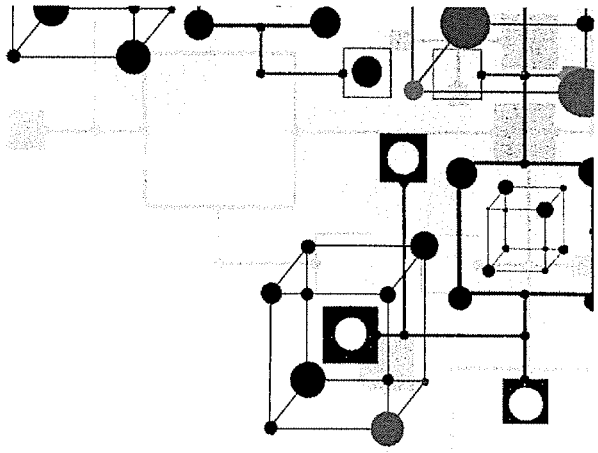
The Department needs additional resources to continue our successful work on the APPS and adequately address the public safety threat these individuals present to California. To achieve these goals, I respectfully request that the Legislature make permanent the temporary funding it has previously authorized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

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 5

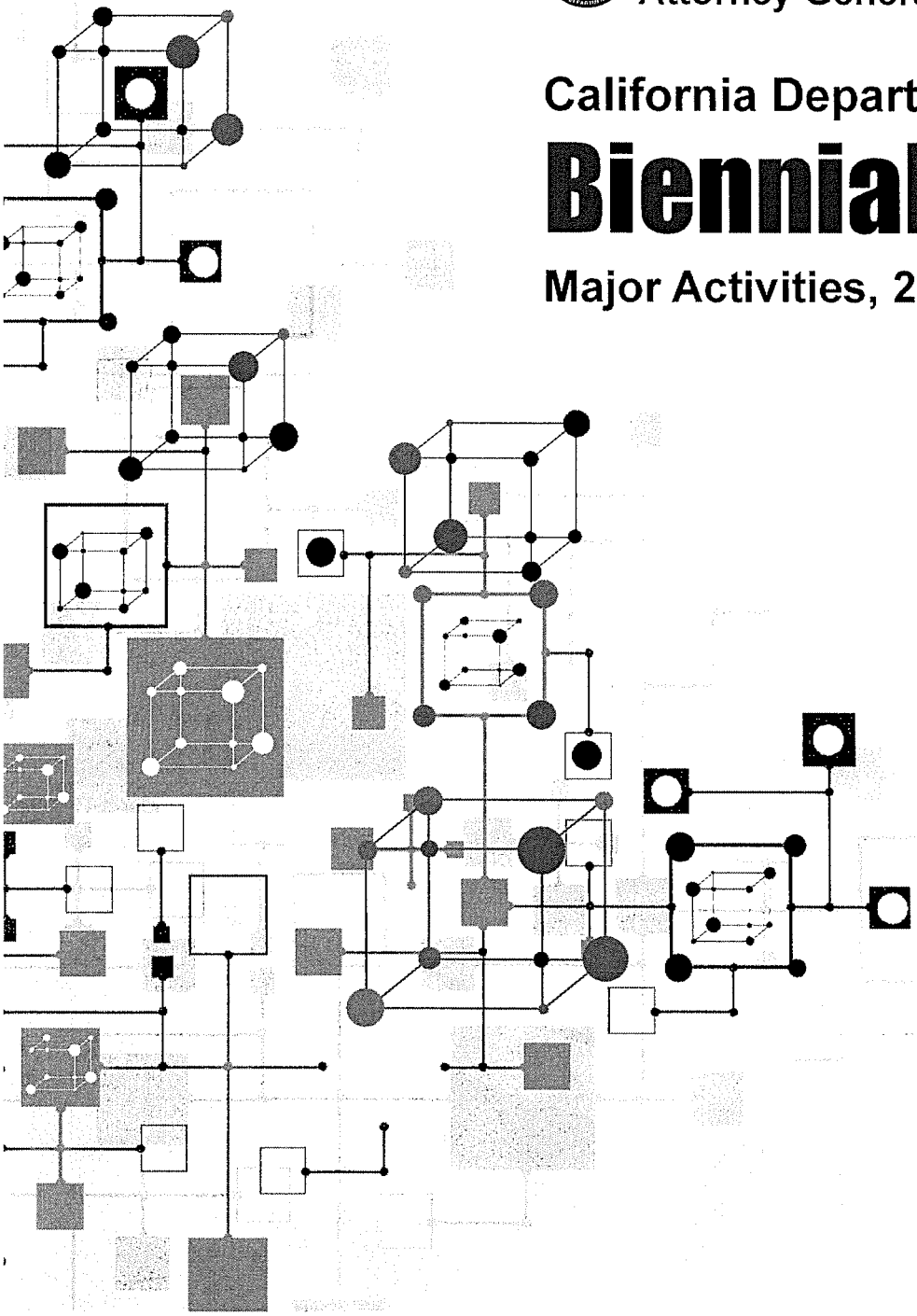


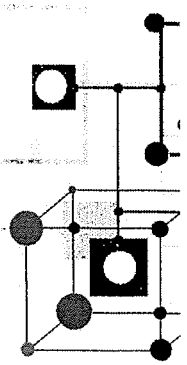
Kamala D. Harris
Attorney General

California Department of Justice

Biennial Report

Major Activities, 2011-2012





Department Overview

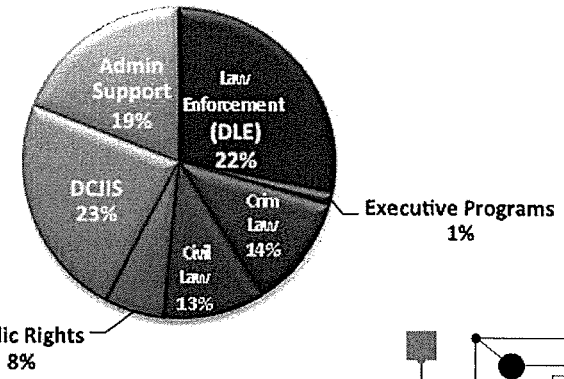
The Attorney General's responsibilities are fulfilled through the diverse programs of the Department of Justice, which has over 4,500 employees, six divisions, and an annual operating budget of over $700 million.

Authorized Division	Positions	Budget
Division of Law Enforcement (DLE)	1,007	$189,882,000
Public Rights Division	343	$109,507,000
Civil Law Division	592	$158,096,000
Criminal Law Division	618	$126,459,000
Div. of Calif. Justice Information Services (CJIS)	1,064	$158,029,000
Division of Administrative Support	864	($81,711,000)
Executive Programs	69	($9,618,000)
Total	4,557 positions	$741,973,000

Through its dedicated employees, the Department represents the People in matters before the appellate and supreme courts of California and the United States, serves as legal counsel to state agencies, coordinates efforts to fight crime, provides identification and information services to criminal justice agencies, and pursues projects designed to protect the People of California from fraudulent, unfair and illegal activities.

Major issues, significant cases, and improvements in the Department's operations are highlighted on the following pages.

Division Breakdown



Division of Law Enforcement

As a result of significant cuts made by Governor Brown to the California state budget, the Division of Law Enforcement suffered a $71 million loss in 2011. This cut had far-reaching effects on the department's capacity and capabilities.

The Division of Law Enforcement, through its 1,007 employees, provides exemplary and comprehensive law enforcement, forensic services, investigations, intelligence and training. The division ensures that the state's firearm laws are fairly administered and vigorously enforced, and regulates legal gambling activities to ensure they are conducted honestly and free from criminal and corruptive elements. The division provides a wide range of support services to law enforcement agencies and manages several of its own crime suppression programs through the Bureau of Forensic Services and the Bureau of Investigation.

The Division of Law Enforcement consists of the following bureaus:

- Bureau of Forensic Services
- Bureau of Investigation *(Bureau of Narcotic Enforcement and Bureau of Investigation and Intelligence were consolidated in 2012)*
- Bureau of Firearms
- Bureau of Gambling Control
- Western States Information Network

Bureau of Forensic Services

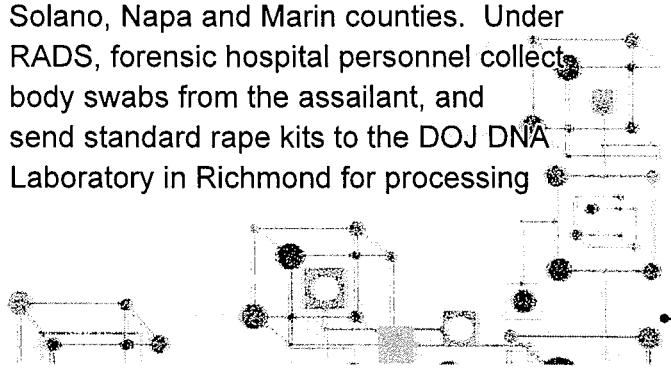
The bureau provides services to state and local law enforcement, district attorneys and the courts. Laboratory staff conduct forensic examinations across a broad range of physical evidence and maintain several specialized programs, including forensic toxicology, latent prints and questioned documents. The bureau also provides forensic service training for DOJ scientists and local government crime laboratory staff through the California Criminalistics Institute.

CAL-DNA Data Bank Program

California's convicted offender DNA database has grown tenfold over the last decade from 185,653 records in 2002 to over 1.9 million records in 2012. Eighty percent of the submissions to the data bank are arrestee records. DOJ has the fourth largest DNA offender database in the world; the CAL-DNA Data Bank processes 20,000 offender/arrestee samples each month.

Rapid DNA Service

DOJ expanded its groundbreaking Rapid DNA Service program (RADS) to Sonoma, Solano, Napa and Marin counties. Under RADS, forensic hospital personnel collect body swabs from the assailant, and send standard rape kits to the DOJ DNA Laboratory in Richmond for processing



Bureau of Investigation

In July 2012, the Division of Law Enforcement's budget was reduced by $59 million. As a result, several programs in the Bureau of Narcotic Enforcement and Bureau of Investigation and Intelligence were moved, dissolved or absorbed by the newly formed Bureau of Investigation.

Significant activities include the following:

Special Operations Unit

The unit provides statewide enforcement to combat intrastate drug trafficking and violent career criminals and gangs, and develops sources of information to identify criminal syndicates. The unit also uses sophisticated investigative techniques to identify methods of operation, as well as supply and distribution networks. The unit works to eliminate the organization, rather than arrest easily replaced members. The unit also supports the task forces and local agencies when major drug cases, inter-jurisdictional traffickers, violent career criminals and gangs exceed the capabilities of local agencies.

Murder-for-Hire Investigation

As a result of a DOJ investigation, three defendants commissioned by a Tijuana drug cartel were arrested for attempting a murder-for-hire plot against five members of a family in California. All three defendants were ultimately convicted.

Major Central Valley Gang Investigation

An 18-month operation resulted in 103 arrests, including gang members with prior felony convictions. Crimes included the sale of drugs, firearms, and stolen property and vehicles. Charges included auto theft, possession of stolen property, gun charges, burglary, sales of narcotics (heroin, cocaine, marijuana, ecstasy), and gang enhancements.

Special Investigations Teams

The teams provide investigative support to attorneys in the legal divisions. Major investigations included:

ATM Identity Theft Investigation

The team investigated an ATM identity theft scam, also known as a "skimmer operation," that spanned seven counties. Card readers were replaced at Chase Bank ATM vestibules to retrieve card information and micro cameras captured card holder PIN numbers. With card and PIN information, fictitious ATM cards were created and used to withdraw over $320,000. Two individuals were arrested and charged with 28 counts of fraud.

Mortgage Fraud Investigation

Desperate homeowners facing foreclosure were led to believe that "mass joinder" lawsuits would stop pending foreclosures, reduce their loan balances or interest rates, or enable them to receive title to their homes free and clear of their existing mortgage. Homeowners paid retainer fees up to $10,000 to join the "mass joinder" lawsuit against their lender or loan servicer. As part of the team's investigation and enforcement efforts, various law firms were placed into receivership and their assets seized.

pharmaceutical drugs, such as oxycodone and hydrocodone, in San Diego, Riverside and Los Angeles counties. The traffickers utilized a large network of individuals who obtained prescriptions in return for money, smuggled drugs into Mexico where they were later sold to illicit pharmacies, and in a six-month period allegedly smuggled $400,000 back into the U.S. to finance criminal operations. The investigation resulted in 15 arrests, including the organization's leader, who faces state and federal charges.

Bureau of Firearms

The Bureau of Firearms ensures that the state's firearms laws are administered and enforced fairly and uniformly.

Firearms Prohibition System Redesign

In February 2012, the Mental Health Firearms Prohibition System was upgraded to a new Oracle system that is shared by most DOJ law enforcement databases. The redesign also allowed for enhancements to support AB 302 (Stats. 2010, ch. 344), which required mental health facilities to electronically report patient records to DOJ. The system contains over 22,000 prohibited person records.

Dealer's Record of Sales

The bureau ensures that purchasers have no prohibitions from owning/possessing firearms. The bureau conducted 601,254 firearm purchase background checks in 2011 and projects 739,529 background checks for calendar year 2012. The bureau prevented over 9,000 felons, dangerous mental patients, and violent domestic abusers from purchasing firearms. This is the fourth consecutive year that firearms sales have increased.

Armed and Prohibited Persons

The APPS program allows the Attorney General to continue efforts to disarm convicted felons, the mentally unstable, individuals with domestic violence restraining orders, and others prohibited by statute from possessing firearms. The bureau conducted 2,710 investigations and seized 2,960 firearms during the biennial period.

Gun Show Program

The bureau conducts background checks and administers licensing requirements on all gun show promoters who operate in California. The bureau also monitors and investigates the gun shows to ensure compliance with California law. The bureau attended 140 gun shows, confiscating 151 illegal firearms and 86,100 rounds of ammunition, of which 1,000 rounds were armor-piercing.

Bureau of Gambling Control

The Bureau of Gambling Control is responsible for the following:

- Investigates license applicant backgrounds.
- Monitors regulatory compliance.
- Investigates suspected gaming-related criminal activity.

Exhibit 6

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.

Exhibit 7

KAMALA D. HARRIS
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STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
ANTHONY R. HAKL
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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.** **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, JOHN CHIANG, in his official capacity as State Controller, and DOES 1-10.,** Defendants and Respondents.	Case No. 34-2013-80001667 **DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY'S THIRD AMENDED RESPONSES TO SPECIAL INTERROGATORIES (SET THREE)**

PROPOUNDING PARTY: **PLAINTIFFS**

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

SET NUMBER: **THREE**

RESPONSES TO SPECIAL INTERROGATORIES

INTERROGATORY NO. 15:

State how the "Y-T-D Expenditures" for "Civil Service-Permanent" of $4,712,132.98, stated on AGRFP000003, was calculated, including the position title (e.g.,"Special Agent Supervisor-Department of Justice[,]" "Criminal Identification Specialist II[,]" or "Temporary Help" for each value that was utilized in such computation.

RESPONSE TO INTERROGATORY NO. 15:

The requested statement of calculation appears on the attached document numbered AGROG000013.

INTERROGATORY NO. 16:

If DEFENDANTS (as sued herein, "DEFENDANTS" refers to Defendants Stephen Lindley and Kamala Harris) contend that, as a general principle, it is not possible to identify whether a portion of a CAL DOJ (as used herein, "CAL DOJ" refers to the California Department of Justice, including the office of Attorney General, and all persons working for or at the direction of the California Department of Justice) employee's salary was paid for out of the DROS SPECIAL ACCOUNT (as used herein, "DROS SPECIAL ACCOUNT" refers to the portion of the state's General Fund wherein DROS FEE [as used herein, "DROS FEE(S)" refers to the charge collected pursuant to SECTION 28225] funds are deposited) in a given fiscal year, please explain such contention.

RESPONSE TO INTERROGATORY NO. 16:

Defendants object to this interrogatory because it seeks irrelevant information. Defendants also object to the misleading phrasing of the interrogatory, which does not completely and accurately reflect State or Department funding and how employees are paid.

Without waiving this objection, defendants respond as follows: Defendants do not make this contention at this time.

INTERROGATORY NO. 17:

State the total amount of DROS SPECIAL ACCOUNT funds spent on salary for attorneys, limited to money expended during fiscal year 2013/2014.

RESPONSE TO INTERROGATORY NO. 17:

Defendants object to this interrogatory because it seeks irrelevant information.

Without waiving this objection, defendants respond as follows:

Approximately $181,486.29. This figure includes salary and benefits.

INTERROGATORY NO. 18:

State the total amount of DROS SPECIAL ACCOUNT funds spent on salary for attorneys, limited to money expended during fiscal year 2005/2006.

RESPONSE TO INTERROGATORY NO. 18:

Defendants object to this interrogatory because it seeks irrelevant information.

Without waiving this objection, defendants respond as follows:

Defendants are unable to state the requested total amount. After a diligent search and reasonable inquiry, defendants have not located the relevant data. Defendants therefore are informed and believe that the relevant data no longer exists.

INTERROGATORY NO. 19:

Explain CAL DOJ's current policy as to how the Department of Legal Services obtains funding to cover the cost of providing lawyers when it provides lawyers to defend employees of Bureau of Firearms (including predecessor r versions thereof, e.g., the Firearms Division), including but not limited to when such representation is provided pursuant to Government Code section 11040.

RESPONSE TO INTERROGATORY NO. 19:

Defendants object to this interrogatory because it seeks irrelevant information. Defendants also object to the phrase "Department of Legal Services." There is no such Department. Defendants also object to the vague and ambiguous phrase "obtains funding to cover the cost of providing lawyers when it provides lawyers to defend employees of Bureau of Firearms."

Without waiving this objection, defendants respond as follows:

The Government Law Section, as part of the Department of Justice, works within the state budget process to obtain the financial resources necessary to operate. The General Fund and the Legal Services Revolving Fund provide those resources. To the extent additional resources are

Exhibit 8

FY 2012/13 – 1st Quarter Fiscal Monitoring

Bureau of Firearms

505 – Armed Prohibited

- Salaries from 826 will be picked up here when funding for the grant is fully expended in December 2012.

826 – Firearms Trafficking Grant

- Funding for this grant will be fully expended by December.

510 - DROS

- Authority includes relief from CS 3.60 and approved provision.
- Salaries includes 15 CIS's effective December.
- Consultant-Internal projection ties to PY adjusted for billable hours ($247,558.49) to salary ($169,652.28) for one DAG. Chargebacks are still occuring from Government Law for lawsuits related to Penal Codes and CCW's.

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On April 25, 2016, the foregoing document(s) described as

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET THREE, PROPOUNDED ON DEFENDANTS KAMALA HARRIS AND STEPHEN LINDLEY

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Kamala D. Harris, Attorney General of California
Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 25, 2016, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on April 25, 2016, at Long Beach, California.

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

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

LAURA L. QUESADA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, 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-CU-WM-GDS

RULING ON SUBMITTED MATTER: RENEWED MOTION TO COMPEL ADDITIONAL RESPONSES TO FORM INTERROGATORIES, AND MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS

The parties waived a hearing in this matter, requesting instead that the Court undertake an "expedited dispute resolution procedure" on these motions, and rule solely on the papers and arguments made when these discovery requests were previously addressed. The Court agreed, but ordered the parties to submit a joint statement identifying the specific discovery requests at issue, and the arguments being made by each party concerning those requests. The parties filed the joint statement on April 20, 2016, along with an "appendix of discovery requests and disputed responses thereto." The Court took the matter under submission on May 11, 2016.

A. Motion to compel further responses to request for admissions

Petitioners seek to compel further responses to their requests for admissions numbers 83, 84, 85, 86, 88 and 89. The requests are:

> 83. Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS place an unusual burden on the general public as to the illegal possession of firearms.
>
> 84. Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS do not place an unusual burden on the general public as to the illegal possession of firearms.
>
> 85. Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS pose no greater burden on the public as to illegal firearm possession than do law abiding citizens who have not participated in the DROS PROCESS.
>
> 86. Admit that it is the position of CAL DOJ that law-abiding citizens who participate in the DROS PROCESS pose a greater burden on the public as to illegal firearm possession than do law abiding citizens who have not participated in the DROS PROCESS.
>
> 88. Admit that it is the position of CAL DOJ that law-abiding firearm owners have a greater interest, as compared to other law-abiding citizens who do not own firearms, in insuring firearms are not in the possession of persons who are not legally permitted to possess a firearm.
>
> 89. Admit that it is the position of CAL DOJ that law-abiding firearm owners do not have a greater interest, as compared to other law-abiding citizens who do not own firearms, in insuring firearms are not in the possession of persons who are not legally permitted to possess a firearm."

Respondents objected to these requests as being irrelevant in light of Respondents' admission that the use of DROS funds does not operate as a tax. Respondents also objected that the requests were an improper use of the admission discovery tool as it goes to the heart of the matter, not to an issue that could be eliminated at trial. Respondents' amended response was:

> "This request for admission goes to plaintiffs' claim alleging a violation of Proposition 26. However, defendants' position is that Proposition 26 simply does not apply. This is because Senate Bill 819 does not 'result[] in any taxpayer paying a higher tax[.]' Cal. Const., art. XIIIA § 3(a). Thus, at this time defendants have no position either way on the precise issue identified in this request for admission." (Appendix of Disc. Requests, p. 5.)

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.

On December 30, 2015, Petitioners filed an amended petition and complaint, adding the following constitutional claims:

> 6. 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).
>
> 7. 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.
>
> 8. 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.

With regard to the requests for admissions, Petitioners admit that there is no longer an Article XIII A, section 3 claim, and consequently no implication of section 3, subdivision (d), which provides,

> "[t]he State bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."

However, Petitioners contend the issues of a claimed tax's benefits and burdens on those required to pay it remains relevant, even absent a constitutional provision so providing. Pursuant to *California Farm Bureau Federation v. State Water Resources Control Board*, "[o]rdinarily, taxes are imposed for revenue purposes and not 'in return for a specific benefit conferred or privilege granted'... In contrast, a fee may be charged by a government entity so long as it does not exceed the reasonable cost of providing services necessary to regulate the activity for which the fee is charged. A valid fee may not be imposed for unrelated revenue purposes." ((2011) 51 Cal.4th 421, 437-38.) Petitioners argue any analysis of whether fee payers are causing the burden at issue is essential to a determination whether the "fee" is actually a tax.

Respondents argue the requests for admissions were propounded when the complaint alleged the Article XIIIA, section 3(a) claim, and are now irrelevant. None of the new constitutional claims alleged refer to the benefits and burdens of the governmental activity on the payor. Respondents also contend they have already responded claiming inability to admit or deny the requests, and consequently cannot be required to instead admit or deny them. Respondents

also point to the fact they have already denied that the DROS fee is a tax. Consequently, they have not formulated a "position on all possible legal questions subsidiary to that issue" such as the questions asked in the Requests for Admissions. Finally, Respondents argue Petitioners are improperly attempting to "brief" the case, in advance of the actual merits briefing in this matter.

California Farm Bureau Federation specifically dealt with the Article XIIIA, section 3 language that is no longer at issue in this case. Accordingly, the case does not stand for the contention that such a "benefit" "burden" analysis is applicable for the constitutional claims Petitioners currently allege. Petitioners have not cited to any cases analyzing the benefits and burdens of fees/taxes pursuant to those constitutional claims now pending in the amended complaint/petition in this matter. However, cases discussing the difference between a tax and a fee indicate that a charge is not a tax when it does "not exceed the value of the governmental benefit conferred upon or the service rendered to the individuals" or "charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities." (*Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 660.) Furthermore, to show a regulatory fee is not a special tax, "it is not necessary for the payor to perceive a 'benefit.' A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provision of the regulation." (*San Diego Gas & Elective Co. v. San Diego County Air Pollution Control Dist.* (1998) 203 Cal.App.3d 1132, 1146, FN 18)(citing *Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375.)

It does appear to the Court that the Requests for Admissions were specifically crafted to address subdivision (c) of Article XIIIA, section 3; a claim that is no longer pending in this matter. It also appears in this matter, the issue is whether the DROS fee constitutes an amount necessary to carry out the purposes and provision of the regulation. While the issue of benefits to

the user may be part of an applicable tax/fee determination, the Requests for Admissions, as worded, do not appear to be relevant to the constitutional tax issues pending. They instead appear to be directly relevant to the Article XIIIA, section 3 claim that was previously dismissed.

The Court **DENIES** the motion to compel further responses to requests for admissions.

B. Motion to compel further responses to form interrogatories, set one, No. 17.1(b)

Petitioners seek to compel further responses to their form interrogatories, set one, No. 17.1(b) in connection with the above-referenced requests for admissions, as well as requests for admissions numbers 18, 19, 21, and 22. As the Court has already denied the requests for further responses to requests for admissions based on relevancy, the request is **DENIED** as to numbers 83, 84, 85, 86, 88, and 89.

Form interrogatory number 17.1(b) inquires, "[i]s your response to each request for admission served with these Interrogatories an unqualified admission? If not, for each response that is not an unqualified admission...state all facts upon which you base your response..." The subject requests for admissions are:

> 18. Admit that the payment of a DROS FEE does not result in an APPS-related special privilege being granted directly to the payor.
>
> 19. Admit that a person who has paid a DROS FEE receives no greater benefit from APPS than a person who has not paid a DROS FEE.
>
> 21. Admit that the payment of a DROS FEE does not result in an APPS-related service being provided directly to the payor.
>
> 22. Admit that a person who has paid a DROS FEE receives no different government service by way of APPS than does a person who has not paid a DROS FEE.

Respondents' answer to form interrogatory number 17.1(b) was the same as to each request:

> "Depending on the circumstances of a particular case, payment of a DROS fee may ultimately lead to a benefit realized by the payor vis-à-vis the APPS program. For example, a person who pays a DROS fee may later become

prohibited from possessing firearms and have firearms recovered as a result of the APPS program." (Appendix of Discovery Responses, pp. 2-3.)

Petitioners argue that none of the subject requests sought an admission as to whether a benefit could be realized by paying the DROS fee, but that is the sole issue addressed by Respondents' response. Respondents now argue that the discovery requests are not relevant in light of the Court's dismissal of the article XIIIA, section 3 claim.

Instead of objecting to the requests in the way they seek to now, Respondents' responses to number 18, 19, 21, and 22, appear to have been an attempt to give a substantive response. Accordingly, these responses do not mirror the response provided in connection with the previously discussed requests. Further, these requests are not clearly premised on the language of Article XIIIA, section 3, as were the previously discussed requests, as it does not track Article XIIIA, section 3, subdivision (d). Accordingly, it does not appear that the requests could only be relevant if such a claim were still pending, as Respondents contend.

The blanket response given to each of the subject requests is not actually responsive, as Petitioners argue. It is also unclear to the Court why Respondents would be unable to admit or deny these requests, as they contend in the Joint Statement. The Court finds these requests are not patently irrelevant, and the answers Respondents provided are not actually responsive. The motion for further responses to Form Interrogatories is **GRANTED** in part and **DENIED** in part. To the extent Respondents have further information to provide in a form interrogatory number 17.1(b) response concerning requests for admissions numbers 18, 19, 21, and 22, they are ordered to do so within 30 days of the date of entry of this Court's order. The request for further responses is denied as it relates to requests for admissions numbers 83, 84, 85, 86, 88 and 89.

///

///

///

Conclusion

The motion to compel further responses to requests for admissions is **DENIED**. The motion for further responses to Form Interrogatories is **GRANTED** in part and **DENIED** in part. To the extent Respondents have further information to provide in a form interrogatory number 17.1(b) response concerning requests for admissions numbers 18, 19, 21, and 22, they are ordered to do so within 30 days of the date of entry of this Court's order. The request for further responses is denied as it relates to requests for admissions numbers 83, 84, 85, 86, 88 and 89.

DATED: May 31, 2016

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
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P.O. Box 944255
Sacramento, CA 94244-2550

Superior Court of California,
County of Sacramento

Dated: May31, 2016

By: S. LEE
Deputy Clerk

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Attorneys for Defendants and Respondents
Kamala Harris and Stephen Lindley

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 Chief of the California Department of Justice Bureau of Firearms, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10.,

Defendants and Respondents.

Case No. 34-2013-80001667

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL

Date: October 28, 2016
Time: 9:00 a.m.
Dept: 31
Judge: The Honorable Michael P. Kenny
Trial Date: None
Action Filed: October 16, 2013

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

INTRODUCTION

Defendants Kamala D. Harris, the Attorney General of California, and Stephen Lindley, Chief of the Bureau of Firearms of the California Department of Justice ("DOJ"), submit this brief in opposition to plaintiffs' motions to compel further responses to requests for production of documents and further responses to special interrogatories. The concurrently filed declaration of Chief Lindley supports this opposition, as does a declaration by David Harper, the Deputy Director of Administration of DOJ. Defendants also have lodged a privilege log and copies of the relevant documents with Department 31 in a sealed envelope so that the Court can review the documents in camera.

As this Court is aware from the other motions that have been filed in this case, plaintiffs' complaint challenges DOJ's expenditure of Dealer's Record of Sale (DROS) fee revenues on California's Armed Prohibited Persons System (APPS) program. The DROS fee is a $19.00 firearms transaction fee, and APPS is a DOJ law enforcement program aimed at recovering firearms from persons prohibited from possessing them due to criminal behavior or mental illness.

Currently at issue are a handful of plaintiffs' latest requests for production of documents and special interrogatories. However, all of the documents at issue are protected from disclosure under the deliberative process and official information privileges. One of the documents, the confidential Transition Report drafted for the incoming Attorney General in December of 2010, is additionally protected under the attorney-client privilege and work product doctrine.

With respect to the interrogatories, defendants' answer to Special Interrogatory No. 25 is more than sufficient in light of the question asked by plaintiffs. And in light of the compelling interests of preserving the safety and efficacy of Bureau of Firearms law enforcement operations and personnel, no further answers should be ordered with respect to Special Interrogatory Nos. 29 or 30.

For these reasons, and as explained in detail below, this Court should deny plaintiffs' motions to compel in their entirety.

ARGUMENT

I. EACH OF THE DOCUMENTS LISTED ON DEFENDANTS' AMENDED PRIVILEGE LOG DATED MARCH 10, 2016, IS PROTECTED FROM DISCLOSURE UNDER THE DELIBERATIVE PROCESS AND OFFICIAL INFORMATION PRIVILEGES.

"Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated. [Citation]." (*San Joaquin Local Agency Formation Common v. Superior Court* (2008) 162 Cal.App.4th 159, 170.) "The privilege rests on the policy of protecting the decision making processes of government agencies. [Citation]." (*Ibid.*) It prohibits discovery of both the agency's reasoning and "what evidence the administrator relied upon in reaching a decision." (*Guilbert v. Regents of the Univ. of Cal.* (1979) 93 Cal.App.3d 233, 246.) "The key question in every case is whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." (*San Joaquin Local Agency Formation Com'n*, *supra*, 162 Cal.App.4th at pp. 170-71.)

Courts have recognized that "[n]ot every disclosure which hampers the deliberative process implicates the deliberative process privilege. Only if the public interest in nondisclosure clearly outweighs the public interest in disclosure does the deliberative process privilege spring into existence." (*Cal. First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172; see also *Connell v. Superior Court* (1997) 56 Cal.App.4th 601; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296.

With respect to the official information privilege, Evidence Code section 1040, subdivision (b)(2) provides: "A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and: [¶] . . . (2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the

information that outweighs the necessity for disclosure in the interest of justice." Section 1040 also provides: "(a) As used in this section, 'official information' means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made."

The official information privilege in Evidence Code section 1040, subdivision (b)(2), is also a conditional privilege. (*Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125–26.) "If the public entity satisfies the threshold burden of showing that the information was acquired in confidence, the statute requires the court next to weigh the interests and to sustain the privilege only if there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice." (*Id.* at p. 1126, internal quotations and citations omitted.) "A trial court commits error under this section if the court fails to make the threshold determination or fails to engage in the process of balancing the interests. (*Ibid.*)

Here, all of the documents at issue (i.e., privilege log items 15-19 and 21-24) are protected from disclosure under the deliberative process and official information privileges. All of the documents were located on an internal, secured departmental computer hard drive housing a variety of documents. (Decl. of Dave Harper in Supp. of Defs.' Opp'n to Pls.' Mots. to Compel ("Harper Decl.") ¶ 6.) Additionally, all of the documents were created in confidence by government employees within the scope of their employment for a variety of reasons that include briefing superiors, discussing issues, making recommendations, and providing advice. (*Ibid.*) All of the documents were communicated in confidence, to the extent they were communicated at all; all were intended to be maintained as confidential; and none of documents has been disclosed publicly. (*Ibid.*)

Additionally, a balance of the relevant interests weighs in favor of nondisclosure, whether that balance is conducted in the context of the deliberative process privilege or the official information privilege. The documents at issue offer a glimpse into how and why DOJ reached particular determinations or made certain decisions regarding its budget, and what DOJ personnel may have been thinking during its budget development process. For example, items 15 and 16 on the privilege log reflect internal departmental deliberations and recommendations regarding the

content of an intended Finance Letter. (Harper Decl. ¶¶ 2-5.) Item 17 reveals a deliberative exchange between DOJ and the Department of Finance preceding a January budget proposal. (*Id.* ¶¶ 7-8.) Items 21 and 23 reflect a similar question and answer exchange between DOJ Budget Office staff and other government officials concerning budget development. (*Id.* ¶¶ 11-12.) Documents 18 and 19 are internal documents that reflect DOJ's deliberations prior to a Budget Change Proposal ("BCP") and regarding the development of its budget. (*Id.* ¶¶ 9-10.) Finally, the relevant portions of document 24 reflects the Bureau's deliberative processes concerning numerous aspects of the Bureau's work, including but not limited to the operation of its programs, litigation, and law enforcement activities. (Decl. of Stephen Lindley in Supp. of Defs.' Opp'n to Pls.' Mots. to Compel ("Lindley Decl.") ¶¶ 3-9.)

Disclosure of this thinking and related decision-making processes would chill the full and candid assessment of departmental budget and other issues. Such an assessment directly depends on the honest consideration of a variety of data, analyses, and options, all of which is intended to support DOJ's departmental decision making. Indeed, many of the documents reflect internal mental processes of DOJ staff as it considered internal questions from DOJ and questions outside the agency, such as inquiries from the Department of Finance. These kind of mental deliberations are protected from disclosure under the deliberative process and official information privilege.

Indeed, in a prior discovery order this Court observed that the relevant discovery issues in this case concerned defendants' "budget and expenditure decisions related to the setting and continuation of the DROS fee" and any "budgetary and other calculations concerning the appropriate amount of the DROS fee." (Order filed June 1, 2015, at p. 4.) In connection with the current discovery dispute, defendants have submitted the relevant documents for this Court's in camera review. That review will reveal that the documents at issue concern broader DOJ and Bureau of Firearms' budget issues more than they concern any discreet issue related to the "setting" or "amount" of the DROS fee. This attenuated relevance, especially when weighed against the intrusion and impact on DOJ's executive decision making process, also counsels in favor of nondisclosure.

For these reasons, the Court should find that documents 15-19 and 21-24 are protected from disclosure under the deliberative process and official information privileges and deny plaintiffs' motions to compel accordingly.

II. ITEM 24 LISTED ON THE PRIVILEGE LOG IS ALSO PROTECTED FROM DISCLOSURE UNDER THE ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE.

The attorney-client privilege, which is set forth in Evidence Code section 954, confers a privilege on the client "to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer. . . ." The fundamental purpose of the privilege "'is to safeguard the confidential relationship between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding legal matters.'" (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 732.) The privilege is absolute and precludes disclosure of confidential communications even though they may be highly relevant to a dispute. (*Ibid.*)

A party that seeks to protect communications from disclosure based upon the attorney-client privilege must establish the preliminary facts necessary to support its exercise (i.e., a communication made in the course of an attorney-client relationship). (*Costco*, *supra*, 47 Cal.4th at p. 733.) "Once that party establishes facts necessary to support a prima facie claim of privilege, the communication is presumed to have been made in confidence and the opponent of the privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply." (*Ibid.*)

"An attorney-client relationship exists when the parties satisfy the definitions of 'lawyer' and 'client' as specified in Evidence Code sections 950 and 951, respectively. (*City of Petaluma v. Superior Court* (2016) 248 Cal. App. 4th 1023, 1032, review denied (Sept. 14, 2016).) For purposes of the attorney-client privilege, "client" is defined in relevant part as "a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal *service or advice* from him in his professional capacity. . . ." (Evid. Code, § 951, italics added.) A "confidential communication" means "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence" by

confidential means. (Evid. Code, § 952.) A confidential communication may include "a legal opinion formed and the advice given by the lawyer in the course of that relationship." (*Ibid.*)

"In assessing whether a communication is privileged, the initial focus of the inquiry is on the 'dominant purpose of the relationship' between attorney and client and not on the purpose served by the individual communication." (*City of Petaluma*, *supra*, 248 Cal.App.4th at p. 1032, quoting *Costco*, *supra*, 47 Cal.4th at pp. 739–740.) "If a court determines that communications were made during the course of an attorney-client relationship, the communications, including any reports of factual material, would be privileged, even though the factual material might be discoverable by other means." (*Id.* at p. 1032, quoting *Costco*, 47 Cal.4th at p. 740.

Related, "[t]he attorney work product doctrine is codified in section 2018.010 et seq. of the Code of Civil Procedure." (*City of Petaluma*, *supra*, 248 Cal.App.4th at p. 1033.) The meaning of "client" for purposes of the work product doctrine is the same as that used for the attorney-client privilege. (Code Civ. Proc., § 2018.010.) "The attorney work product doctrine serves the policy goals of 'preserv[ing] the rights of attorneys to . . . investigate not only the favorable but [also] the unfavorable aspects' of cases and to '[p]revent attorneys from taking undue advantage of their adversary's industry and efforts.'" (*City of Petaluma*, 248 Cal.App.4th at p. 1033, quoting Code Civ. Proc., § 2018.020, subds. (a) & (b).)

"'The work product rule in California creates for the attorney a qualified privilege against discovery of general work product and an absolute privilege against disclosure of writings containing the attorney's impressions, conclusions, opinions or legal theories.'" (*Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 120; Code Civ. Proc., § 2018.030.) "An attorney's work product that is subject to a qualified privilege is not discoverable unless a court determines that denial of discovery would unfairly prejudice the party seeking discovery or result in an injustice." (*City of Petaluma*, *supra*, 248 Cal.App.4th at p. 1033, citing Code Civ. Proc., § 2018.030, subd. (b).) Finally, while the attorney-client privilege applies only to communications (Evid. Code, § 954), the "work product protection applies irrespective of whether any material claimed to be privileged is communicated to the client." (*City of Petaluma*, 248 Cal.App.4th at p. 1033.)

Here, the "Transition Report," with the subtitle "Department Descriptions, Issues and Challenges," is approximately 101 pages in length. (Lindley Decl. ¶ 3.) But only three pages of the report, those that address the Bureau of Firearms, are relevant to this discovery dispute. (*Id.* ¶ 4; see In Camera Documents, Bates Nos. AGIC126-128.) Moreover, the staff involved in the preparation of the portion of the report covering the Bureau included Chief Stephen Lindley; Deputy Attorney General Kimberly Granger, who served as staff counsel for the Bureau at the relevant time; the Assistant Chiefs of the Bureau; and relevant supporting staff. (*Id.* ¶ 6.) The purpose of the Transition Report was to provide confidential and candid information, advice, and counsel to the incoming Attorney General, who had been elected to her position earlier in 2010, regarding DOJ, especially a description of DOJ's numerous bureaus, offices, sections, programs, and units, and the issues and challenges facing each those segments of DOJ. (*Id.* ¶ 7.) The portion of the report concerning the Bureau in fact describes the Bureau and such issues and challenges. (*Ibid.*) That portion of the report specifically references legal challenges (i.e., litigation) and law enforcement operations, among other matters. (*Ibid.*)

The portion of the report concerning the Bureau also contains information derived from attorney-client communications and attorney work-product materials. (Lindley Decl. ¶ 8.) It reflects the Bureau's deliberative processes concerning numerous aspects of the Bureau's work, including but not limited to the operation of its programs, litigation, and law enforcement activities. (*Ibid.*) The Report contains sensitive information about internal Bureau processes and operations. (*Ibid.*) Disclosure of this information may jeopardize the Bureau's operations because it would chill the free exchange of information needed to adequately prepare an incoming Attorney General for his or her responsibilities concerning the Bureau of Firearms. (*Ibid.*)

For these reasons, the Transition Report listed as item 24 on defendants' privilege is protected from disclosure under the attorney-client privilege and work product doctrines. Plaintiffs' motions to compel should be denied accordingly.

III. THE COURT SHOULD DENY THE MOTION TO COMPEL A FURTHER RESPONSE TO REQUEST FOR PRODUCTION NO. 63.

To the extent plaintiffs' motions to compel seek an order compelling the production of the "baseline budget" documents referred to in Request for Production No. 63, the motions should be denied. As explained in the relevant declaration filed with this opposition, plaintiffs' document request seeks "[e]ach and every baseline budget submitted by the CAL DOJ to the California Department of Finance since January 1, 2003." (Harper Decl. ¶ 14.) However, no such document exists for the relevant fiscal years. To explain, DOJ does not submit any stand-alone document called a "baseline budget" to the Department of Finance. Rather, as defendants understand the term, a "baseline budget" for a given fiscal year is DOJ's portion of the state budget passed by the Legislature and signed by the Governor. (*Ibid.*) And the annual state budget is a public document, and enacted budgets for fiscal years 2007-2008 through 2016-2017 are available online at http://www.ebudget.ca.gov. (*Ibid.*)

IV. THE COURT SHOULD DENY PLAINTIFFS' MOTION TO COMPEL FURTHER ANSWERS TO SPECIAL INTERROGATORY NOS. 25, 29, AND 30.

Special Interrogatory No. 25 asked defendants to "state the basis" for their answer to a preceding interrogatory, Special Interrogatory No. 24. Neither of those interrogatories is cogently worded. Yet in their answer to Special Interrogatory No. 24, defendants stated that the total amount of DROS Fund expenditures for fiscal year 2013-2014 was $29,144,382. And in their answer to Special Interrogatory No. 25, defendants have *stated the basis* for the calculation of that figure. More specifically, defendants stated that the details of the calculation were laid out in a table and multiple pages of supporting expenditure reports that had already been produced. In short, defendants' answer to Special Interrogatory No. 25 speaks for itself. And it is a sufficient answer to the question asked by plaintiffs.

With respect to Special Interrogatory No. 29, plaintiffs have asked defendants to explain what made a particular law enforcement operation an "APPS case" and have gone so far as to request that defendants explain "how data from the Armed Prohibited Persons System was used in the case." Special Interrogatory No. 30 is in the same vein, asking defendants to explain what

made a separate law enforcement operation "an 'APPS case[,]' including, but not limited to, how data from the Armed Prohibited Persons System was used in the case." These interrogatories are clearly objectionable and no further responses should be ordered. Plaintiffs are individual firearm owners and a firearms rights advocacy group. Under the deliberative process and official information privileges, discussed above, their asserted need to understand the confidential, intricate details of Bureau of Firearms law enforcement operations totally unrelated to this case is grossly outweighed by the Bureau's need to maintain the safety, security, integrity, and efficacy of those and similar operations. The public's interest in ensuring law enforcement officer safety, the safety of the public, and the security of law enforcement databases further tips the scales in favor of nondisclosure. Nearly every day DOJ Special Agents risk their lives enforcing state law. (Lindley Decl. ¶ 10.) The focus of the APPS program in particular is to disarm convicted criminals, mentally ill persons, and other dangerous individuals. (*Ibid.*) The public's safety, the safety of the Agents involved, and the safety of the person(s) being disarmed is dependent, in part, on the procedures DOJ employs to carry out its mission. (*Ibid.*) Public disclosure of those procedures could jeopardize this dangerous undertaking. (*Ibid.*) A person seeking or anticipating a confrontation with law enforcement, who knows in advance what the relevant procedures are, obviously has a distinct advantage – one that is not in the public's interest to concede. (*Ibid.*) This Court should deny the motion to compel further answers to Special Interrogatory Nos. 29 and 30. (See *People v. Jackson* (2003) 110 Cal.App.4th 280, 290 [denying discovery of police investigation information even though investigation was no longer ongoing]; *Orange v. Superior Court* (2000) 79 Cal.App.4th 759, 767 [trial court erred in granting discovery request for criminal investigation file protected by official information privilege]; *People v. Wilkins* (1955) 135 Cal.App.2d 371, 377 [denying production of police department records of arrest of individuals, for use in cross-examination]; *Runyon v. Board of Prison Terms & Paroles* (1938) 26 Cal.App.2d 183, 184-185 [denying inspection of letters and other documents sent by individuals to state parole board dealing with applications for parole] *People v. King* (1932) 122 Cal.App. 50, 56 [denying request for criminal investigation information used to track stolen cars].

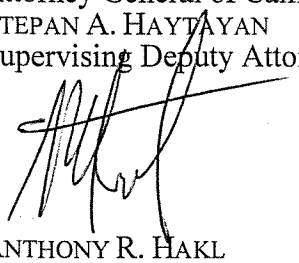
CONCLUSION

For the reasons set forth above, the Court should deny plaintiffs' motions to compel in their entirety.

Dated: October 17, 2016

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 Kamala Harris and Stephen Lindley

SA2013113332

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**
No.: **34-2013-80001667**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 17, 2016, I served the attached **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Scott Franklin
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
SFranklin@michellawyers.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 17, 2016, at Sacramento, California.

Tracie L. Campbell
Declarant

Tracie Campbell
Signature

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Kamala Harris and Stephen Lindley

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 Chief of the California Department of Justice Bureau of Firearms, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10.,

Defendants and Respondents.

Case No. 34-2013-80001667

DECLARATION OF STEPHEN LINDLEY IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL

Date: October 28, 2016
Time: 9:00 a.m.
Dept.: 31
Judge: The Honorable Michael P. Kenny
Trial Date: None
Action Filed: October 16, 2013

DECLARATION OF STEPHEN LINDLEY

1. I, STEPHEN LINDLEY, declare that I am the Chief of the Bureau of Firearms within the Division of Law Enforcement, Department of Justice (DOJ). I have held this position since December 30, 2009, but have been employed by the Department since February 19, 2001. As the Chief, my responsibilities include, but are not limited to, supervising and directing Bureau staff who process Dealer's Record of Sale (DROS) transactions – the process under which a majority of firearms purchases and transfers are conducted in California. I also supervise and direct Bureau staff in connection with the Armed Prohibited Persons System (APPS) program, which is a DOJ law enforcement program aimed at recovering firearms from persons prohibited from possessing them due to criminal behavior or mental illness. I am familiar with and understand the statutes and regulations applicable to both the DROS and APPS programs.

2. I have personal knowledge of the facts stated in this declaration, except as to those expressly stated based on my information and belief, and if sworn as a witness I could and would competently testify to these facts.

3. In late 2010, I directed my staff to assist me in preparing a portion of the document listed as item 24 on defendants' privilege log. The document is titled "Transition Report," with the subtitle "Department Descriptions, Issues and Challenges." The document is dated December 2010 and is approximately 101 pages in length.

4. The portion of the Transition Report that I and my staff prepared concerned the Bureau of Firearms, and as indicated by the subtitle of the report, in fact describes the Bureau's various programs and identified "challenges" and "issues" facing the Bureau at the time. The section of the report concerning the Bureau is approximately three pages on length.

5. The Transition Report does not only address the Bureau of Firearms. Rather, the report contains independent sections addressing all of the bureaus and offices within DOJ's Division of Law Enforcement; all of the legal sections within the Criminal Law, Civil Law, and Public Rights Divisions; the California Justice Information Division; all of the offices and programs within the Division of Administrative Support; and the units and offices under Executive Programs. The report is a comprehensive survey.

6. Staff involved in the preparation of the portion of the report covering the Bureau included me; Deputy Attorney General Kimberly Granger, who served as staff counsel for the Bureau at that time; the Assistant Chiefs of the Bureau; and relevant supporting staff.

7. The purpose of the Transition Report was to provide confidential and candid information, advice, and counsel to the incoming Attorney General, who had been elected to her position earlier in 2010, regarding DOJ, especially a description of DOJ's numerous bureaus, offices, sections, programs, and units, and the issues and challenges facing each those segments of DOJ. The portion of the report concerning the Bureau in fact describes the Bureau and such issues and challenges. That portion of the report specifically references legal challenges (i.e., litigation) and law enforcement operations, among other matters.

8. The portion of the report concerning the Bureau contains information derived from attorney-client communications and attorney work-product materials. It reflects the Bureau's deliberative processes concerning numerous aspects of the Bureaus work, including but not limited to the operation of its programs, litigation, and law enforcement activities. The Report contains sensitive information about internal Bureau processes and operations. Disclosure of this information may jeopardize the Bureau's operations because it would chill the free exchange of information needed to adequately prepare an incoming Attorney General for his or her responsibilities concerning the Bureau of Firearms.

9. I am informed and believe that the portions of the Transition Report covering other sections of the office were similarly prepared by the respective heads of those sections, with input from legal counsel and other staff, and also contain sensitive information, advice, and counsel for the incoming Attorney General.

10. Disclosure of the confidential details of Bureau of Firearms law enforcement operations, such as the ones referenced in plaintiffs' Special Interrogatory Nos. 29 and 30, will serve to compromise the safety, security, integrity, and efficacy of those operations. Disclosure will also threaten law enforcement officer safety, the safety of the public, and the security of law enforcement databases. Nearly every day, department Special Agents risk their lives enforcing state law. The focus of the APPS program in particular is to disarm convicted criminals, mentally

ill persons, and other dangerous individuals. The public's safety, the safety of the Agents involved, and the safety of the person(s) being disarmed is dependent, in part, on the procedures the Department employs to carry out its mission. Public disclosure of those procedures could jeopardize this dangerous undertaking. A person seeking or anticipating a confrontation with law enforcement, who knows in advance what the relevant procedures are, obviously has a distinct advantage – one that is not in the public's interest to concede.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, on October 17, 2016, in Sacramento, California.

Stephen Lindley

SA2013113332

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**
No.: **34-2013-80001667**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 17, 2016, I served the attached **DECLARATION OF STEPHEN LINDLEY IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Scott Franklin
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
SFranklin@michellawyers.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 17, 2016, at Sacramento, California.

Tracie L. Campbell
Declarant

Tracie Campbell
Signature

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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 Chief of the California Department of Justice Bureau of Firearms, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10.,

Defendants and Respondents.

Case No. 34-2013-80001667

DECLARATION OF DAVID HARPER IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL

Date: October 28, 2016
Time: 9:00 a.m.
Dept: 31
Judge: The Honorable Michael P. Kenny
Trial Date: None
Action Filed: October 16, 2013

DECLARATION OF DAVID HARPER

I, David Harper, declare:

1. I am employed as the Deputy Director of Administration of the California Department of Justice. As the Deputy Director, my responsibilities include providing administrative direction, policy guidance, and control of the Budget Office, Accounting Office, Departmental Services Programs, and Information Support Services within the Division of Administrative Support. I have reviewed Defendants' Amended Privilege Log dated March 10, 2016, and the documents referenced in the log and I am familiar with their contents. I have personal knowledge of the facts stated in this declaration, except as to those expressly stated based on my information and belief, and if sworn as a witness I could and would competently testify to these facts.

Privilege Log Items 15 & 16

2. The item numbered 15 on defendants' privilege log is a 5-page document titled "DOJ Finance Letter Concepts." The precise author of the document is not known, but the contents of the document suggest a DOJ employee within the Budget Office staff wrote it. Any recipients of the document are unknown, but the document appears to be an internal document prepared for the Director of Administration, who oversees the Budget Office, and the Executive Office. Its contents indicate that it was written in support of the executive decision making process regarding the DOJ Budget. The document looks like it is in draft form, as opposed to any final or formalized form. The document is not dated but its contents suggest it was created in 2007 or 2008.

3. Generally speaking, the annual state budget process in California involves the Governor proposing a budget in January, state agencies and departments proposing changes to the proposed budget by submitting Finance Letters to the Department of Finance (DOF), the Governor proposing a revised budget in May, and the Legislature thereafter passing a budget.

4. The reference to "DOJ Finance Letter Concepts" in privilege log item 15, and the contents of the document, indicate that the document reflects internal departmental deliberations regarding the content of an intended Finance Letter by DOJ to DOF following a January budget proposal. Among other things, the document summarizes data from various DOJ programs

identified in the document; reflects the budgetary needs and requests of those programs; discusses possible amendments or modifications to a January budget proposal; and generally concerns DOJ's budget development process.

5. The item numbered 16 on the privilege log is another version of the document listed as item 15. Item 16 is six pages in length and the chief difference between the two documents is that item 16 reflects a series of recommendations by the Administrative Services Division to the Executive Office regarding what proposals DOJ should pursue as Finance Letters. In other words, item 16 reflects budget advice to the Executive Office regarding the development, priorities, and decisions to be made regarding the DOJ budget.

6. Like all of the documents addressed in this declaration, I am informed and believe that items 15 and 16 were located on an internal, secured departmental hard-drive housing a variety of documents. I am also informed and believe that documents 15 and 16, like all of the documents addresses herein, were created in confidence by government employees within the scope of their employment for a variety of reasons that include briefing superiors, discussing issues, making recommendations, and providing advice; that all were communicated in confidence, to the extent they were communicated at all; that all were intended to be maintained as confidential; and that none of documents has been disclosed publicly.

Privilege Log Item 17

7. The item numbered 17 on defendants' privilege log is a document titled "Division of Law Enforcement, Bureau of Firearms." It is dated September 2007. The subtitle of the document is "Automated Firearms System Redesign BCP - Responses to Questions from the Department of Finance." The author of the document is not known, but its contents suggest it was jointly authored by DOF staff and DOJ Budget Office staff. The nature of the document also suggests that the document, or at least some of its contents, was exchanged between DOF staff and DOJ Budget Office staff.

8. Item 17 concerns the Budget Change Proposal ("BCP") process. Generally speaking, the BCP process occurs at the beginning of DOJ's development of a new budget for the next fiscal year. Once DOF receives any BCP from DOJ, DOF reviews the proposal and often

contacts DOJ with questions and issues for clarification. This is a deliberative process that involves considerable back and forth discussion between DOJ and DOF, precedes the proposal of any January budget by the Governor, and reflects a conversation in the form of questions and responses between two state departments regarding the budget developmental process.

Privilege Log Item 18 & 19

9. The items numbered 18 and 19 on defendants' privilege log are each two pages in length and titled "BCP Concept Paper - APPS, Response to Anson's Questions. The author of the documents is likely a DOJ Budget Analyst who is no longer employed by the Budget Office. Bureau of Firearms staff also may have contributed to the documents, which reflect a series of notes in the form of questions (likely from the Budget Office) and answers (likely from the Bureau) regarding a concept paper being developed in support of a possible BCP. In other words, items 18 and 19 are internal documents that reflect DOJ's deliberations prior to the BCP process and regarding the development of its budget.

10. Item 18 is dated May 17, 2011, not May 8, 2011, as indicated on the privilege log. Similarly, item 19 is dated May 18, 2011, not May 8, 2011, as indicated on the privilege log. I am informed and believe that the May 8 date on the log is a typographical error.

Privilege Log Item 21 & 23

11. The item numbered 21 on defendants' privilege log is four pages of notes in the form of questions and answers titled "DLE Restoration." The acronym DLE is a reference to the Division of Law Enforcement. The notes were likely created in 2010 or 2011. The author of the document is unknown, but it most likely reflects the comments and thinking of the Legislative Analyst's Office (LAO) or a legislative staffer, and DOJ Budget Office staff. Item 21 concerns a BCP that DOJ submitted to DOF and documents a series of questions (likely by DOF or legislative staff) and answers (likely by DOJ Budget Office staff) regarding that BCP. Item 21 is a document that reflects DOJ's deliberations regarding the development of its budget. The document was likely created internally at DOJ

12. Item 23 on the privilege log is similar to item 21. It is four pages of notes in the form of questions and answers concerning the DOJ budget in general, as opposed to a BCP. The notes

were likely created in 2011. The author of the document is unknown, but it most likely reflects the comments and thinking of a legislative staffer and DOJ Budget Office staff. Item 23 documents a series of budget questions (likely by legislative staff) and answers (likely by DOJ Budget Office staff) regarding the departmental budget. Thus, item 23 is a document that reflects DOJ's deliberations regarding the development of its budget. Item 23 also was likely created internally at DOJ.

Privilege Log Item 22

13. Item 22 on the privilege log is a four-page document titled "Analysis of Problem" and it concerns a BCP. It reflects DOJ's deliberations regarding a BCP. The author of the document is unknown, but it was likely prepared by Budget Office staff. It is unknown if there were any recipients of this particular document. The document may be a draft portion of a BCP. It may be a copy of a portion of a BCP sent to DOF, but I am unable to confirm as much from the contents of the document. In any event, I am informed and believe that in the context of this litigation DOJ has already produced to plaintiffs all relevant approved BCPs.

"Baseline Budget"

14. I understand that plaintiffs have served a document request for "[e]ach and every baseline budget submitted by the CAL DOJ to the California Department of Finance since January 1, 2003." DOJ does not submit a "baseline budget" to the Department of Finance. Rather, as I understand the term as it is used in departmental budget parlance, DOJ's "baseline budget" for a given fiscal year is DOJ's portion of the state budget passed by the Legislature and signed by the Governor. The annual state budget is a public document. Enacted budgets for fiscal years 2007-2008 through 2016-2017 are available online at http://www.ebudget.ca.gov.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, on October 17, 2016, in Sacramento, California.

David Harper

SA2013113332

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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**
No.: **34-2013-80001667**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 17, 2016, I served the attached **DECLARATION OF DAVID HARPER IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Scott Franklin
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
SFranklin@michellawyers.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 17, 2016, at Sacramento, California.

Tracie L. Campbell
Declarant

Tracie Campbell
Signature

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C. D. Michel – S.B.N. 144258
Scott M. Franklin – S.B.N. 240254
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Attorneys for Plaintiffs

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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **REPLY IN RESPONSE TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** Date: 10/28/16 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

INTRODUCTION

Defendants claim the Dealers' Record of Sale ("DROS") fee charged by the California Department of Justice ("Department") is set at a proper amount, but they will not confirm what costs were, or were not, considered in reaching that conclusion. Defendants claim various law enforcement activities performed by the Department's Bureau of Firearms are based on information from the Armed and Prohibited Person System ("APPS"), but when presented with the Department's own public statements that contradict the supposed link to APPS, the Department now claims that taking a position on the issue it previously publicized would create a safety risk.

To use a mixed metaphor, Plaintiffs' attempts to obtain forthright discovery responses on keystone issues over the last three years have been akin to something between pulling teeth and pulling hens' teeth. As shown in the underlying motion and this Reply, Defendants' objections cannot survive scrutiny and should be overruled. Accordingly, Defendants should be ordered to produce the documents and information sought by Plaintiffs.

ARGUMENT

I. The Documents Listed on the Privilege Log Should Be Ordered Produced, Especially Because Plaintiffs Do Not Object to the Redaction of Irrelevant Material

Defendants have lodged the documents identified in the relevant privilege log with the Court, purportedly to show "the documents at issue concern broader D[epartment] and Bureau of Firearms' budget issues more than they concern any discreet issue related to the 'setting' or 'amount' of the DROS fee[,]" two issues that this Court has identified as relevant discovery issues in this case. (Opp'n at 4.) Plaintiffs, however, have no objection to the disclosure of the withheld documents, redacted such that they only disclose information that is relevant to this action. Thus, the presence of purportedly irrelevant material in the documents at issue does not weigh against disclosure because such information can easily be redacted, which moots Defendants' argument on this point.

A. Privilege Log Item Nos. 15-19 and 21-24 Should Be Produced Because the Privileges Claimed Are Neither Supported by Admissible Evidence Nor Substantively Meritorious

First, it is worthwhile to reiterate that the deliberative process and executive privileges are really just species of the official information privilege, meaning that all claims under these privileges are evaluated under the same standard: "A public entity has a privilege to refuse to disclose official information [if d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice." (Evid. Code, § 1040; see *Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125.)

Second, Defendants' privilege claims are purportedly supported by two declarations, but those declarations are, in large part, inadmissible. As more fully explained in Plaintiffs' objection to the declarations of David Harper and Stephen Lindley, those declarations are not proper evidence to the extent they are neither based on personal knowledge nor offer non-speculative factual assertions. (See *Park v. First American Title Co.* (2011) 201 Cal.App.4th 1418, 1427 [citing Evidence Code section 702, subdivision (a), and holding that a declaration was inadmissible because it was not based on personal knowledge]; *People v. Thorton* (2007) 41 Cal.4th 391, 429 [quoting Evidence code section 800, subdivision (b), and affirming trial court's determination that speculative testimony was inadmissible because it would not be "[h]elpful to a clear understanding of [the witness'] testimony.")

For example, David Harper admits that, as to privilege log item nos. 15 and 16, not only are the author(s) and recipient(s) of each document unknown, but that he is basing his opinion of what the documents are solely on the contents of the documents. (Harper Decl. at ¶¶ 2-6.) Further, Harper claims that he is "informed and believes" that all of the documents at issue were "created in confidence by government employees[,]"but this is speculation based on nothing more than the fact that the documents, like presumably all documents used internally by the Department, were located in a secure location (*Id.* at ¶ 6.). Similarly, Harper fails to explain why each of the documents at issue were created, stating only the *non-exclusive* assertion that documents are created by government employees "for a variety of reasons, including . . . ." (*Ibid.*) These

statements do not help the Court in analyzing Defendants' privilege claims, and thus they are inadmissible under Evidence Code section 800, subdivision (b). This Court does not need inadmissible lay opinion to assist it in interpreting whether or not documents listed on the privilege log should be produced, especially in light of the fact that those documents have been provided for in camera review. Because Defendants have the burden of proof on their privilege claims (*Marylander*, *supra*, 81 Cal.App.4th at p. 12), and they have failed to produce sufficient proof to support their privilege claims, Defendants' objections should be overruled.

Third, even assuming Defendants had produced competent evidence that "items 15 and 16 on the privilege log reflect internal departmental deliberations and recommendations regarding the content of an intended Finance Letter" (Opp'n at pp. 3-4),[1] Defendants' privilege claims still fail for two separate reasons. One reason is that Defendants have not shown that the documents sought reflect the mental process of a *senior official*—and as Defendants admit, the privilege only applies regarding deliberations by senior officials of the three branches of government.[2]

The other reason is that they cannot meet their burden under the applicable balancing test; "[o]nly if the public interest in nondisclosure *clearly outweighs* the public interest in disclosure does the deliberative process privilege spring into existence." (*Cal. First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172, italics added.) As this Court previously held when it ordered other budgetary documents produced, "[t]he public clearly has an interest in disclosure of documents which identify the budgetary analyses performed by Respondents to support the amount of the DROS fee." (Order filed June 1, 2015, at 4.)

Though it might not be apparent, budgetary decisions related to the amount of money

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[1] Similar assertions are made regarding privilege log items 18, 19, and 21-24. (Opp'n at 4).

[2] (See Opp'n at 2 [quoting *San Joaquin Local Agency Formation Common v. Superior Court* (2008) 162 Cal.App.4th 159, 170].) Harper states that privilege log item nos. 15 and 16 seem to be "written in support of the executive decisions making process regarding the DOJ Budget." (Harper Decl. at ¶ 2.) This appears to be an attempt to link staff-level work with executive-level decision making and impermissibly broaden the scope of the relevant privilege, inasmuch as Plaintiffs contend these documents were likely written by Department Staff not for senior level review, but for their superior, the Department's Director of Administration. (*Ibid.*)

going into, and coming out of, the DROS Special Account are relevant to the way in which the Department purportedly calculates the DROS fee. As Defendants have already admitted, it is their position that the DROS fee can be set based on the amount of money *purportedly* spent on "the Department's actual year-end expenditures on the Dealers Record of Sale program" divided by an estimate of the number of DROS transactions processed by the Department during a given year. (See Franklin Decl. ISO Reply, ¶ 2, Ex. 1.) "Purportedly" is used above because one of the critical issues in this case is whether the Department is using DROS Special Account money for field operations limited to activities that are truly related to the APPS program (which was the intent behind Senate Bill 819),[3] or, if discussed *infra* in Section II.B., the Department is using money designated for APPS-based law enforcement activities for investigations that do not arise from APPS. If the Department is burying general law enforcement costs—and especially costs unrelated to APPS enforcement or processing DROS applications— in what it calls "the Department's actual year-end expenditures on the Dealers' Record of Sale program[,]" then it is improperly inflating the numerator in the equation purportedly being used to set the DROS fee. The improper calculation of the DROS fee is one of the primary controversies pleaded in this case. (First Am. Compl. at ¶¶ 89-100.)

Further, the documents at issue are, as Defendants claim, "potentially responsive" Request for Production ("RFP") No. 53, which seeks the production of documents that refer to how the (multi-million dollar) DROS Special Account surplus might be reduced. (See Sep. Statement Mot. Compl. Further Resp. to RFP at 2). This topic is also related to whether the Department is properly calculating the DROS fee, inasmuch a massive surplus appeared in the DROS Special Account circa 2007-2008, when these documents were apparently created. Logically, if the Department had been sufficiently monitoring costs and expenses and adjusting the DROS fee accordingly, the surplus would have never occurred.

Defendants' deliberative process argument is basically the same as what the Court rejected

[3] Section 1, subdivision (g), of Senate Bill 819 (Leno, 2011), states that "it is the intent of the Legislature in enacting this measure to allow the [Department] to utilize the Dealer Record of Sale Account for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System."

in its Order filed June 1, 2015. (Compare Order filed June 1, 2015, at 3 [reciting Defendants claim that disclosure would "chill" "full and candid assessment(,)" with the same statement found in the Opp'n at 4].) Therein, this Court recognized that the balance tipped in favor of disclosure notwithstanding Defendants' assertion that "disclosure of ['budget reports, draft letters, concerning budgetary issues, and budget analysts' analyses] would chill the full and candid assessment of departmental budget issues." (Order filed June 1, 2015, at 3). Further, this Court recognized "that the relevant budgetary analysis appears to be designed for public scrutiny in light of the statutory limitations imposed." (*Ibid.*) The issues here are effectively the same as those ruled on in the aforementioned order. Therefore, this Court should order the production of privilege log item nos. 15-19 and 21-24, because Plaintiffs' deliberative process/official information privilege claims are insufficient.

B. Defendants Have Not Sufficiently Alleged Attorney Involvement, Nor Any Other Plausible Basis, Upon Which the Relevant Pages of Privilege Log Item No. 14 Can Be Withheld

Defendants claim that an attorney was "involved" with preparation of the three pages at issue, and thus such pages are privileged under the attorney-lawyer privilege and the attorney work product doctrine. Plaintiffs are aware of no authority that a bare claim of attorney "involvement[,]" with nothing more, brings a document under the umbrella of protected work product or lawyer-client protection. If the attorney at issue was only "involved" in the preparation of these pages because they were provided to her, that level of "involvement" does not create any protection against disclosure that did not already exist. (See *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 397; *San Francisco Unified School Dist. v. Super. Ct.* (1961) 55 Cal.2d 451, 456.) Further, the document at issue, as described, does not seem to be a communication between an attorney and a client in the course of representation that is protected by the lawyer-client privilege (see Evid. Code, § 954); it seems to be a factual status memorandum. Presumably, the Court's in camera review of the three pages at issue will clarify whether there is any indicia of attorney involvement such that withholding these pages is proper.

Finally, given the timing of this document's creation, which occurred while the DROS Special Account surplus was extant and while the Department was moving forward on

rulemaking to reduce the DROS fee (Cal. Reg. Notice Register 2010, No. 30-Z, pp. 1110-1111), any balancing to be done clearly weighs in favor of disclosure, as the public has the right to know if the Department did calculations that showed the DROS fee was set to high, thus presaging the (later abandoned) rulemaking aimed at reducing the DROS fee. For the foregoing reasons, this item should be produced.

C. It Is Unclear if Baseline Budgets Exist, But If they Do, Defendants Cannot Avoid Producing Them

Defendants state that the Department does not submit any stand-alone document called a "baseline budget" to the Department of Finance, and thus the documents requested do no exist. (Opp'n at 8.) There may be no dispute here, but Plaintiffs are still unclear as to whether baseline budgets created by or for the Department exist, regardless of whether they were actually expressly entitled "baseline budgets," which seems to be a distinction made by defendants in their Opposition. (*Ibid.*) Thus, if the Department submitted proposed budgets, e.g., baseline budgets, to the Department of Finance under any name, those documents are relevant and should be produced.

II. Defendants' Objections to Special Interrogatory Nos. 25, 29, and 30 Are Without Merit and Appear to Be Interposed Primarily to Avoid Admissions Material to this Action

A. Defendants Are Not Being Forthright With the Court In Claiming they Have Sufficiently Responded to Special Interrogatory No. 25

Special Interrogatory No. 25 was propounded specifically to limit Defendants' ability to provide an evasive response to Special Interrogatory No. 24, which asked Defendants to "[s]tate the total amount of expenditures attributed to tasks referred to in Penal Code section 28225 for the fiscal year 2013-2014." (Sep. Statement Mot. Compl. Further Resp. to SI at 2.) Thus, when, after two rounds of meeting and conferring, Defendants claimed for the first time that they were unable to respond to Special Interrogatory No. 24, Plaintiffs were required to explain that assertion, per the inquiry made via Special Interrogatory No. 25. (*Id.* at pp. 2-4.) Instead, however, Defendants' response to Special Interrogatory No. 25 bobs and weaves around the question actually asked. Defendants state that they cannot make the required calculation because they do not know how it

was done in the past. (*Id.* at 4). This is nonsense; the fact that the Department supposedly does not know how the total at issue had been calculated in previous years in no way prevents it from tallying up subtotals now.

The information being obfuscated is at the heart of this case. The DROS fee can only be set based on the amount reasonably necessary to cover costs identified in Penal Code section 28225. Defendants are trying to avoid a forthright response here by alluding to the total expenditures from the DROS Special Account, which is not the same tabulation as the total Section 28225 costs. The distinction is critical: if the Department is basing the DROS fee on total costs being paid for out of the DROS Special Account, as opposed to total of the costs that are actually authorized to be utilized in setting the DROS fee (i.e., the costs listed in Section 28225), then, once again, the Department appears to be improperly inflating the numerator in the equation it is using to determine the "necessary" DROS fee.

Therefore, when Defendants claim they "have stated the basis for the calculation of" "the total amount of DROS Fund Expenditures for fiscal year 2013-2014[,]" they are dragging a red herring across the trail by answering a question Plaintiffs *did not ask*. (Opp. at p. 8). And Defendants seek to confuse the issue further by stating Special Interrogatories Nos. 24 and 25 are not "cogently worded." (*Ibid.*) Assuming arguendo that was true, Defendants' counsel has participated in the meet-and-confer process and therefore had a sufficient opportunity to resolve any lack of cogency. (Franklin Decl. ISO Reply at ¶ 3.) Plaintiffs' attorney also participated in that process, and he has no doubt that, when the parties finally determined the process had reached its end, there was no misunderstanding as to what information was sought via the two interrogatories under discussion. (*Ibid.*).

B. Defendants Mischaracterize the Information Sought via Special Interrogatory Nos. 29 and 30 to Bolster Their Claim that the Release of Such Information Would Create a Safety Risk

The only reasonable definition of an "APPS case" is a case that the Department pursued because an individual was on the APPS list. What Plaintiff argued in the underlying motion, which is left unaddressed in Defendants' opposition thereto, is that if these two cases are really "APPS cases" then the horse is already out of the barn. That is, Defendants contend there is a

"necessity for preserving the confidentiality of the information[;] but the Department already disclosed the relevant facts by labeling the 'APPS cases' with that name[,]" meaning the relevant facts are not confidential so as to potentially justify Defendants' privilege claim. (Mot. Compl. SI, at 8-9.) Alternatively, if these cases are not really "APPS cases," then Defendants still have no grounds to object: the weight of the public interest surely must tip strongly against allowing governmental employees to mislead the Governor and the public.

The "APPS case" discussed in Special Interrogatory No. 29 show exactly how the Department is speaking out of both sides of the mouth. The Department provided the following synopsis of an "APPS case" to the public: "In June 2013, agents received an anonymous tip that an ex-felon was working as the manager and firearms instructor at his family's shooting range in Corona. The business is located on a 1,200-acre ranch and is well known to local shooting enthusiasts." (Franklin Decl. ISO Mot. Compl. Further SI Resp. ["Franklin Decl. ISO Mot."], at Ex. 3, 18). Furthermore, Department spokeswoman Michelle Gregory is quoted in local news accounts as saying the case "was pretty cut and dry [sic]" because the ex-felon was "clearly working . . . in and around all the firearms[.]" (Franklin Decl. ISO Reply at ¶ 4, Ex. 2). Even if the ex-felon was on the APPS list, the reason the Department gave for his arrest was that he was working around guns, not that he still possessed firearms identified on the APPS list. (*Id.*)

Given the unique and detailed information released to the public by the Department, there is no doubt that "local shooting enthusiasts[,]" and anyone with internet access, knew what range, and what person, the Department was referring to. (See http://raahauges.com/club-info/our-story/, last visited Oct. 20, 2016 [identifying a 1,200 acre family-operated shooting range in Corona]).

But what the Department identified as a "significant APPS case" is not an "APPS case" at all: (1) the case arose from an anonymous tip, not from a "hit" on the APPS list, and (2) the Department did not need to rely on the APPS list to obtain the search warrant which yielded 88 firearms and over 10,000 rounds of ammunition; the search warrant was obtained based on an agent seeing the ex-felon in possession of firearms at his family's shooting range. (Franklin Decl. ISO Mot. at Ex. 3. 18.) Nothing about the forgoing sounds like an APPS case, other than that the Department, instead of local law enforcement, performed the investigation. Accordingly, the

public interest is strongly in favor of the relevant disclosure because it will help determine if the Department is improperly using funds the legislature set aside for APPS on cases that are not actually "APPS cases."

Defendants attempt to sidestep this issue by mischaracterizing the relevant interrogatories, and the banal information sought thereby, as a plot to obtain "intricate details of Bureau of Firearms law enforcement operations totally unrelated to this case[.]" (Opp. at p. 9.) This hyperbole is unfounded. Whether or not a case is an "APPS case" is not an "intricate detail . . . of . . . law enforcement operations[,]" it is little more than an accounting designation. The Department's position here especially unjustified inasmuch as the Department is already required under Penal Code section 30015 to publicly report on "[t]he number of people cleared from APPS[, t]he number of firearms recovered due to the enforcement of APPS[, and t]he number of contacts made during APPS enforcement efforts. (Pen. Code, § 30015, subds. (3), (6), and (7).) At most, Special Interrogatory Nos. 29 and 30 seek the same information being publically reported, just on a more granular level.

Defendants vaguely contend that Plaintiffs seek disclosure of "procedures" that could be used by a "person seeking or anticipating a confrontation with law enforcement" so as to create a risk to Department Agents, the public, and those who are to be disarmed pursuant to the APPS program. (Opp'n at 9.) Safety concerns are indisputably of the highest importance, but Defendants' have not provided any link between the information sought and a secret "procedure" used in the course of an APPS investigation.

The Department claims that if it is forced to identify whether two closed[4] cases it chose to discuss publically are "APPS cases[,]" then "a person seeking or anticipating a confrontation with law enforcement, who knows in advance what the relevant procedures are, obviously has a distinct advantage." (Opp'n at 9.) But because the information sought would not disclose a "relevant procedure" in any way, there is no "distinct advantage"—obvious or otherwise—that

[4] Per the Department, "[a] case is considered resolved (closed) when the APPS gun(s) is seized, the APPS subject is arrested, and/or all investigative leads have been exhausted." (Franklin Decl. at ¶ 3, Ex. 2.)

would flow from Defendants being forced to explain their seeming contradictory statements concerning the "APPS cases."

In any event, Defendants' claim is spurious because "a person seeking or anticipating a confrontation with law enforcement [e.g., a prohibited person in possession of a firearm]" already has access to multiple public sources on the internet and otherwise confirming that APPS enforcement is a possibility against a person in this situation, including the statutorily required APPS reports the Department is required to publish. (Pen. Code, § 30015.) Because distinguishing "APPS cases" from other cases tells potential APPS targets nothing beyond what already publically known about APPS-based law enforcement, the Court should recognize Defendants' have not shown that production of the information sought would create any safety risk, and that such argument is insufficient to tip the scale towards nondisclosure.

To be sure, if information on a specific procedure used by Department Agents is somehow within the scope of the relevant interrogatories and disclosure would pose a risk to anyone's safety, Plaintiff expressly disclaims any interest in pursuing such information. But based on all of the available information and the Department's failure to provide a plausible link between the information sought and claimed safety risk, there is no perceivable weight in Defendants' position. Accordingly, the public's substantial interest in determining whether the Department is mischaracterizing non-APPS cases as APPS cases—which would indicate the Department is using limited-purpose funds for an unauthorized purpose and keeping the the DROS fee unjustifiably inflated—weighs decisively in favor of this Court ordering further responses to Special Interrogatory Nos. 29 and 30.

CONCLUSION

Plaintiffs respectfully request that the Court grant their motions to compel in full.

Dated: October 21, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin, Attorney for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On October 21, 2016, the foregoing document(s) described as

REPLY IN RESPONSE TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Anthony Hakl, Deputy Attorney General
Kamala D. Harris, Attorney General of California
Office of the Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

___ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on October ____, 2016, at Long Beach, California.

_X_ (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on October 21, 2016, at Long Beach, California.

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

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

LAURA PALMERIN

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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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **PLAINTIFFS' EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF DAVID HARPER AND STEPHEN LINDLEY IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** Date: 10/28/16 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

The declarations of David Harper and Stephen Lindley are, in large part, inadmissible. Those declarations are not proper evidence to the extent they are neither based on personal knowledge nor offer non-speculative factual assertions. (See *Park v. First American Title Co.* (2011) 201 Cal.App.4th 1418, 1427 [citing Evidence Code section 702, subdivision (a), and holding that declaration was inadmissible because it was not based on personal knowledge]; *People v. Thorton* (2007) 41 Cal.4 th 391, 429 [quoting Evidence code section 800, subdivision (b), and affirming trial court's determination that speculative testimony was inadmissible because

it would not be "[h]elpful to a clear understanding of [the witness'] testimony.") Accordingly, as discussed below, the following portions of the aforementioned declarations are inadmissible and should be disregarded by the Court.

Statements	Basis for Objection	Ruling
Declaration of David Harper		
(¶ 2) "the contents of 14 the document *suggest* a DOJ employee within the Budget Office staff wrote it. Any recipients of the document are unknown, but the document *appears to be* an internal document prepared for the Director of Administration, who oversees the Budget Office, and the Executive Office. *Its contents indicate* that it was written in support of the executive decision making process regarding the DOJ Budget. *The document looks like* it is in draft form, as opposed to any final or formalized form. The document is not dated but *its contents suggest* it was created in 2007 or 20 2008." (Italics added.)	Evid. Code, §§ 702, subd. (a), 800, subd. (b). Clearly, the Declarant has no relevant personal knowledge as to creation of the document, and his speculation will not aid the Court. Accordingly, these statements are inadmissible and should be ignored.	Sustained ___ Overruled ___

(¶ 4) "The reference to 'DOJ Finance Letter Concepts" in privilege log item 15, and *the contents of the document, indicate that* the document reflects internal departmental deliberations regarding the content of an intended Finance Letter by DOJ to DOF following a January budget proposal." (Italics added.)	Evid. Code, §§ 702, subd. (a), 800, subd. (b). As above, this statement is inadmissible because it is neither based on personal knowledge nor will it assist the Court.	Sustained ___ Overruled ___
(¶4) "Among other things, the document summarizes data from various DOJ programs identified in the document; reflects the budgetary needs and requests of those programs; discusses possible amendments or modifications to a January budget proposal; and generally concerns DOJ's budget development process."	Evid. Code, § 800, subd. (b). The Declarant provides no basis for this statement other than the document itself, which means it is speculation that is inadmissible per Evidence Code section 800, subdivision (b).	Sustained ___ Overruled ___
(¶ 5) "In other words, item 16 reflects budget advice to the Executive Office regarding the development, priorities, and decisions to be made regarding the DOJ budget.	Evid. Code, §§ 702, subd. (a), 800, subd. (b). As discussed above regarding paragraph 2, this statement is inadmissible because it is neither based on personal knowledge nor will it assist the Court.	Sustained ___ Overruled ___

(¶ 6) "Like all of the documents addressed in this declaration, I am informed and believe that items 15 and 16 were located on an internal, secured departmental hard-drive housing a variety of documents."	Evid. Code, §§ 702, subd. (a), 800, subd. (b). Use of the phrase "informed and believe" proves the Declarant does not have the personal knowledge to make this statement. Inasmuch as someone within the Department obviously located the relevant documents so they could be provided for in camera review, there is no reason for this court to rely on an inadmissible statement concerning the origin of these documents.	Sustained ___ Overruled ___

(¶ 6) "I am also informed and believe that documents 15 and 16, like all of the documents addresses herein, were created in confidence by government employees within the scope of their employment for a variety of reasons that include briefing superiors, discussing issues, making recommendations, and providing advice; that all were communicated in confidence, to the extent they were communicated at all; that all were intended to be maintained as confidential; and that none of documents has been disclosed publicly.	Evid. Code, §§ 702, subd. (a), 800, subd. (b). This statement is replete with speculation. The declarant plainly does not have the personal knowledge to state that the relevant documents have been kept confidential. The Court does not need speculation to assist it in evaluating the relevant documents, and thus this inadmissible statement should be given no weight.	Sustained ___ Overruled ___
(¶ 7) "The author of the document is not known, but *its contents suggest* it was jointly authored by DOF staff and DOJ Budget Office staff. *The nature of the document also suggests* that the document, or at least some of its contents, was exchanged between DOF staff and DOJ Budget Office staff." (Italics added.)	Evid. Code, §§ 702, subd. (a), 800, subd. (b). As discussed above regarding paragraph 2, this statement is inadmissible because it is neither based on personal knowledge nor will it assist the Court.	Sustained ___ Overruled ___

(¶ 9) "The author of the documents is likely a DOJ Budget Analyst who is no longer employed by the Budget Office. Bureau of Firearms staff also may have contributed to the documents, which reflect a series of notes in the form of questions (likely from the Budget Office) and answers (likely from the Bureau) regarding a concept paper being developed in support of a possible BCP. In other words, items 18 and 19 are internal documents that reflect DOJ's deliberations prior to the BCP process and regarding the development of its budget."	Evid. Code, §§ 702, subd. (a), 800, subd. (b). This passage is replete with speculation, especially that the author of this document is likely no longer employed with the Department. Had the Declarant explained the steps taken to reach this determination, his statement might be admissible on this point. But as written, this entire passage is inadmissible.	Sustained ___ Overruled ___

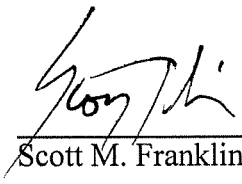
(¶ 11) "The author of the document is unknown, but it most likely reflects the comments and thinking of the Legislative Analyst's Office (LAO) or a legislative staffer, and DOJ Budget Office staff. Item 21 concerns a BCP that DOJ submitted to DOF and documents a series of questions (likely by DOF or legislative staff) and answers (likely by DO] Budget Office staff) regarding that BCP. Item 21 is a document that reflects DOJ's deliberations regarding the development of its budget. The document was likely created internally at DOJ[.]"	Evid. Code, §§ 702, subd. (a), 800, subd. (b). The repeated use of the word "likely" proves that this passage is based on speculation, not personal knowledge. Accordingly, the Court should this passage inadmissible.	Sustained ___ Overruled ___

(¶ 12) "The author of the document is unknown, but it most likely reflects the comments and thinking of the Legislative Analyst's Office (LAO) or a legislative staffer, and DO] Budget Office staff. Item 21 concerns a BCP that DOJ submitted to DOF and documents a series of questions (likely by DOF or legislative staff) and answers (likely by DOJ Budget Office staff) regarding that BCP. Item 21 is a document that reflects DOj's deliberations regarding the development of its budget. The document was likely created internally at DOJ."	Evid. Code, §§ 702, subd. (a), 800, subd. (b). The repeated use of the word "likely" proves that this passage is based on speculation, not personal knowledge. Accordingly, the Court should rule this passage inadmissible.	Sustained ___ Overruled ___

Declaration of Stephen Lindley		
(¶ 10) "Disclosure of the confidential details of Bureau of Firearms law enforcement operations, such as the ones referenced in plaintiffs' Special Interrogatory Nos. 29 and 30, will serve to compromise the safety, security, integrity, and efficacy of those operations. Disclosure will also threaten law enforcement officer safety, the safety of the public, and the security of law enforcement databases."	Evidence Code section 403, subdivision (a), requires the proponent of proffered evidence, here statements, to produce evidence of preliminary facts upon which the proffered evidence is based. In this instance, the supposed preliminary fact is the information sought by Special Interrogatory Nos. 29 and 30 constitutes "confidential details of . . . law enforcement operations[.]" This assertion is untrue and, more to the point, unsupported. Similarly, Defendants have failed to produce evidence on the preliminary fact as to how disclosure "threatens . . . officer safety, the safety of the public, and the security of law enforcement databases." Accordingly, these assertions are inadmissible and should be ignored by the Court. And because the Declarant does not provide the relevant preliminary facts, his statement is inadmissible speculation per Evidence Code section 800, subdivision (b).	Sustained ___ Overruled ___

Dated: October 21, 2016

MICHEL & ASSOCIATES, P.C.



Scott M. Franklin, Attorney for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On October 21, 2016, the foregoing document(s) described as

PLAINTIFFS' EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF DAVID HARPER AND STEPHEN LINDLEY IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Anthony Hakl, Deputy Attorney General
Kamala D. Harris, Attorney General of California
Office of the Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

___ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on October ____, 2016, at Long Beach, California.

_X_ (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on October 21, 2016, at Long Beach, California.

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

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

LAURA PALMERIN

C. D. Michel – S.B.N. 144258
Scott M. Franklin – S.B.N. 240254
Sean A. Brady – S.B.N. 262007
MICHEL & ASSOCIATES, P.C.
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Long Beach, CA 90802
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Attorneys for Plaintiffs

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 for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF PLAINTIFFS' REPLY IN RESPONSE TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL** Date: 10/28/16 Time: 9:00 a.m. Dept.: 31 Action filed: 10/16/2013

DECLARATION OF SCOTT M. FRANKLIN

I, Scott M. Franklin, declare as follows:

1. I am an attorney licensed to practice law before the courts of the State of California. I am an attorney currently working for the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs herein. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of Defendants' response to Form Interrogatory No. 38 propounded on them by Plaintiffs, taken from Defendants Attorney General Kamala Harris and Bureau of Firearms Chief Stephen Lindley's Third Amended Responses to Form Interrogatories (Set One).

3. Leading up to the filing of the underlying motions, and even thereafter, I have met and conferred with Defendants' attorney, Anthony Hakl, in an attempt to resolve the relevant discovery disputes. Our communications were cordial, and we both had a full opportunity to state our positions, and to inquire about issues we were unclear on. I specifically remeber discussing Defendants response to Special Interrogatory 25, in large part because it was related to Defendants' promise, made *years ago*, that they would provide a supplemental response to Special Interrogatory No. 2 identifying an estimated "per transaction cost" for a DROS transaction, something they have not done and now appear unwilling to do. As to the interplay between Special Interrogatory Nos. 24 and 25, I specifically recall explaining to Mr. Hakl that even if it is true that the Department cannot figure out how it calculated a total of annual costs as identified in Penal Code section 12076 (now 28225), that, in and of it self, does not prevent the Department from doing the calculation now, and that Defendants had failed to provide a sufficient response explaining their response to Special Interrogatory No. 24, wherein they claim the Department is unable to make the relevant calculation. I am confident that I expressed myself clearly on this point and that Mr. Hakl understood what Plaintiffs sought to determine via Special Interrogatory No. 25.

4. On October 20, 2016, I reviewed a news article, available on the internet at

http://www.ocregister.com/taxdollars/raahauge-520907-range-firearms.html, that contained information appearing to concern the "APPS case" at issue in Special Interrogatory No. 29. A true and correct printout of the article I reviewed is attached hereto as Exhibit 2.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of October, 2016, in Long Beach California.

Scott M. Franklin, Declarant

EXHIBIT 1

KAMALA D. HARRIS
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General
ANTHONY R. HAKL, State Bar No. 197335
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 322-9041
Fax: (916) 324-8835
E-mail: Anthony.Hakl@doj.ca.gov
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.

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

Defendants and Respondents.

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)

PROPOUNDING PARTY:	**PLAINTIFFS**
RESPONDING PARTY:	**DEFENDANTS ATTORNEY GENERAL KAMALA HARRIS AND BUREAU OF FIREARMS CHIEF STEPHEN LINDLEY**
SET NUMBER:	**ONE**

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

(a) **Request for Admission No. 37.**

(b) The DROS fee was set at $19.00 in approximately 2004. The APPS program was funded with General Fund monies until approximately 2011 (i.e., the passage of SB 819.)

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

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

(a) **Request for Admission No. 38.**

(b) Defendants refer to their answer to Special Interrogatories Nos. 1 & 2, where defendants address the issue of "per transaction cost."

In addition, defendants respond that they are unable to admit that the average cost to the Department of a DROS transaction is less than $19.00 because for fiscal year 2003-04 the average cost was $21.13, according to defendants' best estimate at this time. Defendants refer to fiscal year 2003-04 in this regard because that was the fiscal year immediately preceding the fiscal year the DROS fee was last increased (from $14.00 to $19.00).

The estimated figure of $21.13 is the quotient of the following calculation: $6,462,448 / 305,897. The amount of $6,462,448 was the Department's actual year-end expenditures on the Dealers' Record of Sale program in fiscal year 2003-04. (See AGRFP000359.) The number 305,897 is the approximate number of DROS transactions for all guns (including denials) during fiscal year 2003-04.

Finally, the number of 305,897 is an approximation because DROS transactions are actually tallied by calendar year, as opposed to fiscal year. Defendants calculated the number of 305,897 as follows: ((290,376 + 3,028) + (315,065 + 3,325) / 2). The calculation 290,376 + 3,028 is the number of DROS transactions for all guns (including denials) in calendar year 2003

and the calculation 315,065 + 3,325 is the number of transactions (including denials) for calendar year 2004. (See http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/ dros_chart.pdf [last visited Sept. 14, 2015).

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

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

(a) **Request for Admission No. 39.**

(b) The text of Penal Code section 28225 refers only to "possession" and makes no distinction between "legal" or "illegal" possession.

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

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

(a) **Request for Admission No. 41**

(b) By its terms, section 28225 provides that moneys from the DROS special account, including DROS fees, can be used for law enforcement activities related to the illegal possession of firearms. Section 28225 does not pre-condition such use on having "participated in the DROS PROCESS."

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

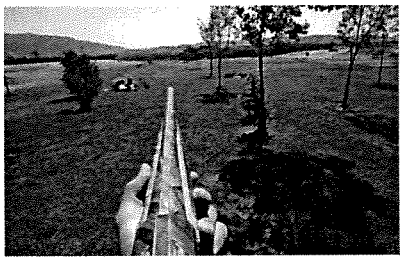
(d) Defendants have no additional documents to identify other than the documents identified in connection with this case and the related federal case, *Bauer v. Harris*, Case No. 1:11-cv-1440-LJO-MJS (E.D. Cal.) Any request for documents can be directed to counsel, whose

EXHIBIT 2

ORANGE COUNTY REGISTER

Can a felon run a shooting range if he doesn't touch the guns?

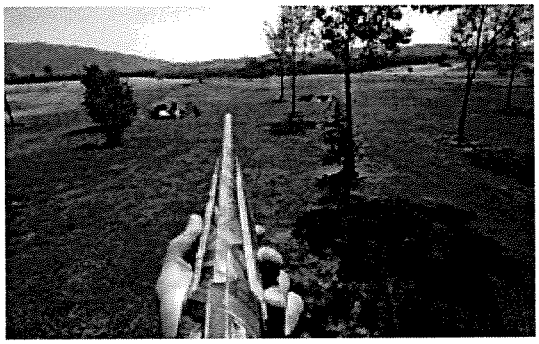
Keegan Kyle
2013-08-13 16:16:19



After his father died in May, **Patrick Raahauge** talked about running the family business – a **Corona** shooting range that's popular among **Orange County** residents for duck and pheasant hunting.

His grandfather, **Linc Raahauge**, founded the range after a signing a lease in 1971. Then his father, **Mike Raahauge**, took over when Linc died in 1989.

"You've got to carry on," Patrick Raahauge, 46, told a news reporter at his father's memorial service. "What else can you do?"



But this transition presented a legal dilemma. Raahauge is a convicted felon and can't legally possess a single firearm, never mind all the pistols, assault rifles and shotguns for rent at the range.

In July, he filed a petition asking the governor to pardon him. He was convicted of stealing a car in 1999, and illegal gun and ammunition possession in 2003.

Before the governor could consider the appeal, however, the state **Department of Justice** cranked up the heat on Raahauge. He was arrested Friday on suspicion of possessing firearms and ammunition at the range.

"He was clearly working there, in and around all the firearms," DOJ spokeswoman **Michelle Gregory** said. "He shouldn't be there at all."

Gregory said state investigators received a tip about Raahauge and found him handling guns and ammunition at the range, still named after his father. Gregory called the case "pretty cut and dry."

Raahauge's attorney, Robert Hickey, confirmed the arrest Friday but said it was too early to comment on the charges. Raahauge has been released on $10,000 bail, jail records show.

The arrest came days after several Orange County Register reporters received an anonymous letter about Raahauge. The letter said he "is a convicted felon and is presently running a firearms range."

In response, we had contacted the Department of Justice and inquired whether a felon could work at a gun range in any manner. The authorities then informed us Raahauge had been arrested.

Hickey said he was aware that letters had been sent out and suggested a disgruntled employee might be responsible. The letters had apparently been mailed to multiple public agencies in the area, too.

Orange County Water District spokeswoman Gina DePinto said her agency received a letter about a week ago. The district leases nearly 700 acres of constructed wetlands to the shooting range each year.

DePinto said she didn't know whether the arrest might affect the terms of the lease. After Mike Raahauge died, the lease was transferred to his wife, Elaine Raahauge.

Patrick Raahauge's employment at the range hadn't been a secret. An article on the range's website says the parents headed the business while their son was "managing the operations."

The family also talked with the water district about transferring more control to Patrick Raahauge, said Bruce Dosier, who oversees the agency's property management. The district planned an interview, but it kept getting pushed back due to scheduling conflicts.

"I need to see if we're still going to pursue this or not," Dosier said. "The intention is to interview Patrick and see if he's a suitable candidate to operate it, but for now we're just going to continue with Elaine."

Tom Watts, a family attorney, said Patrick Raahauge has been working in the same capacity since 2005 and received consent from his parole officer back then. Extensive measures were added to ensure he didn't possess any firearms, Watts said.

The family created a room without firearms where Raahauge could work, and he was strictly prohibited from touching any guns. If someone insisted he handle a firearm, Raahauge was supposed to ask another employee to assist him, Watts said.

"There were a lot of invisible measures taken that you as a customer would have never seen to make sure that he didn't come in contact with any firearms," Watts said.

Parole authorities were unsure Monday whether one of their officers had allowed the arrangement. Bill Sessa, a spokesman for the California Department of Corrections and Rehabilitation, said it would take a significant amount of research to find Raahauge's parole records.

But Sessa said it would be "highly unusual" for an officer to permit the arrangement given Raahauge's 2003 convictions for illegal firearms and ammunition possession. Offenders of those crimes are commonly banned from working with firearms.

Watts helped Raahauge file the July petition asking the governor to pardon him. In light of the arrest Friday, Watts said the family would need to re-evaluate the request.

Contact the writer: 714-796-4976 or kkyle@ocregister.com

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On October 21, 2016, the foregoing document(s) described as

DECLARATION OF SCOTT M. FRANKLIN IN SUPPORT OF PLAINTIFFS' REPLY IN RESPONSE TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

Anthony Hakl, Deputy Attorney General
Kamala D. Harris, Attorney General of California
Office of the Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814

___ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on October ____, 2016, at Long Beach, California.

_X_ (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on October 21, 2016, at Long Beach, California.

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

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

LAURA PALMERIN

C. D. Michel - S.B.N. 144258
Scott M. Franklin - S.B.N. 240254
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorney for Plaintiffs/Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, Plaintiffs and Petitioners, vs. 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, JOHN 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 **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

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

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

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

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

STIPULATION

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

1. 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) pleaded 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 this Court's schedule will allow.

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

3. 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. The parties agree to such

hearing(s) being held telephonically, if permitted by the Court. This stipulation in being made in an abundance of caution, to blunt any inequity that might result from a party raising new allegations during the relevant briefing.

4. Plaintiffs have granted an extension to Defendants such that the following discovery requests, propounded by Plaintiffs, require a response from Defendants Kamala Harris and Stephen Lindley by November 4, 2016: Requests for Admissions (Set Three); (2) Form Interrogatories (Set Four); (3) Special Interrogatories (Set Four); and (4) Request for Production of Documents (Set Four). Pursuant to this Stipulation, however, the parties agree that Defendants' duty to respond to these sets of discovery will be held in abeyance until the Court rules on the partial merits briefing, at which time the Court shall establish a new response deadline or otherwise address the pending requests.

5. Plaintiffs' Motion to Compel Further Responses to Requests for Production (Set Three), currently set to be heard November 4, 2016, will be taken off calendar, and will be rescheduled, declared moot, or otherwise expressly addressed upon the Court's ruling on the partial merits briefing. Further, Plaintiffs will withdraw that motion if the parties are able to reach an agreement whereby the withheld documents can be produced to Plaintiffs under a (future) stipulated protective order. The parties agree to discuss the possibility of such stipulated protective order in good faith.

6. Plaintiffs and Defendants disagree as to how the Court should handle Plaintiffs' Motion to Compel Further Responses to Special Interrogatories (Set Three), and related request for judicial notice, currently set to be heard November 4, 2016. They stipulate, however, to Court resolving this particular issue without a further hearing on the matter. The parties' positions relevant to this issue are outlined briefly below.

Plaintiffs contend that the three interrogatories at issue go directly to elemental issues in their fifth (Special Interrogatory ["SI"] No. 25) and ninth (SI Nos. 29 and 30) causes of action, causes of action that are set to be decided first under the Court's proposed bifurcation. That is, SI No. 25 concerns Defendants' claimed inability to provide a total of the costs listed in Penal Code 28225 for fiscal year 2013-2014, which is directly relevant to the allegation in Plaintiffs' fifth

cause of action; i.e., that Defendants have failed to properly set the DROS Fee as required by statute. And SI Nos. 29 and 30 are directly relevant to an element of Plaintiffs' ninth cause of action: these SI concern whether the Department of Justice is actually spending money earmarked for APPS enforcement on cases that do not fall within the scope of the relevant funding authorization. Plaintiffs' ninth cause of action is for declaratory relief, which requires proof of an actual controversy. Code Civ. Proc., § 1060. Further responses to SI Nos. 29 and 30 are need to show that Plaintiffs do not impermissibly seek an advisory opinion, and that there is a concrete dispute that can be addressed via declaratory relief. Accordingly, Plaintiff requests the Court take the dispute over these three interrogatories under submission and that the relevant motion be decided by this Court without any further argument.

Defendants contend that the motion to compel further answers to interrogatories be handled in the same manner as the motion to compel further responses to requests for production (i.e., taken off calendar and rescheduled, declared moot, or otherwise expressly addressed upon the Court's ruling on the partial merits briefing). Defendants contend that further answers to SI Nos. 25, 29, and 30 are unnecessary for the Court to resolve the fifth and ninth causes of action, and that tabling the motion is more in line with the rest of this stipulation and the spirit of the informal discovery conference held last week. Finally, if the Court is inclined to rule on the motion to compel further answers to SI Nos. 25, 29, and 30, and because there has not yet been oral argument on the motion, Defendants respectfully request that the motion be re-set for a hearing so that the parties have an opportunity to present such oral argument. Defendants do not oppose Plaintiffs' counsel appearing telephonically if the hearing is re-set.

SO STIPULATED.

Dated: November 3, 2016

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin
Attorneys for the Plaintiffs/Petitioners

Dated: November 3, 2016

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

Anthony R. Hakl
Deputy Attorney General
Attorneys for Defendants/Respondents

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.

5. This Court will address Defendants Stephen Lindley and Kamala Harris' duty, if any, to respond to Plaintiffs': (1) Requests for Admissions (Set Three); (2) Form Interrogatories (Set Four); (3) Special Interrogatories (Set Four); and (4) Request for Production of Documents (Set Four) after this Court has ruled on the partial merits brief(s). The parties have agreed that Defendants' duty to respond to these sets of discovery will be held in abeyance until the Court rules on the partial merits briefing.

6. Plaintiffs' Motion to Compel Further Responses to Requests for Production (Set Three), currently set to be heard November 4, 2016,is hereby taken off calendar, and will be rescheduled, declared moot, or otherwise expressly addressed upon the Court's ruling on the partial merits briefing.

7. Plaintiffs' Motion to Compel Further Responses to Special Interrogatories (Set Three), and related request for judicial notice and evidentiary objections, currently set to be heard November 4, 2016,

_____

_____

_____

_____.

IT IS SO ORDERED.

Date: 11/4/16

MICHAEL P. KENNY

Hon. Michael P. Kenny, Judge of the Superior Court

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

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

On November 7, 2016, I served the foregoing document(s) described as

STIPULATION RE: BIFURCATION AND SETTING PARTIAL MERITS HEARING; ORDER

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy

thereof by the following means, addressed as follows:

Anthony R. Hakl, Deputy Attorney General
Anthony.Hakl@doj.ca.gov
Kamala D. Harris, Attorney General of California
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Attorney for Defendants/Respondents

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on November 7, 2016, at Long Beach, California.

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on November 7, 2016, at Long Beach, California.

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

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

LAURA PALMERIN

C. D. Michel - S.B.N. 144258
Scott M. Franklin - S.B.N. 240254
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorney for Plaintiffs/Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, Plaintiffs and Petitioners, vs. 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, JOHN 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 **AMENDED STIPULATION RE: BIFURCATION AND SETTING PARTIAL MERITS HEARING; [~~PROPOSED~~] ORDER** 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, on November 4, 2016, this Court issued an order bifurcating the case and setting a briefing and hearing schedule for the parties to bring motions for summary adjudication, limited to Plaintiffs' Fifth and Ninth Causes of Action. Specifically, based on a stipulation of the parties, the Court ordered the parties' motions were due no later than March 10, 2017, oppositions

no later than March 24, 2017, and replies no later than March 31, 2017, and set a tentative hearing date of April 14, 2017.

WHEREAS, on February 17, 2017, Defendants' attorney emailed Plaintiffs' attorney and stated that the attorney handing the preparation of the Defendants' primary "Person Most Qualified" witness had been hospitalized. In light of the foregoing, Defendants' attorney asked if the upcoming deposition (set for the next business day, February 21, 2017), could be rescheduled.

WHEREAS, on February 17, 2017, the parties agreed to rescheduling the relevant deposition, and that the parties would stipulate to extending the relevant briefing date due to the unforseen delay.

STIPULATION

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

1. 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) pleaded in Plaintiffs' First Amended Complaint, such documents must be filed by May 26, 2017, with opposition briefs filed no later than June 16, 2017, and reply briefs filed no later than June 30, 2017. The matter will be set for hearing on August 4, 2017 at 9:00 a.m.

SO STIPULATED.

Dated: March 9, 2017

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin
Attorneys for the Plaintiffs/Petitioners

Dated: March 9, 2017

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

Anthony R. Hakl
Deputy Attorney General
Attorneys for Defendants/Respondents

ORDER

Based on the Stipulation of the parties dated March 9, 2017, the Court **ORDERS** the following briefing deadlines and hearing date extended as stipulated. To wit, it is **ORDERED** that:

1. The Motion filing and service deadline of March 10, 2017, is continued to May 26, 2017.
2. The opposition brief filing and service deadline of March 24, 2017, is continued to June 16, 2017.
3. The reply brief filing and service deadline of March 31, 2017, is continued to June 30, 2017.
4. The Court sets the hearing on this matter for 9:00 a.m. on August 4, 2017.

IT IS SO ORDERED.

Date: 3/15/17

MICHAEL P. KENNY

Hon. Michael P. Kenny, Judge of the Superior Court

C. D. Michel - S.B.N. 144258
Scott M. Franklin - S.B.N. 240254
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorney for Plaintiffs/Petitioners

By Fax

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, JOHN 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 **SECOND AMENDED STIPULATION RE: BIFURCATION AND SETTING PARTIAL MERITS HEARING; [~~PROPOSED~~] ORDER** Dept.: 31 Judge: Hon. Michael P. Kenny Action filed: 10/16/13 Hearing Date: 08/04/17

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

AVERMENTS

WHEREAS, on November 4, 2016, this Court issued an order bifurcating the case and setting a briefing and hearing schedule for the parties to bring motions for summary adjudication, limited to Plaintiffs' Fifth and Ninth Causes of Action. Specifically, based on a stipulation of the parties, the Court ordered the parties' motions were due no later than March 10, 2017, oppositions

no later than March 24, 2017, and replies no later than March 31, 2017, and set a tentative hearing date of April 14, 2017.

WHEREAS, on February 17, 2017, Defendants' attorney emailed Plaintiffs' attorney and stated that the attorney handling the preparation of the Defendants' primary "Person Most Qualified" witness had been hospitalized. In light of the foregoing, Defendants' attorney asked if the upcoming deposition (set for the next business day, February 21, 2017), could be rescheduled.

WHEREAS, on February 17, 2017, the parties agreed to rescheduling the relevant deposition, and that the parties would stipulate to extending the relevant briefing date due to the unforseen delay.

WHEREAS, on March 15, 2017, this Court ordered the relevant briefing deadlines extended as follows: the motion filing and service deadline of March 10,2017, was continued to May 26, 2017; the opposition brief filing and service deadline of March 24, 2017, was continued to June 16, 2017; and the reply brief filing and service deadline of March 31, 2017, was continued to June 30, 2017. The Court's order of March 15, 2017, also set the hearing on this matter for 9:00 a.m. on August 4, 2017.

WHEREAS, the parties had difficulty scheduling the deposition of Stephen Lindley, Acting Director of the Division of Law Enforcement, sufficiently before the current motion filing deadline, and further the parties agreed that deposing Stephen Lindley after the Informal Discovery Conference of May 12, 2017, would serve judicial economy because the discovery dispute discussed on May 12, 2017, was based on a previously made objection that was likely to be raised again during Acting Director's deposition.

STIPULATION

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

1. 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) pleaded in Plaintiffs' First Amended Complaint, such documents must be filed by June 9, 2017, with opposition briefs filed no later than June 30, 2017, and reply briefs filed no later than July 21, 2017. The modification of the briefing schedule will not affect the hearing date for the relevant

motion(s), previously set for August 4, 2017 at 9:00 a.m.

SO STIPULATED.

Dated: May 22, 2017

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin
Attorneys for the Plaintiffs/Petitioners

Dated: May 22, 2017

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

Anthony R. Hakl
Deputy Attorney General
Attorneys for Defendants/Respondents

ORDER

Based on the Stipulation of the parties dated May 17, 2017, the Court **ORDERS** the following briefing deadlines extended as stipulated. To wit, it is **ORDERED** that:

1. The Motion filing and service deadline of May 26, 2017, is continued to June 9, 2017.
2. The opposition brief filing and service deadline of June 16, 2017, is continued to June 30, 2017.
3. The reply brief filing and service deadline of June 30, 2017, is continued to July 21, 2017.

IT IS SO ORDERED.

Date: 5/24/17

MICHAEL P. KENNY

Hon. Michael P. Kenny, Judge of the Superior Court

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

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, JOHN CHIANG, in his official capacity as State Controller, and DOES 1-10.,** Defendants and Respondents.	Case No. 34-2013-80001667 **STIPULATION AND ~~[PROPOSED]~~ ORDER** Dept.: 31 Judge: The Honorable Michael P. Kenny

The parties, through counsel, stipulate that any summary adjudication/trial brief and separate statement of undisputed facts as to the Fifth or Ninth cause of Action (or both) pleaded in Plaintiffs' First Amended Complaint shall be filed on or before **June 13, 2017** (as opposed to June 9, 2017, the date previously agreed to). Good cause exists for this short extension, counsel

for defendants having been out of the office on June 1-2, 2017, and the parties having only recently received certain relevant deposition transcripts on June 2, 2017. Additionally, the parties agree that the remainder of the schedule (i.e., opposition briefs due June 30, 2017, reply briefs due July 21, 2017, and the hearing on August 4, 2017, at 9:00 a.m.) will remain the same.

Dated: June 7, 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

Dated: June 6, 2017

SCOTT M. FRANKLIN
Michel & Associates, P.C.
Attorneys for Plaintiffs

[~~PROPOSED~~] ORDER

Based on the foregoing stipulation of the parties, IT IS HEREBY ORDERED that the motion filing and service deadline of June 9, 2017, is extended to **June 13, 2017**. The other dates of the current schedule remain the same.

IT IS SO ORDERED.

Date: 6/8/17

Hon. Michael P. Kenny,
Judge of the Superior Court

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**

No.: **34-2013-80001667**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On June 7, 2017, I served the attached **STIPULATION AND [PROPOSED] ORDER** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Scott Franklin
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 7, 2017, at Sacramento, California.

Tracie L. Campbell
Declarant

Tracie Campbell
Signature

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12715021.doc

By Fax

FILED
ENDORSED
2017 JUN 12 AM 11:12
GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

C. D. Michel - S.B.N. 144258
Scott M. Franklin - S.B.N. 240254
Sean A. Brady - S.B.N. 262007
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorney for Plaintiffs/Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, Plaintiffs and Petitioners, vs. 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, JOHN 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-CU-WM-GDS **NOTICE OF MOTION FOR ADJUDICATION OF PLAINTIFFS' FIFTH AND NINTH CAUSES OF ACTION PURSUANT TO THE BIFURCATION ORDER OF NOVEMBER 4, 2016** Dept.: 31 Judge: Hon. Michael P. Kenny Hearing Date: 08/04/17 Action filed: 10/16/13

PLEASE TAKE NOTICE that on August 4, 2017, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 31 of the Sacramento County Superior Court, located at 720 Ninth Street, Sacramento, California 95814, Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and Calguns Shooting Sports Association's (collectively "Plaintiffs") Motion for Adjudication of Plaintiffs' Fifth and Ninth Causes of Action Pursuant to the Bifurcation Order of November 4, 2016, will be heard.

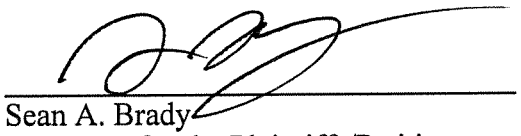
Please take further notice that:

> [p]ursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Sac. Super. Ct. L.R. 1.06.

Dated: June 9, 2017

MICHEL & ASSOCIATES, P.C.



Sean A. Brady
Attorneys for the Plaintiffs/Petitioners

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On June 9, 2017, I served the foregoing document(s) described as

NOTICE OF MOTION FOR ADJUDICATION OF PLAINTIFFS' FIFTH AND NINTH CAUSES OF ACTION PURSUANT TO THE BIFURCATION ORDER OF NOVEMBER 4, 2016

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy

thereof by the following means, addressed as follows:

Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814
Anthony.Hakl@doj.ca.gov

Attorneys for Defendants/Respondents

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on June 9, 2017, at Long Beach, California.

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

LAURA PALMERIN

By Fax

C. D. Michel - S.B.N. 144258
Scott M. Franklin - S.B.N. 240254
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorney for Plaintiffs/Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER, MARK MIDLAM, JAMES BASS, and CALGUNS SHOOTING SPORTS ASSOCIATION, Plaintiffs and Petitioners, vs. XAVIER BECERRA, in His Official Capacity as Attorney General for the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, BETTY YEE, in her official capacity as State Controller for the State of California, and DOES 1-10. Defendants and Respondents.	CASE NO. 34-2013-80001667 **NOTICE OF MOTION AND MOTION FOR ADJUDICATION OF PLAINTIFFS' FIFTH AND NINTH CAUSES OF ACTION PURSUANT TO THE BIFURCATION ORDER OF NOVEMBER 4, 2016** Date: August 4, 2017 Time: 9: 00 a.m. Dept.: 31 Judge: Hon. Michael P. Kenny Action filed: 10/16/13

PLEASE TAKE NOTICE that on August 4, 2017, at 9:00 a.m. or as soon thereafter as the matter may be heard, in Department 31 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiffs/Petitioners David Gentry, James Parker, Mark Midlam, James Bass, and Calguns Shooting Sports Association (collectively "Plaintiffs") will and hereby do move this Court for an order granting Plaintiffs' Motion for Adjudication of Plaintiffs' Fifth and Ninth Causes of Action Pursuant to the Bifurcation Order of November 4, 2016.

The Motion is made pursuant to California Code of Civil Procedure sections 473(a)(1), 1060, and 1085 and is based on this Notice of Motion, the Memorandum of Points and Authorities, the First Amended Complaint, all of the files and records of this action, and on any additional material that may be elicited at the hearing of the Motion.

Please take further notice that

> [p]ursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Sac. Super. Ct. L.R. 106(A).

Dated: June 13, 2017

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin
Attorneys for Plaintiffs/Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Sources

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

When Governor Jerry Brown took office in 2011, California faced a major budgetary deficit. In response, he prepared a proposed budget slashing funding for many governmental agencies, including the Department of Justice's ("Department") Division of Law Enforcement ("DLE"). Governor Brown proposed that the DLE's General Fund resources be cut, which would have decimated funding for the Bureau of Firearms' ("Bureau") activities related to, inter alia, the Armed & Prohibited Persons Program ("APPS"). In response to this threat, the Department—well aware that it had for years overcharged firearm purchasers for background checks resulting in a surplus in excess of $14 million—sought the assistance of the legislature to siphon off the improperly accumulated funds to partially mitigate the Department's expected budget shortfall.

Accordingly, newly elected Attorney General Kamala Harris convinced Senator Mark Leno to introduce a bill—Senate Bill 819 (Leno, 2011) ("SB 819")— that the Department claimed, *at the time*, would allow it "to utilize the Dealer Record of Sale Account ["DROS Fund"] for the additional, limited purpose of funding enforcement of the Armed Prohibited Persons System." Senator Leno told the Senate Public Safety Committee that "in this time of great recession . . . we have to be creative in how we fund programs[,]" and that SB 819 would "give[] the attorney general the authority, which she does not currently have, for this purpose of confiscating weapons from those who are illegally in possession of them . . . to request DROS funds for this very specific purpose." Whether SB 819 was "creative"—as opposed to an unlawful tax—is a question for another day. SB 819 became law soon after the 2011-2012 final budget was passed, a budget that included a $71.5 million cut to the DLE's budget—which effectively eliminated the General Fund as a funding source for APPS-based law enforcement activities.

Plaintiffs' Ninth Cause of Action seeks a declaratory judgment from this Court that confirms SB 819 authorized the use of DROS Fund money for nothing other than the costs of APPS-based law enforcement activities. The legislature and the people of this state were promised SB 819's cost shift was for a "very specific" and "limited" purpose: funding APPS-based law enforcement activities. SB 819 was even amended after its introduction to clarify the

limited scope of SB 819. Notwithstanding the patent narrowness of SB 819, the Department now claims it can use money for anything related to illegal firearm possession. SB 819 is not a "blank check," something the Department and Senator Leno made clear when they sought public support for SB 819 and votes in the legislature. Because the Department's conduct and legal interpretations are not consistent with the law, Plaintiffs respectfully request declaratory relief as to the proper interpretation of the word "possession" in Penal Code section 28225.[1]

As to the Fifth Cause of Action, Plaintiffs ask the Court to rule that the Department has failed and continues to fail to properly analyze the amount being charged for the Dealers' Record of Sale ("DROS") fee ("Fee"), and further requests the Court order the Department to undertake a proper analysis based only on the costs identified in section 28225. The Department's method is unacceptable because it is based on the *total amount* actually leaving the DROS Fund in a given time frame—not, as required by section 28225, the amount *necessary* to cover the *specific* costs referred to in section 28225. In just six years, the Department's failure to properly review the amount charged for the Fee resulted in a surplus in excess of $14 million. Section 28225 requires the Department to estimate reasonable costs in analyzing the amount being charged for the Fee, something the Department simply does not do. The Department is effectively putting a thumb on the scale when it considers how much the Fee should be by using a calculation method that is not authorized by, nor consistent with, section 28225.

Accordingly, Plaintiffs request the Court (1) declare that SB 819's scope is limited to funding the costs of APPS-based law enforcement activities, and (2) require the Department to perform a proper Fee review consistent with section 28225.

II. STATEMENT OF FACTS

A. The Fee

To purchase a firearm in California, qualified individuals must pay the Fee. (UF #1) The Bureau performs extensive background checks for all applicants seeking to purchase firearms. (UF# 2) The primary purpose of this "DROS Process" is to ensure that people seeking to purchase firearms in California are not legally prohibited from possessing them. (UF# 3) The Fee was

[1] All statutory references herein are to the Penal Code except as stated otherwise.

created in 1982 to cover the costs of background checks; it was initially set at $2.25. (UF# 4) In 1990, the amount of the Fee was $4.25. (UF# 5) In 1995, the legislature capped the Fee at $14.00, subject to Consumer Price Index adjustment. (UF# 6) In 2004, the Department increased the Fee from $14 to $19 for the first handgun or any number of rifles or shotguns in a single transaction. (UF# 7) 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. (UF# 8). That is, section 28225 places a duty on the Department to consider whether the amount currently being charged for the Fee is excessive. (UF# 9).

The Department deposits the revenue from the Fee in the "Dealers' Record of Sale Special Account of the General Fund" ("DROS Fund"). (UF# 10) Revenue from multiple fees is pooled in the DROS Fund. (UF# 11) Because of that pooling, however, it is impossible to trace if money paid via a particular fee is actually used for costs related to a particular activity. For example, it is impossible to determine if a cost listed in section 28225 is funded from Fee Revenue, money from a mix of fee sources, or from fee sources exclusive of the Fee .(UF# 12) The Department claims that it is "unable to admit or deny" whether Fee money constitutes a certain percentage of the money in the DROS Fund (UF# 13), but documents produced herein show that the Department recognizes the Fee is the primary source of money going into the DROS Fund. (UF# 14)

B. How the Fee Is Analyzed by the Department

During discovery, the Department contended that the 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 the amount charged for the Fee: $19.00. (UF# 15) And though the Department did offer to produce a current per transaction cost for the DROS process, after two years of requests from Plaintiffs, the Department repudiated its promise during a meeting in this Court's chambers. (UF# 16) In reality, the Department does not set the Fee based on a per transaction cost, but with what is referred to herein as the Macro Review Process. (UF#s 17, 18)

1. The Macro Review Process

It was only after years of discovery in this action that the Department finally admitted that

it does not actually consider any of the specific costs listed in section 28225 when evaluating how much should be charged for the Fee. (UF# 17) Instead, for at least the last thirteen years, the Department has used the "Macro Review Process[,]" which consists of the following: occasionally,[2] two people in the Department look at (1) how much money is in the DROS Fund, (2) then they estimate the *total* amount of money going into and coming out of the DROS Fund in the next year, and (3) as long as the DROS Fund remains in the black and will have a surplus to cover up to one year's worth of operating expenses, the Fee will not be increased. (UF# 18) The specific purpose of the Macro Review Process is *fund* condition analysis, not Fee analysis. (*Id.*)

As to the eleven cost classes referred to in section 28225(b): (1) the Department is unaware of the amount spent yearly for eight of those categories, one of which is the particularly relevant class stated in section 28225(11) (and four categories in this group concern costs the Department has not been requested to pay since at least 2004), (2) the Department has identified two categories that are funded from a source other than the DROS Fund, and (3) one is known: the amount spent for electronic information transfer (83 cents per transaction). (UF# 20) This lack of knowledge as to all but one cost—which presumably is known only because the Department had to calculate the cost when it was deciding whether it internalize the work relating to electronic information transfer (UF# 21)—is caused by the use of a review process that ignores all of the costs the legislature said should be identified or estimated so as to make sure the amount charged for the Fee is not excessive. Indeed, because the Department uses the Marco Review Process, it cannot even provide the total amount of section 28225 costs for any year since 2002. (UF# 22)

The Department claims its process does contemplate the possibility of the Fee being reduced (UF# 23), but the facts say otherwise. The Fee has never been lowered (UF# 24), and yet, between 2005 and 2011, the surplus in the DROS Fund slowly grew to over $14

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[2] The Department does not have a protocol for determining when it should examine if the amount currently being charged for the Fee is excessive. (UF# 19) Stephen Lindley's testimony is "it's not like we're reexamining it every single year to increase it" and "[i]s it a consideration every year for reduction, no[;]" but he also testified that "Dave Harper and I talk constantly about expenditures out of th[e DROS Fund] and we at least look at it on an annual basis."

million—something the Department never saw as a problem it wanted to fix. (UF# 25) It was only when the Department got pressure from the legislature about the surplus that the Department instituted a rulemaking to reduce the Fee (the "2010 Rulemaking[,]") (UF# 26), and, regardless, the Department secretly abandoned the plainly justified rulemaking. (UF# 27)

C. The 2005 Rulemaking

The amount of the Fee was most recently increased in 2005 via an emergency rulemaking ("2005 Rulemaking")[3] intended to resolve an anticipated negative balance in the DROS Fund. (UF# 28) That is, the decision to raise the amount being charged for the Fee from $14 to $19 was based on the Department's use of the Macro Review Process. (*Id.*).

Nonetheless, in 2004, the Department stated that the proposed increase was "only up to a level to cover actual costs as specified in statute[,]" e.g., section 28225. (UF# 29) The Department concedes that the cost of APPS was not a cost considered in the calculations used to set Fee. (UF# 30) The Department claims that it "created a written document that utilized specific cost data to provide an explanation as to why a $19.00 . . . FEE was appropriate[;]" but the Department refuses to produce that document, claiming it is privileged. (UF# 31) Accordingly, there is no evidence before the Court showing the Department utilized "specific cost data" to justify the 2005 increase. Documents ordered produced by this Court, however, show that the Macro Review Process was used in the 2005 Rulemaking. (UF# 32)

Finally, it should be noted that a DROS Fund deficit does not necessarily mean the Fee was set at too low an amount. The Department's own internal audit recommended cost cutting as an element of a solution to the DROS Fund deficit. (UF# 33) But the Department chose to not adopt that recommendation and raised the Fee as the sole remedy for the deficit. (UF# 34)

D. The Secretly Abandoned 2010 Rulemaking

During the summer of 2009 then-Assemblyman Jim Nielsen contacted the Department

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[3] To be clear, Plaintiffs do not specifically challenge the 2005 Rulemaking in this action, even though the use of the Macro Review Process in that rulemaking indicates the rulemaking violated section 28225. Rather, this case is about whether, from the commencement of the 2010 Rulemaking on, the Department failed to comply with the requirements of section 28225. Whether the 2005 Rulemaking violated section 28225 is a question that is not before the Court.

about the unchecked growth of the DROS Fund surplus, which was over $8 million at the time. (UF# 35) In a letter dated September 2, 2009, the Department admitted to the assemblyman that the then $10.5 million dollar surplus in the DROS Fund was more than necessary. (UF# 36) In response to the assemblyman's inquiry, the Department stated that it was "currently exploring numerous administrative and statutory options to reduce the surplus[, and that "[s]hould [the Department] decide to pursue statutory changes to reduced the surplus[, the Department would] welcome an opportunity to meet with [the assemblyman] to discuss the specifics of any proposal." (UF# 37) As a result of the pressure from the legislature, on July 9, 2010, the Department formally commenced the 2010 Rulemaking regarding the possibility of reducing the amount charged for the Fee from $19.00 to $14.00. (UF# 38)

The 2010 Rulemaking was initiated while the Department was headed by Attorney General Jerry Brown. (UF# 39) The Department stated that the purpose of the 2010 Rulemaking was to make the amount of the Fee "commensurate with the actual costs of processing a DROS [application]." (UF# 40) And yet, the Department did not actually perform an analysis to determine that the proposed $14.00 DROS Fee would be "commensurate with the actual costs of processing a DROS [application;]" instead, it performed only the Macro Review Process, which necessarily did not include "a specific, more detailed analysis[.]" (UF# 41)

At deposition, Stephen Lindley admitted the 2010 Rulemaking was based on a determination that the surplus in the DROS Fund was "excessive" and that, with the "$19 fee structure . . . there was a surplus at the end of every fiscal year[.]" (UF# 42) I.e., "at that point the $19 was more than what was needed." (*Id.*) Nonetheless, when asked about this during discovery in this action, the Department claimed that: (1) it never made even a preliminary determination that $19 was excessive (UF# 43), and (2) at the conclusion of the 2010 Rulemaking, the Department was of the opinion that the total amount collected as a result of the $19.00 fee was reasonably related to the total amount of costs referred to in section 28225 that were being incurred by the Department at the time. (UF# 44)

The Department held a public hearing on the proposed rulemaking, and it appears to have completed most of the paperwork to conclude the rulemaking; i.e., the 2010 Rulemaking file even

includes a final statement of reasons. (UF# 44) So why didn't the rulemaking become law? Notwithstanding that the Department had basically completed the clearly justified rulemaking, the Department sat on the 2010 Rulemaking until SB 819 passed, at which time the rulemaking was abandoned in favor of SB 819, without any explanation to the public. (UF# 45)

When Stephen Lindley was asked in a deposition in a prior lawsuit why the 2010 Rulemaking was abandoned, he said it was because all of the public comment was against it.[4] (UF# 46) When deposed in this matter, however, he admitted that it was abandoned in favor of SB 819. (UF# 48) Similarly, when Defendant Lindley was asked who made the decision to abandon the 2010 rulemaking, he indicated the decision had been made by then Attorney General Kamala Harris (UF# 49), which was contrary to his prior discovery response where he claimed that *he* made the decision to abandon the rulemaking. (UF# 50) The pattern of inconsistency goes to the core of the information the Department has provided regarding the 2010 Rulemaking. Even though the initial statement of reasons for the 2010 Rulemaking literally states its purpose was to reduce the Fee to "$14, commensurate with the actual cost of processing a DROS" (UF# 51), and even though Defendants herein admitted during discovery that the Department initiated the 2010 Rulemaking to reduce the amount of the Fee from $19 to $14 (UF# 52), Defendant Lindley now claims he does not "think there was an intent to lower it to $14[.]" (UF# 53)

E. SB 819 Passes after Assurances that Its Scope Was "Limited"

By winter 2010/2011, the DROS Fund surplus was over $14 million. (UF# 54) In January 2011, newly elected Governor Jerry Brown released his proposed budget, which included almos

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[4] This statement is odd for two reasons: (1) public opinion has little to no relevance regarding any of the considerations listed in section 28225, and (2) firearms groups were not against the fee reduction at all; Groups like the Calguns Foundation not only stated they supported a fee reduction, they wanted the reduction to even greater than what was proposed. (UF# 47) Regardless of the reason(s) given by the Department for the abandonment, the only proper basis for abandoning the rulemaking would have been that, pursuant to a proper analysis under section 28225, the amount of the fee was proven appropriate—something the Department never even attempted to prove before the abandonment of the 2010 Rulemaking. Thus, based on the language of section 28225, Plaintiffs contend that it was an abuse of discretion to abandon the rulemaking without budgetary and analytical proof that, per the limitations of section 28225, the amount being charged for the Fee was appropriate.

$62 million in cuts, over two years, to the Department's Division of Law Enforcement.[5] (UF# 55)

Shortly after Kamala Harris became California's Attorney General (UF# 56), the Department, acting on her specific instruction, brought proposed legislation to Senator Mark Leno that ultimately became Senate Bill 819 (Leno, 2011). (UF# 58) Setting aside a spot bill, the first version of SB 819, introduced March 21, 2011, did nothing other than addition the word "possession" to two passages in section 28225. (UF# 59) In the opinion of a Department attorney who was involved in the drafting of SB 819, "as the sponsor I think I can say that we felt that it [i.e., adding only the word "possession"] was a sufficient clarification of existing law." (UF# 60) Senator Leno, or perhaps the legislators whose votes he needed to pass SB 819, did not agree with the Department. On April 14, 2011, Senator Leno introduced a new, and what was ultimately the final, version of SB 819. (UF# 61) That version included a new section, and specifically the subsection limiting SB 819 to providing a funding source for APPS-based law enforcement activities: Section 1(g). (UF# 62) Senator Leno's "Q&A" packet for SB 819 expressly stated that the proponents of the bill had "added declarations and findings to make it clear that [SB 819 wa]s intended to address the APPS enforcement issue." (UF# 63) A parenthetical note in the Q&A packet also shows that the Department was involved in the revision of SB 819 when new declarations and findings section was added. (UF# 64)

Put simply, APPS is a system that cross-references two things: (1) firearm purchaser background check records and (2) criminal or other records that indicate if an individual is prohibited from possessing firearms. (UF# 65) 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. (UF# 66)

Senator Leno and the Department worked together extensively in promoting SB 819. (UF# 67) While discussing SB 819 with the legislature and the public, Senator Leno and the

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[5] In August 2011, the legislature enacted the California state budget for 2011/2012, which included a $71.5 million dollar reduction in the DLE's budget over two years. (UF# 56) The intent behind the $71.5 million cut to the DLE's budget was to "[e]liminate General Fund from the Division of Law Enforcement[;]" previously, the General Fund was used to pay for the Division of Law Enforcement's APPS-based law enforcement activities, among other things. (UF# 57)

Department both made it very clear that SB 819 *only* applied to funding for APPS-based law enforcement activities. (UF# 68) Specifically, when they were pushed on why SB 819's proposed statutory change was limited to one word—the addition of the word "possession" to section 28225—the response was clear: SB 819 was amended with a non-codified section to provide the needed context to understand what "possession" would mean in section 28225 if SB 819 was enacted. (UF# 69) In October 2011, the Legislature passed SB 819, which added the word "possession" to Section 28225, with the following uncodified intent language: "it is the intent of the Legislature in enacting this measure to allow the DOJ to utilize the Dealer Record of Sale Account for the additional, ***limited*** purpose of funding enforcement of the Armed Prohibited Persons System." (UF# 70; emphasis added).

F. How the Department used the DROS Fund before and after SB 819.

The Department was improperly utilizing the DROS Fund even before SB 819 became law. Since 1999, the Department has usedthe DROS Fund to pay for attorney services in over 50 cases. (UF# 71) In fiscal year 2013/2014, $181,486.29 of DROS Fund money was spent on litigation attorneys (UF# 72); the total costs of attorney services paid for out of the DROS Fund is in the millions. (UF# 73) Further, as noted in an internal document from 2004 that this Court ordered the Department to produce, *five* positions within the Department, but outside the Bureau, were being funded from the DROS Fund as of 2004. (UF# 74) The State's auditor stated the DROS Fund was a "dubious funding source for these positions. While they may somewhat contribute to the goals of the DROS program, an overwhelming majority of their time is spent on non-DROS workload." (UF# 75) And once SB 819 became law, the Department started to use the DROS Fund not only for APPS-based law enforcement actives, it also used DROS Fund money to pay for APPS itself (e.g., generating the APPS list) (UF# 76), and for investigations of people who were *not* on the APPS list. (UF# 77) Prior to SB 819, APPS and APPS-based law enforcement activities were funded out of the General Fund. (UF# 78)

The list of costs now funded from the DROS Fund but not referred to in section 28225 also includes the cost of legislative analysis done by the department (UF# 79), and the cost of certain high-level Bureau executives' entire salaries. (UF# 80) If those executives were only

working on matters listed in section 28225, then this allocation might make sense. But the Bureau does not just perform the DROS Process (and the extent relevant, APPS-based law enforcement); it administers over thirty state mandated programs, many of which have their own regulatory fees. (UF#s 11, 81) For example Defendant Lindley stated that approximately 25% of his time as chief of the Bureau was spent working on matters related to APPS (UF# 82), admittedly a General Fund program prior to SB 819. (UF# 78)

Though the Department's failure to separately track record expenses for Non-APPS-based law enforcement activities (UF# 83) makes financial analysis of that spending difficult, based on the Department's own data and estimation (UF# 84), some reasonable investigation of this issue is possible. Assuming APPS-based and non-APPS-based law enforcement activities take the same time,[6] the amount spent on Non-APPS-based activities in a single year equals the yearly salary for approximately 2.84 special agents— somewhere between $131,272.16 to 262,859.04, depending on pay grade. (UF# 85) And that calculation does not include overtime nor support staff (e.g., non-sworn criminal identification specialists), and support staff do a large amount of investigatory work prior to special agents going into the field to contact people who may be armed but legally prohibited from possessing firearms. (UF# 86)

III. ARGUMENT

A. The Court Should Grant Declaratory Relief As to the Proper Interpretation of SB 819's Impact on Section 28225 (Ninth Cause of Action)

1. Plaintiffs Are Authorized to Bring a Declaratory Relief Action

Code of Civil Procedure section 1060 authorizes a party to bring an action for declaratory relief to obtain a judicial declaration of the party's rights vis-à-vis another party. "To qualify for declaratory relief under section 1060, "[P]laintiffs [a]re required to show . . . two essential elements: '(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party." *Lee v. Silveira*, 6 Cal. App. 5th 527, 546 (2016).

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[6] This assumption is made for the purpose of argument only. Indeed, it is reasonable to assume that people on the APPS list, who have voluntarily given their names and contact information to the Department, are going to be, on average, easier to locate than those people who have not.

As to the first element, "[t]he correct interpretation of a statute is a particularly suitable subject for a judicial declaration. Resort to declaratory relief therefore is appropriate to attain judicial clarification of the parties' rights and obligations under the applicable law." *Kirkwood v. Cal. State Auto. Assn. Inter-Ins. Bureau*, 193 Cal. App. 4th 49, 59 (2011) (citation omitted). As to the second element, "[a]n actual controversy is 'one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts[; t]he judgment must decree, not suggest, what the parties may or may not do." *In re Claudia E.*, 163 Cal. App. 4th 627, 638 (2008).

Both elements are plainly met by Plaintiffs. First, because the parties dispute the proper interpretation of the word "possession" in section 28225 (UF# 77), a statute, the dispute is a proper subject of declaratory relief. *Kirkwood*, 193 Cal. App. 4th at 59. Second, because the judgment sought will "decree . . . what [the Department] may not do[,]" e.g., it may not interpret section 28225 in the manner it currently does (UF# 77), both elements are met and Plaintiffs are qualified to seek declaratory relief herein.

2. When Read as a Whole, SB 819 Is Unambiguous and Must Be Interpreted According to Its Plain Meaning

When "the intent of the statute is clearly and unambiguously apparent in the context of the statutory language as a whole, it is unnecessary to resort to indicia of the intent of the Legislature." *In re David S.*, 133 Cal. App. 4th 1160, 1166 (2005) (citing *Lungren v. Deukmejian,* 45 Cal. 3d 727, 735 (1988) and *State Bd. of Edu. v. Levit*, 52 Cal. 2d 441, 462 (1959)). Here, SB 819 added one word to the text of section 28225: "possession." Section 1(g) of SB 819 definitively explains the purpose of this addition: "it is the intent of the Legislature in enacting this measure to allow the DOJ to utilize the Dealer Record of Sale Account for the additional, *limited purpose of funding enforcement of the Armed Prohibited Persons System.*" (Emphasis added). Because the limited nature of SB 819's amendment of section 28225 is "clearly and unambiguously apparent in the context of the statutory language as a whole[,]" the Court should issue a declaratory judgment stating that the word "possession" in section 28225 refers to the potential or actual possession of a firearm by someone on the APPS list.

a. The Department's New Interpretation of "Possession" Is Not Reliable and Should Be Ignored: The Department Offered a Materially Different Interpretation When It Sponsored SB 819

Here, Plaintiffs contend the text of SB 819 is clear and there is no need to look beyond the face of the bill. If, however, the Court considers SB 819 ambiguous and decides to look outside the four corners of the bill to determine its meaning, Plaintiff provides the following.

"When reviewing an administrative agency's interpretation of a governing statute," a court "must 'independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning.'" *S. Cal. Cement Masons Joint Apprenticeship Comm. v. Cal. Apprenticeship Council*, 213 Cal. App. 4th 1531, 1541 (2013) (citing *Yamaha Corp. of Am. v. State Bd. of Equalization,* 19 Cal. 4th 1, 7 (1998)). "[T]he binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." *Yamaha*, 19 Cal. 4th at 4. "Courts must . . . independently judge the text of the statute, taking into account and respecting the agency's interpretation . . . , whether embodied in a formal rule or less formal representation[: d]epending on the context, an [agency's interpretation] may be helpful, enlightening, even convincing. It may sometimes be of little worth." *Id.* at 7-8.

Prior to the enactment of SB 819, the Department publicly acknowledged that the scope of the funding authorization at issue would be limited to APPS-based law enforcement (UF# 68). Tellingly, SB 819 did not have section 1 in the version introduced May 21, 2011 (UF# 59). But the next, and final, amendment of SB 819, introduced April 14, 2011, *did* include Section 1 and its limiting language. (UF#s 61, 62) Senator Leno made it clear that he "added declarations and findings to make it clear that [SB 819 wa]s intended to address the APPS enforcement issue." (UF# 63) Inasmuch as Senator Leno specifically amended SB 819 to preclude exactly the interpretation the Department offers now is strong proof the relevant legislative history confirms the Department's interpretation of the *enacted* version of SB 819 is incorrect.

In this situation, the Court has two mutually exclusive agency interpretations before it. One is completely consistent with Section 1(g) of SB 819, and the other is patently not. (UF# 77) Given that: the Department was heavily involved in drafting SB 819 (UF#s 58, 60, 64); the bill

was amended to add limitation language (UF# 62); and that Department is pushing for the interpretation that will provide it greater access to a consistent revenue stream, the Department's prior interpretation, and not its current, post hoc interpretation, should be the only one given respect if the Court finds SB 819 ambiguous. *See United States v. One Bell Jet Ranger II Helicopter*, 943 F.2d 1121, 1126 (9th Cir. 1991).

B. Writ Relief Should Be Granted Under Code of Civil Procedure Section 1085 Because the Department Has and Continues to Materially Exceed the Fee Setting Authority in Section 28225 (Fifth Cause of Action)

Plaintiffs' Fifth Cause of Action seeks a writ of mandate under Code of Civil Procedure section 1085(a), which states: "[a] writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station." To establish a right to relief under section 1085, a petitioner must show "(1) A clear, present and usually ministerial duty on the part of the respondent . . . ; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty[.]" *Santa Clara Cnty. Counsel Attys. Ass'n v. Woodside*, 7 Cal. 4th 525, 539-40 (1994). Because (1) section 28225 creates a "clear, present and . . . ministerial duty"[7] that the Department use specific data to analyze whether the Fee is being charged is no more than the amount "necessary" to cover statutorily enumerated costs, and because (2) Defendants have not produced any evidence to dispute Plaintiffs' "beneficial right . . . . to the performance of that duty' via past and likely future payment of the Fee, Code of Civil Procedure section 1085 is applicable here. *Santa Clara*, 7 Cal. 4th at 539–540. And though there is no dispute that the Department cannot legally increase the amount charged for the Fee to an amount that is greater

[7] Plaintiffs recognize that *if* the Department had actually calculated actual or estimated costs for each of the activities listed in section 28225 *and* utilized them in analyzing the propriety of the amount being charged for the Fee, that might have an impact on determining whether the essence of the fifth cause of action is a failure to perform a ministerial duty versus an abuse of discretion in performing a discretionary task. *Cf. Cal. Pub. Records Research, Inc. v. Cty. of Stanislaus*, 246 Cal. App. 4th 1432, 1454 (2016) (holding that county had "some discretionary authority when setting ... fees [but that such] discretion [wa]s limited by the phrase" in the relevant statute that limited the fee to an amount necessary to recover "direct and indirect costs.") But as the Department made no potentially discretionary calculations, the abuse of discretion standard does not apply here. And regardless, the failure to do the required calculations *at all* is patent abuse of the Department's limited discretion.

than is necessary to fund the coats referenced in section 28225 (UF# 9), the parties do dispute whether the Department is failing its duty to set the Fee within it statutory Authority. (UF# 77)

1. The Independent Judgment Standard of Review Applies to Petitioner's Writ Claim

"As a general rule, courts in California exercise independent judgment on review of agency interpretations of law, whether the interpretation is contained in a regulation or other generally applicable determination, an adjudicatory decision, or some other form of agency action." California Practice Guide: Administrative Law § 17.10 (Rutter 2016); *accord Yamaha*, 19 Cal. 4th at 7. Indeed, courts are not bound to agency interpretations of ambiguous statutes, even if the court accepts the agency's interpretation as reasonable. California Practice Guide: Administrative Law § 17.10 (Rutter 2016). And if a reviewing court finds the relevant statutory language is unambiguous, "it should give no deference to the agency's contrary interpretation[.]" *Id.* § 17.41 (citing *Bonnell v. Medical Bd. of Cal.*, 31 Cal. 4th 1255, 1264-1265 (2003)).

This rule expressly applies to the question of whether an agency action is within the scope of its statutorily delegated authority. "[I]n determination-of-necessity cases[,] the discretion granted an agency by the legislation authorizing its duties, and hence the appropriate standard of review, may vary depending on the language and intent of that legislation." *San Francisco Fire Fighters Local 798 v. City & County of San Francisco,* 38 Cal. 4th 653, 669 (2006) (explaining, in dicta, that its decision to apply a deferential standard of review in that case should not be interpreted as such standard invariably applying in all "determination-of-necessity cases"). "In other words, the [authorizing] provision may define the scope of the [authorized entity]'s discretion, and this in turn shapes not only *what* is to be reviewed but *how* it should be reviewed: legislation with a narrow definition of necessity would not be served by a deferential standard of review." *Id.* at 670.

For example, when a court is reviewing a quasi-legislative action,[8] "the first duty is to

[8] Petitioners do not concede that the failure to properly monitor and adjust the amount being charged for the Fee is a quasi-legislative act. Nonetheless, regardless of whether the challenged conduct is characterized as quasi-legislative or not appears to be of no import because, as discussed above, the relevant standard of review of an agency's statute interpretation is going to be independent judgment in either scenario.

determine whether the agency exercised its quasi-legislative authority within the bounds of the statutory mandate. (*Morris v. Williams* (1967) 67 Cal.2d 733, 748, 63 Cal.Rptr. 689, 433 P.2d 697 (*Morris*).)" *Yamaha*, 19 Cal. 4th at 16. (J. Mosk, concurring) (Brackets and internal quotation marks omitted); *see also* Gov't Code § 11342.1 ("Each regulation adopted, to be effective, shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law."). "As the *Morris* court made clear, this is a matter for the independent judgment of the court." *Yamaha*, 19 Cal. 4th at 16. (J. Mosk, concurring). Stated differently, "[e]ven in substantive areas of the agency's expertise, . . . deference to an agency's statutory interpretation is limited; determining statutes' meaning and effect is a matter "lying within the constitutional domain of the courts." *Ctr. for Biological Diversity v. Cal. Dep't of Fish & Wildlife*, 62 Cal. 4th 204, 236 (2015), *as modified on denial of reh'g* (Feb. 17, 2016). It is only if the reviewing court gets to the second step of the analysis ("whether the regulations are reasonably necessary to effectuate the purpose of the statute") that the extremely deferential "arbitrary and capricious" standard of review becomes relevant. *Yamaha*, 19 Cal. 4th at 17. (J. Mosk, concurring).

2. The Department's Interpretation of Its Authority Regarding the Fee Is Materially beyond the Scope of what Section 28225 Provides

If the Department chooses to collect the Fee, it "shall be no more than is necessary to fund the following [eleven classes of costs]." Penal Code § 28225(b). "In the law, the word 'necessary' has not a fixed meaning, but is flexible and relative." *San Francisco Fire Fighters Local 798 v. City & County of San Francisco,* 38 Cal. 4th 653, 671 (2006). The word cannot be analyzed in a vacuum, and should be considered in light of the relevant statutory context. *See id.* at 672. One court defined it as follows: "The word 'necessary[]' . . . has a broader meaning than that 'which is absolutely indispensable,' but includes that which is reasonable, convenient, and appropriate for carrying out the purposes expressed in the section following the use of that word." *Danley v. Merced Irr. Dist.*, 66 Cal. App. 97, 105 (1924).

The two subsections *infra* show that the Department has failed to even analyze what is "necessary" to pay for the cost specifically listed in section 28225, let alone show that the

cumulative totals of amounts spent and estimated to be spent are necessary and justify charging $19.00 for the Fee. The Court should grant the relief Plaintiffs seek on their Fifth Cause of Action because the Department is not meeting its duty to monitor and adjust the amount of the Fee.

a. The Department's Longstanding Macro Review Process Fails to Meet the Statutory Requirements of Section 28225

i. Macro Analysis Is Materially Inconsistent with the Authority Bestowed by Section 28225

The Legislature did not grant the Department broad authority as to how the Fee shall be calculated. It limited the Department to considering what is "necessary" to fund eleven classes of costs. Penal Code §2825(b). Further, section 28225(c) states that "the fee established pursuant to this section shall not exceed the sum of [multiple types of costs liste in section 28225(b), including] the ***estimated reasonable*** costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580" ("firearms-related costs"). (Emphasis added.)

The statutory authorization here was plainly intended to be, and is, narrow. First, the Department can only consider its "estimated" firearms-related costs in setting the Fee, meaning that the Department cannot consider firearms-related costs in this context *unless* an estimate thereof has occurred. Penal Code § 28225(c). As shown in Section II.B.1., *infra*, the Macro Review Process does not include any estimation of specific cost categories. (UF#s 18, 20, 22) Interrelatedly, the Department can only consider firearms-related costs in setting the Fee if they are reasonable. Penal Code § 28225(c). The Department, however, cannot identify what is reasonable for the firearms-related costs, or any of the other costs specified in section 28225, because the Department does not make the relevant estimates or examine actual costs incurred as statutorily required. *See, e.g.,* Penal Code § 28225(c). For example, the Department internally concluded that five employees were being paid out of the DROS Fund that should not have been (UF# 74) By using the Macro Review Process, this type of "dubious" spending is hidden, meaning the result of that processes' use is not "reasonable" as required by section 28225(c). The fact that the Macro Review Process obfuscates what amount of money is necessary for *specific*, statutorily identified cost categories—categories the legislature specifically identified—is strong evidence that the

Department's process is not an acceptable way to determine whether a particular amount is "no more than is necessary" to fund the costs identified in section 28225.

ii. The Department's Fee Analysis Is Improper Because It Is Based on Cost Data Inflated with Costs Not Identified in Section 28225

Though the DROS Fund was originally intended to be used for funding the DROS process via Fee money (UF# 74), revenue from over a dozen different fees is currently pooled in that account. (UF# 11) Accordingly, it is impossible to specifically track how Fee revenue is being spent. (UF# 12) Nonetheless, because the Fee is clearly the primary source of funds in the DROS Fund (UF# 14), it is safe to assume the Fee payers are paying for a significant portion of every activity paid for out the DROS Fund.

Fee payers do not pay just for the costs of the DROS Process. Even before SB 819 became law, the DROS Fund was being used to fund activities not mentioned in section 28225, including millions of dollars for attorney services (UF# 73) and five positions within Criminal Justice Information Services ("CJIS"). (UF# 74) As to the CJIS positions, the state's auditor stated the DROS Fund was a "dubious funding source for these positions[; w]hile they may somewhat contribute to the goals of the DROS program, an overwhelming majority of their time is spent on non-DROS workload." (UF# 75) And after SB 819 became law, the Department started funding both APPS-based *and* non-APPS-based firearm law enforcement activities out of the DROS Fund. (UF# 77) Based on the Department's own data and estimation (UF# 84), and assuming both kinds of enforcement activities take the same time,[9] this amounts to the yearly salary for approximately 2.84 special agents— somewhere between $131,272.16 to 262,859.04, depending on pay grade—not to mention overtime and support staff (e.g., non-sworn criminal identification specialists). (UF# 85)

The Macro Review Process considers the amount being charged for the Fee in light of not only the costs *actually* authorized for consideration in section 28225, but potentially millions of

[9] This assumption is made for the purpose of argument only. Indeed, it is reasonable to assume that people on the APPS list, who have voluntarily given their names and contact information to the Department, are going to be, on average, easier to locate than those people who have not.

dollars spent on activities that are *outside* the permitted scope of the DROS Fee. The effect of this is clear: by inflating the total costs considered "necessary" during the Marco Review Process, the Department can claim that because the amount being charged for the DROS Fee currently is needed to meet the (improperly inflated) sum of the "necessary" costs, there is no need to lower the amount charged. Even assuming arguendo the legislature had authorized the Department to consider only the total of the individual costs referred to in section 28225 when analyzing the amount being charged for the DROS Fee (which it did not, see *supra* Section II.B.2.A.ii.), the legislature nonetheless did not authorize the Department to do what it currently does: set the DROS Fee to recoup costs in excess of what is statutorily allowed. Because the Department continues to disregard section 28225 in a materially improper way, this Court should order the Department to perform a proper analysis under the specific requirements of section 28225.

3. The Court Should Order the Department to Perform a Proper Review of the "Necessity" of the Fee Being Kept at $19.00

Based on the argument above, the Court should find in favor of Petitioners on their Fifth Cause of Action and order the Department to individually calculate the incurred and estimated cost categories in section 28225 and to make the documents reflecting such calculations public. The factors discussed below may impact the scope of and reasonable completion date for such work.

For example, resolution of Petitioner's Ninth Cause of Action prior to the commencement of the abovementioned analysis is preferable because it could impact the scope of activities that can be funded as a result of the addition of the word "possession" to section 28225(b)(11). That is, if the Court agrees with Petitioner that SB 819 provided a funding source for nothing other than APPS-based law enforcement activities, then it will be clear that when the Department performs the relevant calculations, it cannot consider the costs—which it is already funding from the DROS Fund—of law enforcement activities related to people not on the APPS list. Petitioners do not expect any difficulty on the temporal aspect of this issue, as this Court will presumably rule on the Fifth and Ninth Causes of Action at the same time. Resolution of Petitioner's remaining causes of action, however, has been bifurcated from the two at issue in this motion, and the resolution of one or several of those causes of action (e.g., the Sixth, Seventh, and Eighth Causes of Action), may

change how the Department must perform the relevant calculations.

Petitioner's Sixth, Seventh, and Eighth Causes of Action are all premised on SB 819 creating a tax that violates a provision of the California Constitution.[10] If Plaintiffs are successful on any of those challenges, it would, presumably, mean that the costs of *both* APPS-based and non-APPS-based law enforcement activities should not be considered in the Department's cost analysis. If Petitioners are unsuccessful on these causes of action, on the other hand, then the bounds of the analysis will be the same as they will be if the Court finds in favor of Petitioners on the Ninth Cause of Action.

Accordingly, in light of the bifurcation of the issues, Petitioners request that if the Court finds in their favor on the two causes of action now before the Court, that the Court issue an order requiring the Department to perform a proper DROS Fee cost analysis now, even though the remaining bifurcated causes of action have yet to be tried. This course of action is justified for at least three reasons.

First, whether or not the Department is charging an illegal tax is a separate question from whether the DROS Fund and the Fee are being used appropriately. The latter question should be resolved now, regardless of how the Court rules on the bifurcated tax claims. Petitioner contends this is especially important vis-a-vis how the Department is, or will, make a "reasonable estimate" of the amount "necessary" to fund APPS-based law enforcement activities. As described in the statement of facts above, APPS-based law enforcement is not a regulatory process (e.g., the DROS Process) with relatively well-defined boundaries, so it makes sense for the Department to explain how, after the Court rules on this motion, the Department plans to shoehorn its activities related to "possession" into the fee-setting limitations stated in section 28225. Second, Petitioner suspects one issue that will be of great importance as to the tax claims is the proportion of DROS Fund money being used for, inter alia, APPS-based law enforcement activities, *non*-APPS-based law enforcement activities, and costs legitimately related to DROS. Production of a proper DROS Fee analysis now should answer many questions that are sure to otherwise arise in preparation for trial

[10] Petitioner also brought a claim that SB 819 violated the 2/3 vote requirement created by Proposition 26, but the Court previously dismissed that claim on a motion for judgment on the pleadings.

of the remaining causes of action. Third, this action is nearly four years old, and it largely concerns statutory language the Department drafted. Language that the Department interpreted one way when it was trying to obtain funding authorization, and in another—contradictory— way in response to scrutiny about whether the Department was exceeding the authority it helped create.

Even setting aside Petitioner's illegal tax claims, the Department's refusal to properly interpret SB 819 over the last several years has resulted in potentially millions of DROS Fund dollars being use for law enforcement activities unrelated to the APPS program. These reasons provide a sufficient basis upon which the Court should order the Department, within 90 days of the Court's ruling, to produce to Petitioners calculations for each cost category, including estimated cost categories, stated in section 28225, with such calculations annotated or otherwise accompanied by information regarding the sources from which raw data were taken and an explanation as to what amount the Department contends should be charged for the DROS Fee.

IV. CONCLUSION

Section 28225 is not a blank check; the legislature went to great pains to make it clear that *if* the Department chooses to collect the DROS fee, it must set the amount of the fee based on actual costs and, particularly, "the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan, or transfer of firearms." Penal Code § 28225(c). The Department skips this statutorily required step and now asks the Court to ignore that detrimental nonconformity.

This is not a case about the merits of APPS, nor is it a case about whether it was fair that the Department's budget was slashed. Rather, the issues before the Court are (1) whether the Macro Review Process is a proper mechanism to meet the requirements of section 28225, and (2) whether SB 819's clear limitation language should be ignored. Because the answer to both of these questions is "no," Petitioners request the Court grant this motion.

Dated: June 13, 2017

MICHEL & ASSOCIATES, P.C.

Scott M. Franklin
Attorneys for Plaintiffs/Petitioners

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On June 13, 2017, I served the foregoing document(s) described as

NOTICE OF MOTION AND MOTION FOR ADJUDICATION OF PLAINTIFFS' FIFTH AND NINTH CAUSES OF ACTION PURSUANT TO THE BIFURCATION ORDER OF NOVEMBER 4, 2016

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy

thereof by the following means, addressed as follows:

Office of the Attorney General
Anthony Hakl, Deputy Attorney General
1300 I Street, Suite 1101
Sacramento, CA 95814
Anthony.Hakl@doj.ca.gov

X (BY OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on June 13, 2017, at Long Beach, California.

X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission. Said transmission was reported and completed without error.
Executed on June 13, 2017, at Long Beach, California.

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

LAURA PALMERIN

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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; MARTHA SUPERNOR, in her official capacity as Acting Director of the California Department of Justice Bureau of Firearms, BETTY T. YEE, in her official capacity as State Controller, and DOES 1-10,

Defendants and Respondents.

Case No. 34-2013-80001667

DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY ADJUDICATION AS TO THE FIFTH AND NINTH CAUSES OF ACTION

Date: August 4, 2017
Time: 9:00 a.m.
Dept: 31
Judge: The Honorable Michael P. Kenny
Trial Date: None set
Action Filed: October 16, 2013

TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on **August 4, 2017, at 9:00 a.m.**, or as soon thereafter as counsel may be heard in Department 31 of the above-entitled Court, located at 720 Ninth Street, Sacramento, California, defendants Xavier Becerra, in his official capacity as Attorney General of the State of California, and Martha Supernor, in her official capacity as Acting Director of the

Bureau of Firearms of the California Department of Justice, will and hereby do move for summary adjudication against all plaintiffs, including David Gentry, James Parker, Mark Mid Lam, James Bass and CalGuns Shooting Sports Association. This motion is made under Code of Civil Procedure section 437c and on the grounds that the material facts are undisputed and that the moving party is entitled to judgment as a matter of law on the fifth and ninth causes of action.

This motion will be based on this notice of motion and motion; the memorandum of points and authorities filed and served herewith; the complete files and records in this action; and upon such oral and documentary evidence as may be presented at the hearing on the motion.

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: June 13, 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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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Gentry, David, et al. v. Kamala Harris, et al.**
No.: **34-2013-80001667**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 13, 2017, I served the attached **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY ADJUDICATION AS TO THE FIFTH AND NINTH CAUSES OF ACTION** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

C.D. Michel
Scott Franklin
Sean A. Brady
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
E-mail: cmichel@michellawyers.com
SFranklin@michellawyers.com
SBrady@michellawyers.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 13, 2017, at Sacramento, California.

Eileen A. Ennis
Declarant

Eileen A. Ennis
Signature

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PROOF OF ELECTRONIC SERVICE

Case Name: *Gentry, et al. v. Becerra, et al.*
Court of Appeal Case No.: C089655
Superior Court Case No.: 34-2013-80001667

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

On February 7, 2020, I served a copy of the foregoing document(s) described as: **APPELLANTS' APPENDIX, VOLUME V OF XVI, (Pages 1113 to 1392 of 4059)**, by electronic transmission as follows:

Robert E. Asperger
bob.asperger@doj.ca.gov
1300 I Street
Sacramento, CA 95814
Attorneys for Defendants and Respondents Xavier Becerra, et al.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 7, 2020, at Long Beach, California.

s/ Sean A. Brady
Sean A. Brady
Declarant