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DEPT. COURT HOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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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

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND FIRST AMENDED
PETITION FOR WRIT OF MANDAMUS
[CONCURRENTLY FILED WITH
DECLARATION OF SCOTT M.
FRANKLIN IN SUPPORT THEREOF;
{PROPOSED} ORDER]**

Date: December 11, 2015
Time: 9:00 a.m.
Dept.: 31
Judge: Hon. Michael P. Kenny
Action filed: 10/16/13

PLEASE TAKE NOTICE that on December 11, 2015, 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 leave to file their First Amended
Complaint for Declaratory and Injunctive Relief and First Amended Petition for Writ of
Mandamus (collectively the "First Amended Complaint") and that the proposed First Amended

1 Complaint submitted with this Motion be deemed filed.

2 The Motion is made pursuant to California Code of Civil Procedure section 473(a)(1) and
3 is based on this Notice of Motion, the Memorandum of Points and Authorities, the proposed First
4 Amended Complaint, the proposed order filed herewith, all of the files and records of this action,
5 and on any additional material that may be elicited at the hearing of the Motion.

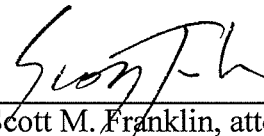
6 Please take further notice that

7 [p]ursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the
8 merits of this matter by 2:00 p.m., the court day before the hearing. The complete
9 text of the tentative rulings for the department may be downloaded off the
10 court's website. If the party does not have online access, they may call the
11 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.

12 Sac. Super. Ct. L.R. 106(A).

13 Dated: November 13, 2015

MICHEL & ASSOCIATES, P.C.

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Scott M. Franklin, attorney for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs seek leave to file the First Amended Complaint pursuant to California Code of
4 Civil Procedure section 473(a)(1). “Clean” and “striketrough” versions of the proposed First
5 Amended Complaint, identified as Exhibits 4 and 5, respectively, are provided herewith.
6 (Declaration of Scott M. Franklin [“Franklin Decl.”] at ¶ 11.) No trial date has been set in the
7 matter, and no prejudice will result from the proposed amendment, which is primarily intended to
8 add or alter legal theories based on facts already pleaded. Because granting the requested leave
9 will not cause prejudice to any party, and denial of the Motion will unfairly prejudice Plaintiffs,
10 the Motion should be granted.

11 **II. STATEMENT OF FACTS/PROCEDURAL HISTORY**

12 Plaintiffs filed their Complaint for Declaratory and Injunctive Relief and Petition for Writ
13 of Mandamus (the “Complaint”) on October 16, 2013. No trial date has been set in this action, nor
14 has a party requested that the Court set a trial date.

15 On June 5, 2015, the Court heard argument regarding Defendants’ Motion for Judgment
16 on the Pleadings (the “MJOP”). During the hearing, the Court requested the parties draft a
17 proposed order regarding the MJOP ruling and other issues that were before the Court. (*See*
18 *Franklin Decl.* at ¶ 2, Ex. 1, at 13:2-9.) Defendants submitted a proposed order to the Court, along
19 with an explanation of Plaintiffs’ objections thereto, on July 2, 2015. The Court issued an order
20 on July 20, 2015 (the “Order After Hearing”), dismissing Plaintiffs’ First Cause of Action and a
21 portion of Plaintiffs’ Second Cause of Action, based on a finding that the First Cause of Action
22 (alleging that Senate Bill 819 [2011, Leno] violated article XIII A, section 3, of the California
23 Constitution) failed to state facts sufficient to state a cause of action. (Order After Hearing at
24 2:11-21.)

25 In the weeks between the June 5 hearing and the issuance of the Order After Hearing,
26 Plaintiffs critically re-evaluated the Complaint to determine if any potentially viable causes of
27 action or theories of liability had not been pleaded in the Complaint. (*Franklin Decl.* at ¶ 2.) As a
28 result, Plaintiffs determined that the Complaint could have been more robust, and on June 23,

1 2015, Plaintiffs' counsel informed Defendants' counsel that Plaintiffs were contemplating seeking
2 leave to file an amended complaint/petition. (*Id.* ¶ 3.)

3 During the conversation of June 23, Plaintiffs' counsel explained that Plaintiffs' interest in
4 seeking leave to amend was primarily based on their desire to plead new theories of liability based
5 on facts previously alleged. (*Id.* ¶ 4.) The conversation of June 23 also included a discussion
6 concerning how the then-forthcoming Order After Hearing would affect Plaintiffs' ability to bring
7 a successful motion for leave to amend, if at all. (*Id.* ¶ 5.) During that discussion, Plaintiffs'
8 counsel expressly stated that Plaintiffs had no intention of seeking leave to amend for the purpose
9 of realleging the theories of liability dismissed pursuant to the (at the time anticipated) Order
10 After Hearing. (*Id.* ¶ 6.) Plaintiffs re-affirmed that position in a letter sent to Defendants' counsel
11 on June 30, 2015. (*Id.* ¶ 7.) On July 21, 2015, Plaintiffs' counsel reserved a hearing date for a
12 motion for leave to amend, after confirming Defendants' counsel's availability for the proposed
13 hearing date. (*Id.* ¶ 8.)

14 Plaintiffs provided Defendants' counsel a copy of the proposed First Amended Complaint
15 on August 3, 2015, with slightly revised versions provided to Defendants' counsel on October 8,
16 2015, and November 11, 2015. (*Id.* ¶ 9.) On November 12, 2015, Defendants' counsel sent
17 Plaintiffs' counsel an email confirming that Defendants intend to oppose this Motion (*Id.* ¶ 10.)

18 **A. The Proposed Amendments**

19 The proposed amendments fall into five categories: (1) non-substantive clerical
20 corrections; (2) the dismissal of the former State Controller as a defendant, who is being replaced
21 herein by the current State Controller; (3) addition of new legal claims to clarify a previously
22 existing cause of action; (4) the addition of new causes of action based on facts already pleaded;
23 and (5) additions to Plaintiffs' prayer based on the newly proposed causes of action. As to the
24 proposed amendments that would substantively change the allegations in the Complaint, the text
25 of those proposed amendments is provided in the Appendix filed as a part of this Motion.

26 **III. ARGUMENT**

27 **A. Relevant Law**

28 "The court may, in furtherance of justice, and on any terms as may be proper, allow a party

1 to amend any pleading[.]” Cal. Civ. Proc. Code § 473(a)(1); *see also* Cal. Civ. Proc. Code § 576
2 (“Any judge, at any time before or after commencement of trial, in the furtherance of justice, and
3 upon such terms as may be proper, may allow the amendment of any pleading.”). “There is a
4 strong policy in favor of liberal allowance of amendments.” *Mesler v. Bragg Mgmt. Co.*, 39 Cal.
5 3d 290, 296 (1985). If the granting of a timely motion for leave to amend “will not prejudice the
6 opposing party, it is error to refuse permission to amend, and where the refusal also results in a
7 party being deprived of the right to assert a meritorious cause of action[;] it is not only error but
8 an abuse of discretion.” *Morgan v. Super. Ct.*, 172 Cal. App. 2d 527, 530 (1959) (finding that the
9 trial court acted arbitrarily and abused its discretion when it denied a motion for leave to file an
10 amended complaint that was filed before a trial date had been set).

11 In some instances, leave to amend a complaint will be denied if there was an unreasonable
12 delay in seeking leave, and where, as a result of that delay, granting leave would prejudice the
13 defendant. *See A.N. v. Cnty. of Los Angeles*, 171 Cal. App. 4th 1058, 1068 (2009). But even
14 unreasonable delay does not justify denial of leave when leave is sought well before trial and the
15 proposed amendment only concerns the introduction of new legal theories that “relate to the same
16 general set of facts” previously pleaded. *See Kittredge Sports Co. v. Super. Ct.*, 213 Cal. App. 3d
17 1045, 1048 (1989) (citation omitted); *accord Morgan*, 172 Cal. App. 2d at 530. “[I]t is a rare case
18 in which a court will be justified in refusing a party leave to amend his pleadings so that he may
19 properly present his case.” *Morgan*, 172 Cal. App. 2d at 530 (citations omitted) (internal quotation
20 marks omitted).

21 **B. The Motion Should Be Granted Because Leave to Amend Was Timely Sought**
22 **and Because Defendants Will Not Be Prejudiced if the Motion Is Granted**

23 Plaintiffs’ counsel took action almost immediately after identifying that the facts pleaded
24 in the Complaint supported additional legal theories that were not pleaded in the Complaint.
25 (Franklin Decl. at ¶¶ 2-3.) Plaintiffs’ counsel told Defendants’ counsel of Plaintiffs’ intent to seek
26 leave within weeks of identifying the need to amend the Complaint, and a hearing date was
27 selected a few weeks thereafter. (*Id.* ¶¶ 4-8). Therefore, Defendants cannot legitimately claim
28 there was an unreasonable delay in bringing this Motion.

1 Further, if the Motion is granted, Defendants will be in effectively the same position as if
2 the proposed First Amended Complaint had been filed on the date the Complaint was filed. In
3 light of the fact that there is no trial date set in this matter—and Defendants have yet to request
4 that the Court set one—no prejudice can arise from the Motion being granted. This is simply not
5 the “eve of trial” type scenario where the potential prejudice flowing from a contemplated
6 amendment justifies ignoring “the strong policy favoring the liberal allowance of amendments.”
7 *Mesler*, 39 Cal. 3d at 296.

8 The type of unfair surprise or additional costs that can occur when leave is sought
9 immediately before, or during, trial just do not exist here. *See, e.g., Magpali v. Farmers Group,*
10 *Inc.*, 48 Cal. App. 4th 471, 486-87 (1996) (“Where . . . counsel, the parties, the trial court, and the
11 witnesses have blocked the time, and the only way to avoid prejudice to the opposing party is to
12 continue the trial date to allow further discovery, refusal of leave to amend cannot be an abuse of
13 discretion.”). The amendments Plaintiffs propose are all related to the facts originally pleaded in
14 this Action, so no prejudice will result by Plaintiff having “delayed” the inclusion or amendment
15 of legal theories stated for the first time in the proposed First Amended Complaint. *See Kittredge*,
16 213 Cal. App. 3d at 1048.

17 To the extent the new causes of action create any additional imposition on Defendants,
18 that imposition will result only from the substance of the claims pleaded against them, not from
19 the fact that some of the claims they will face were not stated in the original Complaint filed
20 herein. There is no authority stating that a motion for leave to amend a complaint could or should
21 be denied simply because the amended complaint expands the scope of litigation. Indeed, the
22 relevant case law indicates that if a plaintiff wants to expand the scope of a complaint to add
23 additional legitimate legal theories, it is proper to do so if discovery is still open. *Morgan*, 172
24 Cal. App. 2d at 531 (noting that there was no prejudice to the defendant where an amended
25 complaint would increase the number of causes of action pleaded against him); *cf. Laabs v. City*
26 *of Victorville*, 163 Cal. App. 4th 1242, 1258 (2008) (noting that amendments to pleadings are
27 “readily allowed” at the summary judgment stage); *see also* Cal. Civ. Proc. Code §§ 437c (stating
28 that a motion for summary judgment must be served seventy-five days before hearing, and that

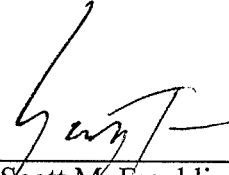
1 such hearing must occur at least thirty days before trial); 2024.020 (stating that discovery
2 generally closes thirty days before trial). Even assuming Defendants oppose this motion on the
3 grounds that it increases the scope of the Action, that is not prejudice of the kind that could scuttle
4 this Motion. As Defendants will not be able to articulate any form of prejudice upon which this
5 Motion could be denied, the Motion should be granted.

6 IV. CONCLUSION

7 In light of Plaintiffs' good faith and timely conduct, and the fact that the amendment
8 sought will not prejudice Defendants, the Plaintiffs respectfully request the Court grant this
9 Motion and allow Plaintiffs to file the proposed First Amended Complaint.

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11 Dated: November 13, 2015

MICHEL & ASSOCIATES, P.C.

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Scott M. Franklin, attorney for Plaintiffs

APPENDIX OF PROPOSED CHANGES

Pursuant to California Rules of Court, Rule 3.1324(a)(2)-(3), Plaintiffs propose the following amendments to the Complaint.

A. Update Plaintiffs' counsel at page 1, line 2; remove Glenn S. McRoberts' name and bar number, add Scott M. Franklin's name and bar number.

B. Replace references to former State Controller John Chiang with references to current State Controller Betty Yee, including related gender pronouns, at case caption (page 1) and at page 5, paragraph 29, lines 20-23.

C. Add a footnote for the Header at page 15, line 1, stating "The Court Granted a Motion for Judgment on the Pleadings, without leave to amend, as to Plaintiffs' First Cause of Action by way of an interlocutory order dated July 20, 2015.

D. Add a footnote for the Header at page 16, line 12, stating "On July 20, 2015, the Court dismissed the first alternative claim in the second cause of action, without leave to amend, based on the Court's dismissal of the Plaintiffs' first cause of action (see note 11 above)."

E. Add the following paragraphs, as new Paragraphs 113 and 114, to the sixth cause of action, at page 19, line 22:

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

114. In light of DOJ Defendants' duties to (1) perform a review to determine "the amount necessary to fund" the activities enumerated at Penal Code section 28225(b)(1)-(11) [12076(e)(1)-(10)] and to (2) charge the DROS Fee at that amount or less, DOJ Defendants' review of the relevant costs necessarily must include a determination of whether the use of DROS Fee funds for APPS-based law enforcement activities constitutes a tax. What is "necessary" to fund the activities referred to in the pre-SB 819 version of Penal Code section 28225 is different from what is "necessary" to fund "possession"-related law enforcement activities that are yet to be specified, inasmuch as a higher level of scrutiny applies to levies purportedly incurred to fund regulatory activities (as opposed to costs paid for via funds collected for a tax).

1 F. Add the following as a new cause of action:

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

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

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

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

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

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

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

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

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

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

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

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

126. Plaintiffs further desire an injunction prohibiting DOJ Defendants from
utilizing DROS Fee revenues for law enforcement activities related to the
“possession” of firearms pursuant to SB 819.

1 G. Add the following as a new cause of action:

2 **EIGHTH CAUSE OF ACTION: FOR DECLARATORY AND INJUNCTIVE**
3 **RELIEF[-]VALIDITY OF SENATE BILL 819/THE DROS FEE[-]Violation**
4 **of California Const., Art. XIII, Sec. 2 (By All Plaintiffs Against DOJ**
5 **Defendants)**

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

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

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

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

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

22 132. The implementation of SB 819 resulted in the differential taxation of personal
23 property (i.e., firearms).

24 133. SB 819 was not enacted by a two-thirds vote.

25 134. SB 819 is void and unenforceable because it created a differential tax that
26 does not meet the constitutional two-thirds vote requirement that applies to the
27 creation of a differential property tax.

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

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

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

138. Plaintiffs further desire an injunction prohibiting DOJ Defendants from
utilizing DROS Fee revenues for law enforcement activities related to the
“possession” of firearms pursuant to SB 819.

H. Add the following as a new cause of action:

NINTH CAUSE OF ACTION: FOR DECLARATORY AND INJUNCTIVE RELIEF[-]VALIDITY OF SENATE BILL 819/THE DROS FEE[-]Violation of California Const., Art. XIII, Sec. 3 (By All Plaintiffs Against DOJ Defendants)

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

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

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

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

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

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

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

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

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

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

149. Plaintiffs further desire an injunction prohibiting DOJ Defendants from utilizing DROS Fee revenues for law enforcement activities related to the “possession” of firearms pursuant to SB 819.

I. Add the following as a new cause of action:

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

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

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

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

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

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

155. Plaintiffs desire a judicial determination of the rights and duties of the parties, including a declaration that SB 819 does not authorize the appropriation of DROS Special Account funds for some use other than APPS-based law enforcement activities.

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

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

J. Add the following items of relief to Plaintiffs' Prayer, at page 21, line 12:

15) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII,

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section 1(b) of the California Constitution and is thus void;
16) For a declaration that Senate Bill 819 creates an unlawful tax under article XIII, section 2 of the California Constitution and is thus void

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

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

K. At page 21, line, 16, substitute Scott M. Franklin for C.D. Michel.

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 November 13, 2015, the foregoing document(s) described as

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FIRST AMENDED PETITION FOR WRIT OF MANDAMUS

on the interested parties in this action by placing

☐ the original

☒ a true and correct copy

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

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

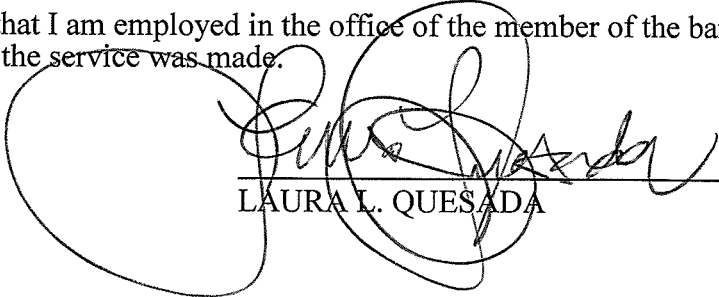
X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course 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 November 13, 2015, 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 November 13, 2015, at Long Beach, California.

— (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on November 13, 2015, 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