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6 Attorneys for Petitioner,
Lycurgan, Inc.
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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 IN RE THE SEARCH OF:
Ares Armor, 206/208 N. Freeman St.,
12 Oceanside; Ares Armor, 416 National
City Blvd.; Ares Armor Warehouse,
13 180 Roymar St. D; and 2420 Industry,
Oceanside, CA.
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CASE NO. 14-CV-1424 JLS (BGS)

**[AMENDED] PETITIONER
LYCURGAN, INC.'S NOTICE OF
HEARING ON MOTION AND
MOTION FOR ATTORNEYS' FEES
PURSUANT TO F.R.C.P. RULE 54(e),
and 28 U.S.C § 2412**

Judge: Hon. Janis L. Sammartino
Courtroom: 4A
Hearing Date: October 30, 2014
Hearing Time: 1:30 P.M.

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19 LYCURGAN, INC. d/b/a ARES
ARMOR,
20 Petitioner,
vs.
21 BUREAU OF ALCOHOL,
TOBACCO, FIREARMS AND
22 EXPLOSIVES,
23 Respondent.

24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE THAT** on October 30, 2014, at 1:30 P.M., in
26 Courtroom 4A of the above-entitled court located at 221 West Broadway, San Diego,
27 California 92101, Petitioner Lycurgan, Inc. ("Lycurgan") will and hereby does move the
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1 Court to grant its request for statutory attorney's fees and costs against Respondent
2 United States ("Government"), and for an order directing B. Todd Jones, as the Director
3 of the Bureau of Alcohol, Tobacco and Firearms Enforcement to pay Lycurgan, Inc. its
4 attorneys fees. Lycurgan brings this motion pursuant to Federal Rule of Civil Procedure
5 54(e), and according to the Equal Access to Justice Act ('EAJA'), 28 U.S.C. § 2412, as
6 the prevailing party in this action.

7 On June 11, 2014, Lycurgan commenced a civil action against the United States
8 seeking an order in the above-captioned case to unseal search warrant affidavit for those
9 warrants served upon Lycurgan's premises on March 15, 2014. The Government
10 opposed the motion, thereby requiring Lycurgan to fully brief the matter and present oral
11 argument at the hearing held on July 31, 2014.

12 At the conclusion of oral arguments by Lycurgan and the Government, the Court
13 ordered the Government to submit supplemental briefing to justify maintaining the
14 sealing of the search warrant affidavit. Instead, the Government disclosed a redacted
15 version of the search warrant affidavit on August 14, 2014.

16 On August 21, 2014, the Court dismissed the case finding that Lycurgan's action
17 to unseal search warrant was moot in light of the Government's disclosure of the redacted
18 search warrant affidavit. Accordingly, Petitioner is the prevailing party, and is statutorily
19 entitled to attorney's fees and costs.

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1 Petitioner requests a total award of not more than \$30,000.00 in reasonable
2 attorneys fees incurred in this case, calculated at the rate of \$189.78 per hour¹, subject to a
3 supporting memorandum of points and authorities and accompanying affidavit to be filed
4 within the statutory time period according to 28 U.S.C. section 2412(d)(1)(B).

5 Respectfully submitted,

6 DATED: September 4, 2014 The McMillan Law Firm, A.P.C.

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8 /s/ Scott A. McMillan

9 Scott A. McMillan
10 Attorney for Petitioner,
11 Lycurgan, Inc.
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22 ¹ The figure is calculated by taking the "HALF1" CPI rate for 2014 and subtracting
23 from it the March 1996 rate (236.384 - 155.7 = 80.684) and then dividing that number by
24 the March 1996 rate (80.684 / 155.7 = 0.5182). These calculations result in the
25 cost-of-living percentage increase from March 1996 through June 2014. The
26 cost-of-living percentage increase is then applied to the statutory rate of \$125.00 to derive
27 the adjusted hourly rate permitted by the EAJA ((0.5182 × 125) [*4] + 125 = 189.78).
28 See Department of Labor, Bureau of Labor Statistics, available at
<http://data.bls.gov/cgi-bin/surveymost?bls> (check box next to "CPI for All Urban
Consumers (CPI-U) 1982-84=100" and click on "Retrieve data" button) (last visited Aug.
13, 2014). See, *Beard v. Comm'r of Soc. Sec.*, 2014 U.S. Dist. LEXIS 120380, 3-4 (M.D.
Fla. Aug. 13, 2014)

CERTIFICATE OF SERVICE

I, Scott A. McMillan, declare the following:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 4670 Nebo Drive, Suite 200, La Mesa, California 91941. On September 4, 2014 I served the following documents:

[AMENDED] PETITIONER LYCURGAN, INC.'S NOTICE OF HEARING ON MOTION AND MOTION FOR ATTORNEYS' FEES PURSUANT TO F.R.C.P. RULE 54(e), and 28 U.S.C § 2412

[X] I have caused service of the above documents by electronically filing them with the Clerk of the District Court using its ECF System, which electronically notifies:

Laura E. Duffy
United States Attorney
Andrew R. Haden
Assistant U.S. Attorney
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101

Andrew Richard Haden andrew.haden@usdoj.gov, Efile.dkt.gc1@usdoj.gov,
esmeralda.diaz@usdoj.gov

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on September 4, 2014, at the City of La Mesa, County of San Diego, California.

/Scott A. McMillan/
Scott A. McMillan