

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Peter A. Krause, Cal. Bar No. 185098 Office of the Attorney General, California Department of Justice 1300 I Street, Suite 125, Sacramento, CA 95814 TELEPHONE NO.: (916) 324-5328 FAX NO. (Optional): (916) 324-8835 E-MAIL ADDRESS (Optional): peter.krause@doj.ca.gov ATTORNEY FOR (Name): Defendant and Appellant	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO STREET ADDRESS: 1130 O Street MAILING ADDRESS: 1130 O Street CITY AND ZIP CODE: Fresno, California 93721-2220 BRANCH NAME: B.F. Sisk Courthouse	
PLAINTIFF/PETITIONER: Sheriff Clay Parker, et al. DEFENDANT/RESPONDENT: State of California, Kamala D. Harris, et al.	
<b>APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</b>	
RE: Appeal filed on (date): June 10, 2011	Superior Court Case Number: 10CECG02116  Court of Appeal Case Number (if known): F062490
<b>Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.</b>	

## 1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior (check a, b, c, d, or e and fill in any required information):

- a. ☐ A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. ☒ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. ☐ A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

## 2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

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b. ☒ WITH the following record of the oral proceedings in the superior court:(1) ☒ A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section on page 3 of this form.)  
I have (check all that apply):(a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).(b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).(c) ☐ Attached the reporter's written waiver of a deposit for (check either (i) or (ii)):(i) ☐ all of the designated proceedings.(ii) ☐ part of the designated proceedings.(d) ☒ Attached a certified transcript under rule 8.130(b)(3).(2) ☐ An agreed statement. (Check and complete either (a) or (b) below.)(a) ☐ I have attached an agreed statement to this notice.(b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.(3) ☐ A settled statement under rule 8.137. (You must attach the motion required under rule 8.137(a) to this form.)**3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
--------------------------------	----------------

(1) Notice of appeal

(2) Notice designating record on appeal (this document)

(3) Judgment or order appealed from

(4) Notice of entry of judgment (if any)

(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)

(6) Ruling on one or more of the items listed in (5).

(7) Register of actions or docket (if any)

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**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in a. above to be included in the clerk's transcript, you must identify those documents here.)

☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed)

Document Title and Description	Date of Filing
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(8)

(9)

(10)

(11)

(12)

☐ See additional pages.

- c. **Exhibits to be included in clerk's transcript.**

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

Exhibit Number	Description	Admitted (Yes/No)
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(1)

(2)

(3)

(4)

(5)

☐ See additional pages.

**5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT**

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

- a. I request that the reporters provide (check one):

(1) ☒ My copy of the reporter's transcript in paper format.

(2) ☐ My copy of the reporter's transcript in computer-readable format.

(3) ☐ My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

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**b. Proceedings.**

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if you know it, the name of the court reporter who recorded the proceedings).

Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
(1) 5/17/11	402	Partial	Motion to Tax Costs Hearing	S. K. Obel-Jorgensen
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				

☐ See additional pages.

c. The proceedings designated in 5b ☒ include ☐ do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Date: June 9, 2011

PETER A. KRAUSE

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Sheriff Clay Parker, et al. v. The State of California**  
Case No.: **10CECG02116**

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 that same day in the ordinary course of business.

On June 9, 2011, I served the attached

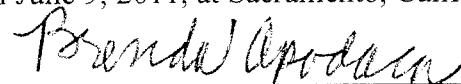
**APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

C.D. Michel  
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 9, 2011, at Sacramento, California.

Brenda Apodaca  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF FRESNO

3 Before the Honorable Jeff Hamilton, Judge

4 Department 402

5 -o0o-

6 SHERIFF CLAY PARKER, )

7 Plaintiff, )

8 vs. )

9 STATE OF )  
10 CALIFORNIA, )

11 Defendant. )

No. 10CECG02116

MOTION TO TAX COSTS

12 Fresno, California

May 17, 2011

13 -o0o-

REPORTER'S TRANSCRIPT

14 -o0o-

15 A P P E A R A N C E S:

16 FOR THE PLAINTIFF:

CLINTON MONFORT  
Michel and Associates, PC  
180 E. Ocean Blvd., Ste 200  
Long Beach, CA 90802

18 FOR THE DEFENDANT:

PETER KRAUSE, Supervising  
Deputy Attorney General  
Office of the Attorney  
General  
Department of Justice  
1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

23 -o0o-

24  
25 REPORTED BY:  
26 STACY K. OBEL-JORGENSEN, CSR, RPR  
CERTIFICATE NO. 11988

ORIGINAL

AFTERNOON SESSION - MAY 17, 2011

(The following proceedings were had in open court in the presence of the Court, Counsel, and the Defendant:)

THE COURT: Sheriff Clay Parker, et al, versus State of California, 10CECG02116.

MR. KRAUSE: Good afternoon, Your Honor. Peter Krause, Attorney's General's Office, on behalf of defendant State of California, et al.

MR. MONFORT: Good afternoon, Your Honor. Clinton Monfort, Michel and Associates, on behalf of plaintiff.

THE COURT: Okay. You both asked for a hearing.

MR. MONFORT: Plaintiffs did not, Your Honor.

THE COURT: Oh, okay.

So defense?

MR. MONFORT: Plaintiffs are willing to submit on the tentative.

THE COURT: Okay.

Defense?

MR. KRAUSE: Your Honor, I'll be brief. Just a couple of issues.

With respect to item number one, the filing and motion fee, the Court indicated in its tentative that the defendants hadn't met their burden of proof to demonstrate that the motion fee was unnecessary and reasonable. It is true that filing fees generally are recoverable, but the Court has

1 discretion to disallow recovery of filing fees when they're  
2 not necessary or proper in the case. And although the Court's  
3 tentative identified it as a burden of proof, the cases seem  
4 to talk about it more as a burden to raise a proper objection.

5 And here, the State objected on the ground that the fee  
6 for the motion wasn't -- not only was it not necessary, but it  
7 essentially didn't exist any longer because the motion was  
8 withdrawn. And although no California Court has yet addressed  
9 this issue, Courts in other states have, including the Wyoming  
10 Supreme Court case that we cited, which held that a motion  
11 withdrawn leaves the record as though the motion had never  
12 been made. And so it stands to reason that you can't recover  
13 a filing fee on a motion that's never been made.

14 So that, I think, was our proper objection and -- which  
15 shifted the burden to them -- to the plaintiffs to establish  
16 why recovery was proper. And so in their opposition, they  
17 assert that the State made them file the motion by being  
18 disagreeable, by delaying, but the record shows that, in fact,  
19 the State was willing to talk about getting a summary judgment  
20 motion on file and, in fact, the plaintiffs had calendared a  
21 hearing in December, six weeks before the statutes were going  
22 to go into effect. Nothing stopped them from filing that  
23 motion on a timely basis and, again, the record submitted with  
24 the papers shows that the State offers as late as October 18th  
25 to allow them to file their papers on that motion, but they  
26 opted instead to proceed with their preliminary injunction



1 motion.

2 So even if they hadn't withdrawn their motion making it a  
3 nullity, it wasn't necessary in the first instance because  
4 they had an opportunity to have a hearing on the merits of the  
5 case well before the statutes were even going to go into  
6 effect. And so I think for both of those reasons, the -- you  
7 know, they haven't met their burden to show why it was  
8 necessary in this case to have that -- have this -- to recover  
9 this filing fee.

10 And I understand it seems like a \$40 issue, but this  
11 obviously is a larger issue. They filed -- the plaintiffs  
12 have filed an attorneys fee motion, which is going to raise  
13 the same issue. They're seeking recovery for 364 hours worth  
14 of time preparing that preliminary injunction motion which  
15 comes to, I think, about \$82,000, plus they're asking for a  
16 multiplier which brings the grand total up to about \$125,000  
17 that they're going to be seeking in fees on this withdrawn  
18 motion.

19 So it is an important issue and, again, we think that the  
20 authority that has been cited, you know, more than meets our  
21 burden for submitting a proper objection.

22 THE COURT: All right.

23 Mr. Monfort?

24 MR. MONFORT: Thank you, Your Honor.

25 Well, our understanding is that costs can be recovered  
26 for filing fees for filings that were either, you know,

1 necessary or reasonable and in light of the circumstances, and  
2 I think this is pretty well set forth in plaintiff's  
3 opposition that it was reasonable and, in fact, necessary to  
4 file a motion for preliminary injunction.

5 Defense counsel has requested delays throughout the  
6 course of the litigation, and although defense counsel  
7 suggested they were happy to talk about the issue of moving  
8 forward with cross motions for summary judgment, the fact of  
9 the matter is, as set forth in Counsel's declaration, my  
10 declaration, is that it was offered. It was on the table, and  
11 the parties were never able to come to an agreeable solution  
12 as to when a motion for summary judgment would be heard and  
13 counsel cited -- counsel for defendant cited the need to  
14 conduct discovery, take the deposition of plaintiffs or  
15 plaintiff's expert witness and not until the preliminary  
16 injunction motion was filed and, in fact, at the hearing did  
17 the -- did defendants ever attempt to notice a deposition in  
18 the case and only noticed the deposition after the Court  
19 assisted the parties in negotiating a shortened briefing  
20 schedule and motion for summary judgment and after the Court  
21 imposed a deadline to conduct depositions.

22 So in light of that, plaintiffs didn't -- didn't see it  
23 likely that a motion for summary judgment would be heard and  
24 then, in fact, ruled on not only prior to the date of the  
25 challenged provision, but prior to it in enough time so the  
26 plaintiffs could, you know, conduct their business decision to

1 allow them to comply with the challenge provisions.

2 THE COURT: Okay.

3 MR. KRAUSE: In responding to that, Your Honor, I didn't  
4 hear any explanation as to why when they had a summary  
5 judgment motion calendared on December 16th they couldn't file  
6 either by the October 1st deadline for notice on a summary  
7 judgment motion or even by the extended deadline that was  
8 offered on October 18th. And aside from that fact, I don't  
9 even think you get to the issue of whether it was reasonably  
10 necessary in litigation. When they withdrew the motion, they  
11 essentially made it as if -- left the record as if the motion  
12 had never been made.

13 And so in that circumstance, I don't think you even get  
14 to the question of whether it was reasonably necessary. But  
15 even if you did, I don't think under any -- under any  
16 circumstance was it necessary when they could have had the  
17 issue resolved, putting aside the misleading characterization  
18 of these delays and so forth. Nothing prevented them from  
19 moving forward with the summary judgment motion.

20 MR. MONFORT: To respond, Your Honor, our intention isn't  
21 to suggest that opposing counsel was, you know, delaying  
22 tactics for any inappropriate reason, but the fact of the  
23 matter was that delays continued to happen throughout the  
24 course of the litigation. And in light of that, it seemed  
25 absolutely necessary for plaintiffs at the time to file a  
26 motion for preliminary injunction. And even though we could

1 have technically calendared a summary judgment motion and  
2 notice it for a certain date, there was very little reason for  
3 plaintiffs to expect that a decision would have actually been  
4 reached -- that a motion would have been heard and a decision  
5 would have been reached prior to the February 1st effective  
6 deadline. And as I alluded to previously, while it was  
7 helpful to get a decision prior to the February 1st effective  
8 deadline, my clients had significant business decisions that  
9 required, you know, resolution well prior to February 1st  
10 effective deadline.

11 And in terms of Counsel's argument that we shouldn't even  
12 reach a decision as to whether or not the decision was  
13 unreasonable or unnecessary, I'm not quite following. I'm not  
14 sure if I'm agreeing with Counsel's -- what he's relying on  
15 because the motion was withdrawn because in light of what took  
16 place in the proceeding that day, the Court and the parties  
17 were able to work out an expedited briefing schedule so the  
18 claims would, in fact, be resolved and would have a ruling  
19 issued prior to February 1st that resulted as -- because of  
20 the preliminary injunction motion hearing was scheduled  
21 regardless of whether or not it was actually withdrawn.

22 THE COURT: All right. I appreciate the argument. At  
23 this point, the Court's going to keep the tentative as it is  
24 written. That's not any kind of telegraph as to the attorney  
25 fees motion, but I'm going to leave the tentative as it is.  
26 That will become the order.

1           MR. KRAUSE: I'm sorry, Your Honor. I do have one other  
2 issue that I'd like to raise --

3           THE COURT: Okay.

4           MR. KRAUSE: -- just briefly on the issue of expedited  
5 deposition transcript costs. Just like to, again, reiterate  
6 that that was something that was caused by the -- caused by  
7 the plaintiffs after they withdrew their preliminary  
8 injunction motion. They opted to pursue that. It was  
9 technically defective. The Court was going to deny it, and  
10 they eagerly accepted this truncated summary judgment briefing  
11 schedule that only gave them two weeks to file their opening  
12 brief. That wasn't for the State's benefit. That was only  
13 for their benefit. They went into it knowing that that was  
14 going to be something that they would have to pay for. And so  
15 I don't think the State should be forced to pay for their  
16 expedited deposition transcript costs.

17          MR. MONFORT: Briefly I'll address that, Your Honor, if I  
18 may. Plaintiff's counsel was aware of the fact that defense  
19 counsel wanted to conduct depositions and -- as far back as, I  
20 believe, August, and repeatedly made our witnesses available  
21 for deposition. And it wasn't until December, just before the  
22 deadline for plaintiffs to file their motion for summary  
23 judgment, that defendants finally noticed the first deposition  
24 in the case.

25          MR. KRAUSE: And I will say, Your Honor, it's because the  
26 State believed that the issues were all legal issues and that

1 discovery wasn't necessary until we saw their summary judgment  
2 papers with its 11 declarations and all the evidence that we  
3 felt compelled to respond by taking the depositions. But  
4 we'll submit on that, Your Honor.

5 MR. MONFORT: Plaintiffs will submit as well, Your Honor.

6 THE COURT: Okay.

7 All right. The tentative remains. Thank you.

8 MR. KRAUSE: Thank you.

9 MR. MONFORT: Thank you, Your Honor. Appreciate it.


10 (Matter concluded.)

11 -oOo-

12 STATE OF CALIFORNIA )  
13 ) ss.  
14 COUNTY OF FRESNO )

15 I, STACY K. OBEL-JORGENSEN, Official Shorthand Reporter, do  
16 hereby certify and declare that I was the duly appointed and  
17 acting Official Stenographic Reporter for the Superior Court  
18 of the State of California, County of Fresno, on the hearing  
19 of the foregoing matter held May 17, 2011; that the foregoing  
20 is a complete, true and correct transcription of the  
21 stenographic notes as taken by me in said matter on said date.

22 Dated May 23, 2011.

23  
24   
25 STACY K. OBEL-JORGENSEN, CSR, RPR.  
26 Certificate No. 11988