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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

SHERIFF CLAY PARKER, TEHAMA COUNTY SHERIFF; HERB BAUER SPORTING GOODS; CALIFORNIA RIFLE AND PISTOL ASSOCIATION FOUNDATION; ABLE'S SPORTING, INC.; RTG SPORTING COLLECTIBLES, LLC; AND STEVEN STONECIPHER, Plaintiffs and Petitioners, vs. THE STATE OF CALIFORNIA; KAMALA D. HARRIS, in her official capacity as Attorney General for the State of California; THE CALIFORNIA DEPARTMENT OF JUSTICE; and DOES 1-25, Defendants and Respondents.	CASE NO. 10CECG02116 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS FEES** Date: Time: Location: Dept. 402 Judge: Hon. Jeffrey Y. Hamilton Action Filed: June 17, 2010

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INTRODUCTION

Code of Civil Procedure section 1021.5 recognizes "that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embedded in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." (*Woodland Hills Resids. Assn. v. City Council* (1979) 23 Cal.3d 917, 933.)

This litigation challenged Defendants' enactment and enforcement of Penal Code sections 12060, 12061, and 12318 ("the Challenged Provisions"), controversial legislation mandating the registration of "handgun ammunition" sales and prohibiting mail order and internet sales of the same. Seeking declaratory and injunctive relief, Plaintiffs charged that the Challenged Provisions failed to give reasonable persons notice as to what constituted "handgun ammunition" under the law, and they likewise failed to provide law enforcement with sufficient guidelines to prevent arbitrary and discriminatory enforcement. (Compl., 18:16-25.)

Following a successful motion for summary adjudication, Plaintiffs obtained a Judgment declaring the Challenged Provisions unconstitutionally vague and permanently enjoining Defendants from implementing, enforcing, or giving effect to the laws. In successfully bringing this action, Plaintiffs have ensured that no person will have their rights to due process violated by the enforcement of the unconstitutionally vague Challenged Provisions. Plaintiffs' attorneys are thus entitled to compensation under section 1021.5.

All of the time for which Plaintiffs seek recovery of their fees is reasonable, as indicated in Exhibit J, attached to the Declaration of Clinton B. Monfort, which indicates the total hours worked, broken down by billing professional and project. Plaintiffs repeatedly attempted to resolve this case on the merits without much of the time and expense accrued, but Defendants' conduct contributed significantly to the hours Plaintiffs' counsel ultimately billed on this matter. Further, the total amount Plaintiffs request appropriately reflects the rates of comparable attorneys in the community and the novelty, contingent risk, and exceptional outcome of this litigation.

STATEMENT OF FACTS

To bring context to this fee claim, Plaintiffs present the following summary of the facts

and proceedings, taken from the Court's files and the declarations filed in this motion.

The Challenged Provisions: Passed in 2009, Assembly Bill 962 ("AB 962") added sections 12060, 12061, and 12318 to the California Penal Code and implemented a statutory scheme for the transfer and handling of "handgun ammunition." More specifically, the Challenged Provisions required vendors to: (1) preclude prohibited employees from accessing "handgun ammunition;" (2) store "handgun ammunition" beyond the reach of customers; and (3) record specific information about every transfer of "handgun ammunition" and obtain a thumb print from each customer. (Pen. Code, § 12061.) Section 12318 further required that all sales and transfers of "handgun ammunition" be conducted in a "face-to-face" transaction.

Building the Case: In bringing this case, Plaintiffs' attorneys logged approximately 150 hours compiling background information and facts, meeting with and communicating with clients, conducting legal research, analyzing the many theories under which this challenge could be brought, conferring with ammunition experts, and drafting, editing, and revising the Complaint for Declaratory and Injunctive Relief and Writ of Mandate. (Monfort Decl., ¶¶ 66-70.)

On June 16, 2010, Plaintiffs filed a Complaint, challenging the laws as vague in violation of the Fourteenth Amendment guarantee of due process, on their face and as applied, arguing they did not give reasonable persons notice as to what constituted "handgun ammunition" and lacked sufficient guidelines to prevent arbitrary and discriminatory enforcement. (Compl., 18:16-25.)

Tracking Assembly Bill 2358: Plaintiffs' attorneys expended about 15 hours tracking, analyzing, and preparing a response to Assembly Bill 2358 (Monfort Decl., ¶¶ 71-76), which would have changed the Challenged Provisions and which was amended with the assistance of Defendant DOJ to include a list of ammunition to be considered "handgun ammunition" for purposes of the Challenged Provisions. The bill had the potential to significantly impact the shape of this litigation and Plaintiffs' arguments in this case. (Monfort Decl., ¶¶ 25-26.)

Motion for Preliminary Injunction: Anticipating that this case hinged largely on a question of law, Plaintiffs sought early on to resolve this matter via cross-motions for summary judgment following a shortened briefing schedule. (Monfort Decl., ¶ 21.) Plaintiffs sought speedy resolution of their claims to increase the likelihood that a *final decision* would be rendered before the

February 1, 2011 effective date of the Challenged Provisions. But Defendants would not agree, citing the need to conduct discovery and depose Plaintiffs' witnesses. (Monfort Decl., ¶ 33.)

Plaintiffs' counsel anticipated that any Motion for Summary Judgment would likely face delays from Defendants, such that Plaintiffs' claims would not be resolved on the merits at any significant time prior to the Challenged Provisions' effective date, or even by the February 1, 2011 effective date itself. Plaintiffs' counsel based this conclusion on Defendants' conduct to that point, including repeatedly requesting extensions, working with the Legislature to amend the laws at issue, refusing Plaintiffs' multiple requests to move forward with cross-motions for summary judgment, and failing to conduct any discovery until December, despite Plaintiffs' repeated offers to make potential witnesses available for deposition. (Monfort Decl., ¶¶ 28-29, 31.)[1]

Even if Plaintiffs' claims could be heard prior to February 1, 2011, it was reasonable for Plaintiffs' counsel to anticipate the Court might take Plaintiffs' claims under submission for an indefinite and potentially lengthy period of time given the magnitude of the issues as stake in this litigation and the extraordinary relief sought, i.e., repeal of three statewide ammunition statutes. (Monfort Decl., ¶ 30.) Plaintiffs thus prepared and filed a Motion for Preliminary Injunction.

Plaintiffs ultimately spent approximately 360 hours conducting relevant legal research, analyzing the legal arguments, drafting the moving and reply papers, preparing the evidence in support, and preparing for, traveling to, and attending the hearing. (Monfort Decl., ¶¶ 77-82.)

Discovery: Plaintiffs propounded written discovery and deposed Defendants' expert; Defendants then noticed and took five depositions of Plaintiffs' witnesses. (Monfort Decl., ¶¶ 33, 40-42, 45.) In total, Plaintiffs' attorneys billed about 225 hours on this phase of litigation. While Plaintiffs were initially of the opinion such extensive discovery would be unnecessary, Defendants' mid-litigation change in strategy, adopting the argument that there is common understanding that the Challenged Provisions apply to nine calibers of ammunition, required Plaintiffs to depose Defendants' expert to thoroughly examine the basis for the newly-adopted

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[1] In fact, it was not until Defendants were in the presence of the Court at the preliminary injunction hearing that Defendants reluctantly agreed to move forward with this case and to work with Plaintiffs to ensure it could be decided before February 1. Only then, when given a deadline by the Court, did Defendants finally notice a deposition. 2011. (Monfort Decl., ¶¶ 35-36.)

approach. (Monfort Decl., ¶¶ 38-40.)

Regarding the depositions of Plaintiffs' witnesses, Defendants have maintained those depositions were merely a necessary response to Plaintiffs' extensive factual record, which Plaintiffs built to provide the Court with background information on the technical subject matter of this litigation. (Defs.' Reply Mem. Supp. Mot. to Tax Costs, 4:6-14; Monfort Decl., ¶ 44.) Even if this were Defendants' true motivation, which Plaintiffs doubt,[2] it does not change the fact that Plaintiffs' counsel were required to prepare for, travel to, and attend those depositions.[3]

Motion for Summary Judgment: At the hearing on Plaintiffs' Motion for Preliminary Injunction, the parties, with the Court's participation, negotiated a briefing schedule by which summary judgment could be heard and a trial held before February 1, 2011. (Monfort Decl., ¶¶ 35-36.) The resulting briefing schedule gave Plaintiffs little more than two weeks to complete discovery and file their moving papers. Plaintiffs' counsel thus worked around the clock conducting research, reviewing and analyzing extensive deposition testimony, consulting with their experts, developing arguments based on the pertinent facts and law, drafting, editing, and revising the moving papers and supporting documents, compiling evidentiary support, and responding to Defendants' opposition. (Monfort Decl., ¶¶ 92-97.)

Plaintiffs' counsel spent about 800 hours bringing their motion. In addition to the activities described above, this figure reflects the time spent preparing for, traveling to, and attending the motion hearing, and preparing for the possibility of trial. (Monfort Decl., ¶¶ 92-97.) Notably, this figure also reflects motion work prepared prior to receiving Defendants' written discovery responses. (Monfort Decl., ¶¶ 34, 38.) In a stark departure from their position in opposition to Plaintiffs' Motion for Preliminary Injunction, Defendants' responses advanced the "common understanding" standard for the first time. (Monfort Decl., ¶¶ 38-39.) This led Plaintiffs' counsel

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[2] Defendants asserted the need to conduct discovery and take the depositions of Plaintiffs' witnesses as early as August 2010. (Monfort Decl., ¶ 23.)

[3] While of the opinion that Mr. Brady's technical expertise made his presence at the depositions essential, Plaintiffs' attorneys, exercising "billing judgment," seek no recovery for the time billed for his travel to and attendance at these depositions. (Monfort Decl., ¶ 59.)

to reevaluate their arguments, research and analyze Defendants' new argument, and re-draft significant portions of their motion. (Monfort Decl., ¶¶ 39, 43.)

Post-Hearing Activity: As of May 5, 2011, Plaintiffs' attorneys had spent about 190 hours on activities since the hearing on their summary judgment motion. This includes time spent drafting the Order of Permanent Injunction, Judgment, Notice of Entry of Judgment, Memorandum of Costs, and Opposition to Defendants' Motion to Tax Costs, negotiations for fee settlement and waiver of appeal, and the present Motion for Attorneys Fees. A significant amount of time was also expended reviewing and analyzing Plaintiffs' counsel's voluminous billing records to properly account for the costs and fees requested. (Monfort Decl., ¶¶ 98-103.)[4]

Plaintiffs' Success: Plaintiffs brought this action, seeking a declaration that the Challenged Provisions are unconstitutionally vague and a permanent injunction preventing their enforcement. (Compl., 22:26-23:3.) In its Order Denying Plaintiffs' Motion for Summary Judgment, the Court declared the laws unconstitutional on their face and, on January 21, 2011, issued an order enjoining Defendants from implementing, enforcing, or giving effect to the Challenged Provisions. (Order Den. Pls.' Mot. Summ. J., 18:1-10; Order of Perm. Inj., 2:7-10.) Judgment was subsequently entered in Plaintiffs' favor. (See Not. Entry of J., filed Mar. 2, 2011.)

As the prevailing party, Plaintiffs now move for the award of reasonable attorneys fees, including a lodestar enhancement for all pre-judgment work, totaling $ 625,048.25.

ARGUMENT

I. PETITIONERS ARE ENTITLED TO REASONABLE ATTORNEYS' FEES

The "private attorney general doctrine," as codified at section 1021.5, *entitles* a litigant to fees if four conditions are met: (1) the litigant is the prevailing party; (2) the action enforced an important right affecting public interest; (3) the action conferred a significant benefit on the general public or a large class of persons; and (4) the necessity and financial burden of private enforcement make an award "appropriate."

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[4] Because the bulk of the post-hearing work was conducted by Ms. Barvir, and because these activities do not require the expertise required by the underlying lawsuit, Plaintiffs do not seek a multiplier for any of this work.

A. Plaintiffs Are the Prevailing Party

It is settled that "plaintiffs may be considered 'prevailing parties' for attorney's fee purposes if they succeed on *any significant issue* in litigation which achieves *some of the benefit* the parties sought in bringing suit." (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153, internal quotations omitted.) For purposes of section 1021.5, a party is successful if it achieves some relief from the benchmark conditions challenged in the lawsuit. (*Folsom v. Butte County Assn. of Govts.* (1982) 32 Cal.3d 668, 687.) Plaintiffs brought this action, seeking a declaration that the Challenged Provisions were unconstitutionally vague and a permanent injunction preventing the enforcement of those laws.[5] (Compl., 22:26-23:3.) Though Plaintiffs dismissed two of their claims, they were successful in achieving *all* relief sought. (See Judgment, 2:14:26; Order Den. Pls.' Mot. Summ. J., 18:1-10.)

B. Plaintiffs' Lawsuit Enforced Important Rights Affecting the Public Interest

It is wellestablished that "[l]itigation which enforces constitutional rights necessarily affects the public interest and confers a significant benefit upon the general public." *City of Fresno v. Press Commcns., Inc.* (1994) 31 Cal.App.4th 32.)

Plaintiffs' lawsuit attacked the Challenged Provisions on constitutional due process vagueness grounds because the statutes failed to provide notice to as to what conduct was regulated, and they lacked sufficient standards to prevent arbitrary and discriminatory enforcement of the law. (Compl., 18:16-25.) The Court agreed, finding the Challenged Provisions failed on both counts. (Order, 11:24-28, 17:23-28). In so succeeding, Plaintiffs promoted the right of persons to be free from deprivations of "life, liberty, or property without due process of law"–a right essential to both the federal and state constitutions. This, according to *City of Fresno v. Press Communications*, necessarily establishes the "public interest" prong of the section 1021.5 inquiry.

Further, this action ensured that Californians who wish to purchase and transact in ammunition do not have that right circumscribed unreasonably. And the United States Supreme Court affirmed in *District of Columbia v. Heller* (2008) 554 U.S. 570, and *McDonald v. Chicago*

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[5] Plaintiffs also sought a peremptory writ as an alternate means of halting the enforcement of the Challenged Provisions. (Compl., 23:4-5.)

(2010) __ U.S. __, 130 S.Ct. 3020, the right to use a firearm in self-defense, which necessarily entails the use of ammunition, is indeed a fundamental right protected by the Constitution. While Plaintiffs did not raise a Second Amendment claim, for purposes of determining whether an important right was enforced, a party need not "have made the particular legal arguments which vindicated the public right affecting the public interest." (*L.A. Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1, 13 n.1.) "It is enough that but for the party's legal action the right would not have been vindicated." (*Ibid.*) This is precisely the case here.

In succeeding on their facial vagueness challenge, Plaintiffs enforced those constitutional rights of the general public enshrined in the Fourteenth Amendment and, by extension, protected rights guaranteed by the Second Amendment, satisfying the second prong of the analysis.

C. The Litigation Conferred a Significant Benefit on the General Public

Under section 1021.5, the lawsuit must also confer a "significant benefit," on the general public or a large class of persons. (*Woodland Hills Residents Assn v. City Council of L.A.* (1979) 23 Cal.3d 917, 939.) When an action vindicates constitutional principles of great magnitude, the court presumes that the public benefits even if only a few individuals are directly involved. (See *Press v. Lucky Stores, Inc.*, *supra*, 34 Cal.3d 311, 319.)[6]

Here, the general public benefitted from the enforcement of two important constitutional rights–those embodied in the Fourteenth and Second Amendments. Specifically, Plaintiffs vindicated the rights of all Californians to be free from the burden of vague laws that violate due process and improperly infringe on their access to ammunition necessary for the exercise of their Second Amendment rights. As with the enforcement of the individual rights at issue in *Press v. Lucky Stores*, society is presumed to have benefitted from Plaintiffs' enforcement of their individual rights to due process and to keep and bear arms through this litigation.

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[6] A number of cases affirm that enforcement of important constitutional rights per se confers a significant benefit on society. (See, e.g., *Schmid v. Lovette* (1984) 154 Cal.App.3d 466 [action to enjoin school district from requiring loyalty oath]; *Best v. Cal. Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1468 [enforcing the constitutional right to the accommodation of religious beliefs in the employment context]; *Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 261 [enforcing right to equal protection and freedom from sex discrimination].)

In any event, a "large class of persons" did, in fact, benefit from Plaintiffs' success. At issue in this case were the rights of *every* ammunition purchaser and seller in California and any person who may in the future wish to purchase or transact in ammunition within the state. Additionally, out-of-state ammunition shippers benefitted from the enforcement of their interests in conducting mail and internet orders free from arbitrary or discriminatory enforcement of the Challenged Provisions. (See Decl. of Brian Hall Supp. Mot. Summ. J.; Decl. of Larry Potterfield Supp. Mot. Summ. J; Decl. of Michael Tenny Supp. Mot. Summ. J.)

Because Plaintiffs' success enforced constitutional rights shared by all Californians and, in fact, benefitted a large class of persons, the litigation conferred a significant benefit, entitling Plaintiffs to fees under section 1021.5.

D. The Necessity and Financial Burden of Private Enforcement Make a Fee Award Appropriate

The final requirement for an award of attorneys' fees under section 1021.5 is that the "necessity and financial burden of private enforcement . . . are such as to make the award appropriate[.]" When an action is brought against a governmental agency, as here, the need for private enforcement is clear. (See *Woodland Hills*, *supra*, 23 Cal.3d at p. 941.)

Additionally, an award is "appropriate when the cost of the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff 'out of proportion to his individual stake in the matter.' " (*Woodland Hills*, *supra*, 23 Cal.3d at p. 941.)

The California Rifle & Pistol Association Foundation, a non-profit 501(c)(3), and the individual plaintiffs had *no* pecuniary interest in this case, rendering the financial burden *grossly* disproportionate to their personal stake in the matter. To the extent they were motivated by non-pecuniary interests in the Fourteenth and Second Amendments, "abstract or ideological personal interests were never intended by the Legislature to defeat fee claims under section 1021.5." (*Hammond v. Agran* (2002) 99 Cal.App.4th 115, 126.) Indeed, a fee award is justified under section 1021.5 because it is meant to encourage suits by exactly these types of interested parties.

Regarding the retailer plaintiffs, this lawsuit actually ran *contrary* to their business interests. The Challenged Provisions' prohibition of mail order and internet sales would have

funneled ammunition purchasers to "brick-and-mortar stores," like the ones operated by those Plaintiffs, increasing their sales and revenues. And any cost associated with creating and retaining the records required by the Challenged Provisions would have paled in comparison to the hundreds of thousands of dollars incurred in maintaining this lawsuit. As such, any pecuniary interest the retailer plaintiffs might have had in the outcome of this case was secondary to their primary focus–the enforcement of fundamental constitutional principles, specifically, the right to be free from arbitrary and discriminatory enforcement of an unconstitutionally vague criminal law.

II. THE AMOUNT OF ATTORNEYS FEES REQUESTED IS REASONABLE

A. California Law Prescribes a Lodestar / Multiplier Method of Calculating a Reasonable Attorney's Fee Award

When a party is entitled to attorneys fees under section 1021.5, the amount of the award is calculated according to the "lodestar/multiplier" method, whereby the base fee or "lodestar" is determined by multiplying a reasonable hourly rate by the number of hours reasonably expended on the litigation. (*Serrano v. Priest* [*Serrano III*] (1977) 20 Cal.3d 25, 48.) To fix the fee at the fair market value of the specific legal services provided, the lodestar may then be enhanced by a multiplier after the court has considered other factors concerning the lawsuit. (*Press v. Lucky Stores*, *supra*, 34 Cal.3d at p. 322; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

Plaintiffs here seek a lodestar of $396,473.50 for work on the merits, to be augmented by a 1.5 multiplier, and $30,338.50 for services rendered following the hearing on Plaintiffs' Motion for Summary Judgment. Plaintiffs thus seek an award totaling $625,048.75. In light of the expertise and reputation of Plaintiffs' attorneys and the novelty, contingent risk, and exceptional outcome of this litigation, these figures are appropriate and will result in a reasonable fee award.

B. Plaintiffs' Requested Lodestar Represents an Appropriate Valuation of the Time Spent by Plaintiffs' Counsel

Plaintiffs' fee claim seeks compensation for 1760.6 total hours worked by four attorneys of varying experience levels, one law clerk, and one paralegal.[7] Under the circumstances of this

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[7] Time spent by paralegals and law clerks is compensable at market rates separately from attorney's services if the local practice is to bill for their services. (*Richlin Sec. Serv. Co. v. Chertoff* (2008) 553 U.S. 571.) In California, fee awards including compensation for paralegal time are justifiable and commonplace. (*Sundance v. Muni. Ct.* (1987) 192 Cal.App.3d 268, 274.) Ms. Barvir, a law clerk, and Ms. Ayala, a paralegal, are billed out at $100 per hour and $85 per

case, this amount represents an appropriate valuation of the time spent by Plaintiffs' counsel, as documented below and in the Declarations of Jason Davis, C.D. Michel, and Clinton B. Monfort.

1. Counsel's Hours Are Reasonable

The prevailing party is entitled to compensation for "*all* the hours reasonably spent." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133.) "The question is not whether . . . in hindsight the time expenditure was strictly necessary to obtain the relief achieved. Rather, the standard is whether a reasonable attorney would have believed the work to be reasonably expended in pursuit of success" when the work was performed. (*Woolridge v. Marlene Indus. Corp.* (6th Cir. 1990) 898 F.2d 1169, 1177.) Counsel's "sworn testimony that, in fact, it took the time claimed is evidence of considerable weight on the issue of the time required." (*Perkins v. Mobile Housing Bd.* (11th Cir. 1988) 847 F.2d 735, 738.) Once a fully documented claim is presented, the burden shifts to the fee opponent to demonstrate with specific evidence that the hours or rates claimed are not reasonable. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.)

Every hour Plaintiffs claim is compensable. First, Plaintiffs' success here was complete. While some theories were never reached, when substantial results are achieved and the plaintiff's claims are related, no reduction for losing theories or claims is appropriate. (See *Downey Cares v. Downey Cmty. Dev. Commn.* (1987) 196 Cal.App.3d 983, 997) Here, each of Plaintiffs' claims were directed at the same conduct–the enactment and enforcement of the Challenged Provisions–and each sought declaratory and injunctive relief. That relief was obtained, and Plaintiffs' attorneys are entitled to be fully compensated.

Second, Plaintiffs' fee claim is documented by the declaration of Plaintiffs' counsel. Mr. Monfort's declaration provides a detailed, step-by-step summary of the various tasks that required counsel's time. (See Monfort Decl.)[8] And "the court should defer to the winning lawyer's

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hour respectively. (Monfort Decl., ¶¶ 63-64.)

[8] Should the Court wish to review the extensive daily time records Plaintiffs' counsel kept over the course of the litigation, Plaintiffs would be willing to submit those records for in camera review, as they contain a great deal of information that is protected by the attorney-client and work product privileges. (Monfort Decl., ¶ 65.)

professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) Further, Plaintiffs' counsel has exercised considerable "billing judgment," excluding from this claim time for entries that might be considered vague, excessive, or redundant. (Monfort Decl., ¶ 59; Ex. J [indicating that counsel has written off 626.6 hours].)

Additionally, all of Plaintiffs' requested hours were reasonably spent. Mr. Monfort's declaration, summarized in the Statement of Facts above, illustrates the time and effort required of Plaintiffs' counsel to bring this case to its successful conclusion. It further identifies key reasons Plaintiffs' counsel made the decisions they made during the course of this litigation, not the least of which being Defendants' litigation tactics. (See, e.g, Monfort Decl., ¶¶ 28-31.)

To reiterate, Mr. Monfort, who billed the most hours, was responsible for compiling the factual basis for this lawsuit, exploring the theories under which Plaintiffs' challenge could be brought, and ultimately developing the legal strategy that led to the success of this matter. He was further responsible for the bulk of the drafting, editing, and revising of all documents submitted in the course of this litigation, conducting discovery, and making appearances on Plaintiffs' behalf. (Monfort Decl., ¶¶ 66, 76-77, 91, 93, 100.)

Mr. Monfort was assisted by Mr. Brady, who was largely responsible for conducting legal research, drafting early versions of the pleadings, compiling evidentiary support, and analyzing extensive deposition testimony. He also provided invaluable input on the types and uses of ammunition. Additionally, he billed a number of hours preparing Mr. Monfort for depositions and for oral argument on Plaintiffs' preliminary injunction and summary judgment motions. (Monfort Decl., ¶¶ 69, 74, 81, 88, 95, 101.)

Mr. Dale, an attorney with ten years experience, assisted with taking and defending depositions and preparing Plaintiffs' Motion for Summary Judgment. (Monfort Decl., ¶¶ 89, 96.)

Mr. Michel was primarily responsible for overseeing the litigation, editing and finishing the court filings, and working closely with Mr. Monfort and Mr. Brady to ensure that all critical issues were addressed. (Monfort Decl., ¶¶ 70, 75, 82, 90, 97, 103.)

Finally, Ms. Barvir, a law clerk, conducted significant legal research, created draft versions

of Plaintiffs' motions, compiled evidence, assisted Mr. Monfort in preparing for depositions and appearances, and conducted final proofreading and cite checking of each of Plaintiffs' filings. Additionally, in an effort to keep fees low, the bulk of Plaintiffs' counsel's post-hearing work was billed by Ms. Barvir. (Monfort Decl., ¶¶ 73, 80, 87, 94, 99.)

2. Plaintiffs' Schedule of Hourly Rates Is Reasonable

Plaintiffs' attorneys are entitled to compensation at rates that reflect the current "prevailing hourly rate in the community," *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1094, weighing the rates of attorneys of similar skill, reputation, and experience for comparable legal services, *Crommie v. California Public Utilities Commission* (N.D. Cal. 1994) 840 F.Supp. 719, 724-725. Generally, the rate of attorneys from the community wherein the court sits controls. (*MBNA Am. Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th Supp. 1.) When a plaintiff retains out-of-town counsel, however, the attorney's "home" market rate prevails if obtaining local counsel would have been impracticable because "the public interest in the prosecution of meritorious civil rights cases requires that the financial incentives be adjusted to attract attorneys who are sufficient to the cause." (*Horsford v. Bd. of Trustees of Cal. State U.* (2005) 132 Cal.App.4th 389, 399.)

Here, Plaintiffs retained Michel & Associates, P.C., a firm based in Long Beach, because it is the largest firearms practice in the nation, having represented gun-rights organizations, firearms retailers and manufacturers, and individual gun owners in countless actions. What's more, Michel & Associates is among only a handful of California firms with practices concentrated in this field of law. (Michel Decl., ¶¶ 16-17.) Their clients include the largest firearms civil rights organizations in the state and, in fact, Plaintiff CRPA Foundation has relied on Michel & Associates to represent them in their firearms-related legal matters for well over a decade. (Michel Decl., ¶ 17.) And the highly technical and specialized nature of this lawsuit required attorneys with specialized knowledge of firearms and civil rights litigation. Plaintiffs' attorneys are unaware of any attorney in the Fresno legal community with comparable experience, expertise, and resources, which made Plaintiffs' success more likely. As such, it was necessary to seek out-of-town counsel, and Plaintiffs' attorneys' "home" market rate controls.

As described in the attached Declarations of C.D. Michel, Joshua R. Dale, Clinton B.

Monfort, and Sean A. Brady, the skill, expertise, and reputation of Plaintiffs' counsel justifies the rates sought. As further attested to in the Declarations of Jason Davis, C.D. Michel, Joshua R. Dale, and Clinton B. Monfort, the rates of the four attorneys performing the work in this case–Michel ($450), Dale ($375), Monfort ($325), Brady ($250)–are more than reasonable, being well within the range of rates charged by comparable professionals in the relevant legal community. (Davis Decl., ¶¶ 6-10; Michel Decl., ¶¶ 14-15; Monfort Decl., ¶¶ 8. 61-62.)

III. A LODESTAR MULTIPLIER OF 1.5 IS APPROPRIATE

Trial courts have considerable discretion in determining whether to apply a lodestar multiplier and the size of that adjustment. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.App.4th 553, 581.) Courts generally consider the several factors detailed in *Serrano III*,[9] but any one of those factors may justify an enhancement, *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 895. And, in some cases, any of several other factors may demand the court apply a multiplier. (See *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 835.) Because this case involved novel issues of law and technical underlying subject matter, and because Plaintiffs' attorneys took a significant risk in bringing the action and obtained exceptional results for Plaintiffs, a lodestar multiplier of 1.5 should be applied.

A. The Novelty of the Issues , the Technicality of the Subject Matter, and the Skill Displayed by Plaintiffs' Attorneys Warrant a Lodestar Enhancement

A lodestar enhancement is appropriate based on the novelty, difficulty, and complexity of the action, and the skill displayed in presenting it. (*Serrano III*, *supra*, 20 Cal.3d at p. 49.) Additionally, when the case's complexity is combined with the skill required to overcome determined and competent opposition, a lodestar enhancement is justified. (*Edgerton v. State Personnel Bd.* (2000) 83 Cal.App.4th 1350, 1363 [affirming 1.5 multiplier based in part on novelty and difficulty of issues and skill displayed in overcoming intransigent opposition].) The

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[9] The *Serrano III* factors are: (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them, (2) the extent to which the litigation precluded other employment of the attorney, (3) the contingent nature of the award, (4) the fact that the award against the state would eventually fall against the taxpayers, (5) the public or charitable funding of the attorneys, (6) that the award would accrue not to the individual attorneys, but to their organizations, and (7) that, when more than one law firm is involved, each firm shared equally in the success of the litigation. (*Serrano III*, *supra*, 20 Cal.3d at p. 49.)

instant case involved both novel questions of law and technical underlying subject matter, requiring particular skill and expertise beyond the level that might be expected from counsel billing at the rates requested by Plaintiffs' counsel.

Plaintiffs set forth a new legal theory applicable to constitutional vagueness claims–namely that, like other fundamental rights, the right to keep and bear arms should trigger a heightened level of certainty in criminal laws touching upon that right. (See Pls. Reply Supp. Mot. Summ. J., p. 1:1-3:9.) In the time since *Heller*, this theory has yet to find itself in a published opinion, requiring Plaintiffs' counsel to forge new arguments supporting their position. While the Court did not reach Plaintiffs' reasoning, it is likely this case will set precedent on this novel issue in light of this matter's pending appeal. Additionally, it is quite rare that a facial vagueness challenge is successfully litigated–and this claim struck down *three* state laws.

Further, the highly technical nature of the subject matter of this litigation is clear, for a great wealth of knowledge regarding ammunition types and uses was necessary for the successful prosecution of this suit. Plaintiffs' counsel's unique experience, expertise, and resources were, in this regard, essential to the ultimate success of Plaintiffs' claims.

Finally, Plaintiffs faced rigorous and competent opposition from Defendants, who repeatedly stalled this case's progress, worked with the Legislature to moot Plaintiffs' claims via amendment of the Challenged Provisions, and often sent two or three highly experienced attorneys from the DOJ to depositions and hearings. (Monfort Decl., ¶¶ 28-29.) For instance, Defendants sent Mr. Peter Krause, an attorney admitted to the Bar in1996, Mr. Zackery Morazzini, an attorney admitted to the Bar in 1999, who has argued before the U.S. Supreme Court, and Deputy Attorney General IV Kimberly Graham of the DOJ Bureau of Firearms to the hearing on Plaintiffs' Motion for Preliminary Injunction. (Exs. K, L, M.)

Faced with such experienced and vigorous opposition, Plaintiffs prevailed. Their attorneys' compensation should reflect the great skill required to overcome such odds.

B. A Reasonable Multiplier Is Necessary to Offset the Inherent Risk in Litigating Civil Rights Cases Where No Damages Are Available

It is well settled that the "contingent and deferred nature of the fee award in a civil rights or other case with statutory attorney fees *requires* that the fee be adjusted in some manner to

reflect the fact that the fair market value of legal services provided on that basis is greater than the equivalent noncontingent hourly rate." (*Horsford v. Bd. of Trustees of Cal. State U.* (2005) 132 Cal.App.4th 359, 394-395, emphasis added; see also *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4 th 1157, 1217 [affirming a multiplier based in part on the "contingent risks" inherent in the litigation].) Here, absent the possibility of monetary damages, Plaintiffs and their attorneys risked hundreds of hours bringing a case to enforce constitutional rights without the promise of ever recovering fees for the time spent on it. Regardless, Plaintiffs' counsel carried on with zealous representation of Plaintiffs' interests, accepting the possibility that they might never be fully compensated for their efforts. That risk should be reflected in any fee award and further warrants application of an upward adjustment of the lodestar fee.

C. Plaintiffs' Counsel Obtained an Exceptional Result for Plaintiffs

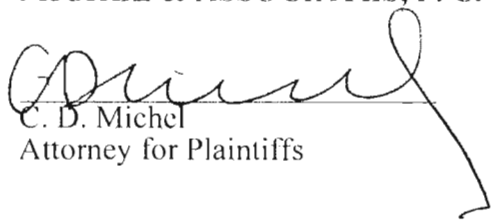
In *Thayer v. Wells Fargo Bank*, *supra*, 92 Cal.App.4th at page 835, the court reiterated that the factors listed *Serrano III* are not exclusive and also recognized that "the results obtained" is an appropriate factor to consider. Because the purpose of lodestar enhancements is to reflect the legal marketplace, exceptional success should permit enhancement of the lodestar figure. (See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 65.) In this case, Plaintiffs obtained *all* the relief they sought, and they did so without the time and expense of a trial. This is particularly exceptional considering Plaintiffs successfully voided three state laws as unconstitutionally vague, a claim that is extremely difficult to sustain.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that their motion for reasonable attorneys fees in the amount of $ 625,048.75 be granted against Defendants.

Dated: May 16, 2011

Respectfully submitted,
MICHEL & ASSOCIATES, P. C.



C. D. Michel
Attorney for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF FRESNO

I, Claudia Ayala, 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, California 90802.

On May 16, 2011, I served the foregoing document(s) described as

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS FEES

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
Zackery P. Morazzini
Supervising Deputy Attorney General
Peter A. Krause
Deputy Attorney General (185098)
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

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 May 16, 2011, at Long Beach, California.

__ (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.

__ (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, copies of which is attached to this declaration.
Executed on May 16, 2011, 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.

CLAUDIA AYALA