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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** **PLAINTIFFS' OPPOSITION TO DEFENDANTS' NOTICE OF MOTION AND MOTION TO TAX COSTS** Date: May 3, 2011 Time: 3:30 p.m. Location: Dept. 402 Judge: Hon. Jeffrey Y. Hamilton Action Filed: June 17, 2010

Plaintiffs Sheriff Clay Parker, Herb Bauer Sporting Goods, California Rifle & Pistol Association, Able's Sporting Goods, Inc., RTG Sporting Collectibles, LLC, and Steven Stonecipher (collectively, "Plaintiffs") submit this Memorandum of Points and Authorities, together with the Notice of Lodgment and the Declarations of C.D. Michel and Clinton B. Monfort in opposition to Defendants the State of California, Kamala D. Harris, and the California Department of Justice (collectively, "Defendants") Motion to Tax Costs.

INTRODUCTION

None of the costs Plaintiffs seek were unnecessarily incurred. In fact, Defendants' own conduct was primarily responsible for the course this litigation ultimately took. They should not be permitted to come back now and claim that Plaintiffs' actions were unreasonable.

Plaintiffs' Motion for Preliminary Injunction, for example, would have been avoided altogether had Defendants agreed to move forward with cross-motions for summary judgment at an early stage in the litigation. Absent agreement, Plaintiffs were forced to seek preliminary injunction to protect their interests. Thus, even though the motion was ultimately withdrawn, it was "reasonably necessary" when filed, and its impact on the course of this action is undeniable.

The Court should also allow Plaintiffs to recover the full amount of their deposition-related costs. From the parties' "pre-trial vantage point," depositions were necessary to the conduct of this litigation. And Plaintiffs' attendance at four depositions compelled by Defendants cannot be said to have been "unreasonable." Specifically, the Court should allow Plaintiffs to recover the cost of rush transcripts – the need for which lays squarely at Defendants' feet. Finally, the appearance of three attorneys on Plaintiffs' behalf was reasonable under the circumstances.

Further, the Court should exercise its discretion to award Plaintiffs their motion-related travel costs, which are neither expressly recoverable nor expressly disallowed, and which were necessarily incurred in the course of litigating this action.

Defendants' Motion to Tax Costs should thus be denied. As the prevailing party, Plaintiffs are entitled to recover those reasonable costs of litigation expressly and impliedly authorized by statute. Aside from $979.89, relating to items Plaintiffs hereby withdraw, the Court should award Plaintiffs their costs in the amount of $10,375.73, which represent recoverable costs actually and reasonably incurred in the prosecution of this action.

FACTUAL AND PROCEDURAL HISTORY

On June 16, 2010, Plaintiffs Sheriff Clay Parker, et al., filed a Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate challenging the validity of Penal Code sections 12060, 12061, and 12318 (the "Challenged Provisions"). (Decl. of Clinton B. Monfort Supp. Opp. to Mot. to Tax Costs ["CBM Decl."], ¶ 2.)

Defendants filed their Answer to Plaintiffs' Complaint on August 2, 2010, having been granted an extension of time by Plaintiffs. (CBM Decl., ¶¶ 3-4.)

Early on, Plaintiffs recognized this case likely turned on a question of law and requested that Defendants agree to a briefing schedule by which cross-motions for summary judgment could be heard and decided well in advance of the February 1, 2011 effective date of the Challenged Provisions. (CBM Decl., ¶ 5.) Plaintiffs sought speedy resolution of their claims to increase the likelihood that a final decision would be rendered before the Challenged Provisions took effect and because thier immediate business decisions relied heavily on whether those sections could be enforced. (CBM Decl., ¶ 5.) Citing the need to conduct written discovery and depose Plaintiffs' witnesses, Defendants denied Plaintiffs' requests. (CBM Decl., ¶ 5.)

In light of Defendants' refusal, Plaintiffs prepared to file a Motion for Preliminary Injunction to protect their interests in the face of the great likelihood their claims would not be heard before February 1, 2011. (CBM Decl., ¶5.) Out of professional courtesy, Plaintiffs postponed the filing of their Motion for Preliminary Injunction to accommodate opposing counsel's scheduled vacation from August 27, 2010, to September 7, 2010. (CBM Decl. ¶ 6.)

On August 19, 2010, the sponsor of the Challenged Provisions, Assemblyman Kevin de León, amended then pending Assembly Bill 2358 in a last minute attempt to correct the vagueness of the Challenged Provisions. (CBM Decl., ¶ 7.) This event led Plaintiffs to again postpone filing their Motion for Preliminary Injunction until it could be determined whether and how the bill would impact Plaintiffs' arguments in this case. (CBM Decl., ¶ 7.)

On September 7, 2010, Plaintiffs moved for a preliminary injunction to enjoin the enforcement of the Challenged Provisions. (CBM Decl., ¶ 8.) On November 17, 2010, Plaintiffs withdrew that motion and the parties, with the participation of the Court, negotiated a briefing schedule by which summary judgment could be heard and, if necessary, a trial could be held before February 1, 2011. (CBM Decl., ¶ 10.)

Indeed, this was the course of action Plaintiffs initially requested and would have pursued had Defendants agreed. (CBM Decl., ¶ 5.)

On December 1 and 2, 2010, Plaintiffs deposed Defendants' expert witness, Special Agent Supervisor Blake Graham. (CBM Decl., ¶ 12.) Plaintiffs determined the need to depose Mr. Graham only after Defendants' delayed response to Plaintiffs' written discovery requests, claiming that a list of ammunition calibers was commonly understood to meet the statutory definition of "handgun ammunition." (CBM Decl., ¶ 11.) Through December 2010, Defendants took the depositions of Plaintiffs' witnesses, Stephen Helsley, Sheriff Clay Parker, Steven Stonecipher, and Barry Bauer. (CBM Decl., ¶ 13.)

At the hearing on Plaintiffs' summary judgment motion, the Court granted summary adjudication as to Plaintiffs' first cause of action, and Plaintiffs voluntarily dismissed the second and third claims.. (CBM Decl., ¶ 15.) On January 31, 2011, the Court issued its Order Denying Plaintiffs' Motion for Summary Judgment and Granting in Part and Denying in Part Plaintiffs' Motion for Summary Adjudication. (CBM Decl., ¶ 15.) Judgment as to the first cause of action was entered in Plaintiffs' favor on February 23, 2011. (CBM Decl., ¶ 15.) Plaintiffs served Notice of Entry of Judgment on March 2, 2011. (CBM Decl., ¶ 15.)

Plaintiffs filed their Memorandum of Costs on March 11, 2011, setting forth total costs of $11,355.63, distributed among five categories: (1) $895.00 for filing fees; (2) $8,331.96 for deposition costs; (3) $781.04 for service of process; (4) $121.50 for court reporter fees; and (3) $1,226.13 for travel expenses related to the hearings on Plaintiffs' motions. (Pls.' Mem. of Costs (Summary).) Defendants brought this Motion to Tax Costs on April 1, 2011. (CBM Decl., ¶ 15.)

Plaintiffs now respectfully request this Court deny the bulk of Defendants' motion and award Plaintiffs the costs requested in their Memorandum.

ARGUMENT

I. LEGAL STANDARD

California Code of Civil Procedure section 1033.5 sets forth the costs recoverable by the prevailing party in a civil action. Among those allowable items are filing and motion fees, deposition costs (including travel-related expenses), and service of process fees. (Code Civ. Proc., § 1033.5, subdivs. (a)(1), (a)(3), (a)(4).) Recovery of those enumerated costs is limited only by the requirements that the costs recovered must have been "reasonably necessary" to the litigation and reasonable in

amount. (*Thon v. Thompson* (1994) 29 Cal.App.4th 1546, 1548.) Determination of whether a cost is "reasonable" rests solely within the trial court's discretion. (*Id.*)

II. AT THE TIME OF ITS FILING, THE MOTION FOR PRELIMINARY INJUNCTION WAS REASONABLY NECESSARY TO THE CONDUCT OF THE LITIGATION; THE COURT SHOULD ALLOW RECOVERY OF THE FILING FEE [ITEM NO. 1(D)]

Section 1033.5, subdivision (a)(1) expressly provides that "filing, motion and jury fees" are allowable as costs under Section 1032. While Plaintiffs agree that recovery of such costs may be disallowed if the Court determines the costs were "incurred unnecessarily," *Perkos Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 245, it cannot be said that Plaintiffs' Motion for Preliminary Injunction was not "reasonably necessary" to this litigation. Under the circumstances of this case, Plaintiffs' motion was more than "necessary," it was essential.

It was, in fact, Defendants' own litigation tactics that drove Plaintiffs to file that motion. Had Defendants agreed to file cross-motions for summary judgment early in this litigation to dispose of the issues before February 1, 2011 (as Plaintiffs requested), Plaintiffs would have had no need to seek preliminary injunction to protect their interests. (CBM Decl., ¶ 5.)

And even though Plaintiffs withdrew their motion at the November 17th hearing, the filing and consideration of that motion alone led the Court to invite Plaintiffs to withdraw their motion in favor of an extremely expedited briefing schedule for summary judgment, with hearing and decision to be had before the Challenged Provisions were set to take effect. (CBM Decl., ¶ 10.) This was exactly what Plaintiffs required in order to protect their interests – and it was precisely the course of action Plaintiffs requested and would have pursued had Defendants agreed. (CBM Decl., ¶ 5.) In light of this outcome, it cannot be said that Plaintiffs' withdrawal truly left the record "as though [the motion] had not been made." (Defs.' Mem. Supp. Mot. to Tax Costs ["Defs.' Mot."], at 4:6-7, 4:11 (quoting *Hammons v. Table Mountain Ranches Owners Assn., Inc.* (Wyo. 2003) 72 P.3d 1153, 1157).)

Because Defendants' own tactics left Plaintiffs with little choice but to pursue preliminary injunction, and because it was that motion that convinced the Court to decide Plaintiffs' claims before the effective date of the Challenged Provisions, the motion was "reasonably necessary" to the conduct of this litigation, and the associated filing fees were not "incurred unnecessarily." As such, the Court should allow Plaintiffs to recover the $40.00 filing fee.

III. THE COURT SHOULD AWARD PLAINTIFFS THEIR DEPOSITION COSTS [ITEM NO. 4], AS THEY ARE BOTH REASONABLE IN AMOUNT AND REASONABLY NECESSARY TO THE CONDUCT OF THE LITIGATION

A. The Court Should Award Plaintiffs Their Deposition Costs Because, at the Time They Were Incurred, Plaintiffs Knew Not Yet Whether Depositions Would Be Relied on by the Court in Rendering Its Decision

Section 1033.5, subdivision (a)(3) expressly authorizes the recovery of the taking, video recording, and transcribing [of] necessary depositions" and "travel expenses to attend depositions." Like other costs recoverable under section 1033.5, deposition-related costs must also be "reasonably necessary" to the conduct of the litigation. (Code Civ. Proc., § 1033.5, subd. (b)(2).) The Court should determine the "necessity" of a deposition "from the pretrial vantage point of a litigant," and not from some point after the decision has been rendered – hindsight being 20/20. (*Brake v. Beech Aircraft Corp.* (1986) 184 Cal.App.3d 930, 940; see also *Moss v. Underwriters' Report* (1938) 12 Cal.2d 266, 275-276 (court affirmed costs associated with deposition testimony not even offered at trial, stating "the fact that the plaintiff did not offer [the depositions] as evidence upon the trial does not necessarily indicate that he could have safely proceeded to trial without them.").) Because the deposition expenses are expressly authorized by law and were "reasonably necessary" at the time they were incurred, the Court should exercise its discretion to allow Plaintiffs to recover the associated costs.

Defendants insist that Plaintiffs' request for deposition costs should be denied because the opinions of the parties' experts and lay witnesses "were not necessary to the Court's [ultimate] determination of whether the challenged definition was facially vague." (Defs.' Mot. to Tax Costs 4.) In essence, Defendants' argument transforms the standard for recovering costs from requiring that costs incurred be reasonably necessary *to the conduct of the litigation* to a requirement that they be necessary to the *court's ultimate determination on the issues.*

From the start, Plaintiffs repeatedly asked Defendants to move forward with cross-motions for summary judgment, believing the determination of their claims hinged on a question of law. (CBM Decl., ¶ 5.) It was Defendants who first suggested the need to conduct discovery and depose Plaintiffs' expert before bringing such a motion. (CBM Decl., ¶ 5.) And once Defendants provided a list of ammunition their own expert thought met the statutory definition of "handgun ammunition," Plaintiffs were left with little choice but to take the witness's deposition to determine the basis for that list.

(CBM Decl., ¶ 11.) From Plaintiffs' "pretrial vantage point," knowing not what the Court would ultimately find helpful in making its determination, it was both "reasonable" and "necessary" for Plaintiffs to depose Defendants' expert.

The costs of defending the depositions of Plaintiffs' witnesses were also "reasonably necessary." Defendants cannot require the deposition of four of Plaintiffs' witnesses and then claim it was unnecessary for Plaintiffs to incur the costs associated with attending and defending them. And Defendants tacitly admit that, from their own "pretrial vantage point," it was unknown whether the Court would find factual matters to be relevant – hence, the taking of those four depositions. (See Decl. of Peter A. Krause Supp. Mot. to Tax Costs ["Krause Decl."] ¶ 3.) Plaintiffs fail to see how Defendants can claim it was reasonably necessary for them to *take* the depositions of Plaintiffs' witnesses, but it was not so necessary for Plaintiffs to *attend* them.

Because the taking and defending of depositions was "reasonably necessary" to the conduct of the litigation, the Court should exercise its discretion to award Plaintiffs the full amount of deposition costs sought – $8,331.96.

B. Plaintiffs' Deposition Costs Are Reasonable and Should Be Awarded in Full

1. Defendants Make a Bald Assertion that Plaintiffs Seek Unnecessary and Excessive Travel Costs

Under the circumstances of this case, the Court should award Plaintiffs all deposition-related travel expenses sought, for they were neither unnecessary nor excessive.

Defendants argue that "there was no reason to have three attorneys from the same firm present at the depositions" and that "having two additional lawyers travel from Los Angeles to Fresno for deposition *simply to watch* the proceedings is the sort of duplication that is frowned upon by the courts." (Defs.' Mot., at 5:9-13.) But aside from the fact that three attorneys attended these depositions, Defendants' argument has little basis in reality.

Contrary to Defendants' assertions, Plaintiffs' counsel were not there "simply to watch." While Mr. Dale, a senior associate and well-seasoned litigator, was primarily responsible for defending the depositions, it was imperative that Plaintiffs send Mr. Brady, their attorney most qualified to weigh in on the highly technical ammunition issues at the center of this controversy. (CBM Decl., ¶ 14.) And

Mr. Monfort is the attorney primarily responsible for conducting this litigation. (CBM Decl., ¶ 14.) Without attending these depositions, it would have been virtually impossible for him to efficiently and fully prepare the remainder of his case. As such, the Court should allow Plaintiffs to recover the costs of sending three attorneys to defend the depositions of Mr. Helsley and Mr. Stonecipher.

If, however, the Court finds that it was "unnecessary" for any one of the junior associates to attend these depositions, Plaintiffs request the Court reduce their recovery by only 1/3 (not 2/3, as Defendants request) because it was reasonable to send at least two attorneys – one senior attorney to conduct the defense and one junior associate primarily responsible for this progress of this case.[1]

Furthermore, Plaintiffs seek only the costs of lodging and transportation to and from the depositions of Stephen Helsley and Steven Stonecipher. (Decl. of C.D. Michel Supp. Opp. Mot. to Tax Costs ["CDM Decl."], ¶¶ 4-8; Ex. B.) This includes airfare and cab fees to and from Sacramento for the deposition of Mr. Helsley, and lodging in Fresno and mileage to and from the deposition of Mr. Stonecipher.[2] (CDM Decl., ¶¶ 4-8; Ex. B.) Plaintiffs do not, as Defendants suggest, seek recovery of travel costs not statutorily permitted, including the costs of meals or expert deposition fees. (CDM Decl., ¶ 4-8; Ex. B.)

Based on the foregoing, Plaintiffs request this Court deny Defendants' request, allowing Plaintiffs to recover the full amount of deposition-related travel costs requested. Alternatively, Plaintiffs ask the Court to reduce Plaintiffs' recovery only to 2/3 of the amount requested, as it would have been reasonable to send two attorneys to defend Defendants' depositions.

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[1] It is interesting to note that, at the deposition of their expert, Defendants had two attorneys appear on their behalf – Peter Krause and Kimberly Graham. (CBM Decl., ¶ 12.) It's a mystery how Defendants could find it reasonable to send two attorneys to defend the deposition of their expert, but deny Plaintiffs the same.

[2] Travel costs for the deposition of Mr. Stonecipher were also associated with the deposition of Barry Bauer. Plaintiffs' attorneys traveled to Fresno both for the deposition of Mr. Stonecipher on December 13, 2010 and for deposition of Mr. Bauer on December 14, 2010.

2. Under the Circumstances, the Court Should Allow Plaintiffs to Recover the Cost of Expedited Deposition Transcripts

Defendants rightly assume that the transcription costs for the depositions of Blake Graham and Stephen Helsley include the costs of expedited transcription and overnight shipping. (CDM Decl., ¶ 9; Ex. C.) And Defendants correctly assert that the costs of expedited transcription is recoverable at the court's discretion. (Defs.' Mot., at 6:3-5 (citing *Hsu v. Semiconductor Systems, Inc.* (2005) 126 Cal.App.4th 1330, 1342.) But Defendants fail when they again hang their hat on the argument that these depositions were not "reasonably necessary" because the Court did not ultimately rely on this testimony to determine the legal issues of this case. As described above, Plaintiffs' taking of Mr. Graham's deposition was necessary from Plaintiffs' "pre-trial vantage point," as they could not know, at that point, whether the Court would ultimately require factual evidence to reach its decision. And the defense of Mr. Helsley's deposition was "reasonably necessary" because Defendants themselves compelled it – they cannot come back now and claim it was unnecessary for Plaintiffs' counsel to attend.

Defendants further argue that it was the fault of Plaintiffs that expedited transcription was required, claiming that Plaintiffs delayed filing a motion for summary judgment or taking *any* discovery. (Defs.' Mot., at 6:19-20.) What Defendants fail to disclose is that, in the summer of 2010, Plaintiffs requested that the parties move forward with cross-motions for summary judgment so that Plaintiffs' claims could be heard and decided well before the Challenged Provisions' effective date. (CBM Decl., ¶ 5.) Defendants refused, citing the need to conduct discovery and depose Plaintiffs' expert witness. (CBM Decl., ¶ 5.) It was thus Defendants' litigation strategy that delayed summary judgment and necessitated Plaintiffs' Motion for Preliminary Injunction.

Far from waiting until the "eleventh hour," Plaintiffs propounded written discovery on Defendants as early as October 7, 2011, and responses were expected on or before November 11, 2010. (CBM Decl., ¶ 9.) But Defendants requested an extension of time, which Plaintiffs granted out of professional courtesy. (CBM Decl., ¶ 9.) On November 23, 2010 – some six days *after* the expedited summary judgment briefing schedule was set and only ten days before Plaintiffs' motion was initially due – Defendants responded to Plaintiffs' written discovery. (CBM Decl., ¶ 11.) Their responses

included a list of ammunition calibers commonly understood to be "handgun ammunition" under the Challenged Provisions. (CBM Decl., ¶ 11.) Having reviewed Defendants' responses, Plaintiffs for the first time recognized the need to depose Defendants' expert to examine the basis for that list. (CBM Decl., ¶ 11.) Plaintiffs thus accepted the Court's shortened briefing schedule, unaware that deposition would be required.

And even though they first cited the need to depose Plaintiffs' expert witness on August 5, 2010, they delayed doing so until December 16, 2010. (CBM Decl., ¶¶ 5, 13.) In this respect, it was Defendants, not Plaintiffs, who made it necessary for Plaintiffs to seek expedited transcription.

Because Plaintiffs could not know (and, in fact, did not know) of the need to take a deposition until after they reviewed Defendants' delayed discovery responses, and because Defendants failed to take Plaintiffs' expert's deposition until mid-December, Plaintiffs should recover the full cost of obtaining expedited deposition transcripts.

IV. PLAINTIFFS' WITHDRAW THEIR REQUEST FOR $620.47 IN SERVICE OF PROCESS FEES, BUT REQUEST RECOVERY OF THE REMAINING $160.56 AS DEFENDANTS CONCEDE IT WAS A REASONABLE COST [ITEM NO. 5]

In preparing their Memorandum of Costs, Plaintiffs relied on a summary accounting to determine those costs incurred for service of the summons and complaint. In light of Defendants' objection, Plaintiffs conducted further research, through which they discovered the disputed $620.47 in "Registered Process Server" costs were actually "rush fees" for the service of Plaintiffs' Motion for Preliminary Injunction, and that they had been inadvertently coded to the wrong account. (CDM Decl., ¶ 10; Ex. E.) Plaintiffs agree with Defendants that such fees are not recoverable under Section 1033.5 and, therefore, withdraw their request for reimbursement of those fees.

Plaintiffs should, however, recover the remaining $160.56 for the service of the complaint on each of the three Defendants – an amount which Defendant concedes is reasonable. (CDM Decl., ¶ 11Defs.' Mot., at 7:3-4.)

V. PLAINTIFFS WITHDRAW THEIR REQUEST FOR $121.50, THE COST OF COURT REPORTER FEES ASSOCIATED WITH THE SUMMARY JUDGMENT HEARING [ITEM NO. 12]

Upon review of Defendants' objection to Item No. 12 and relevant case law, Plaintiffs agree with Defendants' view that such costs are not recoverable unless court ordered. (Code Civ. Proc., §

1033.5, subd.(b); see also *Davis v. KGO-T.B., Inc.* (1998) 17 Cal.4th 436, 440-442; *Sanchez v. Pacificare Health Systems* (1999) 75 Cal.App.4th 846, 948-949.) In light of Defendants' objection, Plaintiffs reviewed their detailed accounting report to find that the fee was, in fact, for the preparation of the hearing transcript and not some other recoverable fee. Because the Court did not order preparation of the transcript, Plaintiffs withdraw their request for this expense.

VI. PLAINTIFFS' HEARING-RELATED TRAVEL COSTS [ITEM NO. 13] ARE NEITHER EXPLICITLY RECOVERABLE NOR EXPLICITLY DISALLOWED, AND THE COURT SHOULD EXERCISE ITS DISCRETION TO AWARD THESE COSTS

"An item not specifically allowable under subdivision (a) nor prohibited under subdivision (b) may nevertheless be recoverable in the discretion of the court if 'reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.' " (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774 (quoting Code Civ. Proc., § 1033.5, subd. (c)(2).) Even though Plaintiffs chose to file in Fresno, under the circumstances, the travel costs incurred were "reasonably necessary" to the conduct of the litigation, and the Court should exercise its discretion to award Plaintiffs these costs.[3]

The court in *Ladas*, applying the above principle, found "*routine* expenses for local travel by attorneys or other firm employees" to be unnecessary to the conduct of the litigation. (19 Cal.App.4th at pp. 775-776.) There, the prevailing defendant sought reimbursement for four years of "local travel expenses" unrelated to depositions, including "parking fees, cab fares and 'mileage/parking' fees for attorney and paralegals." (*Id.* at 775.) The court reasoned that the requesting party had failed to prove these charges were "necessary," as opposed to being merely "convenient." (*Id.* at 775-776.) As such,

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[3] In light of Defendants' objections, Plaintiffs' counsel conducted a detailed review of the invoices for summary judgment travel-related costs. (CBM Decl., ¶ 14.) It was then discovered that the lodging bill for Clinton B. Monfort included a $20.30 "Restaurant Room Charge," and the lodging bill for C.D. Michel included a $2.50 charge for "Bottled Water." (CDM Decl., ¶ 14; Ex. F.) It was also discovered that, due to a billing error, Plaintiffs' Memorandum of Costs includes a request for both "mileage" and "gas," essentially seeking double recovery for Plaintiffs' attorneys' transportation to and from the hearing. (CDM Decl., ¶ 14; Ex. F.) Because the costs of meals are not recoverable under section 1033.5, *Ladas*, 19 Cal.App.4th at pp. 774-775, and because double recovery of costs improper, Plaintiffs request only $988.21 in hearing-related travel costs ($1,226.13 in reasonable lodging and transportation costs, minus $22.80 in inadvertently requested meal costs, minus $215.12 in twice-entered gas costs).

the court denied those expenses. (*Id.* at 776.) The court's decision did not rest solely on the fact that only deposition-related travel expenses are *explicitly* recoverable under section 1033.5, subdivision (a).

Here, Plaintiffs seek only the costs of driving to the Fresno courthouse for hearings on Plaintiffs' motions for preliminary injunction and summary judgment and one night's lodging in Fresno for the summary judgment hearing. (CDM Decl., ¶¶ 13; Ex. F.) This is a far cry from the barrage of "routine costs" claimed by the defendants in *Ladas*. For the reasons described above, Plaintiffs' preliminary injunction motion was more than "reasonably necessary" to the conduct of this litigation, it was essential. And costs related to travel to the summary judgment hearing were necessarily incurred because that hearing was to serve dual roles – as a hearing on Plaintiffs' motion and as a trial on the merits. It can hardly be said that travel to the hearing that would ultimately dispose of Plaintiffs' claims was not "reasonably necessary."

Defendants further suggest that because Plaintiffs chose to file in Fresno rather than a jurisdiction closer to their attorneys, and because they did not choose counsel from the Fresno area, their motion-related travel costs should be taxed. (Defs.' Mot., at 8:1-3.) Plaintiffs being mostly from Fresno and the surrounding areas elected to bring suit in a jurisdiction close to their own homes. And they sought not just any attorney to bring their claims, but those attorneys best known for their experience with firearms and ammunition litigation, attorneys who have, for decades brought such cases on behalf of the California Rifle and Pistol Association, the National Rifle Association, and other prominent organizations dedicated to preserving the Second Amendment rights of Californians. And this is their right. Just because their attorneys happen to be located in Long Beach, rather than Fresno, does not require that they be denied reimbursement for travel necessary for the litigation of their claims. (See *Thon*, 29 Cal.App.4th at 1548 (reimbursement for deposition travel is not limited to travel by attorneys practicing locally).)

Because travel to Fresno for hearings on Plaintiffs' motions was "reasonably necessary" to the conduct of this litigation, and because Plaintiffs should not have their costs denied simply because they chose out-of-county counsel, the Court should deny Defendants' request to tax the cost of Plaintiffs' motion-related travel.

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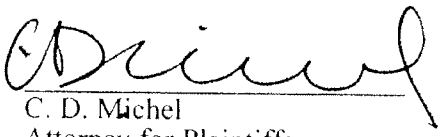
CONCLUSION

Based on the foregoing, Plaintiffs respectfully requests this Court deny Defendants' motion and award Plaintiffs $10,375.73, those costs actually incurred and reasonably necessary to the conduct of this litigation.

Dated: April 19, 2011

MICHEL & ASSOCIATES, PC



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 April 19, 2011, I served the foregoing document(s) described as

PLAINTIFFS' OPPOSITION TO DEFENDANTS' NOTICE OF MOTION AND MOTION TO TAX COSTS

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
1300 I Street, Suite 125
Sacramento, CA 94244-2550

— (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on April 19, 2011, at Long Beach, California.

— (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.
Executed on April 19, 2011, at Long Beach, California.

X (VIA OVERNIGHT MAIL As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on April 19, 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