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8 *State of California, Kamala D. Harris, and the*
9 *California Department of Justice*

*Exempt from fees pursuant to
Government Code § 6103*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO
12

13 **SHERIFF CLAY PARKER, TEHAMA**
14 **COUNTY SHERIFF; HERB BAUER**
15 **SPORTING GOODS; CALIFORNIA**
16 **RIFLE AND PISTOL ASSOCIATION;**
ABLE'S SPORTING, INC.; RTG
SPORTING COLLECTIBLES, LLC; AND
STEVEN STONECIPHER,

17 Plaintiffs and Petitioners,

18 v.

19 **THE STATE OF CALIFORNIA;**
20 **KAMALA D. HARRIS, IN HER**
21 **OFFICIAL CAPACITY AS ATTORNEY**
22 **GENERAL FOR THE STATE OF**
23 **CALIFORNIA; THE CALIFORNIA**
24 **DEPARTMENT OF JUSTICE, AND DOES**
25 **1-25,**

26 Defendants and
27 Respondents.
28

Case No. 10CECG02116

**THE STATE'S NOTICE OF MOTION
AND MOTION TO TAX COSTS**

BY FAX

Date: May 3, 2011
Time: 3:30 p.m.
Dept: 402
Judge: Hon. Jeffrey Hamilton
Action Filed: June 17, 2010

1 **NOTICE OF MOTION AND MOTION TO TAX COSTS**

2 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORDS:

3 PLEASE TAKE NOTICE THAT, on May 3, 2011 at 3:30 p.m., or as soon thereafter as the
4 matter may be heard in Department 402 of the above-entitled Court, located at 1130 O Street,
5 Fresno, California 93721, defendants and respondents the State of California, Attorney General
6 Kamala D. Harris, and the California Department of Justice (collectively, the "State") will, and
7 hereby do, move for an order taxing the costs claimed by plaintiffs and petitioners Clay Parker,
8 Herb Bauer Sporting Goods, California Rifle and Pistol Association, Able's Sporting, Inc., RTG
9 Sporting Collectibles, LLC, and Steven Stonecipher ("Plaintiffs").

10 This Motion is brought pursuant to Code of Civil Procedure section 1033.5 and rule
11 3.1700(b) of the California Rules of Court, on the grounds that the following items of costs
12 claimed in Plaintiffs' Memorandum of Costs were unnecessary, excessive, or unrecoverable:

13 1. Item No. 1. The Court should disallow recovery of the \$40.00 filing fee associated
14 with Plaintiffs' preliminary injunction motion, which motion was voluntarily withdrawn by
15 Plaintiffs at the November 17, 2010 hearing.

16 2. Item No. 4. The Court should tax Plaintiffs' deposition costs. Because the Court
17 ruled that the case presented a pure question of law, depositions were not reasonably necessary to
18 the conduct of the litigation. Moreover, the amounts sought for travel for multiple attorneys and
19 expedited transcription and overnight mail costs are unreasonable and excessive.

20 3. Item No. 5. The Court should tax the service of process costs claimed in Attachment
21 5(d) as ambiguous, unsupported, and/or unrecoverable.

22 4. Item No. 12. The Court should disallow recovery of the court reporter fees sought
23 because they are not allowable under Code of Civil Procedure section 1033.5(b)(5).

24 5. Item No. 13. The Court should tax Plaintiffs' motion-related travel costs because
25 such costs are not recoverable, and because Plaintiffs withdrew one of the two motions.

26 This Motion is based upon this Notice, the Memorandum of Points and Authorities and
27 Declaration of Peter A. Krause filed concurrently herewith, all pleadings, records, and files
28

1 herein, those matters of which the Court may take judicial notice, and upon such oral argument as
2 may be made at the hearing on this matter.

3
4 Dated: April 1, 2011

Respectfully Submitted,

5 KAMALA D. HARRIS
6 Attorney General of California
7 ZACKERY P. MORAZZINI
8 Supervising Deputy Attorney General

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11 PETER A. KRAUSE
12 Deputy Attorney General
13 *Attorneys for Defendants and Respondents*
14 *State of California, Kamala D. Harris, and*
15 *the California Department of Justice*

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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 April 1, 2011, I served the attached

THE STATE'S NOTICE OF MOTION AND MOTION TO TAX COSTS

(1) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE STATE'S MOTION TO TAX COSTS; and (2) DECLARATION OF PETER A. KRAUSE IN SUPPORT THEREOF

APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO TAX COSTS

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
Clint B. Monfort
Sean A. Brady
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 April 1, 2011, at Sacramento, California.

Lametric Broussard

Declarant

Lametric Broussard
Signature