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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

**JEFF SILVESTER, BRANDON COMBS,  
THE CALGUNS FOUNDATION, INC., a  
non-profit organization, and THE SECOND  
AMENDMENT FOUNDATION, INC., a  
non-profit organization,**

Plaintiffs,

**v.**

**KAMALA D. HARRIS, Attorney General of  
California (in her official capacity),**

Defendant.

**Case No. 1:11-cv-02137-AWI-SKO**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
ATTORNEY FEES**

Hearing Date:	December 8, 2014
Hearing Time:	1:30 p.m.
Judge:	Hon. Anthony W. Ishii
Trial Date:	March 25, 2014
Action Filed:	December 23, 2011

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Defendant Kamala D. Harris, Attorney General of the State of California (“Defendant”), submits the following opposition to the motion to recover attorney fees filed herein on September 8, 2014, by Plaintiffs Jeff Silvester (“Silvester”), Brandon Combs (“Combs”), The Calguns Foundation, Inc. (“CGF”), and The Second Amendment Foundation, Inc. (“SAF”; together with Silvester, Combs, and CGF, “Plaintiffs.”)

### INTRODUCTION AND SUMMARY OF ARGUMENT

Although Plaintiffs were successful in obtaining a judgment declaring unconstitutional part of the enforcement of California’s waiting period laws for firearm acquisitions (Cal. Penal Code §§ 26815, 27540), Plaintiffs have failed to support adequately their post-judgment motion for attorney fees in the amount of approximately \$300,000. Plaintiffs demand reimbursement of attorney fees based on hourly rates that are far in excess of their attorneys’ customary rates and the rates recognized by other Eastern District of California judges as recoverable in similar cases in the present venue. Also, Plaintiffs should not be able to recover fees for work on the unsuccessful Fourteenth Amendment claim. Because of these flaws, the demanded attorney fees reimbursement should, at a minimum, be substantially reduced here to approximately **\$159,715**.

Defendant acknowledges that, under 42 U.S.C. § 1988, under which the present case was brought, this Court *may* award reasonable attorney fees to the prevailing party in the present case. *See Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 619 n.2 (9th Cir. 1987). Defendant further acknowledges that Plaintiffs are the prevailing parties here, having obtained an injunction against certain enforcement of California’s statutory waiting period laws regarding the acquisition of firearms. *See Lefemine v. Wideman*, \_\_\_ U.S. \_\_\_, \_\_\_, 133 S.Ct. 9, 11 (2012) (holding that plaintiff’s achievement of injunction generally justifies designation as prevailing party). Finally, Defendant acknowledges that this Court, if awarding attorney fees, should use the “lodestar” method, multiplying the number of Plaintiffs’ attorneys’ hours reasonably expended on the litigation by a reasonable hourly rate, to arrive at the amount of the attorney fee award. *City of Burlington v. Dague*, 505 U.S. 557, 561 (1992); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 982 (9th Cir. 2008).

However, Defendant must also highlight other principles governing attorney fee adjudication that hinder Plaintiffs’ attempt at recovery. Overall, a “reasonable fee” is one “that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case . . . but that *does not produce windfalls to attorneys . . .*” *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551–552 (2010) (italics added; internal punctuation omitted). The U.S. Court of Appeals for the Ninth Circuit teaches similarly that, in making an attorney fee award in a civil rights case, the trial court “must strike a balance between granting sufficient fees to attract qualified counsel to civil rights cases and avoiding a windfall to counsel.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2010), citing *Blum v. Stenson*, 465 U.S. 886, 897 (1984), and *City of Riverside v. Rivera*, 477 U.S. 561, 579-80 (1986). “The way to do so is to compensate counsel at the prevailing rate in the community for similar work; no more, no less.” *Moreno*, 534 F.3d at 1111.

Regarding reasonable attorney hourly rates, as detailed below, Plaintiffs are unjustly claiming for their senior attorneys hourly rate premiums of more than double the amount of money that the attorneys actually charged Plaintiffs, and upwards of 80 percent above relevant top market rates in Fresno. Plaintiffs are also seeking large, if not quite as large, premiums with respect to the work of the more junior attorneys. If Plaintiffs' attorney fees motion is granted in full, then the attorneys will receive windfalls, directly at odds with Ninth Circuit precedent. Regarding hours worked, the Court should discount from the total hours worked the time expended on the unsuccessful Fourteenth Amendment claim. Consequently, if Plaintiffs recover attorney fees, the sum should be roughly half of what Plaintiffs have requested.

## ARGUMENT

## I. PLAINTIFFS HAVE PROPOSED AN INAPPROPRIATE LODESTAR

Plaintiffs bear the burden of substantiating the lodestar, including the number of attorney hours worked and the attorney hourly rate claimed, and any deviation from the lodestar. *Flitton v. Primary Residential Mortg., Inc.*, 614 F.3d 1173, 1178 (10th Cir. 2010). As detailed below, Plaintiffs have failed to bear that burden, and the Court should, at minimum, dramatically reduce the amount of any attorney fee award from what Plaintiffs have requested.

**A. Plaintiffs Have Proposed Inflated Attorney Hourly Rates That The Court Should Reduce**

Plaintiffs' demand to recover attorney fees at the rate of \$640, for the three primary plaintiff-side attorneys, is inflated and should be reduced significantly.

Plaintiffs ask to recover money for lead attorney Don Kilmer's work on the present case at the rate of \$640 per hour. (Memo. in Supp. of Pls.' Mtn. for Attorney Fees ("Plaintiffs' Brief"), Dkt. 108, at 7:19.) Yet Mr. Kilmer testifies that he billed Plaintiffs (only two of them, CGF and SAF) at a rate of only \$270 per hour to litigate the case. (Decl. of Don Kilmer [Etc.] ("Kilmer Decl."), Dkt. 108-4, at ¶5, Exh. 5 [Dkt. 108-10].) Mr. Kilmer further testifies, "I currently bill retail clients at a rate of \$360 per hour . . . ." (Kilmer Decl. at ¶7.) According to Mr. Kilmer's law office's Internet site, [http://www.dklawoffice.com/firm\\_profile.html](http://www.dklawoffice.com/firm_profile.html), 70 percent of Mr. Kilmer's practice is devoted to family law matters. Plaintiffs derive the \$640 hourly rate—an approximately 80 percent premium above Mr. Kilmer's retail rate—from an unauthenticated Internet site, [www.laffeymatrix.com](http://www.laffeymatrix.com) (*id.* at ¶8), of unknown ownership and authorship (see Exhibit A and the accompanying discussion in the request for judicial notice submitted herewith), and Mr. Kilmer's 18+ years practicing law. (*But compare* Plaintiffs' Brief at 7:19 (15 years) *with* Kilmer Decl., at ¶9 (18+ years).)

Plaintiffs also seek \$640 per hour for co-trial-counsel Victor Otten's work. (Plaintiffs' Brief at 7:17.) Yet Mr. Otten testifies that he billed Plaintiffs (only one of them, CGF) at a rate of only \$250 per hour to litigate the present case. (Decl. of Vic Otten [Etc.] ("Otten Decl."), Dkt. 108-2, at ¶12, Exhs. 1 [Dkt. 108-6], 4 [Dkt. 108-9].) Mr. Otten did not disclose his regular hourly rate. But Mr. Otten did describe his expertise as a lawyer as centering on the area of environmental law, not the Second Amendment. (*Id.* at ¶¶8-10.) Plaintiffs seek \$640 per hour for Mr. Otten's work, again based on the Internet Laffey Matrix and Mr. Otten's 19+ years of experience practicing law. (Otten Decl. at ¶¶2, 8, 17.)

Plaintiffs also seek \$640 per hour for former lead attorney Jason Davis's work. (Plaintiffs' Brief at 7:18.) Mr. Davis testifies that he billed Plaintiffs (only one of them, CGF) at a rate of \$650 per hour to litigate the present case. (Decl. of Jason Davis [Etc.] ("Davis Decl."), filed

1 herein, at ¶5.) However, the billing records show that the rate was actually \$250 per hour. (*Id.* at  
2 Exh. 6.) Mr. Davis further testifies, “I currently bill retail clients at a rate of \$350 per hour . . .”  
3 (*Id.* at ¶6.) Plaintiffs seek \$640 per hour for Mr. Davis’s work, again based on the Internet Laffey  
4 Matrix and Mr. Davis’s 11+ years practicing law. (Memo. in Supp. of Pls.’ Mtn. for Attorney  
5 Fees (“Plaintiffs’ Brief”), Dkt. 108, at 7:18.)

6 Additionally, Plaintiffs seek to recover money for more junior attorneys and non-attorney  
7 professionals at rates ranging between \$110 per hour and \$350 per hour. (Plaintiffs’ Brief at  
8 7:21-7:25, 9:18-10:9.)

9 These claimed rates are much too high and cannot be justified.

10 In determining reasonable hourly rates for attorneys for fee awards, the Court should  
11 consider the following factors:

- 12 • the prevailing rate charged by attorneys of similar skill and experience for  
13 comparable legal services in the community (*Kerr v. Screen Extras Guild, Inc.*, 526 F.2d  
14 67, 69 (9th Cir. 1975); *Camacho*, 523 F.3d at 979-81);<sup>1</sup>
- 15 • the nature of the work performed (*Kerr*, 562 F.2d at 69); and
- 16 • the attorney’s customary fee (*Kerr*, 562 F.2d at 69);
- 17 • the novelty and difficulty of the issues (*Moreno*, 534 F.3d at 1114); and
- 18 • and whether or not the fee is contingent (*Moreno*, 534 F.3d at 1114).

19 The following analysis of these factors yields appropriate hourly fee rates for the present case at a  
20 maximum of \$350 for the primary Plaintiffs’ attorneys, Mr. Kilmer, Mr. Otten, and Mr. Davis,  
21 and lower rates for the more junior personnel on Plaintiffs’ side.

22 **1. First Factor: Prevailing Attorney Billing Rates In The Local**  
23 **Community**

24 **a. The Local Community Is Fresno**

25 Plaintiffs concede that the Court should work from attorney billing rates in the relevant  
26 local community, in determining the proper rates here. (*See* Plaintiffs’ Brief at 6:11-6:27.)

27 <sup>1</sup> This factor or a very similar one is sometimes phrased as “the experience held by  
28 counsel and fee awards in similar cases” and/or “the skill required to try the case.” *Moreno*, 534  
F.3d at 1114.



1 Generally, the appropriate hourly rate is the market rate in the forum where the case is litigated.  
 2 *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205-06 (9th Cir. 2013). Therefore, in the present  
 3 case, the relevant community is the Eastern District of California, Fresno Division. *See Jadwin v.*  
 4 *County of Kern*, 767 F. Supp. 2d 1069, 1124 (E.D. Cal. 2011).

5 Plaintiffs assert to the contrary that the Court should look to the market rates for attorneys  
 6 in the expensive locations of Plaintiffs' attorneys' home offices in Los Angeles and the San  
 7 Francisco Bay Area, in determining appropriate hourly rates here. (Plaintiffs' Brief at 8:1-9:1,  
 8 10:10-10:19.) However, Plaintiffs have failed to justify why the Court should ignore Fresno.  
 9 Plaintiffs cannot legitimately rely on the out-of-circuit decision in *Maceira v. Pagan*, 698 F.2d  
 10 38, 40 (1st Cir. 1983), which Plaintiffs cite (at Plaintiffs' Brief at 10:18), for the proposition that  
 11 out-of-forum attorneys should garner the hourly rates that they charge in their own locales. In  
 12 *Maceira*, the court considered evidence regarding whether there were any local attorneys who  
 13 could have handled the matter in question. *Ibid.* Plaintiffs have presented no evidence on the  
 14 issue of whether any Fresno attorneys could have handled the present case. In the absence of  
 15 such a showing, *Maceira* is off point, and Plaintiffs are not entitled to attorney fee reimbursement  
 16 at rates higher than what prevails in Fresno.

17 Separately, Plaintiffs offer an unworkable alternative suggestion to use the locations of  
 18 Defendant's offices (*id.* at 10:15-10:19) as the requisite local communities. The suggestion is  
 19 unworkable because Defendant has offices in multiple locations, in Fresno, Los Angeles,  
 20 Oakland, Sacramento, San Diego, and San Francisco. (See the Internet page at  
 21 <http://oag.ca.gov/contact/mailling-addresses> to confirm the multiple locations of the offices.)

22 In the end, the only supported and workable basis for determining appropriate attorney  
 23 hourly rates here is to use Fresno as the pertinent locale.

24 **b. Top-of-Market Hourly Rates In Fresno Fall Well Below The**  
 25 **Rates Plaintiffs Desire To Recover**

26 On the topic of attorney hourly rates in Fresno, the opinion in *Jadwin* is instructive.

27 In a recent fee motion before the Court, *Schultz v. Ichimoto*, No. 1:08-CV-526-  
 28 OWW-SMS, 2010 WL 3504781 (E.D.Cal. Sep. 7, 2010), it was determined that two  
 very experienced employment litigation counsel—with more than twenty years of

litigation experience each—were entitled to hourly rates of \$305.00 and \$255.00, respectively. To reach the hourly rates in *Schultz*, the Court catalogued the recent attorney’s fee decisions in the Eastern District of California, Fresno Division, including *Ruff v. County of Kings*, 700 F.Supp.2d 1225 (E.D.Cal.2010), *Beauford v. E.W.H. Group Inc.*, 2009 WL 3162249 (E.D.Cal. Sept. 29, 2009) and *Wells Fargo Bank, Nat. Ass’n v. PACCAR Financial Corp.*, 2009 WL 211386 (E.D.Cal. Jan. 28, 2009). In those cases, it was determined that hourly rates of \$350 (*Beauford*), \$315 (*PACCAR*) and \$300 (*Ruff*) were reasonable for “experienced and competent counsel.”

*Jadwin*, 767 F. Supp. 2d at 1130. As can be seen, *Jadwin* shows that the top of the relevant Fresno pay scale, as of 2011, was in the range of \$255 to \$350 per hour. The decision in *J & J Sports Prods., Inc. v. Corona*, No. 1:12-cv-01844-LJO-JLT, 2014 WL 1513426 at \*3 (E.D. Cal. Apr. 16, 2014), quotes and expressly agrees with *Jadwin* on this issue. These holdings are bolstered by the March 2012 declaration of Timothy J. Buchanan, submitted herewith with as Exhibit B to the request for judicial notice, following use in a state-court case, which suggests that for Fresno cases considering the constitutionality of California state laws the proper attorney fee range is \$295 to \$360 (*id.* at ¶¶6-10), or roughly the same range as the case law identifies.<sup>2</sup>

Although the figures in *Jadwin* are three-plus years old, as noted above, *J & J Sports*’s use of the *Jadwin* figures in 2014 indicates that they are up-to-date. *Cf. Camacho*, 523 F.3d at 981 (discussing importance of up-to-date hourly rates for attorney fees motions). Another way to test the figure’s currency is to study average hourly wage data compiled by California’s Employment Development Department (“EDD”) for the years 2011 versus 2014 and to make appropriate comparisons and adjustments. The rationale for using this data is that it is likely that attorneys’ average hourly wages earned correspond to attorneys’ average hourly rates charged. In the first

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<sup>2</sup> The Buchanan declaration was submitted in the case called *Children & Families Commission of Fresno County v. Brown*, Fresno County Superior Court Case No. 11CECG01077. The plaintiffs were attempting to recover attorney fees, and used the declaration in support of the fees claimed. The plaintiffs did not recover attorney fees in the case.

As a point of comparison for Fresno fees, a federal trial court recently determined that, for Sacramento, in the northern part of the Eastern District of California, reasonable attorney fee rates for experienced counsel ranged from \$285 to \$450 per hour. *Trulsson v. County of San Joaquin District Attorney’s Office*, No. 2:11-CV-02986 KJM DAD, 2014 WL 5472787 at \*5-\*6 (E.D. Cal. Oct. 28, 2014). Another federal trial court in Sacramento determined this year that \$350 per hour was reasonable compensation in a civil rights case for a well-known civil rights lawyer who had tried 160 cases to verdict and handled 100 civil rights cases. *Hall v. City of Fairfield*, No. 2:10-cv-0508 DAD, 2014 WL 1286001 at \*7 (E.D. Cal. Mar. 31, 2014).

1 quarter of 2011, in Fresno, the average hourly wage for lawyers was \$63.47. (See Exhibit C to  
 2 the request for judicial notice.) In the first quarter of 2014, the figure had moved up less than  
 3 one-half of one percent and was at \$63.73. (See Exhibit D to the request for judicial notice.)  
 4 Therefore, the \$255-350 hourly rates discussed in *Jadwin* (and confirmed in the other sources) do  
 5 not need to be modified and may be applied here essentially as is.

6 It follows that the Court should set the attorney fee reimbursement rates for Plaintiffs'  
 7 senior attorneys, Mr. Kilmer, Mr. Otten, and Mr. Davis, within a range with maximum of \$350  
 8 per hour.

9 The billing rate for Brigid Joyce, whom Plaintiffs call a "secondary attorney" (Plaintiffs'  
 10 Brief at 7:20-7:21), should also be reduced from what Plaintiffs have demanded. Plaintiffs ask  
 11 for a rate of \$350 per hour for Joyce, based upon her 10 or 11 years of experience practicing law.  
 12 (*Id.* at 7:21, 9:18-9:22.) Given that Ms. Joyce has less experience than Mr. Kilmer or Mr. Otten,  
 13 and admittedly played a secondary role in this case, Ms. Joyce's rate should be reduced to around  
 14 \$255 per hour, at the low end of the prevailing range for experienced legal counsel in Fresno.

15 "This Court has determined that \$150 per hour is the 'established rate' for associate  
 16 attorneys, and '\$75 for paralegals [is] reasonable for litigation performed in this district.'" *J & J*  
 17 *Sports*, 2014 WL 1513426 at \*3 (citation and internal punctuation omitted). Upon that ground,  
 18 Defendant requests reductions from \$175 per hour down to \$150 per hour for both Michael Ruttle  
 19 or Justin Otten, junior attorneys for Plaintiffs

20 Defendant does not contest the proposed \$110 hourly billing rates for the two first-year  
 21 attorneys, Denise Quartermaine and Jennifer Tamura, for work done after they became attorneys.  
 22 But the reimbursement rate should be only \$75 per hour for work done as non-attorneys.

## 23 **2. Second Factor: Nature Of Work Performed**

24 The present case proceeded like a typical litigation matter, so the nature of the work  
 25 performed is a neutral factor here. Plaintiffs filed a short original complaint (Dkt. 1) and  
 26 voluntarily amended the complaint. (Dkt. 10.) Defendant answered the first amended complaint.  
 27 (Dkt. 11.) Plaintiffs propounded a single set of document requests, to which Defendant  
 28 responded, disclosing about 2,000 pages of documents. Plaintiffs took no depositions. Defendant

1 propounded a set of interrogatories to each Plaintiff and deposed each Plaintiff. The four sets of  
2 interrogatory responses were closely similar to each other. Each deposition lasted a half a day or  
3 a full day, not longer. There was no expert witness discovery. There were no discovery motions.  
4 There was only one major pre-trial motion, Defendant's summary judgment motion (Dkt. 31 *et*  
5 *seq.*), which Plaintiffs successfully opposed. (Dkt. 44.) There followed a three-day bench trial  
6 and the subsequent submissions of proposed findings of fact and conclusions of law. (Dkt. 88-99,  
7 100.) As can be seen, the nature of the work performed is ordinary, not extraordinary, for  
8 complex litigation and does not justify deviating from the \$255-\$350 maximum hourly rates of  
9 reimbursement described above.

### 10 **3. Third Factor: Attorneys' Customary Fees**

11 It is significant here that the customary fees charged by Plaintiffs' primary attorneys  
12 approximate the appropriate hourly rates prevailing in Fresno. Mr. Kilmer's actual rate of \$270  
13 per hour charged to Plaintiffs and Mr. Kilmer's customary rate of \$360 per hour, Mr. Otten's  
14 actual rate of \$250 per hour charged to Plaintiffs (Mr. Otten fails to disclose a customary rate),  
15 and Mr. Davis's actual rate of \$250 per hour charged to Plaintiffs and Mr. Davis's customary rate  
16 of \$350 per hour are right in line with—and thus reinforce the propriety of using—the prevailing  
17 rates in Fresno of \$255 to \$350 per hour.

### 18 **4. Fourth Factor: Novelty and Difficulty of Issues**

19 Defendant acknowledges that Second Amendment litigation is a new area of law practice,  
20 and that the present case mounted the first legal challenge to the constitutionality of a waiting  
21 period law for firearm acquisitions. However, the present case did not require analyzing complex  
22 statutes or fact patterns, much less digesting and cogently interpreting and applying a vast body of  
23 case law. As noted above, there were no expert witnesses in the case. The novelty and difficulty  
24 of the issues does not justify deviating from the \$255-\$350 maximum hourly rates of  
25 reimbursement described above.

26 In this respect, it should be noted that Plaintiffs' demand for \$640 attorney hourly rates  
27 contrasts with the attorney fee award following the landmark U.S. Supreme case of *District of*  
28 *Columbia v. Heller*, 554 U.S. 570 (2008), which established that the Second Amendment confers

1 an individual right to possess firearms in the home for self-defense. There, the senior attorneys  
 2 for the plaintiffs were compensated for their work on the case at the hourly rate of \$420, based on  
 3 the U.S. Department of Justice Laffey Matrix of rates applicable in Washington, D.C. *Heller v.*  
 4 *District of Columbia*, 832 F. Supp. 2d 32, 48-49 (D.D.C. 2011). The 2014-15 USDOJ Laffey  
 5 Matrix is submitted here for the Court's reference. (See Exhibit E to the request for judicial  
 6 notice.) Of course, the *Heller* case was brought in Washington, D.C., and (as Plaintiffs admit) the  
 7 Laffey Matrix is established for Washington, D.C., as well (Plaintiffs' Brief at 7:1-7:4), so the use  
 8 of the USDOJ Laffey Matrix makes sense for that case. *Heller*, 832 F. Supp. 2d at 40. In  
 9 contrast, and as noted above, the present case was litigated in Fresno, where hourly fees for  
 10 attorneys are indisputably much lower, so use of the Laffey Matrix to determine Plaintiffs'  
 11 attorneys hour rates here is suspect.

12 Also in the *Heller* attorney fees decision, the plaintiffs' attorneys cited *National Law*  
 13 *Journal* reports about local law-firm billing rates, but the court correctly noted that such  
 14 information was relevant to only the largest law firms, which tend to have the highest rates.  
 15 *Heller*, 832 F. Supp. 2d at 42. Likewise, this Court should reject Plaintiffs' citations to *National*  
 16 *Law Journal* attorney fee reports (Plaintiffs' Brief at 7:10-7:12), as all of the plaintiffs' attorneys  
 17 indisputably work in very small law firms.<sup>3</sup>

## 18 **5. Fifth Factor: Contingency Fees**

19 Plaintiffs' attorneys did not take the present case on a contingency fee basis. Because the  
 20 attorneys charged hourly fees in the traditional manner, the rate for reimbursement purposes  
 21 should be discounted, or at least not increased.

### 22 **B. Plaintiffs Have Not Justified The Claimed Attorney Hours Worked**

23 As regards the hours worked, Plaintiffs have simply submitted copies of their legal bills  
 24 from their attorneys. (See Exhs. 1, 4-6 of Plaintiffs' attorney fees motion (Dkt. 108 et seq.), on  
 25 file herein.) However, for a complex case, the submission of "voluminous billing records without

26 <sup>3</sup> The Internet site for Mr. Kilmer's law firm indicates that he is a solo practitioner. See  
 27 [http://www.dklawoffice.com/donald\\_kilmer\\_resume.html](http://www.dklawoffice.com/donald_kilmer_resume.html). The Internet site for Mr. Otten's law  
 28 firm has an internal page, <http://ottenlawpc.com/professionals/>, that indicates that there are fewer  
 than 10 attorneys and paralegals at the firm, and that Mr. Davis is now working there.

1 delineating a specific total for each of the categories of work . . . performed” will not suffice to  
2 substantiate the number of attorney hours worked. *Jadwin*, 767 F. Supp. 2d at 1101. This flaw is  
3 serious enough that the Court would be justified in denying the motion outright, for failure of  
4 proof.

5 Furthermore, a prevailing party that recovers an attorney fee award in litigation should not  
6 recover money for attorney fees incurred in the pursuit of unsuccessful claims. *Traditional Cat*  
7 *Ass’n, Inc. v. Gilbreath*, 340 F.3d 829, 833-34 (9th Cir. 2003). The test for whether successful  
8 and unsuccessful claims are related is “whether relief sought on the unsuccessful claim is  
9 intended to remedy a course of conduct entirely distinct and separate from the course of conduct  
10 that gave rise to the injury upon which the relief granted is premised.” *Odima v. Westin Tucson*  
11 *Hotel*, 53 F.3d 1484, 1499 (9th Cir. 1995) (citation omitted).

12 In the present case, Plaintiffs prevailed on their Second Amendment claim but did not  
13 prevail on the Fourteenth Amendment claim (which the Court did not reach). It remains that  
14 people who have statutory exemptions to the firearm waiting period laws in question may acquire  
15 firearms without having to pass through the 10-day waiting period, *even for first-time firearm*  
16 *acquisitions*, whereas any other person, including Silvester and Combs, has to go through that  
17 waiting period for a first-time purchase. There is a difference of treatment of different people,  
18 which Plaintiffs initially protested, but did not succeed in eliminating. Hence there is a clear  
19 distinction between Plaintiffs’ victory on the Second Amendment claim and Plaintiffs’ lack of  
20 success on the Fourteenth Amendment claim. Accordingly, the Court should decide that  
21 Plaintiffs cannot recover attorney fees for time and resources expended in pursuit of the  
22 Fourteenth Amendment claim, and construct any fee award accordingly. *Schwarz v. Secretary of*  
23 *Health and Human Servs.*, 73 F.3d 895, 903 (9th Cir. 1995).

24 Here, because of Plaintiffs’ failure to delineate the specific work performed on the  
25 Fourteenth Amendment claim, the amount of time devoted to that part of the case cannot be  
26 determined by reference to the motion papers. But, admittedly, the Fourteenth Amendment claim  
27 consumed a minority of time in the litigation. The claim was obviously pleaded, was analyzed in  
28 the motion for summary judgment, at trial Defendant presented evidence about the claim, and it

was analyzed further in the proposed findings of fact and conclusions of law. A reduction in the attorney fees to account, for the failed effort to establish Fourteenth Amendment claim, is appropriate. For these reasons, if the Court chooses to reduce the attorney fee award on this basis, and uses a percentage discount method, then a discount of 10 percent seems appropriate. *See Conti v. Corporate Servs. Group, Inc.*, \_\_\_ F. Supp. 2d \_\_\_, \_\_\_ 2014 WL 3396083 at \*26 (W.D. Wash. Jul. 10, 2014) (making 30 percent cut to attorney fee award because of unsuccessful claims).

## **II. THERE IS NO REASON TO DEVIATE FROM THE LODESTAR, PROPERLY CALCULATED**

While a trial court may deviate from the lodestar by evaluating various additional factors that could inspire appropriate adjustments (*Quesada v. Thomason*, 850 F.2d 537, 539 (9th Cir. 1988)), Plaintiffs are *not* seeking a deviation from or multiplier of the lodestar. Therefore, the Court should not add a multiplier above 1.0 or otherwise deviate upward from the lodestar.

Ultimately, reasonable plaintiff-side attorney fee rates (in Fresno) and hours worked for the present case (reduced by 10 percent for the unsuccessful Fourteenth Amendment claim) are as follows:

<b>Attorney/Professional Name</b>	<b>Reas. Hrly. Rate</b>	<b>Reas. Hrs. Worked<sup>4</sup></b>	<b>Subtotal</b>
Don Kilmer	\$350	193	\$67,550
Victor Otten	\$350	83	\$29,050
Jason Davis	\$350	102	\$35,700
Brigid Joyce	\$255	9	\$2,295
Michael Ruttle	\$150	90	\$13,500
Justin Otten	\$150	65	\$9,750

<sup>4</sup> For each attorney and non-attorney professional, the reasonable hours worked listed here is the number of hours claimed for that person in Plaintiffs' moving papers, reduced by 10 percent, based on the failure of Plaintiffs to prevail on the Fourteenth Amendment claim. If the Court were to award fees at the hourly rates advocated by Defendant, without a 10 percent reduction in the hours worked, the attorney fee award would be approximately \$177,500.



Attorney/Professional Name	Reas. Hrly. Rate	Reas. Hrs. Worked <sup>4</sup>	Subtotal
Denise Quartermaine	\$110	13	\$1,430
Jennifer Tamura	\$110	4	\$440

The grand total for the attorney fee award is thus **\$159,715**. (Defendant is not contesting the \$1,430 cost reimbursement request of Plaintiffs.)

### CONCLUSION

In seeking an attorney fee award in the present case, Plaintiffs have advocated for inflated attorney hourly rates based on a mysterious Internet site. If the Court applies those rates, then Plaintiffs' attorneys will receive a forbidden windfall. Defendant has demonstrated with multiple corroborating, credible sources of information what reasonable hourly rates look like for the present case. Plaintiffs have not adequately justified the attorney work hours claimed, and should not recover for work on the unsuccessful Fourteenth Amendment claim. Defendant respectfully requests that the Court substantially reduce the attorney fee award to no more than **\$159,715**.

November 24, 2014

Respectfully Submitted,

KAMALA D. HARRIS  
Attorney General of California  
MARK R. BECKINGTON  
Supervising Deputy Attorney General

/s/  
JONATHAN M. EISENBERG  
Deputy Attorney General  
*Attorneys for Defendant Kamala D.  
Harris, Attorney General of California*



KAMALA D. HARRIS, State Bar No. 146672  
Attorney General of California  
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E-mail: Jonathan.Eisenberg@doj.ca.gov  
*Attorneys for Defendants Kamala D. Harris*  
*Attorney General of California*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

**JEFF SILVESTER, BRANDON COMBS,  
THE CALGUNS FOUNDATION, INC., a  
non-profit organization, and THE SECOND  
AMENDMENT FOUNDATION, INC., a  
non-profit organization,**

Plaintiffs,

**v.**

**KAMALA D. HARRIS, Attorney General of  
California (in her official capacity),**

Defendant.

**Case No. 1:11-cv-02137-AWI-SKO**

**REQUEST FOR JUDICIAL NOTICE RE:  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR ATTORNEY FEES;  
SUPPORTING DECLARATION OF  
JONATHAN M. EISENBERG**

Hearing Date:	December 8, 2014
Hearing Time:	1:30 p.m.
Judge:	Hon. Anthony W. Ishii
Trial Date:	March 25, 2014
Action Filed:	December 23, 2011

Under Federal Rule of Evidence 201, Defendant Kamala D. Harris, Attorney General of the State of California ("Defendant"), requests that the Court take judicial notice of the following items in connection with Defendant's opposition to the motion to recover attorney fees filed herein on September 8, 2014, by Plaintiffs Jeff Silvester ("Silvester"), Brandon Combs ("Combs"), The Calguns Foundation, Inc. ("CGF"), and The Second Amendment Foundation, Inc. ("SAF"; together with Silvester, Combs, and CGF, "Plaintiffs.")

**ITEMS TO BE JUDICIALLY NOTICED AND ARGUMENTS FOR JUDICIAL NOTICE**

Exhibit A is a print-out from the Internet site register.com, particularly the “whois” function there, showing publicly accessible information about which person or entity owns or operates the Internet site laffeymatrix.com. There is no person or entity owner or operator named there. Furthermore, the Internet site itself does not supply such information, and Plaintiffs have not supplied that information. The Court should take judicial notice of the print-out as evidence that Plaintiffs have not adequately justified the \$640 per hour attorney rates that Plaintiffs are trying to collect for the work of Don Kilmer, Victor Otten, and Jason Davis, as per *Liberty Media Holdings, LLC v. Vinigay.com*, No. CV-11-280-PHX-LOA, 2011 WL 7430062 at \*5 (D. Ariz. Dec. 28, 2011).

Exhibit B is a copy of a declaration of Timothy J. Buchanan that was submitted in the Fresno County Superior Court case called *Children and Families Commission of Fresno County v. Brown*, Case No. 11CECG01077, in March 2012. The Court should take judicial notice of this item as evidence that, in Fresno in March 2012, reasonable hourly rates for attorneys handling cases posing challenges to the constitutionality of state laws were, in the opinion of one senior attorney in the community, many hundreds of dollars lower than the \$640 rate sought by Plaintiffs here. The *Children* plaintiffs were attempting to recover attorney fees, and used the Buchanan declaration in support of the fees claimed. The plaintiffs did not recover attorney fees in that case. The Court should take judicial notice of the representations in the Buchanan declaration, as per *NuCal Foods, Inc. v. Quality Eggs LLC*, 887 F. Supp. 2d 977, 984-85 (E.D. Cal. 2012).

Exhibit C is a print-out of pages 1 and 5 of a report of California’s Employment Development Department about median wages for different jobs in Fresno in the first quarter of 2011. As can be seen, lawyers had a median hourly wage of \$63.47. The Court should take judicial notice of this information from an official government report, per *AtPac, Inc. v. Aptitude Solutions, Inc.*, 787 F. Supp. 2d 1108, 1112 & n.3 (E.D. Cal. 2011), and *Jimenez v. Domino’s Pizza, Inc.*, 238 F.R.D. 241, 246 (C.D. Cal. 2006).

Exhibit D is a print-out of pages 1 and 5 of a report of California's Employment Development Department about median wages for different jobs in Fresno in the first quarter of 2014. As can be seen, lawyers had a median hourly wage of \$63.73. The Court should take judicial notice of this information from an official government report, per *AtPac*, 787 F. Supp. 2d at 1112 & n.3, and *Jimenez*, 238 F.R.D. at 246.

Exhibit E is a print-out from the Internet site of the U.S. Department of Justice, www.usdoj.gov, of the Laffey Matrix that is put out regarding attorney fee rates in Washington, D.C. This print-out shows the current official Laffey Matrix rates. The Court should take judicial notice of this information from an official government report, per *AtPac*, 787 F. Supp. 2d at 1112 & n.3, and *Jimenez*, 238 F.R.D. at 246.

November 24, 2014

Respectfully Submitted,

KAMALA D. HARRIS  
Attorney General of California  
MARK R. BECKINGTON  
Supervising Deputy Attorney General

/s/  
JONATHAN M. EISENBERG  
Deputy Attorney General  
*Attorneys for Defendant Kamala D.  
Harris, Attorney General of California*

**SUPPORTING DECLARATION OF JONATHAN M. EISENBERG**

I, Jonathan M. Eisenberg, declare as follows:

1. I have personal knowledge of the following facts and, if called as a witness in any relevant proceeding, could and would testify competently to the following facts.

2. I am an attorney admitted to practice law in all California state and federal courts, including the present Court. I am a deputy attorney general in the Office of the California Attorney General. I am one of the attorneys of record for Defendant Kamala D. Harris, Attorney General of California ("Defendant"), in the present case, *Silvester v. Harris*, Case No. 1:11-cv-02137-AWI-SKO.

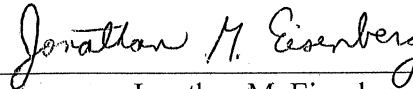
3. The document that is Exhibit A, in Defendant's request for judicial notice regarding the opposition to the pending attorney fees motion in the present case, I generated by using the "whois" feature at the Internet site register.com, to determine which person or entity owns the Internet site laffeymatrix.com. I have used this feature of that website multiple times in the past to determine the ownership of other websites.

4. The document that is Exhibit B, in Defendant's request for judicial notice regarding the opposition to the pending attorney fees motion in the present case, I obtained from files in the Office of the California Attorney General. It is my understanding that other deputy attorneys general represented California Gov. Edmund G. Brown Jr. in that case and the document, a pleading from that case, is in the files of the Office of the California Attorney General for that reason.

5. The documents that are Exhibits C and D, in Defendant's request for judicial notice regarding the opposition to the pending attorney fees motion in the present case, I located on the Internet site for California's Employment Development Department ("EDD") at <http://www.edd.ca.gov/>. Each of the documents appears to be a report generated by EDD.

6. The document that is Exhibit E, in Defendant's request for judicial notice regarding the opposition to the pending attorney fees motion in the present case, I located on the Internet site for the U.S. Department of Justice ("USDOJ") at <http://www.doj.gov/>. The document appears to be a table generated by USDOJ.

1 I declare under the penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that I signed this declaration on November 24, 2014, at Los  
3 Angeles, California.

4  
5   
6 Jonathan M. Eisenberg

**Whois Server Version 2.0**

Domain names in the .com and .net domains can now be registered with many different competing registrars.

Go to <http://www.internic.net> for detailed information.

Domain Name: LAFFEYMATRIX.COM  
Registry Domain ID: 242533483\_DOMAIN\_COM-VRSN  
Registrar WHOIS Server: whois.godaddy.com  
Registrar URL: <http://www.godaddy.com>  
Update Date: 2013-10-10 13:54:47  
Creation Date: 2005-10-30 17:21:34  
Registrar Registration Expiration Date: 2015-10-30 16:21:34  
Registrar: GoDaddy.com, LLC  
Registrar IANA ID: 146  
Registrar Abuse Contact Email: [abuse@godaddy.com](mailto:abuse@godaddy.com)  
Registrar Abuse Contact Phone: +1.480-624-2505  
Domain Status: clientTransferProhibited  
Domain Status: clientUpdateProhibited  
Domain Status: clientRenewProhibited  
Domain Status: clientDeleteProhibited  
Registry Registrant ID:  
Registrant Name: Registration Private  
Registrant Organization: Domains By Proxy, LLC  
Registrant Street: DomainsByProxy.com  
Registrant Street: 14747 N Northsight Blvd Suite 111, PMB 309  
Registrant City: Scottsdale  
Registrant State/Province: Arizona  
Registrant Postal Code: 85260  
Registrant Country: United States  
Registrant Phone: +1.4806242599  
Registrant Phone Ext:  
Registrant Fax: +1.4806242598  
Registrant Fax Ext:  
Registrant Email: LAFFEYMATRIX.COM@domainsbyproxy.com  
Registry Admin ID:  
Admin Name: Registration Private  
Admin Organization: Domains By Proxy, LLC  
Admin Street: DomainsByProxy.com  
Admin Street: 14747 N Northsight Blvd Suite 111, PMB 309  
Admin City: Scottsdale  
Admin State/Province: Arizona  
Admin Postal Code: 85260  
Admin Country: United States  
Admin Phone: +1.4806242599  
Admin Phone Ext:  
Admin Fax: +1.4806242598  
Admin Fax Ext:  
Admin Email: LAFFEYMATRIX.COM@domainsbyproxy.com  
Registry Tech ID:  
Tech Name: Registration Private  
Tech Organization: Domains By Proxy, LLC  
Tech Street: DomainsByProxy.com  
Tech Street: 14747 N Northsight Blvd Suite 111, PMB 309  
Tech City: Scottsdale  
Tech State/Province: Arizona  
Tech Postal Code: 85260  
Tech Country: United States  
Tech Phone: +1.4806242599  
Tech Phone Ext:

Tech Fax: +1.480.624.2598

Tech Fax Ext:

Tech Email: LAFFEYMATRIX.COM@domainsbyproxy.com

Name Server: NS03.DOMAINCONTROL.COM

Name Server: NS04.DOMAINCONTROL.COM

DNSSEC: unsigned

URL of the ICANN WHOIS Data Problem Reporting System: <http://wdprs.internic.net/>

Last update of WHOIS database: 2014-11-24T22:00:00Z

The data contained in GoDaddy.com, LLC's Whois database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records.

Any use of this data for any other purpose is expressly forbidden without the prior written permission of GoDaddy.com, LLC. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" section. In most cases, GoDaddy.com, LLC is not the registrant of domain names listed in this database. The Registry database contains ONLY .COM, .NET, .EDU domains and Registrars.

Kenneth J. Price #225114  
Robert D. Wilkinson #100478  
BAKER MANOCK & JENSEN, PC  
5260 North Palm Avenue, Fourth Floor  
Fresno, California 93704  
Telephone: 559.432.5400  
Facsimile: 559.432.5620

Attorneys for Petitioner and Plaintiffs CHILDREN AND FAMILIES COMMISSION  
OF FRESNO COUNTY, a public agency, MADERA COUNTY  
CHILDREN AND FAMILIES COMMISSION, a public agency,  
FIRST 5 MERCED COUNTY, an agency of the County of Merced,  
and KENDRA ROGERS, an individual and taxpayer and Intervenor  
FIRST 5 SOLANO CHILDREN AND FAMILIES COMMISSION (an  
agency of the County of Solano) (collectively "Fresno Petitioners")

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF FRESNO, CENTRAL DIVISION

CHILDREN AND FAMILIES  
COMMISSION OF FRESNO COUNTY, a  
public agency, MADERA COUNTY  
CHILDREN AND FAMILIES  
COMMISSION, a public agency, FIRST 5  
MERCED COUNTY, an agency of the County  
of Merced, and KENDRA ROGERS, an  
individual and taxpayer,

Petitioners and Plaintiffs,

v.

EDMUND G. BROWN, JR., California State  
Governor, JOHN CHIANG, California State  
Controller, ANA J. MATOSANTOS,  
California Director of Finance, in their official  
capacities, and DOES 1 to 100, inclusive, ,

Respondents and Defendants.

*AND CONSOLIDATED CASES*

CASE No. 11CECG01077

ORANGE COUNTY SUPERIOR COURT  
CASE No. 30-2011 00463630  
MARIN COUNTY SUPERIOR COURT  
CASE No. CIV 1102028  
LOS ANGELES COUNTY SUPERIOR  
COURT CASE NO. BC461005  
SONOMA COUNTY SUPERIOR COURT  
CASE No. SVC 249633  
SAN DIEGO COUNTY SUPERIOR COURT  
CASE No. 37-2011-00091556-CU-WM-CTL

**DECLARATION OF TIMOTHY J.  
BUCHANAN IN SUPPORT OF FRESNO  
PETITIONERS' MOTION FOR  
ATTORNEYS' FEES**

Judge: Hon. Debra J. Kazanjian  
Date: June 11, 2012  
Time: 1:30 p.m.  
Dept.: 51

Action Filed: April 5, 2011

I, Timothy J. Buchanan, declare as follows:



1           1.       I am an attorney licensed to practice law before all of the courts of the State of  
2 California and a partner at the law firm of McCormick Barstow LLP at its office in Fresno,  
3 California. I make this declaration of my own knowledge, except where indicated on information  
4 and belief, in which case I believe it to be true, in support of Fresno Petitioners' Motion for  
5 Attorneys' Fees.

6           2.       I was admitted to the California State Bar in 1981. That year I graduated from the  
7 University of the Santa Clara School of Law where I was a member of the Board of Editors of the  
8 Law Review. From 1981 until 1984 I worked as a research attorney for the California Court of  
9 Appeal for the Fifth District. In 1984 I went into private practice specializing in commercial and  
10 business litigation. In 2001 I joined the law firm of McCormick Barstow LLP where I practice in  
11 the areas of commercial and business litigation, appeals, intellectual property right, and land use  
12 and CEQA litigation.

13           3.       McCormick Barstow LLP is an AV rated law firm with 100 lawyers in six offices  
14 in five states including California, Nevada, Colorado, Ohio and Washington.

15           4.       I am informed that this case involved a petition for writ of mandate to prohibit the  
16 California state government from taking \$1 billion from state and county First 5 commissions  
17 throughout the state. The commissions were established pursuant to the California Children and  
18 Families Act (the "Act") passed by California voters as Proposition 10 in 1998. The Act  
19 established the California Children and Families Program (the "First 5 Program") which is funded  
20 by a 50 cent per package tax on cigarettes. The First 5 Program is a developmental program for  
21 California children from the prenatal stage to age 5.

22           5.       I am informed and believe that Proposition 10 includes a provision that the Act can  
23 only be amended by a two-thirds vote of both houses of the California Legislature and on the  
24 condition that any legislative amendment "shall be to further the Act and must be consistent with  
25 its purposes."

26           6.       I am informed and believe that in April of 2011, the California Legislature passed  
27 Assembly Bill 99 (2011-2012 Reg. Sess.) (hereinafter "AB 99") which provided for the transfer of  
28 \$1 billion from California Children and Families Trust Fund (hereinafter "First 5 Trust Fund")

1 which was created by the Act. The Act provided that First 5 Trust Fund monies could only be  
2 spent on the First 5 Program, could not be used to fund existing state programs and, in the case of  
3 the trust funds held by the county First 5 commissions, had to be spent according to priorities set  
4 by local decision makers. Pursuant to AB 99 the \$1 billion was to be transferred from the First 5  
5 Trust Fund to the State Treasury, outside of the trust, where the legislature planned to spend it on  
6 Medi-Cal, an existing state program.

7       7. I am informed and believe that the Fresno Petitioners, joined by six other county  
8 First 5 commissions, brought this action to prohibit the transfer of \$1 billion from the First 5 Trust  
9 Fund to the State Treasury on the grounds that AB 99 was unconstitutional because it did not  
10 further the purposes of the Act nor was it consistent with its purposes. The Fresno Petitioners also  
11 challenged AB 99 on the grounds that the transfer violated the voters' legislative intent in passing  
12 Proposition 10. In particular, the Fresno Petitioners successfully argued that AB 99 violated the  
13 California Constitution and the Act because AB 99 took away local control over the expenditure  
14 of First 5 Trust Funds and allowed the funds to be spent on existing state programs.

15       8. I am informed and believe that after bringing a motion for the issuance of a  
16 preemptory writ of mandate, the Court entered an order on November 21, 2011, establishing that  
17 AB 99 was invalid in its entirety and thereafter, on January 11 and January 12, 2012, respectively,  
18 issued a judgment and preemptory writ of mandate in the Petitioners' favor.

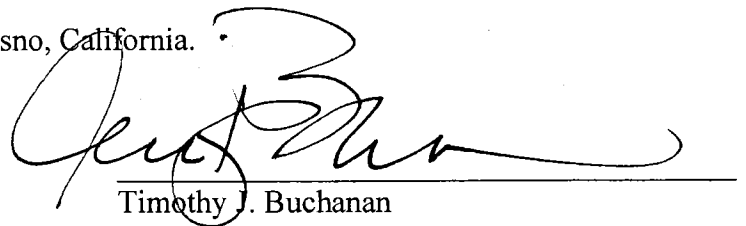
19       9. I am informed that the Fresno Petitioners were the lead petitioners in this matter  
20 and are moving for an award of attorneys' fees under California Code of Civil Procedure § 1021.5  
21 in the amount of \$360 an hour for Robert D. Wilkinson, \$295 an hour for Kenneth J. Price, \$310  
22 an hour for Dirk B. Paloutzian, \$200 an hour for Amanda M. Neal and Raj Singh Badhesha, \$425  
23 an hour for Hon. James A. Ardaiz (ret), and \$55 for summer law clerks. I am informed and  
24 believe that Mr. Wilkinson has been an attorney for approximately 30 years, practices in the areas  
25 of civil litigation and white collar criminal defense and is AV rated. I am informed and believe  
26 that Mr. Price has been a lawyer for ten years, specializes in representing governmental and non-  
27 profit entities and has been named a Rising Star three years in a row in the *California Super*  
28 *Lawyer* magazine. I am informed and believe that Mr. Paloutzian has been an attorney for

1 approximately 16 years, practices in the areas of civil litigation and white collar criminal defense  
2 and is BV rated. I am informed and believe that Ms. Neal and Mr. Badhesha have each been  
3 attorneys for three years and are associates with Baker Manock & Jensen. I am informed and  
4 believe that Mr. Ardaiz joined Baker Manock & Jensen as of counsel in September 2011. Before  
5 that he was a state appellate court justice for approximately 22 years, a state trial court judge for  
6 approximately seven years, and a deputy district attorney for approximately seven years. Mr.  
7 Ardaiz has won many awards and published. He lectures regularly on the law. I am informed and  
8 believe that the summer law clerk that worked on this matter was between her second and third  
9 year at the University of the Pacific, McGeorge School of Law.

10 10. It is my opinion, based on my familiarity with the prevailing market rates for the  
11 kinds of services provided by Baker Manock & Jensen to the Fresno Petitioners in this matter, that  
12 the rates set forth above are consistent with the billing rates charged for comparable work by other  
13 law firms and attorneys with comparable skills, experience and expertise in the San Joaquin  
14 Valley.

15 I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct.

17 Dated: March 6, 2012, at Fresno, California.

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Timothy J. Buchanan

**(Released May 2011)**

These survey data are from the 2010 Occupational Employment Statistics (OES) survey. The wages have all been updated to the **first quarter of 2011** by applying the US Department of Labor's Employment Cost Index to the 2010 wages. Occupations are classified using the Standard Occupational Classification (SOC) codes. For details of the methodology, see the Overview of the OES Survey at <http://www.labormarketinfo.edd.ca.gov>.

**Geography: Fresno MSA**

**Counties: Fresno**

MSA Code	Geographic Area Name	SOC Code	Occupational Title	May 2010 Employment Estimates	2011 - 1st Quarter Wages					
					Mean Hourly Wage	Mean Annual Wage	Mean Relative Standard Error (1)	25th Percentile Hourly Wage	50th Percentile (Median) Hourly Wage	75th Percentile Hourly Wage
023420	Fresno MSA, California	00-0000	Total all occupations	312060	\$20.00	\$41,607	1.84	\$9.69	\$14.93	\$25.00
023420	Fresno MSA, California	11-0000	Management Occupations	12500	\$46.56	\$96,851	1.34	\$29.78	\$40.87	\$55.70
023420	Fresno MSA, California	11-1011	Chief Executives	470	\$81.79	\$170,132	3.77	\$53.89	\$71.00	(4)
023420	Fresno MSA, California	11-1021	General and Operations Managers	3860	\$51.63	\$107,382	2.26	\$31.91	\$42.68	\$60.65
023420	Fresno MSA, California	11-1031	Legislators	90	(4)	\$42,748	5.73	(4)	(4)	(4)
023420	Fresno MSA, California	11-2011	Advertising and Promotions Managers	30	\$38.79	\$80,682	13.83	\$23.56	\$31.32	\$41.83
023420	Fresno MSA, California	11-2021	Marketing Managers	210	\$57.69	\$119,986	7.11	\$36.40	\$45.26	\$73.36
023420	Fresno MSA, California	11-2022	Sales Managers	1030	\$43.52	\$90,511	5.17	\$25.84	\$36.30	\$53.49
023420	Fresno MSA, California	11-2031	Public Relations Managers	90	\$41.35	\$86,010	4.84	\$30.55	\$35.19	\$50.22
023420	Fresno MSA, California	11-3011	Administrative Services Managers	450	\$39.35	\$81,842	6.57	\$23.45	\$35.43	\$47.17
023420	Fresno MSA, California	11-3021	Computer and Information Systems Managers	220	\$44.23	\$92,019	2.03	\$37.55	\$43.79	\$51.40
023420	Fresno MSA, California	11-3031	Financial Managers	1030	\$49.27	\$102,479	3.69	\$33.05	\$44.37	\$59.44
023420	Fresno MSA, California	11-3051	Industrial Production Managers	340	\$40.07	\$83,331	3.32	\$29.59	\$35.54	\$45.11
023420	Fresno MSA, California	11-3061	Purchasing Managers	70	\$45.19	\$93,988	4.02	\$37.20	\$42.63	\$49.62
023420	Fresno MSA, California	11-3071	Transportation, Storage, and Distribution Managers	210	\$38.30	\$79,655	2.87	\$29.78	\$36.95	\$45.37
023420	Fresno MSA, California	11-3111	Compensation and Benefits Managers	50	\$39.17	\$81,465	5.21	\$31.48	\$38.43	\$44.15
023420	Fresno MSA, California	11-3121	Human Resources Managers	90	\$50.90	\$105,865	3.67	\$40.55	\$50.34	\$59.28
023420	Fresno MSA, California	11-3131	Training and Development Managers	60	\$44.39	\$92,328	5.04	\$34.44	\$41.75	\$52.90
023420	Fresno MSA, California	11-9013	Farmers, Ranchers, and Other Agricultural Managers	30	\$37.74	\$78,504	12.71	\$22.24	\$32.24	\$59.64
023420	Fresno MSA, California	11-9021	Construction Managers	280	\$50.86	\$105,791	3.92	\$38.51	\$48.26	\$61.22
023420	Fresno MSA, California	11-9031	Education Administrators, Preschool and Child Care Center/Program	120	\$33.30	\$69,259	21.74	\$16.79	\$21.60	\$44.12
023420	Fresno MSA, California	11-9032	Education Administrators, Elementary and Secondary School	690	(4)	\$89,665	4.19	(4)	(4)	(4)
023420	Fresno MSA, California	11-9033	Education Administrators, Postsecondary	220	\$55.73	\$115,909	4.34	\$41.77	\$55.97	\$68.79
023420	Fresno MSA, California	11-9039	Education Administrators, All Other	110	\$39.38	\$81,917	6.25	\$23.38	\$41.57	\$53.55

023420	Fresno MSA, California	23-1021	Directors, Religious Activities and Education	70	\$22.83	\$47,488	1.29	\$15.55	\$21.59	\$30.51
<b>023420</b>	<b>Fresno MSA, California</b>	<b>23-0000</b>	<b>Legal Occupations</b>	<b>1900</b>	<b>\$47.86</b>	<b>\$99,538</b>	<b>8.62</b>	<b>\$25.69</b>	<b>\$40.29</b>	<b>\$61.72</b>
<b>023420</b>	<b>Fresno MSA, California</b>	<b>23-1011</b>	<b>Lawyers</b>	<b>970</b>	<b>\$63.47</b>	<b>\$132,027</b>	<b>8.89</b>	<b>\$42.39</b>	<b>\$56.01</b>	<b>\$71.29</b>
023420	Fresno MSA, California	23-1012	Judicial Law Clerks	(3)	\$12.35	\$25,686	14.44	\$8.87	\$9.37	\$9.86
023420	Fresno MSA, California	23-1022	Arbitrators, Mediators, and Conciliators	70	\$30.14	\$62,698	25.7	\$16.49	\$18.09	\$23.06
023420	Fresno MSA, California	23-2011	Paralegals and Legal Assistants	500	\$27.29	\$56,764	7.42	\$21.67	\$25.59	\$30.80
023420	Fresno MSA, California	23-2099	Legal Support Workers, All Other	130	\$30.20	\$62,809	6.53	\$22.35	\$30.08	\$38.73
<b>023420</b>	<b>Fresno MSA, California</b>	<b>25-0000</b>	<b>Education, Training, and Library Occupations</b>	<b>25920</b>	<b>\$26.06</b>	<b>\$54,222</b>	<b>4.32</b>	<b>\$15.91</b>	<b>\$24.65</b>	<b>\$34.12</b>
023420	Fresno MSA, California	25-1011	Business Teachers, Postsecondary	200	(2)	\$97,148	3.06	(2)	(2)	(2)
023420	Fresno MSA, California	25-1021	Computer Science Teachers, Postsecondary	70	(2)	\$93,106	3.68	(2)	(2)	(2)
023420	Fresno MSA, California	25-1022	Mathematical Science Teachers, Postsecondary	190	(2)	\$96,854	3.13	(2)	(2)	(2)
023420	Fresno MSA, California	25-1042	Biological Science Teachers, Postsecondary	80	(2)	\$92,028	2.24	(2)	(2)	(2)
023420	Fresno MSA, California	25-1051	Atmospheric, Earth, Marine, and Space Sciences Teachers, Postsecondary	40	(2)	\$96,159	2.4	(2)	(2)	(2)
023420	Fresno MSA, California	25-1052	Chemistry Teachers, Postsecondary	30	(2)	\$93,497	2.85	(2)	(2)	(2)
023420	Fresno MSA, California	25-1065	Political Science Teachers, Postsecondary	40	(2)	\$103,861	2.26	(2)	(2)	(2)
023420	Fresno MSA, California	25-1066	Psychology Teachers, Postsecondary	90	(2)	\$96,996	2.42	(2)	(2)	(2)
023420	Fresno MSA, California	25-1071	Health Specialties Teachers, Postsecondary	180	(2)	\$78,682	5.33	(2)	(2)	(2)
023420	Fresno MSA, California	25-1072	Nursing Instructors and Teachers, Postsecondary	70	(2)	\$85,133	2.37	(2)	(2)	(2)
023420	Fresno MSA, California	25-1081	Education Teachers, Postsecondary	250	(2)	\$90,556	3.54	(2)	(2)	(2)
023420	Fresno MSA, California	25-1111	Criminal Justice and Law Enforcement Teachers, Postsecondary	140	(2)	\$91,481	2.99	(2)	(2)	(2)
023420	Fresno MSA, California	25-1121	Art, Drama, and Music Teachers, Postsecondary	190	(2)	\$94,766	3.37	(2)	(2)	(2)
023420	Fresno MSA, California	25-1122	Communications Teachers, Postsecondary	100	(2)	\$100,670	2.18	(2)	(2)	(2)
023420	Fresno MSA, California	25-1123	English Language and Literature Teachers, Postsecondary	170	(2)	\$97,652	2.03	(2)	(2)	(2)
023420	Fresno MSA, California	25-1124	Foreign Language and Literature Teachers, Postsecondary	70	(2)	\$99,746	2.21	(2)	(2)	(2)
023420	Fresno MSA, California	25-1125	History Teachers, Postsecondary	30	(2)	\$94,417	1.82	(2)	(2)	(2)
023420	Fresno MSA, California	25-1193	Recreation and Fitness Studies Teachers, Postsecondary	110	(2)	\$91,980	2.13	(2)	(2)	(2)
023420	Fresno MSA, California	25-1194	Vocational Education Teachers, Postsecondary	490	\$34.00	\$70,723	7.7	\$20.88	\$36.51	\$46.70
023420	Fresno MSA, California	25-1199	Postsecondary Teachers, All Other	950	(2)	(4)		(2)	(2)	(2)
023420	Fresno MSA, California	25-2011	Preschool Teachers, Except Special Education	990	\$12.30	\$25,582	6.21	\$9.40	\$10.95	\$13.36

**Occupational Employment (May 2013) & Wage (2014 - 1st Quarter) Data**  
**Occupational Employment Statistics (OES) Survey Results**  
**(Sorted by SOC code)**

**(Released June 2014)**

These survey data are from the 2013 Occupational Employment Statistics (OES) survey. The wages have all been updated to the **first quarter of 2014** by applying the US Department of Labor's Employment Cost Index to the 2013 wages. Occupations are classified using the Standard Occupational Classification (SOC) codes. For details of the methodology, see the Overview of the OES Survey at <http://www.labormarketinfo.edd.ca.gov>.

**Geography: Fresno MSA****Counties: Fresno**

MSA Code	Geographic Area Name	SOC Code	Occupational Title	May 2013 Employment Estimates	2014 - 1st Quarter Wages					
					Mean Hourly Wage	Mean Annual Wage	Mean Relative Standard Error (1)	25th Percentile Hourly Wage	50th Percentile (Median) Hourly Wage	75th Percentile Hourly Wage
023420	Fresno MSA, California	00-0000	Total all occupations	321,810	\$20.12	\$41,861	1.90	\$9.85	\$14.93	\$24.65
023420	Fresno MSA, California	11-0000	Management Occupations	13,600	\$46.33	\$96,362	1.20	\$29.63	\$41.34	\$56.21
023420	Fresno MSA, California	11-1011	Chief Executives	440	\$81.43	\$169,368	3.50	\$57.27	\$68.96	(4)
023420	Fresno MSA, California	11-1021	General and Operations Managers	4,690	\$48.48	\$100,835	2.10	\$30.58	\$41.77	\$57.30
023420	Fresno MSA, California	11-1031	Legislators	120	(4)	\$47,707	6.10	(4)	(4)	(4)
023420	Fresno MSA, California	11-2011	Advertising and Promotions Managers	50	\$43.99	\$91,495	10.00	\$28.07	\$38.07	\$45.56
023420	Fresno MSA, California	11-2021	Marketing Managers	190	\$46.24	\$96,180	5.30	\$27.70	\$42.35	\$59.74
023420	Fresno MSA, California	11-2022	Sales Managers	920	\$45.97	\$95,626	4.40	\$25.66	\$37.56	\$62.04
023420	Fresno MSA, California	11-2031	Public Relations and Fundraising Managers	100	\$47.14	\$98,064	6.20	\$30.72	\$39.06	\$61.08
023420	Fresno MSA, California	11-3011	Administrative Services Managers	640	\$38.60	\$80,281	3.20	\$27.03	\$34.34	\$45.46
023420	Fresno MSA, California	11-3021	Computer and Information Systems Managers	220	\$50.10	\$104,200	3.00	\$39.98	\$45.46	\$56.62
023420	Fresno MSA, California	11-3031	Financial Managers	1,010	\$49.82	\$103,636	3.20	\$33.66	\$44.35	\$56.35
023420	Fresno MSA, California	11-3051	Industrial Production Managers	410	\$38.14	\$79,314	3.00	\$27.66	\$36.36	\$45.76
023420	Fresno MSA, California	11-3061	Purchasing Managers	90	\$46.12	\$95,918	5.20	\$32.67	\$43.84	\$53.11
023420	Fresno MSA, California	11-3071	Transportation, Storage, and Distribution Managers	210	\$38.83	\$80,775	3.00	\$31.60	\$37.87	\$45.12
023420	Fresno MSA, California	11-3121	Human Resources Managers	240	\$39.83	\$82,840	2.40	\$31.86	\$36.61	\$47.42
023420	Fresno MSA, California	11-3131	Training and Development Managers	(3)	\$47.91	\$99,646	14.30	\$30.84	\$43.58	\$55.87
023420	Fresno MSA, California	11-9013	Farmers, Ranchers, and Other Agricultural Managers	(3)	\$37.99	\$79,022	11.00	\$31.28	\$34.44	\$37.60
023420	Fresno MSA, California	11-9021	Construction Managers	360	\$43.07	\$89,591	4.40	\$31.09	\$40.80	\$52.88
023420	Fresno MSA, California	11-9031	Education Administrators, Preschool and Childcare Center/Program	210	\$19.69	\$40,957	9.20	\$15.19	\$18.44	\$22.45
023420	Fresno MSA, California	11-9032	Education Administrators, Elementary and Secondary School	680	(4)	\$96,634	3.10	(4)	(4)	(4)

023420	Fresno MSA, California	21-1011	Substance Abuse and Behavioral Disorder Counselors	230	\$18.44	\$38,354	8.80	\$13.83	\$16.66	\$21.87
023420	Fresno MSA, California	21-1012	Educational, Guidance, School, and Vocational Counselors	1,200	\$28.20	\$58,639	7.20	\$20.14	\$23.24	\$35.78
023420	Fresno MSA, California	21-1013	Marriage and Family Therapists	100	\$31.36	\$65,235	5.00	\$25.11	\$31.04	\$38.68
023420	Fresno MSA, California	21-1014	Mental Health Counselors	220	\$15.58	\$32,405	12.50	\$10.26	\$11.97	\$19.83
023420	Fresno MSA, California	21-1015	Rehabilitation Counselors	400	\$14.35	\$29,835	7.50	\$9.92	\$11.74	\$17.08
023420	Fresno MSA, California	21-1019	Counselors, All Other	250	\$26.64	\$55,412	17.30	\$18.77	\$24.07	\$35.09
023420	Fresno MSA, California	21-1021	Child, Family, and School Social Workers	710	\$21.08	\$43,848	3.60	\$17.69	\$21.27	\$24.71
023420	Fresno MSA, California	21-1022	Healthcare Social Workers	330	\$28.82	\$59,964	6.00	\$22.06	\$29.33	\$36.18
023420	Fresno MSA, California	21-1023	Mental Health and Substance Abuse Social Workers	290	\$22.38	\$46,539	8.20	\$14.42	\$21.49	\$31.15
023420	Fresno MSA, California	21-1029	Social Workers, All Other	640	\$28.34	\$58,953	4.30	\$24.36	\$28.48	\$33.62
023420	Fresno MSA, California	21-1091	Health Educators	130	\$23.37	\$48,603	4.40	\$17.34	\$21.36	\$27.58
023420	Fresno MSA, California	21-1092	Probation Officers and Correctional Treatment Specialists	380	\$36.05	\$74,978	9.10	\$27.97	\$36.20	\$44.67
023420	Fresno MSA, California	21-1093	Social and Human Service Assistants	1,170	\$12.85	\$26,730	4.30	\$9.66	\$11.41	\$15.92
023420	Fresno MSA, California	21-1094	Community Health Workers	200	\$17.56	\$36,533	5.40	\$13.12	\$16.31	\$20.32
023420	Fresno MSA, California	21-1099	Community and Social Service Specialists, All Other	210	\$19.08	\$39,700	3.90	\$13.71	\$18.28	\$23.13
023420	Fresno MSA, California	21-2021	Directors, Religious Activities and Education	30	\$19.25	\$40,034	10.80	\$12.40	\$14.00	\$25.10
<b>023420</b>	<b>Fresno MSA, California</b>	<b>23-0000</b>	<b>Legal Occupations</b>	<b>2,060</b>	<b>\$46.71</b>	<b>\$97,155</b>	<b>8.10</b>	<b>\$23.81</b>	<b>\$36.64</b>	<b>\$56.67</b>
<b>023420</b>	<b>Fresno MSA, California</b>	<b>23-1011</b>	<b>Lawyers</b>	<b>1,060</b>	<b>\$63.73</b>	<b>\$132,555</b>	<b>8.50</b>	<b>\$39.74</b>	<b>\$51.91</b>	<b>\$79.94</b>
			Administrative Law Judges, Adjudicators, and Hearing							
023420	Fresno MSA, California	23-1021	Officers	70	\$46.97	\$97,711	1.90	\$36.50	\$47.66	\$56.39
023420	Fresno MSA, California	23-1022	Arbitrators, Mediators, and Conciliators	40	\$22.06	\$45,871	17.30	\$16.39	\$17.84	\$21.37
023420	Fresno MSA, California	23-2011	Paralegals and Legal Assistants	610	\$22.41	\$46,620	5.90	\$17.05	\$21.68	\$27.13
023420	Fresno MSA, California	23-2091	Court Reporters	60	\$26.59	\$55,310	2.60	\$20.96	\$23.73	\$33.60
023420	Fresno MSA, California	23-2099	Legal Support Workers, All Other	90	\$22.22	\$46,215	7.90	\$16.99	\$20.76	\$25.23
<b>023420</b>	<b>Fresno MSA, California</b>	<b>25-0000</b>	<b>Education, Training, and Library Occupations</b>	<b>24,930</b>	<b>\$26.23</b>	<b>\$54,572</b>	<b>2.90</b>	<b>\$15.03</b>	<b>\$23.20</b>	<b>\$34.48</b>
023420	Fresno MSA, California	25-1011	Business Teachers, Postsecondary	130	(2)	(4)	10.20	(2)	(2)	(2)
023420	Fresno MSA, California	25-1021	Computer Science Teachers, Postsecondary	50	(2)	(4)	3.90	(2)	(2)	(2)
023420	Fresno MSA, California	25-1022	Mathematical Science Teachers, Postsecondary	100	(2)	(4)	4.30	(2)	(2)	(2)
023420	Fresno MSA, California	25-1041	Agricultural Sciences Teachers, Postsecondary	30	(2)	(4)	9.70	(2)	(2)	(2)
023420	Fresno MSA, California	25-1042	Biological Science Teachers, Postsecondary	70	(2)	(4)	10.90	(2)	(2)	(2)
023420	Fresno MSA, California	25-1052	Chemistry Teachers, Postsecondary	40	(2)	(4)	28.40	(2)	(2)	(2)
023420	Fresno MSA, California	25-1065	Political Science Teachers, Postsecondary	30	(2)	(4)	13.80	(2)	(2)	(2)
023420	Fresno MSA, California	25-1066	Psychology Teachers, Postsecondary	100	(2)	(4)	9.40	(2)	(2)	(2)
023420	Fresno MSA, California	25-1071	Health Specialties Teachers, Postsecondary	120	(2)	\$63,536	13.00	(2)	(2)	(2)



**LAFFEY MATRIX – 2014-2015**

Years (Rate for June 1 – May 31, based on prior year's CPI-U)

Experience	14-15
20+ years	520
11-19 years	460
8-10 years	370
4-7 years	300
1-3 years	255
Paralegals & Law Clerks	150

*Explanatory Notes:*

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The various "brackets" in the column headed "Experience" refer to the years following the attorney's graduation from law school, and are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). Thus, the "1-3 years" bracket is generally applicable to attorneys in their first, second, and third years after graduation from law school, and the "4-7 years" bracket generally becomes applicable on the third anniversary of the attorney's graduation (*i.e.*, at the beginning of the fourth year following law school). *See Laffey*, 572 F. Supp. at 371; *but cf. EPIC v. Dep't of Homeland Sec.*, No. 11-2261, \_\_\_ F. Supp. 2d \_\_\_, 2013 WL 6047561, \*6 -\*7 (D.D.C. Nov. 15, 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp.2d 56, 60-61 (D.D.C. 2013) (same).
3. The hourly rates approved in *Laffey* were for work done principally in 1981-82. The matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated Laffey Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of



prevailing market rates for litigation counsel in the Washington, D.C. area. *See Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia have relied on the United States Attorney's Office Matrix, rather than the so-called "Updated Laffey Matrix," as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); *see, e.g., Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 150 (D.D.C. 2007). *But see Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 14-15 (D.D.C. 2000). The United States Attorney's Office does not use the "Updated Laffey Matrix" to determine whether fee awards under fee shifting statutes are reasonable.