

1 Anna M. Barvir, SBN 268728
MICHEL & ASSOCIATES, P.C.
2 180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
3 Telephone: (562) 216-4444
Fax: (562) 216-4445
4 Email: abarvir@michellawyers.com

5 Attorney for Plaintiffs and Petitioners

E-FILED
3/27/2017 4:42:58 PM
FRESNO COUNTY SUPERIOR COURT
By: C. Cogburn, Deputy

6
7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF FRESNO**

10 SHERIFF CLAY PARKER, TEHAMA
COUNTY SHERIFF; HERB BAUER
11 SPORTING GOODS; CALIFORNIA RIFLE
AND PISTOL ASSOCIATION
12 FOUNDATION; ABLE'S SPORTING, INC.;
RTG SPORTING COLLECTIBLES, LLC;
13 AND STEVEN STONECIPHER,

14 Plaintiffs and Petitioners,

15 vs.

16 THE STATE OF CALIFORNIA; KAMALA D.
HARRIS, in her official capacity as Attorney
17 General for the State of California; THE
CALIFORNIA DEPARTMENT OF JUSTICE;
18 and DOES 1-25,

19 Defendants and Respondents.

Case No. 10CECG02116

**DECLARATION OF C. D. MICHEL IN
SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES ON APPEAL;
EXHIBITS D-G**

Judge: Jeffrey Y. Hamilton
Dept.: 402
Date: May 31, 2017
Time: 3:30 PM

Action Filed: June 17, 2010

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I, Carl D. Michel, declare as follows:

1. I am an attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

6
7
8
9
10

7
8
9
10
11
12
13
14
15
16
17

11
12
13
14
15
16
17
18
19
20

18
19
20
21
22
23

21
22
23
24
25
26

24
25
26
27
28

27
28

1 *Federal Firearm Regulations*, the first in-depth and comprehensive treatment of state and federal
2 firearm laws for California gun owners, judges, police, and attorneys.

3 8. I have conducted dozens of presentations and continuing legal education seminars
4 on firearms law and the Second Amendment. I have appeared as a spokesperson for National Rifle
5 Association of America and California Rifle & Pistol Association, Incorporated, in dozens of
6 television and radio interviews. And I have served as an Adjunct Professor at Chapman University
7 School of Law, where I taught courses on firearms law and law practice management.

8 9. In *Madrid v. City of Los Angeles* (2003), the court found it reasonable for me to be
9 compensated at the rate of \$350 per hour. Attached hereto as Exhibit D, is a true and correct copy
10 of the *Madrid* Stipulation for Dismissal, indicating my stipulated hourly rate in 2003.

11 10. In *California Side By Side Society v. City of Los Angeles* (2005), the court found it
12 reasonable for me to be compensated at the rate of \$375 per hour. Attached hereto as Exhibit E, is a
13 true and correct copy of the Notice of Motion and Motion for Attorney's Fees and Memorandum of
14 Points and Authorities in Support, including the chart of hourly rates submitted in support thereof.
15 Attached hereto as Exhibit F, is a true and correct copy of the *California Side By Side* Ruling on
16 Plaintiffs' Motion for Attorney's Fees, approving plaintiffs' lodestar figure, including my hourly
17 rate in 2005.

18 11. It has been recognized that firearms civil rights litigation attorneys charge rates
19 within the range corresponding to the experience-level categories identified below:

20	1 to 3 years	\$255/hr to \$450/hr
21	4 to 7 years	\$480/hr
22	8 to 10 years	\$650/hr
23	11 to 20 years	\$640/hr to \$800/hr
24	20+ years	\$760/hr to \$950/hr

25 The above rates were standard for each attorney who assisted in litigating *Parker (Heller) v.*
26 *District of Columbia* during the period that the attorneys' services were rendered. Attached hereto
27 as Exhibit G, is a true and correct copy of the Notice of Filing filed with the United States District
28 Court of the District of Columbia in *Parker*.

1 12. During the appeal for which plaintiffs seek fees, I was categorized by Michel &
2 Associates as a “Partner” (*see* Ex. B, attached to declaration of Anna M. Barvir, filed
3 simultaneously herewith), and I was primarily responsible for supervising the work of all
4 professionals working on this matter and for directing the course of the appeal. My \$450 hourly
5 rate is well within the hourly rates charged by highly specialized firms for attorneys of similar skill,
6 experience, and expertise in Southern California.

7 13. Michel & Associates, P.C., is among is one of the largest, most recognized, and
8 well-respected firearms practices in the nation, having represented gun-rights organizations,
9 firearms retailers and manufacturers, and individual gun owners in countless actions throughout
10 California.

11 14. Michel & Associates, P.C., is among only a handful of California firms with
12 practices concentrated in the unique, highly technical and challenging specialty of firearms law.

13 15. Michel & Associates has more than 20 years’ experience representing some of the
14 largest firearms civil rights organizations in the state. In fact, Plaintiff The CRPA Foundation has
15 been a client of Michel & Associates (formerly Trutanich • Michel, LLP) for nearly two decades,
16 during which time, we have represented The CRPA Foundation in all of their firearms-related legal
17 matters in California.

18 16. Michel & Associates’ firearms law team includes the expertise of former
19 prosecutors, trial lawyers, retired state legislators, constitutional law professors, and authors of law
20 review articles and firearms law books.

21 17. Through its client, the NRA, Michel & Associates also has at its disposal a national
22 network of reputable firearms law and civil rights litigators, experts on firearms and ammunition,
23 and other valuable resources.

24 18. Our firearms attorneys have extensive experience in all phases of civil litigation and
25 appeals, and they have appeared before local and state agencies and legislative rule-making bodies
26 that impact firearm owners’ interests. They have also assisted in drafting firearms legislation,
27 represented clients in firearm licensing matters, represented firearms manufacturers, wholesalers,
28 and retailers in product liability litigation, defended against firearm-related criminal charges, and

1 challenged countless state and local laws in court. Our attorneys are experienced in litigating issues
2 of constitutional law and governmental law.

3 **Authentication of Billing**

4 19. Plaintiffs' billing records, attached to the Declaration of Haydee Villegas filed
5 simultaneously herewith, include true and accurate copies of my billing records for which fee
6 recovery is sought in this matter. The records include detailed descriptions of the work I performed
7 on this case and the time spent on each task between May 2011 and December 2011, as well as
8 work I performed on Plaintiffs' fee motion through March 22, 2017.

9 20. In the regular course and scope of my daily business activities, I prepared the
10 descriptions contained in each billing record that shows my name as the "Timekeeper," and I did so
11 at or near the time of the occurrence of the work that I performed on this matter.

12 21. The descriptions contained within my billing records are a fair and accurate
13 description of the work I performed on this matter and time spent on each task. In my professional
14 judgment, the amount of time indicated for each task described in my billing records is a
15 reasonable amount of time for me to have spent on the type of work described therein.

16 **Role in the Appeal**

17 22. I assigned Clinton B. Monfort as "Responsible Attorney" in litigating this matter.
18 Throughout the course of this appeal, I supervised Mr. Monfort's work, meeting with him regularly
19 to assist in making strategic decisions related to the case.

20 I declare under penalty of perjury under the laws of the State of California that the forgoing
21 is true and correct. Executed March 21, 2017, at Long Beach, California.

22
23 
24 C.D. MICHEL
25 Declarant
26
27
28

EXHIBIT D

1 ROCKARD J. DELGADILLO, City Attorney
2 GARY G. GEUSS, Assistant City Attorney
3 DON W. VINCENT, Assistant City Attorney
4 1650 City Hall East
5 200 North Main Street
6 Los Angeles, California 90012-4130
7 Telephone: (213) 485-1430
8 Facsimile: (213) 485-3958

9 Attorneys for Defendant City of Los Angeles, a municipal corporation, also erroneously
10 sued as Los Angeles Police Department, a nonsuable entity

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

Priority
Send
Enter
Closed
18-1/JS-6
18-2/JS-3
Scan Only

11 DIANA MADRID, BAD BOY BAIL
12 BONDS, Inc., a California Corporation,
13 JEFF STANLEY, CRAIG STANLEY,
14 CYNTHIA STANLEY,

15 *Plaintiff,*

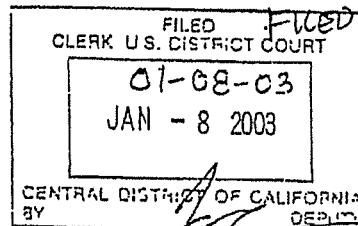
16 vs.

17 CITY OF LOS ANGELES, a Municipality;
18 LOS ANGELES POLICE DEPARTMENT;
19 JAMES HAHN and MARTIN POMEROY in
20 their official capacities as Mayor and Police
21 Chief of LOS ANGELES; LAPD CAPTAIN
22 BECK; LAPD WATCH COMMANDER
23 SERGEANT GEORGE CAULFORD; LAPD
24 SERGEANT LEWIS; and LAPD
25 OFFICERS; SIMMS and ROBINSON,

26 *Defendants.*

CASE NO. CV 02-5990 DDP (Mcx)

STIPULATION FOR
DISMISSAL [F.R.C.P. 41(a)]



27 IT IS HEREBY STIPULATED by and between the parties DIANA MADRID,
28 BAD BOY BAIL BONDS, Inc., a California corporation, JEFF STANLEY, CRAIG
29 STANLEY, CYNTHIA STANLEY, (hereinafter referred to as "Plaintiffs") and the
30 CITY OF LOS ANGELES, including any and all other named and unknown Defendants
(hereinafter "Defendants"), to this action through their designated counsel as follows:

31 The Plaintiffs and Defendants have settled and resolved all of Plaintiffs' claims,
32 asserted in the Complaint filed on July 31, 2002, the United States Central District Court.

ENTERED ON 10
JAN 10 2003

1 Los Angeles, entitled Diana Madrid v. City of Los Angeles, Case Number CV02-05990.
2 The lawsuit for Deprivation of Constitutional Rights and Pendent State Claims included
3 Causes of Action for: 1) Arbitrary and Uncontrolled Discretion Regarding Exercise of
4 Free Expression Rights; 2) Vagueness, Chilling Effect on Exercise of Free Expression
5 Rights; 3) No Public Purpose for Interference with Free Expression Rights; 4) No Public
6 Purpose for Interference with Free Expression Rights.

7 In exchange for and in consideration of the covenants contained herein, Plaintiffs
8 agree to dismiss, with prejudice, all of the claims against all Defendants in the above-
9 mentioned lawsuit.

10 I. AGREEMENT

11 a. Release And Discharge

12 Plaintiffs acknowledge that in consideration of the covenants contained in this
13 Agreement and the payments called for by this Agreement, Plaintiffs, for themselves,
14 their executors, administrators and assignees, fully and forever release, waive and
15 discharge all Defendants, including but not limited to CITY OF LOS ANGELES, a
16 Municipality; LOS ANGELES POLICE DEPARTMENT; JAMES HAHN and MARTIN
17 POMEROY in their official capacities as Mayor and Police Chief of LOS ANGELES;
18 LAPD CAPTAIN BECK; LAPD WATCH COMMANDER SERGEANT GEORGE
19 CAULFORD; LAPD SERGEANT LEWIS; and LAPD OFFICERS; SIMMS and
20 ROBINSON, as well as all other named and unknown (doe) Defendants, from any and all
21 liability in connection with the events alleged in said lawsuits, and further discharge the
22 City's executors, administrators and assigns, and all other persons, firms, associations,
23 corporations, attorneys, and each of them, from any and all past, present or future claims,
24 demands, obligations, actions, causes of action, fee claims, rights, damages, costs, losses
25 of services, attorneys fees and expenses and compensation of any nature whatsoever,
26 which Plaintiffs may or might have against Defendants and all named and unknown
27 (DOE) Defendants, by reason of any damages or injuries whatsoever sustained by
28 Plaintiffs, either directly or indirectly arising from the claims asserted in the above-

1 mentioned Civil Complaint. This shall be a fully binding and complete Settlement
2 Agreement between Plaintiffs and Defendants, their assigns and successors.

3 b. Payments

4 In consideration for this Stipulation for Dismissal, Defendants acknowledge as
5 follows:

- 6 A. That the ordinance is constitutionally invalid;
7 B. That the City of Los Angeles will be required to repeal the ordinance;
8 C. The City of Los Angeles will pay to the plaintiffs \$1,137.00 in nominal
9 damages;
10 D. The City of Los Angeles will pay plaintiffs' attorneys fees and costs as
11 follows:
12 1. \$13,000.00 to Don B. Kates for 32.5 hours @ \$400/hr.
13 2. \$9,000.00 to Donald Kilmer for 30 hours @ \$300/hr.
14 3. \$1,544.00 to Trutanich & Michel broken down as follows:
15 a. \$840 for Chuck Michel for 2.4 hours @ 350/hr.
16 b. \$704 for Haydee Villegas for 6.4 hours @\$110/hr.
17 4. \$319.00 for filing fees, copy charges and service of process.

18 Payment will be made within 30 days of filing the dismissal. The instrument of
19 payment will be made out payable to: "Attorney/Client Trust Account of the Law Offices
20 of Donald Kilmer."

21 Plaintiffs specifically acknowledge and agree that in consideration for the sum
22 paid and foregoing agreement by the Defendants included in this Stipulation, Plaintiffs
23 now and forever waive any claim against Defendants, as well as all named and unknown
24 (DOE) Defendants, for additional attorneys fees or costs, including those which may have
25 been otherwise available under the laws of the State of California or any other state or
26 territory.

27 That the above captioned action be and hereby is dismissed with prejudice, against
28 the Defendants, CITY OF LOS ANGELES, a Municipality; LOS ANGELES POLICE

1 DEPARTMENT; JAMES HAHN and MARTIN POMEROY in their official capacities as
2 Mayor and Police Chief of LOS ANGELES; LAPD CAPTAIN BECK; LAPD WATCH
3 COMMANDER SERGEANT GEORGE CAULFORD; LAPD SERGEANT LEWIS; and
4 LAPD OFFICERS; SIMMS and ROBINSON and each of its employees pursuant to Rule
5 41(a) of the Federal Rules of Civil Procedure, with each side to bear their own costs.

6 DATED: Dec 17, 2002 Respectfully submitted,

7 LAW OFFICES OF DONALD KILMER

8
9 By:

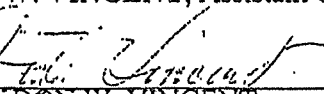

DONALD E. J. KILMER, JR.

10 Attorney for Plaintiffs DIANA MADRID, BAD BOY
11 BAIL BONDS, Inc., a California Corporation,
12 JEFF STANLEY, CRAIG STANLEY,
13 CYNTHIA STANLEY

14 DATED: December 3, 2002

ROCKARD J. DELGADILLO, City Attorney
15 GARY G. GEUSS, Assistant City Attorney
16 DON W. VINCENT, Assistant City Attorney

17 By:


DON W. VINCENT

18 Attorneys for Defendants, City of Los Angeles, et al.

19
20 ORDER

21 The parties having so stipulated and good cause appearing, it is hereby ordered,
22 decreed and adjudged that the plaintiffs' complaint be dismissed with prejudice in its
23 entire action.

24 DATED: 1-8-03

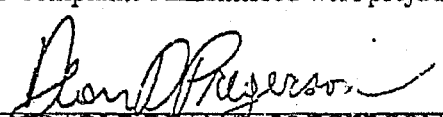

25 HONORABLE DEANE D. PREGERSON
26 United States District Judge
27
28

EXHIBIT E

1 C. D. Michel - S.B.N. 144258
Glenn S. McRoberts - S.B.N. 144852
2 Don B. Kates - S.B.N. 039193
Jason A. Davis - S.B.N. 224250
3 TRUTANICH • MICHEL, LLP
180 East Ocean Ave.
4 Suite 200
Long Beach, CA 90802
5 Telephone: 562-216-4444
Facsimile: 562-216-4445

6 Attorneys for Plaintiffs
7
8
9

10 IN THE UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

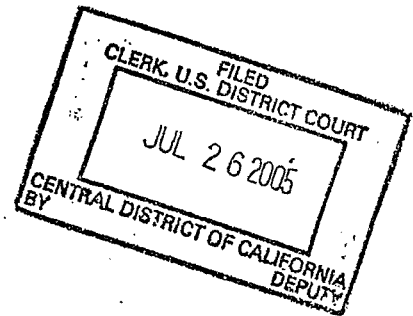
12 CALIFORNIA SIDE BY SIDE
SOCIETY, CALIFORNIA
13 ASSOCIATION OF FIREARMS
RETAILERS, FIFTY CALIBER
14 SHOOTERS ASSOCIATION,
BARRETT FIREARMS
15 MANUFACTURING, INC.,
CALIFORNIA RIFLE AND PISTOL
16 ASSOCIATION, EDM ARMS,
SPORTS AFIELD, and ROBERT
17 KAHN

18 Plaintiffs,

19 v.

20 CITY OF LOS ANGELES a
municipality; and Does 1 - 10,

21 Defendants.
22
23
24
25
26
27
28



CASE NO. EDCV04 - 01395 GAF
(SGLX)

NOTICE OF MOTION AND
MOTION FOR AWARD OF
REASONABLE ATTORNEY'S FEES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF; DECLARATIONS IN
SUPPORT THEREOF

Date: August 2, 2005
Time: 9:30 a.m.
Courtroom: 740

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

PAGE(s)

<u>MEMORANDUM OF POINTS AND AUTHORITIES</u>	2
INTRODUCTION	2
BACKGROUND	2
ARGUMENT	5
I. PLAINTIFFS ARE ENTITLED TO AN AWARD OF REASONABLE FEES	5
A. Plaintiffs are the "Prevailing Party" for Purposes of Section 1988.	6
B. Denial of Fees to a Plaintiff Who Prevailed on <i>Any</i> Significant Issue in a 1983 Action Is Rare, and Must Be Specially Justified	7
II. THE AMOUNT OF FEES REQUESTED BY PLAINTIFFS IS REASONABLE	8
A. Plaintiffs' Fees are in Line with Prevailing Market Rates	8
B. Even Where Plaintiffs Are Unsuccessful on the Major Thrust of their Suit, They are Still Entitled to Recover Fees as to Issues That Were Successfully Litigated.	9
CONCLUSION	12

TABLE OF AUTHORITIES

		PAGE(s)
4	<u>FEDERAL CASES</u>	
5	Alyeska Pipeline Service Co. v. Wilderness Society,	
6	421 U.S. 240, 267 n.42 (1975)	5, 6
7	Bauer v. Sampson,	
8	261 F.3d 775, 785 (9th Cir. 2001)	6, 8
9	Blum v. Stenson,	
10	465 U.S. 886, 898, 104 S.Ct. 1541, 1549 (1984)	9
11	Corder v. Gates,	
12	947 F.2d 374, 379 (9th Cir. 1991)	6
13	Davis v. City and County of San Francisco,	
14	976 F.2d 1536, 1545-46 (9th Cir.1992)	9
15	Entertainment Concepts, Inc. v. Maciejewski,	
16	631 F.2d 497, 507-508 (7th Cir. 1980)	8
17	Forest County Potawatomi Community of Wisconsin v. Norquist,	
18	45 F.3d 1079, 1084-1085 (7th Cir. 1995)	7
19	Hatfield v. Hayes,	
20	877 F.2d 717, 720 (8th Cir. 1989)	8
21	Hensley v. Eckerhart,	
22	461 U.S. 424, 433, 103 S.Ct.1933 (1983).....	6, 7, 9, 10,11
23	Homans v. City of Albuquerque,	
24	264 F.Supp.2d 972, 977 (D.N.M. 2003)	9
25	Hyundai Motor America v. J.R. Huerta Hyundai, Inc.,	
26	775 F.Supp. 915, 920 (E.D.La. 1991)	8
27	Love v. Mayor, City of Cheyenne, Wyo.,	
28	620 F.2d 235, 236 (10th Cir. 1980)	8
	Nadeau v. Helgemoe,	
	581 F.2d 275, 278-279 (1st Cir. 1978)	7
	Northcross v. Board of Education of Memphis City Schools,	
	611 F.2d 624, 635 (6th Cir. 1979)	8
	Riddell v. National Democratic Party,	
	624 F.2d 539, 543 (5th Cir. 1980)	8
	Schwarz v. Secretary of Health & Human Services,	
	73 F.3d 895, 903 (9th Cir. 1995)	10, 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES (Cont.)

PAGE(s)

Souza v. Travisono, 512 F.2d 1137, 1139 (1st Cir. 1975)	6
Tyler v. City of Manhattan, 866 F.Supp. 500, 501	7
Watson v. County of Riverside, 300 F.3d 1092, 1096 (9th Cir. 2002)	7
Williams v. Miller, 620 F.2d 199, 202 (8th Cir. 1980)	8

FEDERAL STATUTES

42 U.S.C. §1988	1, 6
-----------------------	------

CALIFORNIA STATE STATUTE

Penal Code 12275ff	4
--------------------------	---

1 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:


2 PLEASE TAKE NOTICE THAT at 9:30 a.m. on August 29, 2005, or as soon
3 thereafter as counsel may be heard, at the United States District Court for the
4 Central District of California, Western Division, Roybal Building, 255 East Temple
5 Street, Los Angeles, CA, Judge Gary A. Feess, Courtroom 740, plaintiffs will move
6 for an order awarding reasonable attorney fees as they were "prevailing parties" in
7 this case.

8 This motion is based upon the preliminary injunction issued by this court on
9 May 2, 2005, which enjoined the operation of defendants' ordinance in certain
10 respects. These issues became moot when defendants subsequently amended the
11 ordinance in response to this lawsuit, wherefore plaintiffs are the prevailing party in
12 those respects and are entitled to an award of attorney's fees under 42 U.S.C.
13 §1988.

14 This motion is based upon this notice, the attached memorandum of points
15 and authorities, the declarations in support thereof, and the complete files and
16 records of this action, and such evidence as may be presented on the hearing of the
17 motion.

18 Date: July 26, 2005

TRUTANICH • MICHEL, LLP:

19
20
21 
22 C.D. Michel
23 Attorneys for Plaintiffs
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On May 2, 2005, this Court granted Plaintiffs' Motion for Preliminary
4 Injunction in part, finding that the City of Los Angeles' Large Caliber Firearm
5 ("LCF") ordinance was preempted by state law as to its regulation of .50 caliber
6 BMG rifles, and that an exception to the ordinance violated the equal protection
7 clause of the United States Constitution. The City has amended its ordinance to
8 comply with the Court's ruling. Thus plaintiffs have succeeded on two significant
9 claims and have achieved the "judicial imprimatur" necessary to support an award
10 of attorney's fees.

11
12 **BACKGROUND**

13 On June 10, 2003 defendant City of Los Angeles ("the City") enacted the
14 ordinance involved in this case (hereinafter "Ordinance") banning the sale of rifles
15 of .50 caliber.

16 The California Legislature enacted a ban on sale of .50 caliber BMG rifles on
17 August 25, 2005, which became effective on January 1, 2005. It did so by bringing
18 those rifles under the Assault Weapons Control Act (hereinafter "AWCA"),
19 although those rifles are not, in fact, "assault weapons."

20 The City now concedes that the state enactment preempted the Ordinance as
21 to .50 caliber BMG rifles. But the state enactment did not cause the City to exempt
22 .50 caliber BMG rifles from the Ordinance, which continued to ban the acquisition
23 or sale of .50 caliber BMG rifles by Los Angeles firearms dealers even to persons
24 who had licenses or permits issued by the California Department of Justice
25 (hereinafter "DOJ") to possess and transfer those rifles.

26 Prior to the passage of the City's ordinance, counsel for plaintiffs Jason Davis
27 appeared before the City Council and indicated that the ordinance would be
28 preempted by pending state legislation – AB50 – if that legislation should pass.

1 Further after AB50 passed in the state legislature, Mr. Davis informed the City
2 Attorney's office on multiple occasions that the ordinance was preempted by state
3 law. Nonetheless, the City refused to repeal the ordinance. (Declaration of Jason
4 Davis, attached as Exhibit A at ¶6.)

5 Plaintiffs filed this lawsuit on November 5, 2004, eleven months after the
6 state law took effect, and after it became apparent that the City was not going to
7 repeal or cease enforcement of the Ordinance. The City asked plaintiffs for, and
8 received, extensions of time to respond to their Complaint. In mid-February, 2005,
9 the city attorney handling the case (hereinafter "opposing counsel") stated his
10 intention to file a motion to dismiss based on standing grounds, and objecting to
11 plaintiffs' inclusion of the police chief as a defendant. Plaintiffs' counsel
12 responded with a memorandum showing that plaintiffs did have standing, but to
13 avoid litigating a tangential issue plaintiffs nonetheless agreed to drop the police
14 chief, the mayor, and the City Clerk from the case. As a result of this agreement,
15 the City answered plaintiffs' complaint rather than filing a motion to dismiss.

16 Subsequently plaintiffs informed opposing counsel that they were preparing a
17 motion for a preliminary injunction. Opposing counsel responded by mentioning
18 that the Ordinance might be amended in some unspecified respect. Plaintiffs agreed
19 to consider holding off on the motion subject to their being supplied with a copy of
20 the proposed amendment. Weeks passed. Plaintiffs were never supplied with a
21 copy of any proposed amendment. Inquiries of the Los Angeles City Clerk's office,
22 with which any proposed amendment would have to be filed, elicited the
23 information that no such proposed amendment had been filed with the City Clerk or
24 was pending before the City Council. And in discussion with the city attorney
25 handling the case, the City was unable to tell plaintiffs what the amorphous
26 amendment proposed to affect – though, if any such amendment had been under
27 consideration it would have been drafted by the Office of the City Attorney.

28 Plaintiffs therefore proceeded to file their motion, which they had been

1 preparing well before they were informed of the supposed amendment. In sum,
2 plaintiffs sought the preliminary injunction in this case because their prior
3 experience with the City indicated that unless they did so nothing would happen.¹
4
5

6 ¹ To understand that decision it is useful to consider the experiences of
7 similar plaintiffs in such cases against CITY:

8 California Rifle & Pistol Ass'n. et al v. City of Los Angeles et al, L.A. Superior
9 Court # BC 292730. This case involved a City ordinance banning "assault weapons."
10 This ordinance was preempted by the state AWCA, Penal Code 12275ff. In 1997, the
11 plaintiffs in this case wrote the City asking that the ordinance be repealed, and noting
12 federal and state due process and other constitutional problems, as well as preemption
13 issues. During the ensuing six years, the City Attorney repeatedly informed the Los
14 Angeles City Council that its ordinance was void and requested a repeal of the ordinance.
15 Finally, in 2003, the plaintiffs sued to void the ordinance. Only after that suit was filed,
16 did the City repeal that ordinance – all the while claiming both to the plaintiffs and to the
17 court that the ordinance had never been enforced. But the plaintiffs' freedom of
18 information request elicited the information that at least three arrests had been made
19 under that ordinance since 1995. (The City Attorney's records were too spotty to show
20 what had happened in those cases, or whether there had been other arrests.) Moreover, at
21 the very time that the City was claiming that ordinance had never been enforced the City
22 was engaged in a major civil law suit to enforce that ordinance against firearms
23 manufacturers and sellers. The City also claimed that its repeal of that ordinance was not
24 related to the lawsuit and that the timing of the repeal was just coincidental. But
25 plaintiffs secured a videotape of the Los Angeles City Council meeting in which the
26 repeal occurred. The discussion of repeal featured an exchange in which a city
27 councilman asked the deputy city attorney if the point of the repeal was to get rid of the
28 lawsuit. The city attorney replied in the affirmative. (See declaration of C.D. Michel,
attached as Exhibit B, at ¶15.)

20 Madrid v. City of Los Angeles U.S. Dist. Ct. (Central District) #CV 02-5990
21 DDP. In this case, employees of a bail bond company which is a client of this office were
22 threatened with arrest by the Los Angeles Police Department ("LAPD") for distributing
23 leaflets explaining the principles of bail and advertising the company. The threat was
24 made under a Los Angeles Municipal Code section that had been declared
25 unconstitutional by the California Supreme Court twenty-five years earlier – but never
26 repealed by the City. The City Attorney's Office had advised LAPD to enforce it against
27 our client. Calling the city attorney involved produced no response. Faxing the city
28 attorney a copy of the draft 1983 complaint produced a promise that the City would look
into the matter a get back to plaintiffs in a day or two. When a week's time and several
phone calls produced no response, the case was filed and a copy of the complaint was
served. Even this produced no response. But filing a motion for a preliminary injunction
produced a promise of a settlement which was entered into, and an order of dismissal
issued pursuant to the settlement. One of the provisions of the court order was that the
ordinance would at long last be repealed. (See declaration of Donald Kilmer submitted
herewith as Exhibit C.)

1 This Court denied plaintiffs' preliminary injunction motion in most respects.
2 But it held plaintiffs had demonstrated both probable success and balance of
3 hardships on two points: (a) that the Ordinance is preempted in relation to .50 cal.
4 BMG rifles which the state AWCA covers and regulates differently; and (b) that
5 equal protection was denied by an exception which would allow police officers to
6 buy .50 caliber rifles for their private gun collections – something the Ordinance
7 forbids ordinary law-abiding, responsible adults to do.

8 The City has subsequently amended the Ordinance to remove any coverage of
9 .50 caliber BMG rifles and to limit police purchases to rifles to be used for duty
10 purposes.²

11 Pursuant to this amendment being finally adopted, plaintiffs moved for
12 voluntary dismissal of this case as to all issues except attorneys fees. This Court
13 entered its order of dismissal on plaintiffs' motion to dismiss on July 12, 2005. The
14 Court retained jurisdiction over the matters of attorney's fees and costs.

15 16 ARGUMENT

17 I. PLAINTIFFS ARE ENTITLED TO AN AWARD OF REASONABLE 18 FEES

19 Under the traditional American Rule, individual parties were required to bear
20 the costs and attorney's fees of their own litigation. In suits that would both
21 vindicate an individual's rights and benefit all other similarly situated plaintiffs, the
22 courts developed the "private attorney general" doctrine to mitigate the harsh
23 consequences of the traditional rule. Alyeska Pipeline Service Co. v. Wilderness
24 Society, 421 U.S. 240, 267 n.42 (1975). Under the "private attorney general"
25 doctrine, courts awarded attorney's fees to plaintiffs who, in the place of the

26
27 ² This latter amendment is a face-saving charade. Police officers do not buy
28 their own firearms because under California law the City is required to provide
them. Nor is any officer likely to spend almost \$8,000.00 of his own money on a
rifle that he is only allowed to use on duty.

1 attorney general, litigated claims in the public interest. Souza v. Travisono, 512
2 F.2d 1137, 1139 (1st Cir. 1975) (vacated in light of Aleyska). In Aleyska, the
3 Supreme Court abolished the common law “attorney general doctrine.” 421 U.S. at
4 269. Congress responded quickly and passed the Civil Rights Attorneys Fees
5 Awards Act (codified at 42 U.S.C. §1988, hereinafter referred to as “Section 1988”) in
6 1976 with the intention of providing reasonable attorney fees to prevailing parties
7 pursuant to civil rights statutes lacking fee-shifting provisions.

8 Subsection (b) of Section 1988 provides, in part, that “[i]n any action to
9 enforce a provision of section[] . . . 1983 . . . the court, in its discretion, may allow
10 the prevailing party, other than the United States, a reasonable attorney’s fee as part
11 of its costs . . .”

12 Although Section 1988 is phrased in the permissive, providing that “the
13 court, in its discretion, may allow” reasonable attorney’s fees, the actual discretion
14 of the court to not award attorney’s fees in cases where a plaintiff is successful
15 under section 1983 is severely limited. Prevailing plaintiffs in section 1983 actions
16 “should ordinarily recover an attorney’s fee unless special circumstances could
17 render such an award unjust.” Bauer v. Sampson, 261 F.3d 775, 785 (9th Cir. 2001)
18 (internal citation omitted). See also Corder v. Gates, 947 F.2d 374, 379 (9th Cir.
19 1991) (“fee awards must ensure that civil rights lawyers receive reasonable
20 compensation for their services...” “The purpose of a fee award is to encourage
21 litigation and voluntary compliance with civil rights laws.”)

22
23 **A. Plaintiffs are the “Prevailing Party” for Purposes of Section 1988.**

24 In order to recover fees under section 1988, a plaintiff must be considered a
25 “prevailing party.” Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct.1933 (1983).
26 Whether particular plaintiffs are a “prevailing party” is a threshold question, the
27 determination of which is subject to a “generous formulation.” Id. Plaintiffs will be
28 considered “prevailing parties” if they “succeed on *any significant issue* in litigation

1 which achieves *some of the benefit* the parties sought in bringing suit.” *Id.* (citing
2 *Nadeau v. Helgemoe*, 581 F.2d 275, 278-279 (1st Cir. 1978)) (emphases added).

3 In this case, plaintiffs succeeded on two significant issues: that the City’s
4 ordinance regulating .50 caliber BMG rifles was preempted by state law, and that
5 the ordinance’s exception for sales or transfers to peace officers violated the equal
6 protection clause. Accordingly, plaintiffs have satisfied the “prevailing party”
7 threshold for determination of whether they are entitled to attorney’s fees. The
8 scope of plaintiffs’ success may be relevant to determining the reasonableness of
9 the size of their fee award, but it is *not* relevant to the question of whether they are
10 entitled to a fee award at all.

11 Moreover, it is irrelevant to the question of whether plaintiffs are “prevailing
12 parties” that the plaintiffs did not obtain a judgment. The Ninth Circuit has
13 specifically held that in order to be considered a “prevailing party,” a plaintiff must
14 only have obtained a “judicial imprimatur that alters the legal relationship between
15 the parties.” *Watson v. County of Riverside*, 300 F.3d 1092, 1096 (9th Cir. 2002).
16 Although “judgements and consent decrees are examples of [a judicial imprimatur]
17 . . . they are not the only examples.” *Id.* Rather, a preliminary injunction carries all
18 the “judicial imprimatur” necessary for “prevailing party” status. *Id.*

19 **B. Denial of Fees to a Plaintiff Who Prevailed on *Any* Significant Issue**
20 **in a 1983 Action Is Rare, and Must Be Specially Justified**

21 Cases of courts denying fees to prevailing plaintiffs are rare, and involve
22 highly unusual conditions. *Tyler v. City of Manhattan*, 866 F.Supp. 500,
23 501(D.Kan. 1994). For example, in *Forest County Potawatomi Community of*
24 *Wisconsin v. Norquist*, 45 F.3d 1079, 1084-1085 (7th Cir. 1995), the Court denied
25 attorney’s fees to an Indian tribe which had made a compact with the state of
26 Wisconsin that both the tribe and the state would bear the costs of litigation in any
27 action to enforce the compact. In the instant case, plaintiffs and the City have made
28 no such agreement.

1 The burden of proof that “special circumstances” exist for the denial of an
2 award lies on the defendant. Williams v. Miller, 620 F.2d 199, 202 (8th Cir. 1980).
3 Further, the “special circumstances” exception to the award of attorney’s fees
4 should be narrowly construed. Hatfield v. Hayes, 877 F.2d 717, 720 (8th Cir.
5 1989). There is a two-part test for determining when such “special circumstances”
6 exist: “(1) whether allowing attorney’s fees would further the purposes of §1988
7 and (2) whether the balance of the equities favors or disfavors the denial of fees.”
8 Bauer v. Sampson, supra, 261 F.3d at 786-786.

9 Numerous cases refute arguments that the City might make against a fee
10 award in this matter. For instance, difficulty or even inability of a defendant to pay
11 a fee award does not constitute a “special circumstance” justifying denial of a fee
12 award. Entertainment Concepts, Inc. v. Maciejewski, 631 F.2d 497, 507-508 (7th
13 Cir. 1980). Likewise, the financial ability of a of plaintiff to pay its lawyers does
14 not justify denying attorney’s fees. See, e.g., Riddell v. National Democratic Party,
15 624 F.2d 539, 543 (5th Cir. 1980); Hyundai Motor America v. J.R. Huerta Hyundai,
16 Inc., 775 F.Supp. 915, 920 (E.D.La. 1991). The good faith or bad faith of a
17 defendant in carrying out its actions is also irrelevant in determining whether
18 attorney’s fees should be awarded. Entertainment Concepts v. Maciejewski, 631
19 F.2d at 507; Love v. Mayor, City of Cheyenne, Wyo., 620 F.2d 235, 236 (10th Cir.
20 1980). Nor would mere uncertainty about the law justify denial of an attorney’s fee
21 award. Northcross v. Board of Education of Memphis City Schools, 611 F.2d 624,
22 635 (6th Cir. 1979).

23 24 **II. THE AMOUNT OF FEES REQUESTED BY PLAINTIFFS IS** 25 **REASONABLE**

26 **A. Plaintiffs’ Fees are in Line with Prevailing Market Rates**

27 Reasonable fees are “to be calculated according to the prevailing market
28 rates in the relevant community,” with close attention paid to the fees charged by

1 "lawyers of reasonably comparable skill, experience, and reputation." Davis v. City
2 and County of San Francisco , 976 F.2d 1536, 1545-46 (9th Cir.1992). To that end
3 plaintiffs have submitted declarations (Exhibits A through F) showing that the rates
4 regularly charged are in line with attorneys of comparable experience and skill in
5 the legal community. A prevailing plaintiff meets the burden of establishing
6 reasonable hourly rates by submitting sworn declarations that the "requested rates
7 are in line with those prevailing in the community for similar services by lawyers of
8 reasonably comparable skill, experience, and reputation." Homans v. City of
9 Albuquerque, 264 F.Supp.2d 972, 977 (D.N.M. 2003)

10 As noted in the attached declarations, a number of the attorneys who have
11 worked on this case have an extensive specialized background in the field of
12 firearms law. "[T]he special skill and experience of counsel should be reflected in
13 the reasonableness of the hourly rates." Blum v. Stenson, 465 U.S. 886, 898, 104
14 S.Ct. 1541, 1549, 79 L. Ed. 2d 891(1984).

15 Moreover, plaintiffs have submitted an attorneys fee award given by this
16 court earlier in 2004 in another § 1983 case against the City, Madrid v. City of Los
17 Angeles. This award sets out the reasonable hourly rates of two of plaintiffs'
18 counsel, Don Kates and C.D. Michel, which the City stipulated to in that case.
19 (Exhibit G at p. 3.)

20

21 **B. Even Where Plaintiffs Are Unsuccessful on the Major Thrust of**
22 **their Suit, They are Still Entitled to Recover Fees as to Issues That**
Were Successfully Litigated.

23 After it has been established that a party is a "prevailing party" for purposes
24 of fee recovery, the court must begin its analysis of a "reasonable fee" by
25 multiplying the number of hours reasonably expended on the litigation by a
26 reasonable hourly rate. Hensley v. Eckerhart, supra, 461 U.S. at 433. In the instant
27 case, plaintiffs' attorneys expended 513.80 hours at rates ranging from \$250 to \$400
28 per hour. (See attached table calculating plaintiffs' fees at \$163,809.00, attached as

1 Exhibit H; see also billing entries attached as Exhibit I.) These rates are reasonable
2 given the experience level of each attorney involved and due to the complexity of
3 the issues involved. (See Declarations of attorneys, attached as Exhibits A through
4 F.)

5 Where plaintiffs are “prevailing parties” but have succeeded only on some of
6 their claims for relief, the court must engage in a two-step analysis to determine a
7 reasonable fee award. First the court will determine if any of the work prepared by
8 plaintiffs’ counsel on an unsuccessful claim was unrelated to counsel’s work on the
9 successful claims. If the work on the unsuccessful claim was unrelated to work on
10 the successful claims, the time spent on the unsuccessful claim must be excluded
11 from the fee award. Hensley v. Eckerhart, 461 U.S. at 435. The court has noted
12 that such instances of unrelated claims whose accompanying hours must be
13 excluded are rare.³

14 The test for whether claims are related or unrelated is imprecise. Schwarz v.
15 Secretary of Health & Human Services 73 F.3d 895, 903 (9th Cir. 1995). But
16 generally an unsuccessful claim will be considered unrelated to a successful claim if
17 the relief the unsuccessful claim sought was “intended to remedy a course of
18 conduct entirely distinct from and separate from the course of conduct that gave rise
19 to the injury on which the relief granted is premised.” Id. “Thus, the focus is to be
20 on whether the unsuccessful and successful claims arose out of the same ‘course of
21

22 ³ “It may well be that cases involving such unrelated claims are unlikely to
23 arise with great frequency. Many civil rights cases will present only a single
24 claim. In other cases the plaintiff’s claims for relief will involve a common core of
25 facts or will be based on related legal theories. Much of counsel’s time will be
26 devoted generally to the litigation as a whole, making it difficult to divide the
27 hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a
28 series of discrete claims. Instead the district court should focus on the significance
of the overall relief obtained by the plaintiff in relation to the hours reasonably
expended on the litigation.” Hensley v. Eckerhart, 461 U.S. at 435.

1 conduct.' If they didn't they are unrelated under Hensley." Id.

2 In the instant case, all of plaintiffs claims arose out of the same course of
3 conduct: namely, the City's passing of an ordinance regulating Large Caliber
4 Firearms. This is true for plaintiffs' preemption claims, for plaintiffs' first
5 amendment claims, plaintiffs' equal protection claim, plaintiffs' dormant commerce
6 clause claim, etc. Every one of plaintiffs' claims sought to redress the City's
7 passing of its Large Caliber Firearm ordinance. Thus, every one of plaintiffs'
8 claims was related to plaintiffs' two successful claims, and none of plaintiffs' hours
9 must be excluded under the first prong for determining a reasonable award.

10 After the court has determined whether there were any unsuccessful claims
11 whose hours must have been excluded, the court must determine if the plaintiffs
12 achieved a level of success that justifies the hours expended. Hensley v. Eckerhart,
13 461 U.S. at 434. When plaintiffs have obtained "excellent results," their attorney
14 should recover a fully compensatory fee. Id. at 435. But where plaintiffs have
15 achieved only partial or limited success, the court may reduce the amount of the fee
16 award. Id. at 436-37. The court can reduce the fee amount either by eliminating
17 specific hours or by simply reducing the award to account for the limited success.
18 Id. However, "[a] request for attorney's fees should not result in a second major
19 litigation." Id. at 437.

20 In the instant case, plaintiffs' success was, admittedly, limited. Nonetheless,
21 plaintiffs did succeed on significant issues and are therefore entitled to recover
22 attorney's fees. Due to the interrelatedness of plaintiffs' claims, attempting to
23 determine which of plaintiffs billing entries relate to plaintiffs successful claims and
24 which related wholly to unsuccessful claims would be impracticable. For example,
25 a good deal of time was spent preparing materials arguing that the ordinance was
26 preempted by state law. This analysis applied equally to whether the City's
27 restriction of .50 caliber BMG's was preempted, as well as to whether the City's
28 restriction of other large caliber firearms was preempted. Because most of

1 plaintiffs' work was relevant to their successful claims, plaintiffs ask that this
2 Court's reduction to plaintiffs' fees be minimal.

3
4 **CONCLUSION**

5 For the foregoing reasons, plaintiffs respectfully request that this Court
6 approve their reasonable request for fees.

7 Dated: July 26, 2005

TRUTANICH • MICHEL, LLP:

8 
9 C.D. MICHEL
10 Attorney for Plaintiffs
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Summary of Petitioner's Fee Claim

The following chart summarizes petitioner's fees:

Attorneys	Rate	Total Hours	Total
C.D. Michel	\$375.00	28.8	\$ 10,800.00
Glenn McRoberts	\$375.00	144	\$ 54,000.00
Don Kates	\$400.00	46	\$ 18,400.00
Tom Maciejewski	\$250.00	137.1	\$34,275.00
Jason Davis	\$250.00	157.90	\$ 40,475.00
			\$156,950.00
Paralegal	Rate	Total Hours	Total
Claudia Ayala	\$85.00	80.7	\$ 6859.50
		Grand Total:	\$163,809.00

EXHIBIT F

LINK: 56 *ent*UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV04-1395-GAF (SGLx)

Date September 6, 2005

Title California Side By Side Soc'y v. City of Los Angeles

SCANNED

Present: The Honorable GARY ALLEN FEES

Marilynn Morris

None

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings:

(In Chambers)

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

DOCKETED ON CM

SEP - 8 2005

BY

001

RULING ON PLAINTIFFS' MOTION FOR ATTORNEY'S FEES

Plaintiffs, a group of firearm manufacturers, retailers, and enthusiasts, brought this suit against the City of Los Angeles (the "City" or "Defendant") to bar the enforcement of a local ordinance prohibiting the sale, transfer, offer for sale or display for sale of firearms between .50 and .60 caliber within the Los Angeles city limits. Plaintiffs sought a preliminary injunction, which the Court denied on all issues except two very narrow aspects of the ordinance. The Court enjoined: 1) the ordinance's regulation of a particular type of large caliber firearm – .50 BMG rifles – because sales and transfers of that particular weapon were comprehensively regulated by the state, and, therefore, local regulation was preempted; and 2) the ordinance's exception for peace officers, which violated equal protection. The remainder of the ordinance remained in force. However, the injunction dissolved six weeks after it was issued when an amended ordinance, which cured the defects, went into effect. In June 2005, Plaintiffs moved to dismiss their challenge to the ordinance. The Court granted the motion, retaining jurisdiction to resolve the question of attorney's fees.

Presently before the Court is Plaintiffs' motion for award of reasonable attorney's fees. The City opposes the motion on the ground that Plaintiffs do not qualify as a "prevailing party." The City also argues that, even if Plaintiffs are a prevailing party, the fee award, in view of Plaintiffs' "extensive failure" in obtaining relief, should be greatly reduced from the total billed fees of \$163,809. Plaintiffs concede that their "success was, admittedly, limited," and that some reduction is therefore appropriate. However, Plaintiffs argue that because most of their work on

LINK: 56

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV04-1395-GAF (SGLx) Date September 6, 2005

Title California Side By Side Soc'y v. City of Los Angeles

SCANNED

the unsuccessful challenges to the ordinance was "relevant" to their successful claims, the reduction should be "minimal."

The Court concludes that, under Ninth Circuit authority, Plaintiffs qualify as a prevailing party and are entitled to an award of attorney's fees. However, the Court rejects Plaintiffs' argument that the reduction of the total billed fees should be "minimal" because the effort expended by Plaintiffs' counsel on unsuccessful issues was so "interrelated" to the effort expended on the two narrow successful issues, that any attempt to distinguish one from the other would be "impracticable."

Fortunately, the Court need not engage in an "impracticable" line-by-line analysis of Plaintiffs' voluminous billing records to reach an equitable result. "[A] district court does not abuse its discretion when it resorts to a mathematical formula, even a crude one, to reduce the fee award to account for limited success." Schwarz v. Secretary of Health & Human Servs., 73 F.3d 895, 905 (9th Cir. 1995) (emphasis added). Here, Plaintiffs sought to permanently enjoin the entire ordinance, and thereby prevent the City from limiting their ability to sell, transfer, and offer for sale every type of large caliber firearm within the City limits. In contrast, what Plaintiffs achieved was a short-lived injunction against enforcement of the ordinance's exception for police officers, and its regulation of a single firearm – .50 BMG rifles. As discussed in more detail below, in view of the very limited quantum of success achieved by Plaintiffs, the Court determines that a significant reduction in the \$163,809 fee claim is appropriate.

A. Legal Standard

"Section 1988 provides that in actions brought 'to enforce a provision of [42 U.S.C. § 1983],' the court in its discretion may allow the prevailing party, other than the United States, a reasonable attorney's fee." Jensen v. San Jose, 806 F.2d 899, 900 (9th Cir. 1986) (quoting 42 U.S.C. § 1988). To be considered a prevailing party, "one must have obtained a 'judicial imprimatur' that alters the legal relationship of the parties, such as a judgment on the merits or a court-ordered consent decree." Watson v. County of Riverside, 300 F.3d 1092, 1096 (9th Cir. 2002) (quoting Buckhannon Board and Care Home, Inc. v. West Virginia Dept. of Health, 532 U.S. 598, 600 (2001)). Like a consent decree or judgment, "[a] preliminary injunction issued by a judge carries all the 'judicial imprimatur' necessary to satisfy [the prevailing party standard set forth in] Buckhannon." Id.

In "a case of a partial or limited success," like the instant case, a court must engage in a "two-step process for calculating attorney's fees." First, the court must consider "whether 'the

LINK: 56

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No: EDCV04-1395-GAF (SGLx)Date: September 6, 2005Title: California Side By Side Soc'y v. City of Los Angeles

SCANNED

plaintiff failed to prevail on claims that were unrelated to the claims on which he succeeded." *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). "If unrelated, the final fee award may not include time expended on the unsuccessful claims." *Schwarz*, 73 F.3d at 901. Second, the court must consider "whether 'the plaintiff achieved a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award.'" *Watson*, 300 F.3d at 1096 (quoting *Hensley*, 461 U.S. at 434). "Deductions based on limited success are within the discretion of the district court." *Id.* (citing *Sorenson v. Mink*, 239 F.3d 1140, 1147 (9th Cir. 2001)). "[A] district court does not abuse its discretion when it resorts to a mathematical formula, even a crude one, to reduce the fee award to account for limited success." *Schwarz*, 73 F.3d at 905 (9th Cir. 1995) (collecting cases upholding percentage reductions).

B. Plaintiffs are a Prevailing Party

In the Ninth Circuit, "a plaintiff who succeeds in obtaining a preliminary injunction can be deemed a 'prevailing party' for purposes of [obtaining an attorney's fee award under] 42 U.S.C. § 1988, even though he did not recover other relief sought in the lawsuit." *Watson*, 300 F.3d at 1093. Nevertheless, the City argues that Plaintiffs are not a prevailing party here because Plaintiffs, unlike the plaintiff in *Watson*, received no benefit from the injunction they obtained. (Opp. at 10). The City contends that the injunction did not "materially alter the relationship between Plaintiffs and the City." (*Id.*); *see also Watson*, 300 F.3d at 1096 ("one must have obtained a 'judicial imprimatur' that alters the legal relationship of the parties"). This argument is without merit. In this case, the City was "prohibited from [enforcing the unamended ordinance against the Plaintiffs with regard to .50 BMG rifles during the life of the injunction] for one reason and one reason only: because [this Court] said so." *Id.* at 1093. The same is true of the police officer exception. "There was nothing voluntary about the [City's] inability [to enforce the ordinance with regard to .50 BMG rifles or the exception for police officers during the period of the injunction]." *Id.* The injunction, however limited in time and scope, altered the legal relationship of the City and Plaintiffs.

As *Watson* acknowledged, Plaintiffs would not be a prevailing party if they "score[d] an early victory by securing a preliminary injunction, then los[t] on the merits as the case play[ed] out and judgment [was] entered against [them] — a case of winning a battle but losing the war." *Id.* at 1096. But, that is not what happened in this case. Plaintiffs' preliminary injunction was "not dissolved for lack of entitlement," but, like the injunction in *Watson*, was "rendered moot" when the amended ordinance took effect. *Id.*

LINK: 56

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV04-1395-GAF (SGLx)

Date: September 6, 2005

Title: California Side By Side Soc'y v. City of Los Angeles

SCANNED

The City argues that "Plaintiffs' claims were never rendered moot" because the "preliminary injunction was denied in all significant respects," and "Plaintiffs had for all practical purposes lost the case." (Opp. at 11). The City asserts "[h]ad Plaintiffs not voluntarily dismissed the action and allowed the case to 'play out,' the City would have been awarded judgment in their favor." (Opp. at 11) (emphasis added). Thus, the City concludes Plaintiffs not only lost the battle, but would have lost the war. (*Id.*).

But, of course, Plaintiffs *did* voluntarily dismiss – the case did not 'play out' with a judgment awarded to the City, and Plaintiffs did win an injunction, however limited. Moreover, that victory, though limited, was complete. The City may not now, or in the future, licitly reinstate the enjoined aspects of the ordinance. In other words, Plaintiffs left the battlefield after completely winning a very limited battle – and, thus, maintain their prevailing party status. While Plaintiffs' victory was very limited in time and scope, it is clear that the "prevailing party inquiry does not turn on the magnitude of the relief obtained. Although the size of the relief may impact the size of the eventual fee award, it does not affect eligibility for a fee award." *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000) (internal quotation marks omitted).

C. Plaintiffs' Limited Success Merits a Limited Fee Award**1. Plaintiffs' Successful and Unsuccessful Claims are Related**

As explained above, in determining an appropriate fee award where, as here, the prevailing plaintiff has achieved limited success, the first step is to determine whether the plaintiff spent time on unrelated claims that were unsuccessful, and exclude such time, if any, from the award. *Schwarz*, 73 F.3d at 901. Although there is "no certain method of determining when claims are 'related' or 'unrelated,'" one "benchmark" used by the Ninth Circuit is "whether relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which the relief granted is premised." *Schwarz*, 73 F.3d at 902-03 (internal quotation marks omitted). Here, Plaintiffs argue, and the City does not dispute, that their successful and unsuccessful claims are related because they all arise out of the same course of conduct – the City's enactment of the challenged ordinance. The Court agrees that the claims are related, and no reduction need be made for time spent on unrelated claims.

2. Plaintiffs' Fees Must be Reduced in View of their Very Limited Success

The second inquiry "where a plaintiff is deemed 'prevailing' even though he succeeded on only some of his claims for relief," is whether the "results obtained" by the plaintiff justify a "fully compensatory fee" or something less. *Hensley*, 461 U.S. at 434-35 (internal quotation

LINK: 56

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV04-1395-GAF (SGLx)

Date September 6, 2005

Title California Side By Side Soc'y v. City of Los Angeles

FILED

marks omitted). If results are "excellent," a "fully compensatory fee" is indicated. *Id.* However, where "a plaintiff has achieved only partial or limited success," a full fee award "may be an excessive amount" (*id.* at 436), and this consideration[] . . . may lead the district court to adjust the fee . . . downward." *Id.* at 434. "Deductions based on limited success are within the discretion of the district court." *Watson*, 300 F.3d at 1096.

Plaintiffs concede that the Court may reduce the fee award in view of their limited success. However, Plaintiffs argue that the reduction should be "minimal" due to the "interrelatedness" of their claims. (Mot. at 11). This argument is answered by the Supreme Court in *Hensley*, which teaches that where success is "partial or limited," a fee based on the hours billed on the case as a whole may be excessive "even where the plaintiff's claims were *interrelated*, nonfrivolous, and raised in good faith." *Id.* at 436 (emphasis added). "[T]he most critical factor is the degree of success obtained." *Id.*

Plaintiffs admit their success was limited. In reality, Plaintiffs' success was extraordinarily limited indeed. Plaintiffs sought to take away the City's legal authority to enforce the ordinance in its entirety, thereby preventing the City from being able to limit Plaintiffs' ability to sell, transfer, and advertise all types of large caliber firearms within Los Angeles. The ordinance withstood Plaintiffs' wide-ranging challenge with the exception of two narrow, technical aspects. As a result of Plaintiffs' success, Police officers could no longer purchase large caliber firearms for personal use, and the sale and transfer of .50 BMG rifles would be subject only to the already comprehensive regulation imposed by state law during the limited life of the injunction. Every other aspect of the ordinance was upheld. The sale, transfer and advertising of every other large caliber firearm remained subject to the ordinance's restrictions within the City. This very limited success moved Plaintiffs only a hair's breadth closer to their intended goal of obtaining the right to transfer, sell, and offer for sale all large caliber firearms within Los Angeles free from the illicit (in their view) burden of municipal regulation.

In view of the very limited degree of success achieved by Plaintiffs in this case, a large scale reduction of the total fee, based on the over 500 hours billed on this case as a whole, is in order. Based on the small percentage of success, the Court determines that a reduction of 75% of the requested \$163,809 fee is appropriate. *Schwarz*, 73 F.3d at 905. Accordingly, the Court GRANTS Plaintiffs' motion for attorney's fees in the amount of \$40,952.25.

IT IS SO ORDERED.

EXHIBIT G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHELLY PARKER, *et al.*

Plaintiffs,

 \mathbf{v}_i DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 03-0213 (EGS)

NOTICE OF FILING

Pursuant to the Court's direction at and after the motions hearing held on March 23, 2011, the District of Columbia provides the following information, provided by the firms that gave *pro bono* assistance to the District in this matter. Each firm provided standard rates for each attorney who assisted the District in this case during the period that the *pro bono* services were provided (2007–08). The District has placed those rates in a range within the corresponding experience-level groupings identified by the Court as follows:

1 to 3 years	\$255/hr to \$450/hr
4 to 7 years	\$480/hr
8 to 10 years	\$650/hr
11 to 20 years	\$640/hr to \$800/hr
20 + years	\$760/hr to \$950/hr

Each of the three firms explained that the quoted hourly rates can vary significantly depending upon the client and case at issue. In addition, it is common for the firms to use alternative fee arrangements, including flat or capped fees for appellate and other types of work as well as various other arrangements. With respect to the type of work at issue here (*i.e.*, Supreme Court work), the firms stated that they generally do not charge their highest rates, and frequently charge significantly lower than their highest rates (either through flat/capped fees or

otherwise), because of the value that those cases offer to the firms and their reputation. This explanation concerning their standard rates applies both to the period when the firms worked on this case, as well as to current rates.

DATE: April 6, 2011

Respectfully submitted,

IRVIN B. NATHAN
Acting Attorney General for the District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General, Civil Litigation Division

/s/ Ellen A. Efros
ELLEN A. EFROS, D.C. Bar No. 250746
Chief, Equity Section I
441 Fourth Street, N.W., 6th Floor South
Washington, D.C. 20001
Telephone: (202) 442-9886

/s/ Samuel C. Kaplan
SAMUEL C. KAPLAN, D.C. Bar No. 463350
Assistant Deputy A.G., Civil Litigation Division
441 Fourth Street, N.W., 6th Floor South
Washington, D.C. 20001
Telephone: (202) 724-7272
samuel.kaplan@dc.gov

/s/ Andrew J. Saindon
ANDREW J. SAINDON, D.C. Bar No. 456987
Assistant Attorney General
Equity I Section
441 Fourth Street, N.W., 6th Floor South
Washington, D.C. 20001
Telephone: (202) 724-6643
Facsimile: (202) 730-6643
andy.saindon@dc.gov

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF FRESNO

4 I, Laura Palmerin, am employed in Long Beach, Los Angeles County, California. I am over
5 the age of eighteen (18) years and am not a party to the within action. My business address is 180
6 East Ocean Boulevard, Suite 200, Long Beach, CA 90802.

7 On March 27, 2017, I served the foregoing document(s) described as:

8 **DECLARATION OF C. D. MICHEL IN SUPPORT OF**
9 **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES ON APPEAL; EXHIBITS D-G**

10 on the interested parties in this action by placing

11 ☐ the original

12 ☒ a true and correct copy

13 thereof enclosed in a sealed envelope(s) addressed as follows:

14 George Waters
15 Deputy Attorney General
16 1300 I Street, Suite 125
17 P.O. Box 944255
18 Sacramento, CA 94244-2550

19 P. Patty Li
20 Deputy Attorney General
21 455 Golden Gate Ave., Suite 11000
22 San Francisco, CA 94102

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

Executed on March 27, 2017, at Long Beach, California

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

23 X (STATE) I declare under penalty of perjury under the laws of the State of California that
24 the foregoing is true and correct.

25 — (FEDERAL) I declare that I am employed in the office of the member of the bar of this of
26 this court at whose direction the service was made.

27 
28 LAURA PALMERIN