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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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES
ON APPEAL; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

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

Action Filed: June 17, 2010

1 **NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES ON APPEAL**

2 Please take notice that, on May 31, 2017 at 3:30 p.m., or as soon thereafter as the matter
3 may be heard in Department 402 of the above-entitled Court, located at 1130 O Street, Fresno,
4 California 93721, Plaintiffs-Petitioners Sheriff Clay Parker, Herb Bauer Sporting Goods, The
5 CRPA Foundation, Able's Sporting, Inc., RTG Sporting Collectibles, LLC, and Steven Stonecipher
6 will, and hereby do, move for an award of attorneys' fees in the amount of \$335,731.25 against
7 Defendants-Respondents the State of California, Attorney General Kamala D. Harris, in her official
8 capacity, and the California Department of Justice.

9 This motion is brought under the authority of California Code of Civil Procedure section
10 1021.5 and rule 3.1702 of the California Rules of Court, because (1) Plaintiffs prevailed on appeal;
11 (2) they enforced an important right affecting the public interest; (3) they conferred a significant
12 benefit upon the public; (4) the necessity and financial burden of private enforcement makes such
13 award appropriate; and (5) the fees Plaintiffs incurred in obtaining relief in this action are
14 reasonable and fully recoverable.

15 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and
16 Authorities in Support, and the concurrently filed declarations of C. D. Michel, Clinton B. Monfort,
17 Anna M. Barvir, Sean A. Brady, Haydee Villegas, Albert E. Peacock III, Clay Parker, Barry Bauer,
18 Steven H. Dember, Randy Wright, Ray T. Giles, and Steven Stonecipher, and exhibits A – G. It is
19 also based on all pleadings and documents on file in this action, those matters of which the Court
20 may take judicial notice, and any oral argument that may be made at the hearing on this matter.

21 Dated: March 27, 2017

Respectfully submitted,
MICHEL & ASSOCIATES, P.C.

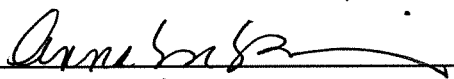
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23 _____
24 Anna M. Barvir
25 Counsel for Plaintiffs and Petitioners
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Code of Civil Procedure section 1021.5¹ recognizes “that privately initiated lawsuits are
4 often essential to the effectuation of the fundamental public policies embodied in constitutional . . .
5 provisions, and that, without some mechanism authorizing the award of attorney fees, private
6 actions to enforce such important public policies will . . . frequently be infeasible.” (*Woodland*
7 *Hills Resids. Assn., Inc. v. City Council of L.A.* (1979) 23 Cal.3d 917, 933 (*Woodland Hills*.)

8 This litigation challenged Defendants’ enactment and enforcement of Assembly Bill 962,
9 controversial legislation mandating the registration of all “handgun ammunition” sales and
10 prohibiting mail-order and internet sales of such ammunition. Seeking declaratory and injunctive
11 relief, Plaintiffs charged that AB 962 was void for vagueness under the Fourteenth Amendment.
12 Following a successful motion for summary adjudication, Plaintiffs obtained a judgment declaring
13 the challenged laws unconstitutional and permanently enjoining their enforcement.

14 The Court of Appeal fully affirmed this Court’s reasoned judgment in a decision that
15 adopted Plaintiffs’ theory of the proper analytical framework for facial vagueness challenges
16 involving criminal laws that touch upon Second Amendment rights. In addition to ensuring that no
17 person would have their rights violated under the unconstitutional Challenged Provisions,
18 Plaintiffs’ lawsuit resulted in much-needed guidance from the Court of Appeal regarding
19 challenges to similarly vague laws. Plaintiffs’ attorneys are entitled to reasonable compensation.

20 Further, as described below and evidenced by the records filed in support of this motion, all
21 the time for which Plaintiffs seek recovery is reasonable. And the total award Plaintiffs seek
22 reflects the rates of comparable attorneys in the community, as well as the novelty, risk, and
23 exceptional outcome of this litigation. Plaintiffs’ motion should be granted in full.

24 **STATEMENT OF FACTS AND PROCEEDINGS**

25 AB 962 added (former) sections 12060, 12061, and 12318 to the Penal Code and
26 implemented a statutory scheme for the transfer and handling of “handgun ammunition.” (Assem.
27

28

¹ All further statutory references are to the Code of Civil Procedure unless indicated.

1 Bill No. 962 (2009-2010 Reg. Sess.) ch. 628.) Specifically, the Challenged Provisions required
2 vendors to: (1) preclude prohibited employees from accessing “handgun ammunition”; (2) store
3 “handgun ammunition” beyond the reach of customers; and (3) record specific information about
4 every transfer of “handgun ammunition.” (Former Pen. Code, § 12061.)² Section 12318 further
5 required that all transfers be conducted in a “face-to-face” transaction, largely barring the purchase
6 of such ammunition via mail-order or internet sale. (*Id.*, § 12318.)

7 After AB 962 passed, widespread confusion surfaced as to which ammunition was
8 regulated by the law. That confusion, resulting from an unclear statutory definition of “handgun
9 ammunition,” was shared by individuals and ammunition vendors, who contacted Plaintiffs’
10 counsel for advice. (Decl. of Clinton B. Monfort Supp. Mot. Summ. Judg., ¶ 2.) Two individuals, a
11 brick-and-mortar retailer, two ammunition-shippers, and a Second Amendment civil rights
12 organization sued, challenging the laws as unconstitutionally vague in violation of due process.
13 (Compl., ¶¶ 11-17.) Plaintiffs sought declaratory and injunctive relief. (*Id.*, at pp. 22-23, ¶¶ 1-2.)

14 On January 31, 2011, this Court granted Plaintiffs’ motion for summary adjudication,
15 declaring the Challenged Provisions unconstitutionally vague on their face and permanently
16 enjoining their enforcement. (Order Den. Pls.’ Mot. Summ. Judg., Granting Pls.’ Mot. Summ. Adj.;
17 Order Perm. Inj.) The Court entered judgment in Plaintiffs’ favor. And Defendants appealed.

18 Almost three years later, the Fifth District affirmed this Court’s ruling, striking down the
19 Challenged Provisions as void for vagueness. (*Parker v. State* (2013) 221 Cal.App.4th 340, review
20 granted Feb. 19, 2014, S215265, review dism. as moot Dec. 14 2016, req. repub. pending.
21 (*Parker*.) The Court of Appeal adopted, in its entirety, Plaintiffs’ novel legal theory that a
22 heightened level of certainty is constitutionally required of criminal laws that abut upon the rights
23 enshrined in the Second Amendment and lack a scienter requirement—an issue that was
24 unexamined by this Court’s order. (*Id.* at pp. 355-365.) To bring this case to its extraordinarily
25 successful conclusion, Plaintiffs’ counsel performed the reasonably necessary work set forth below:

26 Designation of Record and Joint Appendix: In preparing this case for appeal, Plaintiffs

27 ² Former Penal Code section 12061 was repealed and reenacted as section 30345, et seq., in
28 2010 without substantive change. (Stats. 2010, ch. 711, § 4 [repealing provision]; Stats. 2010, ch.
711, § 6, pt. 6, art. 3 [enacting § 30312, 30345 et seq.]

1 spent 45.8 hours on the Designation of Record and the Joint Appendix. (Monfort Decl., ¶¶ 30-33.)
2 While the State’s counsel, as appellants, were primarily responsible for creating the parties’
3 appendix, they relied on Plaintiffs’ counsel to search for and provide official, conformed copies of
4 various trial-court documents. (*Ibid.*) And Plaintiffs’ counsel had to review the 20-volume, 4,314-
5 page document for completeness and accuracy before filing—a time-consuming task. (*Ibid.*)

6 Respondents’ Brief: Plaintiffs spent 422.9 hours researching, drafting, and preparing
7 Respondents’ Opening Brief, a 76-page document that not only laid out in detail exactly why this
8 Court was correct, but also provided a thoroughly researched and exhaustive summary of the
9 complex (and often conflicting) universe of state and federal case law governing facial challenges,
10 vagueness challenges, and facial vagueness challenges. (Monfort Decl., ¶¶ 34-40.) The brief also
11 included technical information regarding firearms and ammunition necessary to the reviewing
12 court’s full understanding of this case and why Defendants’ statutory definition for “handgun
13 ammunition” was woefully vague. (*Id.*, at ¶ 34.)

14 Oral Argument: Plaintiffs logged 311.7 hours during the oral argument phase of the appeal.
15 (Monfort Decl., ¶¶ 41-47.) That phase included time spent revisiting all appellate briefs;
16 brainstorming, discussing, and outlining an appropriate argument; preparing case briefs, outlines,
17 memoranda, and case notebooks; moot court preparation, participation, and evaluation; as well as
18 travel to and from and appearing in the oral argument itself. (*Ibid.*) It also included a great deal of
19 new research and preparation required after the Court of Appeal sent notice to the parties
20 specifically asking them to “be prepared to address at argument whether . . . [the Challenged
21 Provisions should be construed] to include a scienter element” (Charlene Ynson, Clerk
22 Administrator for the Court of Appeal Fifth Appellate District, letter to Plaintiffs-Respondents and
23 Defendants-Appellants, June 27, 2013)—an issue that was given little attention by the parties
24 before oral argument. (Monfort Decl., ¶¶ 42, 45-46.)

25 Post-hearing Activity: After argument, Plaintiffs’ counsel billed approximately 19.9 hours,
26 reviewing the appellate court’s decision, meeting to discuss strategies and next steps, and preparing
27 to respond to the State’s Petition for Review. (Monfort Decl., ¶¶ 48-53.)

28 Attorneys’ Fees Motion: As of March 22, 2017, Plaintiffs’ attorneys had spent 169.8 hours

on activities necessary to this fee motion. (Monfort Decl., ¶¶ 54-57.) This includes time spent: conducting legal research on the recovery of appellate fees; drafting, reviewing, and revising Plaintiffs’ motion and supporting papers; corresponding with clients; preparing and securing signed declarations; preparing documentary evidence; and meeting to discuss arguments, strategy, and division of tasks. (*Ibid.*) A significant amount of time was also necessarily expended analyzing counsel’s billing records to properly account for all fees requested. (*Id.*, at ¶ 57; Barvir Decl., ¶ 22.)

Case Management: In addition to the above, Plaintiffs’ counsel spent 75.6 hours performing myriad other tasks necessary to the successful management of any case on appeal. (Monfort Decl., ¶¶ 21-29.) Counsel met regularly to discuss strategy and arguments on appeal, deadlines, and division of tasks; prepared and responded to motions affecting the briefing schedule; managed requests for amicus support; and reviewed the briefs of Defendants and amici. (*Ibid.*)

A table of all the hours for which Plaintiffs seek compensation is attached to Anna M. Barvir’s declaration. (Exh. C.) And the declaration of each attorney working on this appeal provides detailed descriptions of their qualifications, hourly rates, and the activities performed.

ARGUMENT

I. PETITIONERS ARE ENTITLED TO REASONABLE ATTORNEYS’ FEES ON APPEAL

A party is entitled to fees under the “private attorney general doctrine,” as codified at section 1021.5 of the Rules of Civil Procedure, if four conditions are met. Specifically, (1) the moving party must be the “prevailing party”; (2) the action must have enforced an important public interest; (3) the action must have conferred a significant benefit on the public or a large class of persons; and (4) the necessity and financial burden of private enforcement must make an award “appropriate.” (Code Civ. Proc., § 1021.5.) Plaintiffs readily satisfy each requirement.

A. Plaintiffs Are the Prevailing Party on Appeal

Plaintiffs are “ ‘prevailing parties’ for attorney’s fees purposes if they succeed on *any significant issue* in litigation which achieves some of the benefit the parties sought in bringing suit.” (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153.) In other words, a party is successful if it achieves some relief from the benchmark conditions challenged in the lawsuit. (*Folsom v. Butte County Assn. of Govts.* (1982) 32 Cal.3d 668, 686-687.) There can be

1 little debate that Plaintiffs satisfy this requirement.

2 Plaintiffs brought this action, seeking a declaration that the Challenged Provisions were
3 unconstitutionally vague and a permanent injunction preventing the State from enforcing those
4 laws. (Compl., 22:26-23:3.) In January 2011, Plaintiffs prevailed when this Court struck the
5 Challenged Provisions in their entirety, granting Plaintiffs the very relief they sought. Plaintiffs’
6 victory was affirmed in full by the Court of Appeal on November 6, 2013. (*Parker, supra*, 221
7 Cal.App.4th 340.) And, while subsequent legislation ultimately mooted Supreme Court review,
8 Plaintiffs’ total victory on appeal still stands. (*Parker v. State* (2016) 211 Cal.Rptr.3d 98.) Under
9 settled law, Plaintiffs are the “prevailing party” entitled to their expenses on appeal.

10 **B. Plaintiffs’ Lawsuit Enforced Important Rights Affecting the Public Interest**

11 “Litigation which enforces constitutional rights *necessarily affects the public interest* and
12 confers a significant benefit upon the general public.” (*City of Fresno v. Press Commcns., Inc.*
13 (1994) 31 Cal.App.4th 32, 44 italics added.) Here, the public benefitted from the enforcement of
14 two important constitutional rights—those embodied in the Fourteenth and Second Amendments.
15 Specifically, Plaintiffs vindicated the rights of all Californians to be free from the burden of vague
16 laws that violate due process and improperly infringe on their access to ammunition necessary for
17 the exercise of the Second Amendment. This prong is undoubtedly met.

18 **C. Plaintiffs’ Lawsuit Conferred a Significant Benefit on the Public**

19 The lawsuit must also confer a “significant benefit,” on the public or a large class of
20 persons. (*Woodland Hills, supra*, 23 Cal.3d 917, 939.) “[T]he ‘significant benefit’ that will justify
21 an attorney fee award need not represent a ‘tangible’ asset or a ‘concrete’ gain.” (*Ibid.*) So, when an
22 action vindicates constitutional principles of great magnitude, the court *presumes* that the public
23 benefits. (See *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 318-319 (*Press*).)³ That
24 presumption is appropriate here. For this lawsuit vindicated fundamental rights enshrined in the
25 Fourteenth and Second Amendments shared by *all* Californians.

26 In any event, a “large class of persons” did benefit from Plaintiffs’ success. At issue in this

27 ³ It is well-established that enforcement of constitutional rights confers a significant benefit
28 on society per se. (See, e.g., *Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 246
[enforcing right to equal protection and freedom from sex discrimination].)

1 case were the rights of *every* ammunition purchaser and seller in California and any person who
2 might have sought to purchase or transact in ammunition in the state. And even non-party, out-of-
3 state shippers benefitted from the enforcement of their interests in conducting mail and internet
4 orders free from arbitrary or discriminatory enforcement of the Challenged Provisions. (See, e.g.,
5 Decl. of Brian Hall Supp. Mot. Summ. Judg.; Decl. of Larry Potterfield Supp. Mot. Summ. Judg.)

6 Consider also that the Court of Appeal’s adoption of Plaintiffs’ facial vagueness theory, as
7 well as its encyclopedic analysis of pivotal state and federal cases regarding facial vagueness
8 jurisprudence, will be an asset to courts, attorneys, and others considering issues of constitutional
9 vagueness. For such guidance was never before so thoroughly laid out. Indeed, Plaintiffs’ counsel
10 spent dozens of hours simply analyzing and synthesizing the vast (and complex) universe of legal
11 authority governing facial challenges and the void-for-vagueness doctrine. (Monfort Decl., ¶ 40.)
12 This case will undoubtedly aid future attorneys and courts in that undertaking. And it will reduce
13 the controversial nature of facial vagueness challenges, secure uniformity in decisions, and greatly
14 advance the efficiency of those who repeatedly grapple with the void-for-vagueness doctrine.

15 Because Plaintiffs’ success enforced fundamental, constitutional rights and benefitted a
16 large class of persons, the litigation conferred a significant benefit, entitling Plaintiffs to fees.

17 **D. The Necessity and Burden of Private Enforcement Make a Fee Award**
18 **Appropriate**

19 Finally, the Court must consider the necessity and burden of private enforcement. (*In re*
20 *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214 (*Whitley*).) This factor requires the Court
21 to examine two issues: (1) “ ‘whether private enforcement was necessary’ ”; and (2) “ ‘whether the
22 financial burden of private enforcement warrants subsidizing the successful party’s attorneys.’ ”
23 (*Ibid.*, quoting *Lyons v. Chinese Hosp. Assn.* (2006) 136 Cal.App.4th 1331, 1348.) Because this
24 action was brought against a government entity to enjoin the enforcement of an unconstitutional
25 public law, and because Plaintiffs had either zero or little pecuniary interest in this litigation, an
26 award of section 1021.5 fees is proper.

27 **1. Private Enforcement Was Necessary to Compel Defendants to Comply**

28 To determine whether private enforcement is necessary, courts “ ‘look[] to the adequacy of

1 public enforcement and [award fees] in cases where private enforcement is necessary.’ ” (*Whitley*,
2 *supra*, 50 Cal.4th at p. 1215.) Necessity is established when “public enforcement is not available,
3 or not sufficiently available.” (*Id.* at p. 1217.) When an action is brought against the government
4 agency bearing responsibility for public enforcement, *as here*, the need for private enforcement
5 could not be more clear. (*Woodland Hills, supra*, 23 Cal.3d at p. 941.)

6 **2. The Financial Burden of Litigation Far Outweighs Any Pecuniary** 7 **Interest Any Plaintiff Might Have Had**

8 Fees are recoverable “when the cost of the claimant’s legal victory transcends his personal
9 interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff ‘out of
10 proportion to his individual stake in the matter.’ ” (See *Woodland Hills, supra*, 23 Cal.3d at p. 941,
11 quoting *County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 89.) When balancing the
12 costs and benefits of litigation for fee-shifting purposes, the Court must quantify the monetary
13 value of the benefit obtained, then *discount that benefit by the likelihood of success* and weigh the
14 resulting value against the actual cost of litigation. (*L.A. Prot. League v. City of Los Angeles* (1986)
15 188 Cal.App.3d 1, 9-10.) A fee award is proper unless “the expected value of the litigant’s own
16 monetary award *exceeds by a substantial margin* the actual litigation costs.” (*Ibid.*, italics added;
17 see also *Whitley, supra*, 50 Cal.4th at p. 1215-1216.)

18 Here, not one plaintiff has a financial interest in this case that comes anywhere close to the
19 costs of litigating this case and defending it on appeal through the Supreme Court.

20 **a. The individual plaintiffs have no financial interest in the case.**

21 The individual plaintiffs, former-Sheriff Clay Parker and Steven Stonecipher, had *no*
22 pecuniary interest in the outcome of this case. They are not engaged in the business of selling
23 ammunition for profit (Compl., ¶¶ 11, 16; Parker Decl., ¶¶ 2-3; Stonecipher Decl., ¶¶ 2-3), and thus
24 are not in a position to financially gain from an injunction prohibiting the enforcement of statutes
25 regulating the sale of ammunition. Monetary damages were neither sought nor awarded (Compl.,
26 pp. 22-23, ¶¶ 1-4; Parker Decl., ¶¶ 4-7; Stonecipher Decl., ¶¶ 6-8; see also Judgment), and the
27 evidence establishes that these parties’ goals were strictly non-pecuniary (Parker Decl., ¶¶ 4, 8;
28 Stonecipher Decl., ¶¶ 5, 10). What’s more, the individual plaintiffs, in fact, reaped no financial

benefit. (Parker Decl., ¶¶ 6-7; Stonecipher Decl., ¶¶ 7-8.) The financial burden of bringing this suit is thus *grossly* disproportionate to their personal stake in the matter.

b. The litigation ran *counter* to the pecuniary interests of brick-and-mortar-retailer plaintiff Herb Bauer Sporting Goods.

Plaintiff Herb Bauer Sporting Goods’ primary interest in participating in this litigation was an altruistic one—the protection of the constitutional rights of its employees and customers. (Bauer Decl., ¶¶ 3-4, 8.) Nowhere on the record does Herb Bauer Sporting Goods allege that the Challenged Provisions’ enforcement would have resulted in lost profits. And for good reason. In terms of financial interests, Herb Bauer stood to *lose* much more than it gained by bringing this action. (*Id.*, at ¶¶ 2, 5-6.) For enforcement of the Challenged Provisions’ face-to-face purchase requirement would have largely restricted internet and mail-order purchases, directing most buyers to traditional “brick-and-mortar stores,” *like Herb Bauer Sporting Goods*. (*Id.*, at ¶ 2; former Pen. Code, § 12318.) Enforcement of the law would have thus *increased* Herb Bauer’s profits from ammunition sales. (Bauer Decl., ¶ 5.) In fact, the company estimates it would have seen an *increase* of \$4,000 in profits annually if AB 962 had not been enjoined. (*Ibid.*)⁴ Because this plaintiff stood to *lose* money due to this lawsuit, it does not have a disqualifying pecuniary interest.

c. The ammunition-shipper plaintiffs had no financial interest in the litigation sufficient to disqualify them from fees.

While RTG Sporting Collectibles and Able’s Sporting, Inc., the ammunition-shipper plaintiffs, might have conceivably had some business interest in this litigation, it is not one that disqualifies them from a section 1021.5 fee award. In *Planned Parenthood v. Aakhus* (1993) 14 Cal.App.4th 162, the Court of Appeal affirmed a fee award to an abortion clinic that had sued to enjoin protestors from disturbing its business. (*Id.* at p. 167-169.) Though the court recognized that Planned Parenthood had “sufficient business motive to wage this suit,” it held that fees were appropriate because the case could not “be exclusively characterized as a self-serving, private dispute commenced by respondent to protect its own pocketbook.” (*Id.* at p. 173.) Rather, “the

⁴ Any costs associated with compliance with AB 962 (i.e., for the creation and retention of records) would have easily been offset by this increase in profits. (Bauer Decl., ¶ 5 [estimating that compliance would have cost \$2,000 annually, resulting in a net loss of \$2,000 each year due to this lawsuit].) In any event, such costs would pale in comparison to the hundreds of thousands spent litigating this case. (*Id.*, at ¶¶ 5-7, 10-12.)

1 interest of [the clinic] and its clients, rendering and receiving reproductive medical care, are *mutual*
2 *and inseparable*.” (*Ibid.*, italics added.)

3 Here, to the extent that the ammunition-shipper plaintiffs’ participation in this suit
4 benefitted them at all, it equally benefitted their patrons. For the right of ammunition shippers to sell
5 constitutionally protected goods (i.e., ammunition), free from the threat of arbitrary and
6 discriminatory enforcement of vague criminal laws, is “mutual and inseparable” from the right of
7 individuals to acquire those goods free from that threat.⁵ (See *Aakhus*, *supra*, 14 Cal.App.4th at p.
8 173.) Simply put, this case is not simply “a private success story.” (*Ibid.*) Like the abortion clinic in
9 *Aakhus*, even if the ammunition-shipper plaintiffs had sufficient business interests to justify their
10 participation, they would not disqualify Plaintiffs from fees because the fundamental mutual
11 interests of these plaintiffs and their patrons cannot be disentangled. (*Ibid.*; see Wright Decl., ¶2.)

12 Assuming the *L.A. Protective League* valuation method did apply here, it is impossible to
13 say the shipper plaintiffs realized a pecuniary benefit sufficient to defeat their entitlement to fees.
14 Assuming Plaintiffs had a 10% chance of success at the time vital litigation decisions were being
15 made (Monfort Decl., ¶ 21; Giles Decl., ¶ 16; Wright Decl., ¶ 14), they would have had a pecuniary
16 interest just over \$10,000.⁶ Litigating this case, defending it on appeal, and briefing it before the
17 Supreme Court, Plaintiffs incurred upwards of \$800,000 in attorneys’ fees (Monfort Decl., ¶ 20)—
18 an amount nearly 80 times higher than the combined interest of each shipper plaintiff. This figure
19 in *no way* exceeds “by a substantial margin” the costs of bringing this suit.

20 What’s more, when viewed from the parties’ expectations at the outset of litigation (the
21 appropriate perspective for determining expected pecuniary gain), it is clear a fee award is proper.
22 For the highly speculative nature of any future monetary gain the ammunition-shipper plaintiffs
23 could have realized *favors* a fee award. (*Citizens Against Rent Control v. City of Berkeley* (1986)
24 181 Cal.App.3d 213, 230-231.) The Giles and Wright declarations explain that, at the time the

25 ⁵ Recall, AB 962 also criminalized the mail-order and internet purchase of so-called
26 “handgun ammunition,” a prohibition Plaintiffs also challenged here. (Compl., ¶¶ 1, 38, 89-90.)

27 ⁶ Under the proper valuation method, Able’s interest would be \$8,568 (\$85,680 in
28 ammunition profits through 2017, discounted by a 10% chance of success). (Wright Decl., ¶¶ 6-7.)
RTG’s interest is only \$2,072 (\$20,720 in ammunition profits from through 2017, discounted by a
10% chance of success). (Giles Decl., ¶¶ 6-9, 14.) Even if Plaintiffs generously predicted a 50%
chance of success, the value of their combined pecuniary interest would still be a mere \$53,200.

1 businesses decided to pursue litigation, neither could possibly predict the value of any profits that
2 would have been lost due to the Challenged Provisions. (Giles Decl., ¶ 3; Wright Decl., ¶ 4.)

3 For these reasons, Plaintiffs RTG and Able’s had insufficient financial interest in the
4 outcome of this lawsuit to overcome their clear entitlement to a fee award under section 1021.5.

5 **d. The CRPA Foundation has no financial interest in the case.**

6 The CRPA Foundation is a non-profit civil rights organization whose “interests” are not
7 financial, but ideological. It is primarily an organization representing *individual firearm owners*
8 *and sportsmen* to protect and preserve the rights enshrined in the Second Amendment. (Compl., ¶
9 13; Dember Decl., ¶¶ 5-8.) To that end, The CRPA Foundation joined this action on behalf of “tens
10 of thousands of its supporters” who sought only to purchase ammunition free from the risk of
11 unfair prosecution. (Compl., ¶ 13; see also Dember Decl. ¶ 12.) It was solely the non-pecuniary
12 interests of these individuals that the foundation sought to promote through this litigation.

13 Any incidental benefit that an ammunition-retailer supporter *might* have realized does not
14 overcome The CRPA Foundation’s entitlement to a fee award here. *California Licensed Foresters*
15 *Assn. v. State Bd. of Forestry* (1994) 30 Cal.App.4th 562 (*Cal. Lic. Foresters*), is instructive. There,
16 the California Licensed Foresters Association, an organization whose mission was to protect the
17 economic welfare of foresters and industry professionals, obtained an injunction barring
18 enforcement of regulations that would have temporarily halted timber harvesting and significantly
19 reduced CLFA members’ income. (*Id.* at pp. 567, 571-572.) The court denied fees because CLFA
20 had a financial stake “*to the same extent as its members*” for its “*very existence depends upon the*
21 *economic vitality of its members*” and because CLFA’s “*primary objective*” was the protection of
22 its members’ economic interests. (*Id.* at pp. 570, 573, italics added.)

23 Unlike CLFA, The CRPA Foundation is not devoted to the interests of ammunition
24 retailers—or to *anyone’s* economic interests. (Dember Decl., ¶¶ 5-6, 12, 14.) Rather, the foundation
25 primarily fights on behalf of individual firearm owners and sportsmen—including the 30,000 plus
26 individual members of CRPA—to preserve fundamental rights enshrined in the Constitution. (*Id.*,
27 ¶¶ 5-7.) These individuals, like Plaintiffs Parker and Stonecipher, have *no* pecuniary interest in this
28 litigation. And they make up the *clear majority* of both The CRPA Foundation’s donors and the

1 paid members of CRPA. (*Id.*, ¶ 9 [indicating that 99.925% of donations to The CRPA Foundation
2 between 2000 and the present came from individuals and non-retailer organizations]; *id.*, ¶ 11
3 [indicating that, at any given time, retail business members make up a fraction of a percentage of
4 CRPA’s membership].) Because most of its supporters are financially uninterested individuals, the
5 livelihood of The CRPA Foundation does not depend on the few of its supporters who might
6 happen to be ammunition shippers or retailers. (*Id.*, ¶¶ 8-9.)

7 For that reason, The CRPA Foundation does not hold a “financial stake in pursuing this
8 matter to the same extent as its members,” and it has insufficient personal economic interest to
9 defeat its entitlement to fees. (See *Cal. Lic. Foresters, supra*, 30 Cal.App.4th at pp. 570, 573.)

10 **II. PLAINTIFFS’ ATTORNEYS’ FEES CLAIM REPRESENTS A REASONABLE VALUATION OF THE** 11 **TIME SPENT BY PLAINTIFFS’ COUNSEL**

12 When a party is entitled to attorneys’ fees under section 1021.5, the amount of the award is
13 calculated per the “lodestar/multiplier” method, whereby the base fee or “lodestar” is determined
14 by multiplying a reasonable hourly rate by the number of hours reasonably expended. (*Serrano v.*
15 *Priest* (1977) 20 Cal.3d 25, 48 (*Serrano III*); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 626 fn. 6.)
16 To fix the fee at the fair market value of the specific legal services provided, the lodestar may then
17 be enhanced by a multiplier after the court has considered other factors concerning the lawsuit.
(*Press, supra*, 34 Cal.3d at p. 322 & fn. 12.)

18 Plaintiffs seek compensation for 875.9 hours of work on the merits by four attorneys of
19 varying experience levels, four law clerks working at different points throughout the appeal, and
20 one paralegal. Plaintiffs also seek a 1.5 multiplier, and \$41,570.00 for work on this fee motion, for
21 an award totaling \$335,731.25. Considering the experience and reputation of Plaintiffs’ attorneys
22 and the extraordinary outcome of this case, these numbers represent a more-than-reasonable award.

23 **A. Counsel’s Hours Are Reasonable**

24 The prevailing party is entitled to compensation for “all the hours reasonably spent.”
25 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133, italics omitted.) “Counsel’s “sworn testimony
26 that, in fact, it took the time claimed is evidence of considerable weight on the issue of the time
27 required.” (*Perkins v. Mobile Housing Bd.* (11th Cir. 1988) 847 F.2d 735, 738; see also *Wershba v.*
28

1 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254-55 [attorney declarations evidencing their
2 rates and the hours spent establish a fee claim].) Indeed, “the court should defer to the winning
3 lawyer’s professional judgment as to how much time he was required to spend on the case; after all,
4 he won, and might not have, had he been more of a slacker.” (*Moreno v. City of Sacramento* (9th
5 Cir. 2008) 534 F.3d 1106, 1112.)

6 Here, Plaintiffs have established that they are entitled to full compensation for the hours
7 spent on this appeal—for Plaintiffs’ sworn testimony establishes that each hour was reasonably
8 spent. Plaintiffs’ fee claim is documented both by Plaintiffs’ counsel’s detailed declarations and by
9 billing records prepared at or around the time all work was performed. (See Monfort Decl., ¶¶ 23-
10 57; Exh. A.) Mr. Monfort provides a step-by-step summary of the various tasks that required
11 counsel’s time. (*Ibid.*) And the declarations of Ms. Barvir and Messrs. Michel, Monfort, and Brady,
12 illustrate the time and effort required of each of them to bring this case to its successful conclusion.
13 (Barvir Decl., ¶¶ 16-22; Brady Decl., ¶¶ 9-12; Michel Decl., ¶ 22; Monfort Decl., ¶¶ 24, 31, 35, 42,
14 49, 55.) Further, Plaintiffs’ counsel has exercised considerable “billing judgment,” excluding from
15 its claim time for entries that might be considered vague, excessive, or redundant. (Barvir Decl., ¶¶
16 13-14; Monfort Decl., ¶ 13; Exh. C [counsel has written off 384.1 hours].)

17 Plaintiffs have thus presented a fully documented fee claim, establishing the reasonableness
18 of their request. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.)

19 **B. Counsel’s Schedule of Hourly Rates Is Reasonable**

20 Plaintiffs’ attorneys are entitled to compensation at rates that reflect the current “prevailing
21 hourly rate in the community,” *PLCM Grp. v. Drexler* (2000) 22 Cal.4th 1084, 1094, weighing the
22 rates of attorneys of similar skill, reputation, and experience for comparable legal services,
23 *Crommie v. PUC* (N.D.Cal. 1994) 840 F.Supp. 719, 724-725. Generally, the rate of attorneys from
24 the community where the court sits controls. (*MBNA Am. Bank v. Gorman* (2006) 147 Cal.App.4th
25 Supp. 1, 13.) But when a plaintiff retains out-of-town counsel, the attorney’s “home” market rate
26 prevails if obtaining local counsel would have been impracticable. (*Horsford v. Bd. of Trustees of*
27 *Cal. State U.* (2005) 132 Cal.App.4th 359, 399.) This is because “the public interest in the
28 prosecution of meritorious civil rights cases requires that the financial incentives be adjusted to

1 attract attorneys who are sufficient to the cause.” (*Ibid.*)

2 Plaintiffs retained Michel & Associates, P.C., a firm from Long Beach, because it is the
3 largest firearms practice in the nation, having represented gun-rights organizations, firearm retailers
4 and manufacturers, and individual gun owners for decades. (Michel Decl., ¶ 13.) And it is among
5 only a handful of California firms with practices concentrated in this field. (*Id.*, at ¶ 14.) Their
6 clients include the largest firearms civil rights organizations in the state, including Plaintiff The
7 CRPA Foundation, which has relied on Michel & Associates to represent it in all its firearm-related
8 legal matters for years. (*Id.*, at ¶ 15.) The highly technical nature of this lawsuit required attorneys
9 with specialized knowledge of firearms and ammunition, as well as the experience and access to
10 the resources necessary to bring this case to a successful resolution—all characteristics the firearms
11 team at Michel & Associates possesses. (*Id.*, at ¶¶ 16-18.) Plaintiffs are unaware of any attorney in
12 the Fresno legal community with comparable experience, expertise, and resources. It was thus
13 necessary to seek out-of-town counsel, and Plaintiffs’ attorneys’ “home” market rate controls.

14 As described in the declarations of Plaintiffs’ counsel, the skill, expertise, and reputation of
15 Plaintiffs’ counsel justifies the rates sought. And, as further attested to, the rates of the attorneys
16 performing the work on this appeal are well within the range of rates charged by comparable
17 professionals in the relevant legal community. (Peacock Decl., ¶¶ 13-17; Michel Decl., ¶¶ 2-12;
18 Monfort Decl., ¶¶ 2-1; Barvir Decl., ¶¶ 2-7, 14-19; Brady Decl., ¶¶ 2-5; Exh. B.)

19 **C. A Lodestar Multiplier of 1.5 Is Appropriate**

20 Trial courts have considerable discretion in determining whether to apply a lodestar
21 multiplier and the size of that adjustment. (*Graham v. DaimlerChrysler Corp.* (2004) 34
22 Cal.App.4th 553, 581.) Courts generally consider the several factors listed in *Serrano III, supra*, 20
23 Cal.3d at p. 49, but *any one* of those factors may justify an enhancement, *Center for Bio. Divers. v.*
24 *County of San Bernardino* (2010) 185 Cal.App.4th 866, 901. In some cases, any of several other
25 factors may justify a multiplier. (See *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 835
26 (*Thayer*).) Because this case involved novel issues of law and technical underlying subject matter,
27 and because Plaintiffs’ attorneys took a significant risk in bringing the action and obtained
28 exceptional results, a lodestar multiplier of 1.5 should be applied.

1 **1. The Novelty of the Issues, Technicality of the Subject Matter, and the**
2 **Skill Displayed by Plaintiffs' Counsel Warrant Lodestar Enhancement**

3 A lodestar enhancement is appropriate based on the novelty, difficulty, and complexity of
4 an action, and the skill displayed in presenting the case. (*Serrano III, supra*, 20 Cal.3d at p. 49.)
5 Additionally, when the case's complexity is combined with the skill required to overcome
6 competent and determined opposition, a lodestar enhancement is justified. (*Edgerton v. State*
7 *Personnel Bd.* (2000) 83 Cal.App.4th 1350, 1363.) This appeal involved both novel questions of
8 law and technical underlying subject matter, requiring skill and expertise beyond that expected
9 from counsel billing at Plaintiffs' counsel's rates. That reason alone warrants a 1.5 multiplier. And
10 the State's stalwart defense strengthens the call for lodestar enhancement.

11 First, Plaintiffs set forth a novel legal theory for constitutional vagueness claims. Namely,
12 that the right to keep and bear arms, like other fundamental rights, should trigger a heightened level
13 of certainty in criminal laws touching upon that right. (See Resps.' Br., Aug. 15, 2014, *Parker v.*
14 *State* (2013) 221 Cal.App.4th 340.) Before Plaintiffs won on appeal, their theory had yet to find
15 itself in any published opinion, requiring Plaintiffs' counsel to forge new arguments supporting
16 their position. Developing those arguments required many hours of legal research, poring through
17 countless decisions about facial challenges, vagueness claims, facial vagueness claims, and the
18 different analyses applicable in state and federal courts, to cobble together the most appropriate test
19 for facial vagueness challenges in state court.

20 Second, the highly technical nature of the subject matter of this litigation is clear. A great
21 wealth of knowledge regarding ammunition types and uses was necessary to the prosecution of this
22 case. This type of knowledge is uncommon. And counsel is aware of only a handful of law firms in
23 the state that specialize in this area. (Michel Dec., ¶ 14.) Plaintiffs' counsel's unique expertise and
24 resources were, in this regard, essential to the Plaintiffs' success.

25 Third, Plaintiffs faced rigorous and competent opposition from the State. In short, this case
26 was heavily contested from the outset—continuing through the Court of Appeal and *all the way to*
27 *the Supreme Court*. Because Plaintiffs' success in both the trial court and on appeal required an
28 extraordinary amount of work by Plaintiffs' counsel, a multiplier is appropriate.

///

1 **2. A Reasonable Multiplier Is Necessary to Offset the Inherent Risk in**
2 **Bringing Civil Rights Cases Where No Damages Are Available**

3 The “contingent and deferred nature of the fee award in a civil rights or other case with
4 statutory attorney fees requires that the fee be adjusted in some manner to reflect the fact that the
5 fair market value of legal services provided on that basis is greater than the equivalent
6 noncontingent hourly rate.” (*Horsford, supra*, 132 Cal.App.4th at pp. 394-395; see also *Amaral v.*
7 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1217 [affirming a multiplier based in part on
8 inherent “contingent risks”].) Here, absent the possibility of monetary damages, Plaintiffs and their
9 attorneys risked hundreds of hours bringing a case to enforce constitutional rights without the
10 promise of ever recovering fees. Nevertheless, Plaintiffs’ counsel provided zealous representation
11 of Plaintiffs’ interests, accepting the possibility that they might never be fully compensated. That
12 risk must be reflected in any fee award and further warrants upward adjustment of the lodestar.

13 **3. Plaintiffs’ Counsel Obtained an Exceptional Result**

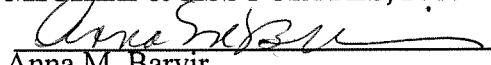
14 In *Thayer*, the court reiterated that the factors listed *Serrano III* are not exclusive,
15 recognizing that “the results obtained” is an appropriate factor to consider. (92 Cal.App.4th at p.
16 835.) Because the purpose of lodestar enhancements is to reflect the legal marketplace, exceptional
17 success should permit enhancement of the lodestar figure. (See, e.g., *Chavez v. Netflix, Inc.* (2008)
18 162 Cal.App.4th 43, 61.) In this case, Plaintiffs obtained all the relief they sought *and* their efforts
19 resulted in a once-published opinion adopting, wholesale, their novel facial vagueness theory,
20 detailing precisely why criminal laws that touch upon Second Amendment rights require the most
21 exacting language. (See *Parker, supra*, 221 Cal.App.4th 340.) While the opinion was
22 automatically de-published on review by the Supreme Court, it remains good law and will
23 undoubtedly set important precedent on this complex issue.

24 **CONCLUSION**

25 For the foregoing reasons, Plaintiffs respectfully request that their motion for reasonable
26 attorneys’ fees in the amount of \$335,731.25 be granted.

27 Dated: March 27, 2017

MICHEL & ASSOCIATES, P.C.

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 Anna M. Barvir
 Counsel for Plaintiffs and Petitioners

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF FRESNO

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

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

**NOTICE OF MOTION AND MOTION IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES ON APPEAL; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

on the interested parties in this action by placing
[] the original
[x] a true and correct copy
thereof enclosed in a sealed envelope(s) addressed as follows:

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

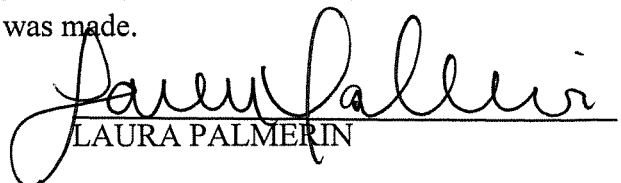
P. Patty Li
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

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

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

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


LAURA PALMERIN