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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO
Before the Honorable JEFFREY HAMILTON, JR., Judge
Department 402

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SHERIFF CLAY PARKER,)	
)	
Plaintiff,)	No. 10 CECG 02116
)	
vs.)	
)	
STATE OF CALIFORNIA,)	
)	
Defendant.)	

Fresno, California September 14, 2017

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REPORTER'S TRANSCRIPT

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A P P E A R A N C E S:

FOR THE PLAINTIFF:	ANNA BARVIR
	MICHEL & ASSOCIATES
	180 East Ocean Boulevard, Suite 200
	Long Beach, California 90802
FOR THE DEFENDANT:	GEORGE WATERS
	DEPARTMENT OF JUSTICE
	OFFICE OF THE ATTORNEY GENERAL
	1300 I Street, Suite 125
	Sacramento, California 94244

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REPORTED BY:
AMANDA SHEIN, CSR, RPR, CRR
CERTIFICATE NO. 13226

SEPTEMBER 14, 2017 - AFTERNOON SESSION

(The following proceedings were held in the presence of the Court and counsel:)

THE COURT: Sheriff Clay Parker versus State of California.

Appearances?

MS. BARVIR: Anna Barvir, B-A-R-V-I-R, for Plaintiffs Parker, et cetera.

MR. CUBEIRO: Matt Cubeiro also for Plaintiffs Parker, et cetera, C-U-B-E-I-R-O.

MR. WATERS: George Waters for Defendants State of California, et cetera.

THE COURT: Plaintiffs, I assume you called for the argument?

MS. BARVIR: That's correct. Thank you, your Honor.

I'd like to take this time to just address two points in light of the Court's tentative ruling that was issued yesterday. First I'd like to address whether a private litigant must bear his own costs in order to be entitled to a private attorney general's award under 1021.5, then I'd like to make a few remarks about the Court's concerns regarding the California Rifle and Pistol Association Foundation's interests in this suit.

As to the first issue, whether a litigant must bear his or her own fees, the answer must be no. Certainly the financial support of a third party civil rights organization,

1 even if it fully takes on the cost of suit, cannot be enough
2 to disqualify a party from private attorney general awards.
3 Told otherwise, would gut the Section 1021.5 and the
4 nonprofit public interest litigation model.

5 The tentative cites Torres for what the Court seems to be
6 applying as a bright-line rule that should deny a litigant
7 fees absent a showing that that litigant paid its fees out of
8 pocket, but applying Torres so broadly ignores a deal of
9 authority granting such awards in cases where litigants did
10 not bear their own costs.

11 First looking to state law, the plaintiffs cited in their
12 brief Auto, which explicitly holds that not bearing the
13 financial costs of litigation does not warrant denying him
14 fees, because section 1021.5 doesn't explicitly require a
15 plaintiff to bear his own costs.

16 Plaintiffs also cited in their reply brief Press v Lucky
17 Stores, a supreme court case that affirmed an award to a
18 litigant whose fees were paid by a nonprofit legal services
19 corporation.

20 Now, under Ramon versus County of Santa Clara, 173
21 Cal.App.4th 915, we know that we can also look to federalist
22 authority for analogous precedent under private attorney
23 general award doctrines.

24 So Rodriguez versus Taylor, 569 F.2d 1123, which also
25 holds that a private attorney general award fee, whenever
26 otherwise authorized, are, "Not obviated by the fact that

1 individual plaintiffs are not obligated to compensate their
2 counsel."

3 Brandenburger versus Thompson, 494 F.2d 885, Ninth
4 Circuit, where the ACLU took the financial obligation of a
5 private suit, explains why the very purpose of a private
6 attorney general award doctrine explains why that's so or
7 supports this view. The Court recognized that the purpose of
8 private attorney general award fees is to encourage public
9 interest suits, and oftentimes these are by litigants who
10 couldn't afford to cover the costs. And so while not having
11 to pay the fees would not discourage such a litigant from
12 bringing suit, because if legal representation is provided,
13 the court recognized that the entity providing the free legal
14 services would be so discouraged, and an award of attorney's
15 fees encourages it to bring public-minded suits when required
16 by litigants who could not otherwise pay for them themselves.

17 Further, to read Torres to require that a plaintiff must
18 bear his own legal costs, it doesn't make a lot of sense in
19 light of the well-settled authority regarding setting the
20 reasonable fee award, and by that what I'm referencing is
21 after the court has determined entitlement of fees, the court
22 then has to set the lodestar, and once the lodestar amount is
23 determined, the court is then given the discretion to provide
24 an upward multiplier when it's necessary.

25 And, you know, one basis for applying an upward
26 multiplier is the contingent nature of compensation in most

1 public interest litigation. If private litigants are
2 required to cover their own costs, compensation isn't
3 contingent and it wouldn't be grounds for an upward
4 multiplier.

5 So to the extent that Torres is correct or applicable, it
6 must stand for something more narrow than plaintiff is
7 reading the Court's tentative, perhaps when dealing with a
8 third-party organization whose stated purpose is to further
9 the goals of some financially interested business like a
10 business association or a trade association. Which then
11 brings me to my points about the California Rifle and Pistol
12 Association Foundation and its sister organization the CRPA
13 and whether they had a disqualifying pecuniary interest in
14 this suit even absent evidence that specifically says there
15 are no manufacturer -- gun manufacturers, ammunition
16 manufacturers that support either organization.

17 Torres denied fees in a case where an individual sought
18 to nullify a local government contract that wasn't properly
19 endorsed. The court denied fees because they were covered by
20 a third-party business association, the Los Angeles County
21 Environmental Business Association, a group that was made up
22 of a contractor's competitors and whose very purpose was to
23 serve their business interests, much like the organization
24 plaintiff in California Licensed Forest Association, which
25 plaintiffs discuss and distinguish at length in their
26 briefing.

1 The CRPA Foundation, which admits to funding the suit in
2 its press release that the State entered into evidence, and
3 CRPA are not such organizations. As the most recently filed
4 Steven Dember declaration shows, the California Rifle and
5 Pistol Association and the CRPA Foundation are organizations
6 whose purpose is to support the second amendment and the
7 individual rights of shooters and gun enthusiasts, not -- it
8 is not some business organization or business association,
9 regardless of how many donors it has.

10 And I think -- I would like the Court to take one more
11 look at the declaration. I think it shows that overall there
12 really isn't a business interest, that the CRPA Foundation
13 and the CRPA are not significantly or even much at all
14 supported by any types of businesses at all. And I think
15 that's also made a little more clear in the December 2011
16 declarations of Mr. Montanarella and Mr. John Fields.

17 But to the extent the Court is not satisfied with member
18 statements regarding who and what purposes the organizations
19 serve, or who their donors are, the plaintiffs are able to
20 provide declarations and offer records for in-camera review
21 that show that neither organization relies on firearms or
22 ammunition industry donors, obviously if the Court would
23 allow, so I must ask if the Court would be willing to
24 continue the hearing or deny this motion without prejudice to
25 allow this admission of the evidence the Court now seeks
26 under the authority that is explained in *Farber v Bay View*

1 Terrace Homeowners Association, 141 Cal.App.4th 1007 at
2 page 1015.

3 I think that what I'm asking for the Court is just
4 clarification at this stage whether or not this is a denial
5 with or without prejudice.

6 But again, even if the Court won't allow supplemental
7 evidence at this stage to establish that CRPA or its donors
8 do not financially benefit, and even if some donor had a
9 sufficient business motive, which we don't concede at all,
10 that it would not be grounds for denial.

11 I bring the Court's attention to Planned Parenthood
12 versus Accos, a case that we specifically discuss in our
13 moving papers at length where it's really clear that even
14 where you have an organization that might have sufficient
15 business interests to bring litigation on their own, when
16 it's a sort of organization that is in the business, I guess,
17 of providing constitutionally protected goods or services, it
18 can't be seen as litigation that's brought just to line their
19 pocketbooks. What you have instead is a case where the
20 organization is a named plaintiff or a supporting funder
21 actually has an interest that's inextricably linked to the
22 constitutional interests of the individuals who are seeking
23 to access the right or to provide the right. In Accos it was
24 obviously abortion services, and here it's access to firearms
25 and ammunition, which is protected under the Second
26 Amendment, without fear of being criminally prosecuted under

1 a vague law.

2 And this must be so; otherwise all sorts of public
3 interest lawsuits would need to be brought without any hope
4 of recovering fees. For instance, if a non-party newspaper
5 association or journalist trade association funded a lawsuit
6 challenging restrictions on newspaper sales on behalf of
7 individual journalists, readers or small newsstands; or if a
8 non-party national association for the repeal of abortion
9 laws or Planned Parenthood funded a lawsuit challenging
10 restrictions on vaguely defined types of abortion procedures
11 on behalf of women or doctors or clinics; or if a non-party
12 Land of Legal, or the National Center For Lesbian Rights
13 funded a lawsuit challenging bans on adoption for same sex
14 couples to the benefit of individuals, adoption agencies or
15 attorneys.

16 For those reasons I would like the Court to reconsider
17 its tentative and award my client the reasonable attorney's
18 fee award.

19 Thank you.

20 MR. WATERS: Your Honor, my opposing counsel covered a
21 lot of ground there. I will cover less.

22 I think, first of all, we agree with the tentative,
23 obviously. But I think there the rule of thumb here is that
24 with attorney's fees, the courts take a broad, pragmatic view
25 of the circumstances in any individual case, and I think that
26 has to be the case because, as my opposing counsel here cited

1 Torres for a bright-line rule, I don't think bright-line
2 rules really lend themselves to being effective in attorney's
3 fees litigation. There are many, many mixed-motive cases.
4 There have been lots at different times in the last 40 years
5 since 1021.5, the attorney's fees statute, was adopted.
6 There have been dozens of rules from different appellate
7 courts which could at the time have been described as
8 bright-line rules.

9 What happens, I think, is that each case presents its own
10 circumstances, and the Torres case presented a circumstance
11 where an individual bore no cost for the litigation and was
12 denied fees. I think that is an acceptable principle under
13 the right circumstances, and I think the circumstances
14 dictate that result here for the reasons set forth in your
15 opinion.

16 The fact of the matter is that ammunition and guns --
17 obviously the Second Amendment is an important amendment.
18 It's number two. It was one of the original ten. No one
19 denies that it's there and no one denies its import. But it
20 is also true that any -- not any litigation, but some
21 litigation involving the Second Amendment is going to involve
22 financial interests as well as interests that are not
23 financial, and I believe that the way this case was presented
24 originally -- I mean, I was not here five, six, seven years
25 ago whenever this case started. The people who litigated it
26 have moved on to other things, so I cannot say what happened

1 in any detail there, but the rule that was announced by
2 Torres, which actually follows up on Whitley, a supreme court
3 case about financial interests, I think that is a principle
4 that can and should be applied here, and I think that this is
5 a case where it was originally presented with the idea that
6 financial commercial firms had large financial interests in
7 this. I think that was the appropriate way to read the
8 original declarations, which were filed at the time of the
9 preliminary injunction motion, and I believe that there is no
10 definitive statement ruling defining what the role of gun
11 manufacturers, ammo manufacturers are in the support of the
12 plaintiff, the organizational plaintiff in this case. And I
13 think for those reasons, your tentative is correct and should
14 be upheld.

15 THE COURT: Okay. Thank you.

16 (The proceedings were concluded at 3:40 p.m.)
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1 STATE OF CALIFORNIA)
2 COUNTY OF FRESNO)

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4 I, AMANDA SHEIN, Certified Shorthand Reporter licensed in
5 the State of California, License No. 13226, do hereby certify
6 that the foregoing proceedings was reported by me and was
7 thereafter transcribed under my direction into typewriting;
8 that the foregoing is a full, complete and true record of said
9 proceeding.

10 I further certify that I am not of counsel or attorney
11 for either or any of the parties in the foregoing proceeding
12 and caption named, or in any way interested in the outcome of
13 the cause named in said caption.

14 In witness whereof, I have hereunto set my hand and
15 affixed my seal this day.

16 Date: September 17, 2017

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Amanda Shein

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AMANDA SHEIN, CSR #13226, RPR, CRR

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