

1 XAVIER BECERRA
Attorney General of California
2 MARK R. BECKINGTON
Supervising Deputy Attorney General
3 GEORGE WATERS
Deputy Attorney General
4 State Bar No. 88295
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6059
Fax: (916) 324-8835
7 E-mail: George.Waters@doj.ca.gov
Attorneys for Defendants/Respondents State of
8 California, Xavier Becerra, and the California
Department of Justice

E-FILED
12/20/2017 4:53 PM
FRESNO COUNTY SUPERIOR COURT
By: R. Faccinto, Deputy

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO
12
13

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

21 Plaintiffs and Petitioners,

22 v.

23 **THE STATE OF CALIFORNIA; XAVIER**
24 **BECERRA, IN HIS OFFICIAL**
25 **CAPACITY AS ATTORNEY GENERAL**
26 **FOR THE STATE OF CALIFORNIA; THE**
27 **CALIFORNIA DEPARTMENT OF**
28 **JUSTICE, AND DOES 1-25,**

Defendants and
Respondents.

Case No. 10CECG02116

RESPONSE TO PLAINTIFFS'
DOCUMENTATION RE FEES

Date: January 10, 2018
Time: 3:30 p.m.
Dept: 402
Judge: The Honorable Jeffrey Y.
Hamilton
Action Filed: June 17, 2010

1 **PLAINTIFF CRPA FOUNDATION HAS NOT PROVIDED DOCUMENTATION OF THE**
2 **AMOUNT IT CONTRIBUTED TO APPELLATE FEES IN THIS ACTION.**

3 On November 29, 2017, the Court entered an order allowing Plaintiff CRPA Foundation to
4 recover the sum of money it contributed to the Plaintiffs' attorneys' fees for the appeal in this
5 action. (11/29/17 Order at p. 9.) The Court noted that, according to Plaintiffs' counsel, this
6 action had been funded exclusively by the NRA and the CRPA Foundation and that principal
7 funding was provided by the NRA. (*Id.*, p. 4.) Accordingly, the Court instructed Plaintiff CRPA
8 Foundation to "serve and file documentation evidencing the total amount it contributed to the fees
9 and costs paid in support of this litigation[.]" (*Id.*, p. 9.) In response, Plaintiffs have filed two
10 declarations. (Supplemental Declarations of Haydee Villegas and Anna M. Barvir, 12/8/17.) The
11 declarations are not responsive to the Court's order.

12 The question posed by the Court was how much did Plaintiff CRPA Foundation contribute
13 to the fees on the appeal of this action. In response, Plaintiffs offer the Supplemental Declaration
14 of Haydee Villegas, who testifies that (a) she is the Office Manager of the Michel & Associates,
15 (b) CRPA Foundation pays the law firm a flat monthly fee to conduct litigation on its behalf, (c)
16 she was asked to prepare a report of invoices sent to and payments made by CRPA Foundation
17 during the time that the appeal was active,¹ and (d) the report is attached to her declaration as
18 Exhibit B. (Villegas Decl., ¶¶ 4-8.) The report shows total invoices and payments in the amount
19 of \$285,000. (*Id.*, Exh. B, p. 2.)

20 The Villegas Declaration is unresponsive because it does not state the amount contributed
21 by CRPA Foundation to appellate fees in this action. Rather the declaration states that CRPA
22 Foundation paid the law firm a flat monthly fee "to conduct litigation on its behalf." (Villegas
23 Decl., ¶ 7.) The monthly payments are described on the checks as a "Flat Fee Retainer" or "Flat
24 Retainer." (*Id.*, Exh. C [checks #1107 (7/28/11), #1109 (9/6/11)].) There is no explanation why
25 the monthly retainer increased from \$5,000 to \$10,000 in October 2012; the retainer appears to

26 ¹ The report covers two periods, May 2011 through December 2013, and January 2017
27 through May 2017. The first period roughly tracks period of appellate litigation. Notice of
28 Appeal was filed in this Court on April 28, 2011, and the Fifth District Court of Appeal released
its opinion on November 6, 2013. (*Parker v. State* (2013) 221 Cal.App.4th 340, review granted
and opinion superseded (Cal. 2014) 167 Cal.Rptr.3d 658.) The second period very roughly tracks
the initial briefing on Plaintiffs' attorneys' fees motion.

1 have no relationship to whatever CRPA Foundation paid for in the present action. (*Id.*, Exh. B,
2 p. 1.) Further, the Michelle firm has represented CRPA Foundation in several actions other than
3 this one. (See, e.g., [http://michellawyers.com/barry-bauer-et-al-v-california-department-of-](http://michellawyers.com/barry-bauer-et-al-v-california-department-of-justice-et-al/)
4 [justice-et-al/](http://michellawyers.com/barry-bauer-et-al-v-california-department-of-justice-et-al/) [last visited 12/20/17] [describing *Bauer v. DOJ*, USDC ED Cal. No. 11-01440,
5 where Michelle & Associates represents Plaintiff CRPA Foundation];
6 [http://michellawyers.com/wp-content/uploads/2016/08/Flanagan-v-Harris-](http://michellawyers.com/wp-content/uploads/2016/08/Flanagan-v-Harris-Complaint_Conformed.pdf)
7 [Complaint_Conformed.pdf](http://michellawyers.com/wp-content/uploads/2016/08/Flanagan-v-Harris-Complaint_Conformed.pdf) [last visited 12/20/17] [describing *Flanagan v. Harris*, USDC CD
8 Cal. No. 16-06164, where Michelle & Associates represents Plaintiff CRPA Foundation].)

9 Plaintiffs' second declaration, the Supplemental Declaration of Anna M. Barvir, also is not
10 responsive. It attaches what appears to be the 2015 tax return of the NRA. The Court has already
11 held that funds contributed the NRA are not compensable. The declaration sheds no light on the
12 current issue: How much of the claimed fees are attributable to CRPA Foundation?

13 There is a complete failure of proof here. CRPA Foundation has the burden to show that
14 the financial burden of private enforcement warrants subsidizing its attorneys' fees. (*Consumer*
15 *Cause Inc. v. Mrs. Gooch's Natural Foods* (2005) 127 Cal.App.4th 387, 401.) Its own counsel
16 has admitted that a non-party provided the bulk of the financing. (Waters Decl. (6/9/17), Exh. 6,
17 p. 4.) Having failed to establish an essential element of its claim despite being given an
18 opportunity by the Court to do so, CRPA Foundation should not be heard to claim any fees. The
19 Court would have to speculate as to what CRPA Foundation paid and what it should be awarded.

20 The fee motion should be denied.

21 Dated: December 20, 2017

Respectfully Submitted,

22 XAVIER BECERRA
23 Attorney General of California
24 MARK R. BECKINGTON
Supervising Deputy Attorney General

25 [s/George Waters](#)
26 GEORGE WATERS
27 Deputy Attorney General
Attorneys for Defendants/Respondents
State of California, Xavier Becerra, and
the California Department of Justice

28 SA2010101624/12903618.docx

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **Sheriff Clay Parker, et al. v. The State of California**
No.: **10CECG02116**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the Oddessy electronic filing system. Participants who are registered with Oddessy will be served electronically. Participants in this case who are not registered with Oddessy will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

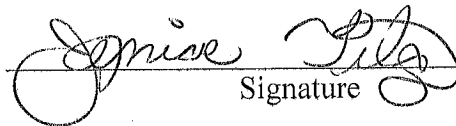
On December 20, 2017, I electronically served the attached **RESPONSE TO PLAINTIFFS' DOCUMENTATION RE FEES** by transmitting a true copy via this Court's Oddessy system. Because one or more of the participants in this case have not registered with the Court's Oddessy system or are unable to receive electronic correspondence, on December 20, 2017, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Anna Barvir
Michel & Associates, P.C.
180 East Ocean Blvd., Suite 200
Long Beach CA 90802-4079

Attorney for Plaintiffs and Petitioners

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2017, at Sacramento, California.

Janice Titgen
Declarant


Signature