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FRESNO COUNTY SUPERIOR COURT  
By: R. Faccinto, Deputy

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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; CRPA FOUNDATION;  
ABLE'S SPORTING, INC.; RTG SPORTING  
12 COLLECTIBLES, LLC; AND STEVEN  
STONECIPHER,

13 Plaintiffs and Petitioners,

14 vs.

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

18 Defendants and Respondents.  
19

Case No. 10CECG02116

**PLAINTIFFS' REPLY TO RESPONSE  
TO PLAINTIFFS' DOCUMENTATION  
RE FEES**

Judge: Jeffrey Y. Hamilton  
Dept.: 402  
Date: January 10, 2018  
Time: 3:30 p.m.

Action Filed: June 17, 2010

1 **I. WHILE PLAINTIFFS HAVE THE BURDEN TO SHOW THAT THE FINANCIAL BURDEN OF**  
2 **PRIVATE ENFORCEMENT WARRANTS A FEE AWARD, THAT BURDEN DOES *NOT* REQUIRE**  
3 **PROOF OF THE AMOUNTS ANY NAMED PLAINTIFF ACTUALLY PAID**

4 Fees are recoverable “when the cost of the claimant’s legal victory transcends his personal  
5 interest, that is when the necessity for pursuing the lawsuit placed a burden on the plaintiff out of  
6 proportion to his individual stake in the matter.’ ” (*Woodland Hills Residents Assn., Inc. v. City*  
7 *Council of L.A.* (1979) 23 Cal.3d 917, 941 (*Woodland Hills*), quoting *County of Inyo v. City of Los*  
8 *Angeles* (1978) 78 Cal.App.3d 82, 89.) When balancing the costs and benefits of litigation for fee  
9 shifting purposes, the court must quantify the monetary value of the benefit obtained, then discount  
10 that benefit by the likelihood of success and weigh the resulting value against the actual costs of  
11 litigation. (*L.A. Police Prot. League v. City of Los Angeles* (1986) 188 Cal.App.3d 1, 9-10.) A fee  
12 award is proper unless “the expected value of the litigant’s own monetary award [, discounted by  
13 the likelihood of success,] exceeds by a substantial margin the actual litigation costs.” (*Ibid.*, italics  
14 added; see also *In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1215-1216 (*Whitley*)).  
15 While the State correctly notes that the fee proponent “has the burden to show that the financial  
16 burden of private enforcement warrants subsidizing its attorneys’ fees” (Defs.’ Resp. to CRPA  
17 Documentation of Fees at p. 3 (hereafter “Resp.”), citing *Consumer Cause Inc., v. Mrs. Gooch’s*  
18 *Natural Foods* (2005) 127 Cal.App.4th 387, 401), this does *not*, as the State suggests (Resp. at p.  
19 2), require Plaintiffs to establish the amounts actually paid by The CRPA Foundation.

20 On September 13, 2017, this Court issued a temporary order denying Parker’s motion for  
21 attorneys’ fees on appeal, holding that Parker had not established that any named party bore  
22 *personal financial responsibility* for the litigation and, so, could not establish that the burden of  
23 private enforcement outweighed any party’s financial stake in the case. (Tentative Order at pp. 8-9  
24 (Sept. 13, 2017) (hereafter “Tentative”), discussing *Torres v. City of Montebello* (2015) 234  
25 Cal.App.4th 382, 406-407 (*Torres*).)<sup>1</sup> Subsequently, the Court issued an Order After Hearing,

26 <sup>1</sup> The Court also signaled that it would deny the motion as to The CRPA Foundation on the  
27 further ground that the organization had not submitted sufficient evidence of various types of  
28 corporate donors, including “gun manufacturers,” who are not ammunition shippers but might have  
lost profits under the challenged provisions. (Tentative at p. 9.) At the hearing on the matter,  
Parker’s counsel directed the court’s attention to record evidence establishing little support from  
any corporate donors. (Order After Hearing at p. 8 (Nov. 29, 2017).)

1 partially granting Parker’s motion. (Order After Hearing at p. 1.) The court maintained its position  
2 that named parties bear personal responsibility for fees to recover. (*Id.* at pp. 3-8.) But it reversed  
3 course on The CRPA Foundation’s entitlement, stating that:

4 [T]he CRPA foundation would appear to have either no, or negligible, financial  
5 interest in this litigation. Moreover, unlike the individual plaintiffs in this  
6 litigation, CRPA Foundation did apparently have a role in deciding to bring this  
7 litigation, paying for the litigation, and controlling the course of the litigation. In  
8 other words, the litigation would not have happened without [T]he CRPA  
9 Foundation’s participation and support.

10 *Accordingly, it would be appropriate for [The] CRPA Foundation to*  
11 *recover the sum of money it contributed to the attorney’s fees for this case.*

12 (*Id.* at pp. 8-9.) The Court’s Order After Hearing signals that it will ultimately limit Parker’s  
13 recovery to “the sum of money [The CPRA Foundation] contributed to the attorney’s fees for this  
14 case.” (*Id.* at pp. 1, 9.)

15 The Court’s reasoning largely relies on *Torres v. City of Montebello*, a case from the  
16 Second District, that denied fees where an individual taxpayer sought to nullify a local government  
17 contract that hadn’t been properly endorsed. (234 Cal.App.4th at pp. 406-407.) There, the court  
18 denied fees because they were covered by a third-party business association, the Los Angeles  
19 County Environmental Business Association, which was made up of the winning contractor’s  
20 competitors and whose very purpose was to serve those business’ interests. (*Ibid.*) And Torres, the  
21 named plaintiff, stood to gain nothing but the satisfaction of seeing the rules for local government  
22 contracts enforced. (*Id.* at p. 407.) Because the factual record suggested that “the named plaintiff  
23 [was] litigating the action primarily for the benefit of nonlitigants with a financial interest in the  
24 outcome,” *id.* at p. 405, the court found Torres “had no financial interest in the outcome, either  
25 from a benefit point of view or from a cost point of view,” *ibid.*

26 The Court’s most recent order suggests that *Torres* stands for a bright-line rule that private  
27 attorney general fees should be denied absent a showing that the litigant paid fees out of his own  
28 pocket. But the financial support of a third-party civil rights organization—even one that fully  
assumes the costs of suit—cannot be enough to disqualify a party from private attorney general  
fees. To hold otherwise would gut section 1021.5 and non-profit public interest litigation. Indeed, it  
ignores the great number of such cases where litigants did not bear their own costs. (See e.g., *Otto*

1 v. *L.A. Unified Sch. Dist.* (2003) 106 Cal.App.4th 328, 333 (*Otto*); *Mounger v. Gates* (1987) 193  
2 Cal.App.3d 1248, 1260 [“[N]either appellant is ineligible for an attorney fee award merely because  
3 the protective league is a union which may have absorbed all or most of the expenses of this  
4 appeal.”]; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 316.) As the court in *Otto v. Los*  
5 *Angeles Unified School District* recognized: “the fact [that a party has not personally borne the  
6 burden of paying his attorneys] will *not* warrant denying him section 1021.5 fees. Section 1021.5  
7 does not specifically require a plaintiff to bear his own fees. It simply speaks of the “financial  
8 burden of private enforcement.” ” (106 Cal.App.4th at p. 333, italics added.) That “burden” often  
9 falls on the shoulders of third party non-profits and charitable organizations.

10 Federal courts have also addressed the issue of whether compensation without proof of  
11 actual payment is often necessary.<sup>2</sup> For instance, the Third Circuit has expressly held that “private  
12 attorney general fees when “authorized are not obviated by the fact that individual plaintiffs are not  
13 obligated to compensate their counsel.” (*Rodriguez v. Taylor* (3d Cir. 1977) 569 F.2d 1231, 1245.)  
14 The Ninth Circuit’s decision in *Brandenburger* (9th Cir. 1974) 494 F.2d 885, explains why this is  
15 so. There, a plaintiff who successfully challenged Hawaii’s one-year durational residency  
16 requirement for state welfare benefits met the requirements of a “private attorney general” and was  
17 entitled to an award of attorney’s fees, even though he had been represented without charge by the  
18 ACLU, a public interest organization. (*Id.* at p. 889.) The court explained its reasoning thus:

19 It is true that the prospect of attorneys’ fees does not discourage the  
20 litigant from bringing suit when legal representation is provided without charge.  
21 *But the entity providing the free legal services will be so discouraged, and an*  
22 *award of attorneys’ fees encourages it to bring public-minded suits when so*  
*requested by litigants who are unable to pay. Thus, an award of attorneys’ fees to*  
*the organization providing free legal services indirectly serves the same purpose*  
*as an award directly to a fee-paying litigant.*

23 (*Brandenburger, supra*, 494 F.2d at p. 889.)

24 So, to the extent *Torres* suggests that plaintiffs must personally bear the “burden” of  
25 litigation costs, it must stand for something far narrower than the Court and the State suggest.  
26 Perhaps, as *Torres* itself states, the rule applies when the record establishes that “the named  
27

28 <sup>2</sup> Under *Ramon v County of Santa Clara* (2009) 173 Cal.App.4th 915, the Court can look to  
federal decisions regarding the private attorney general fee doctrine as analogous precedent.

1 plaintiff is litigating the action primarily for the benefit of non-litigants with a financial interest in  
2 the outcome.” (234 Cal.App.4th at p. 405) The facts of this case are simply not like the uncommon  
3 situation addressed in *Torres*.

4 Here, the Court’s Order After Hearing recognizes that The CRPA Foundation does not have  
5 sufficient corporate backing to justify denying fees, but holds that the National Rifle Association of  
6 America’s support of the litigation bars recovery of the costs it covered. (Order After Hearing at p.  
7 9.) But, like The CRPA Foundation, the NRA is not an organization dedicated to the *business*  
8 interests of its supporters. (See *Cal. Lic. Foresters Assn. v. State Bd. of Forestry* (1994) 30  
9 Cal.App.4th 562, 570, 573.) Its primary purpose is “[t]o protect and defend the Constitution of the  
10 United States, especially with reference to the inalienable right of the individual American citizen .  
11 . . to acquire, possess, collect, exhibit, transport, carry, transfer ownership of, and enjoy the right to  
12 use arms.” (Guidestar.com, *National Rifle Association of America*, [https://www.guidestar.org/  
13 profile/53-0116130](https://www.guidestar.org/profile/53-0116130) (last accessed Dec. 18, 2017), quoting NRA Bylaws, art. II.) And it cannot  
14 fairly be assumed that the NRA relies on the support of any firearms-related business such that its  
15 “very existence depends on the economic vitality of” such supporters. (Order After Hearing at p. 9,  
16 citing *Cal. Redevel. Assn. v. Matosantos* (2013) 212 Cal.App.4th 1457, 1480.)

17 The Court’s sole reason for denying the NRA appropriate fees is that the NRA has made  
18 available certain tiers of corporate and individual sponsorship. (Order After Hearing at p. 9, citing  
19 <https://www.nraringoffreedom.com/guide-to-giving/ways-to-donate/corporate-partners/>.) These  
20 tiers say nothing of what corporations actually donate to the organization. But, as the NRA’s 2015  
21 IRS Form 990, states: “The vast majority of contributions to the NRA comes from millions of  
22 small individual donors.” The organization reports that *only five percent* of its annual contribution  
23 revenue comes from “companies and executives in the firearms, hunting, and shooting sports.”  
24 (Suppl. Barvir Decl., Ex. A, p. 50.) The NRA reports that its contribution revenue for 2015 was  
25 \$94,982,032. Five percent of that amount would be just \$4,749,101.60. (*Id.*, Ex. A, p. 9.) On the  
26 other hand, membership dues from “only individual citizens” accounted for some \$165,664,978.  
27 (*Id.*, Ex. A, pp. 9, 51.) It could hardly be said that the organization’s very existence depends on the  
28 economic vitality of” any corporate supporters.

1 The exclusion from Parker’s fee award any amount paid by the NRA is thus improper and should  
2 be corrected.

3 In this present case, as in others, “[t]he determination of entitlement to fees is generally  
4 based on the record already before the court.” (2 Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar  
5 2014 supp.) § 11.47, p. 11-49.) Here, the entire record, evidence submitted in support of Parker’s  
6 fee motion including the Supplemental Declaration of Anna M. Barvir, as well as logical inference  
7 and case law bear this fact. There is no need to provide any further evidence of the actual amounts  
8 The CRPA Foundation expended in litigating this suit. The Court’s decision to require such  
9 evidence is in error.

10 **II. REGARDLESS, THE DOCUMENTATION PROVIDED IS MORE THAN SUFFICIENT TO**  
11 **DEMONSTRATE THE AMOUNT CRPA FOUNDATION CONTRIBUTED TO APPELLATE FEES**  
**IN THIS ACTION**

12 On November 29, 2017, this Court issued an order holding that Plaintiff The CRPA  
13 Foundation should recover fees for its financial contributions to this case. (Order After Hearing at  
14 pp. 1, 9.) The Court directed The CRPA Foundation to serve and file documentation evidencing the  
15 total amount it contributed to the fees and costs paid in support of the litigation. (*Ibid.*)  
16 Accordingly, Plaintiff submitted the Supplemental Declaration of Haydee Villegas and supporting  
17 exhibits documenting the attorney’s fee payments and invoices between The CRPA Foundation and  
18 Michel & Associates P.C. The documentation clearly shows that The CRPA Foundation has  
19 contributed significant financial resources to support the appeal of *Parker v. California*, in the form  
20 of flat monthly fees—\$5,000 per month between May 2011 and September 2012, and \$10,000 per  
21 month between October 2012 and May 2017, for a total contribution of \$285,000. (Suppl. Villegas  
22 Decl., ¶¶ 6-8; Exs. B-C.) According to the sworn testimony of Michel & Associates’ office  
23 manager, these fees were paid to directly defray the costs of the *Parker* appeal. (Suppl. Villegas  
24 Decl., ¶ 7.)

25 At the time The CRPA Foundation began paying for this litigation, no one could have  
26 predicted that their fees would be challenged in the way they have been throughout the course of  
27 this litigation. This Court has already issued several orders on the matter—most recently, one  
28 denying fees to The CRPA Foundation and another subsequent order granting fees for their

1 contributions. (Tentative at pp. 9-10; Order After Hearing at pp. 1, 8-9.) Before this litigation, it  
2 was considered a truism that non-profit organizations could fund litigation aimed at upholding  
3 constitutional rights or the public interest and be compensated without necessarily being a named  
4 plaintiff. (See *Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 45, 47; *Folsom v. Butte Co.*  
5 *Assn. of Govts.* (1982) 32 Cal.3d 668, 681; *Rogel v. Lynwood Redev. Agency* (2011) 194  
6 Cal.App.4th 1319, 1332 [litigation funded by charities, or conducted by private attorneys on a pro  
7 bono/discounted basis is not barred from recovering fees under private attorney general doctrine]).  
8 Many non-profits (indeed, many organizations in general) maintain long-term relationships with  
9 legal counsel in order to advance their litigation goals, and pay reduced rates or flat retainers as  
10 consideration for long-term support. There is no legal authority anywhere that prohibits non-profits  
11 from paying flat monthly retainers, and this cannot therefore be a valid reason for disputing the  
12 extent and quality of Plaintiffs' documentary submissions.<sup>3</sup>

13       What's more, the State's response ultimately reveals its intention to deprive Plaintiff of any  
14 fees they are entitled to in this case. Not content to merely oppose the extent and quality of  
15 Plaintiffs' fee submissions, the State sums up its conclusion by baldly asserting that The "CRPA  
16 Foundation should not be heard to claim *any fees*" and that the "fee motion should be denied."  
17 (Resp. at p. 3, italics added.) This is absurd. The Court has already stated that The CRPA  
18 Foundation should recover the sum of money it contributed to the attorneys' fees for this case.  
19 (Order After Hearing at pp. 1, 9.) A hearing to decide the amount is set before this Court on  
20 January 10, 2018. (*Ibid.*) Thus far, the State's response is to completely deprive The CRPA  
21 Foundation of all compensation for the efforts it expended on this case. (Resp. at p. 3.) Whatever  
22 the outcome of this case, that is not appropriate. This Court has stated that Plaintiff The CRPA  
23 Foundation is entitled to recover its costs for its role as a successful litigant that has advanced an  
24 important public right affecting the public interest and for conferring a significant benefit to the  
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26       <sup>3</sup> The State also appears to take issue with the fact that the monthly fee was increased from  
27 \$5,000 to \$10,000 in October of 2012. (Resp. at p. 2.) For reasons one can only speculate on, the  
28 State demands an explanation for this increase, which took place five years ago. There is no  
explanation other than that The CRPA Foundation decided to increase its support in order to  
advance what it felt to be necessary and important advocacy on behalf of its members in this  
litigation.

1 general public. (Order After Hearing, pp. 1, 8-9.) There can be no reason that The CRPA  
2 Foundation should be left entirely uncompensated for this important service simply because it pays  
3 its lawyers a flat monthly rate for litigation services.<sup>4</sup>

4 **III. CONCLUSION**

5 For these reasons, as well as those presented in Plaintiffs' Motion for Attorneys' Fees on  
6 Appeal and in Plaintiffs' Reply to Defendants' Opposition to Motion for Attorneys' Fees on  
7 Appeal, Sheriff Clay Parker, Herb Bauer Sporting Goods; The CRPA Foundation, Able's Sporting,  
8 Inc.; RTG Sporting Collectibles, LLC; and Steven Stonecipher, respectfully ask this Court to grant  
9 their request for private attorney general fees under section 1021.5.

10  
11 Dated: December 28, 2017

Respectfully submitted,  
**MICHEL & ASSOCIATES, P.C.**

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14 Anna M. Barvir  
15 Counsel for Plaintiffs and Petitioners  
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25 <sup>4</sup> Furthermore, the State incorrectly asserts that Michel & Associates represents The CRPA  
26 Foundation in *Flanagan v. Harris*. The CRPA Foundation is *not* a party to that case. Rather,  
27 Michel & Associates represents the California Rifle and Pistol Association, Incorporated, and not  
28 The CRPA Foundation, a separate legal entity bearing a similar name. (Complaint at pp. 6-7,  
*Flanagan v. Harris*, Case No. 16-cv-06164 (Aug. 17, 2016), *available at* [http://michellawyers.com/wp-content/uploads/2016/08/Flanagan-v-Harris-Complaint\\_Conformed.pdf](http://michellawyers.com/wp-content/uploads/2016/08/Flanagan-v-Harris-Complaint_Conformed.pdf); see also Decl. of  
Steven H. Dember Supp. Pls.' Mot. Attys.' Fees on Appeal (Mar. 27, 2017) [describing separate  
legal status of CRPA and The CRPA Foundation].)



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  
East Ocean Boulevard, Suite 200, Long Beach, CA 90802.

6 On December 28, 2017, I served the foregoing document(s) described as:

7 **PLAINTIFFS' REPLY TO RESPONSE TO PLAINTIFFS' DOCUMENTATION RE FEES**

8 on the interested parties in this action by placing

9 [ ] the original

10 [x] a true and correct copy

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

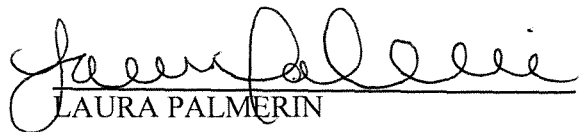
11 George Waters  
12 George.Waters@doj.ca.gov  
13 Deputy Attorney General  
14 1300 I Street, Suite 125  
Sacramento, CA 94244-2550

15 X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic  
16 transmission through One Legal. Said transmission was reported and completed without  
error.

17 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and  
18 processing correspondence for mailing. Under the practice it would be deposited with the  
19 U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach,  
20 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.

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

23 Executed December 28, 2017 at Long Beach, California.

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26 LAURA PALMERIN  
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