1 2	Anna M. Barvir, SBN 268728 Tiffany D. Cheuvront, SBN 317144 MICHEL & ASSOCIATES, P.C.	
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6		RESNO COUNTY SUPERIOR COURT By: I. Herrera, Deputy
7		
8	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	FOR THE C	OUNTY OF FRESNO
10	SHERIFF CLAY PARKER, TEHAMA COUNTY SHERIFF; HERB BAUER	Case No. 10CECG02116
11	SPORTING GOODS; CALIFORNIA RIFL AND PISTOL ASSOCIATION	E PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE
12		
13	AND STEVEN STONECIPHER,	ATTORNEYS' FEES ON APPEAL; MEMORANDUM OF POINTS &
14	Plaintiffs and Petitioners,	AUTHORITIES; DECLARATION OF MATTHEW D. CUBEIRO
15	vs.	
16	THE STATE OF CALIFORNIA; XAVIER BECERRA, in his official capacity as Attorn	Judge:Jeffrey Y. HamiltonneyDept.:402
17	General for the State of California; THE CALIFORNIA DEPARTMENT OF JUSTIC	Date: March 27, 2018
18	and DOES 1-25,	
19	Defendants and Respondents.	
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	MOTION FOR LEAVE TO	FILE SUPPLEMENTAL EVIDENCE

1	NOTICE OF MOTION & MOTION	
2	NOTICE IS HEREBY GIVEN that on March 27, 2018, at 3:30 p.m., or as soon thereafter	
3	as the matter may be heard, in Department 402 of this Court, located at 1130 O Street, Fresno, CA	
4	93721, Plaintiffs will and hereby to move for leave to file supplemental evidence in support of their	
5	pending motion for attorneys' fees on appeal.	
6	This request is based on this notice of motion, the attached memorandum of points and	
7	authorities, the attached Declaration of Matthew D. Cubeiro, the records on file to date in this	
8	matter, and on any further oral and documentary evidence as may be presented at the hearing.	
9	Date: February 7, 2018 Respectfully submitted, MICHEL & ASSOCIATES, P.C.	
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11	<u>s/ Anna M. Barvir</u> Anna M. Barvir	
12	Attorney for Plaintiffs	
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14	MEMORANDUM OF POINTS & AUTHORITIES	
15	With the hearing on Plaintiffs' Motion for Attorneys' Fees on Appeal being postponed until	
16	February 8, 2018, Plaintiffs move the Court for leave to submit updated evidence regarding the	
17	7 National Rifle Association of America's lack of pecuniary interest in this case. Specifically,	
18	Plaintiffs seek to provide excerpts of the NRA's 2016 IRS Form 990 and a declaration	
19	authenticating that document. Plaintiffs respectfully request this relief because the NRA's 2016 tax	
20	information was not made publicly available until after the final submission of evidence in this	
21	matter and because Plaintiffs previously submitted the organization's 2015 Form 990. It is in the	
22	dual interests of justice and judicial economy to accept for filing Plaintiffs' supplemental evidence.	
23	Recall, Plaintiffs successfully challenged three state laws regulating ammunition sales on	
24	constitutional vagueness grounds. (Pls.' Mot. Attys.' Fees on App. at pp. 1-2.) That victory was	
25	upheld on appeal. (Id. at p. 2.) As the prevailing party, Plaintiffs timely filed a motion for	
26	attorney's fees on appeal under Code of Civil Procedure section 1021.5. (See id.) After full	
27	briefing, the Court issued a tentative order denying Plaintiffs' fee request on the grounds that the	
28	individual plaintiffs had failed to show that they lacked a pecuniary interest in the outcome of the	
	2 MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE	

1 lawsuit because they had not established that they had personally borne the costs of litigation. 2 (Tent. Order at pp. 5-8, Sept. 13, 2017.) While the record shows that the CRPA Foundation did 3 fund the litigation, the Court indicated it would deny fees because the organization (or its members) 4 stood to gain financially from successfully striking the ammunition restrictions at issue in this case. 5 (Id. at pp. 9-10.) After the hearing, where Plaintiffs presented argument and drew the Court's 6 attention to record evidence establishing that the CRPA Foundation did not have sufficient 7 financial support from business entities to justify denying fees, the Court took the motion under 8 submission. (Law & Mot. Min. Order, Sept. 14, 2017.)

9 On November 29, 2017, the Court issued an Order After Hearing, partially granting
10 Plaintiffs' fee motion, awarding fees for "the sum of money [The CRPA Foundation] contributed to
11 the attorney's fees for this case." (Order After Hrg. at pp. 1, 9, Nov. 29, 2017 [also ordering
12 Plaintiffs to submit evidence of the amounts paid by the CRPA Foundation by December 5,
13 2017].)¹ The Court's Order After Hearing also held, however, that any amount paid by the NRA
14 (which is not a party to this case) would be unrecoverable because unlike the CRPA Foundation,
15 the Court assumed, the NRA does have significant firearm business support. (*Id.* at p. 9.)

16 In response to the Court's order for further evidence, Plaintiffs submitted evidence of the 17 CRPA Foundation's relevant credits and debits, as well as copies of CPRA Foundation payments 18 made to plaintiffs' counsel. (Decl. Haydee Villegas Suppl. Decl. Supp. Pls.' Mot. Attys.' Fees on 19 App. (Villegas Suppl. Decl."), ¶¶ 6-8, Exs. B &C.). To address the Court's concerns about the 20 NRA's firearms business supporters, Plaintiffs also submitted a copy of the NRA's 2015 IRS 990. 21 (Decl. Anna M. Barvir Suppl. Decl. Supp. Pls.' Mot. Attys.' Fees on App. (Barvir Suppl. Decl."), ¶ 22 2, Ex. A.) At the time of that filing—December 8, 2017—the 2015 record was the most recent 23 NRA Form 990 widely available. (Barvir Suppl. Decl., ¶ 2; Decl. of Matthew D. Cubeiro Supp. 24 Pls.' Mot. Leave File Suppl. Evid. ("Cubeiro Decl."), ¶ 3.)

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¹ As Plaintiffs' counsel has previously declared, Plaintiffs did not receive notice or a copy
of the Court's November 29 Order After Hearing until the late afternoon of December 5, 2017.
(Pls.' Ntc. of Untimely Receipt of Order After Hrg. & Late Filing at pp. 1-2, Dec. 5, 2017; Decl. of
Anna M. Barvir at ¶¶ 3, 6, Dec. 5, 2017; Decl. of Haydee Villegas at ¶¶ 4-5, Dec. 5, 2017.)

MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE

In the time since Plaintiffs submitted the NRA's 2015 IRS Form 990, however, the	
organization's 2016 Form 990 was released for public viewing. (Cubeiro Decl., \P 4.) Like the 2015	
form previously submitted, the 2016 Form 990 again shows that the NRA receives a majority of its	
revenue from individuals and only 5% of its annual revenue is attributed to "companies and	
executive in the firearms, hunting, and shooting sports industries." (Decl. of Matthew D. Cubeiro	
Supp. Pls.' Mot. Attys.' Fees on App., Ex. D, Schedule O, p. 2.)	
It is proper that Plaintiffs submit this updated information to the Court, so that the Court	
may have at it disposal and weigh the most up-to-date evidence relevant to Plaintiffs' pending fee	
motion. Plaintiffs respect and appreciate the Court's schedule and time, and they desire to prevent	
the waste of the Court's and the parties' resources that may arise if this evidence were brought in a	
1 motion for reconsideration or other relief. As such, they request leave to submit the NRA's 2016	
2 IRS Form 990 in good faith, believing that it will likely to assist the Court in ruling on the	
Plaintiffs' Motion for Attorneys' Fees on Appeal.	
Date: February 7, 2018Respectfully submitted,	
MICHEL & ASSOCIATES, P.C.	
s/ Anna M. Barvir	
Anna M. Barvir Attorney for Plaintiffs	
4 MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE	

DECLARATION OF MATTHEW D. CUBEIRO

2 I, Matthew D. Cubeiro, declare as follows:

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I. I am an Associate Attorney employed by Michel & Associates, P.C., attorneys of record
 for Plaintiffs in this action. I am licensed to practice before the courts in the State of California, and
 I am currently in good standing. I have personal knowledge of each fact stated in this declaration,
 except stated on information and belief and as to those facts I believe them to be true.

7 2. On or about December 6, 2017, I researched and located the 2015 IRS Form 990 for the
8 National Rifle Association of America as published on <u>https://projects.propublica.org/nonprofits/</u>
9 organizations/530116130.

3. At that time, there was no more recent IRS Form 990 for the NRA publicly available on
 <u>https://projects.propublica.org/nonprofits/organizations/530116130</u> or on any other website that I
 could find. So, I forwarded the 2015 record to Anna M. Barvir, counsel of record in this case, for
 use in support of Plaintiffs' fee motion.

4. Several weeks later, after the deadline for submission of further evidence in this
matter had passed, I was made aware that the NRA's 2016 IRS Form 990 had been recently made
available for public viewing at <u>https://assets.documentcloud.org/documents/4343410/NRA-2016-</u>
<u>990.pdf</u>. I visited that website and, from there, reviewed the record and confirmed that it would
assist the court in weighing Plaintiffs' Motion for Attorneys' Fees on Appeal. I thus forwarded the
2016 to Ms. Barvir for her consideration.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th
day of February 2018, in Long Beach, California.

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Matthew D. Cubeiro Declarant

1	PROOF OF SERVICE	
1 2	STATE OF CALIFORNIA COUNTY OF FRESNO	
3	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.	
5	On February 7, 2018, I served the foregoing document(s) described as:	
6 7 8	PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ON APPEAL; MEMORANDUM OF POINTS & AUTHORITIES; DECLARATION OF MATTHEW D. CUBEIRO	
9 10 11 12	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	
13 14 15	Sacramento, CA 94244 Counsel for Defendants and Respondents X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic transmission through One Legal. Said transmission was reported and completed without	
16 17 18 19	X (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 firm's 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.	
20 21	\underline{X} (<u>STATE</u>) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	
22	Executed on February 7, 2018, at Long Beach, California	
23 24	LAURA PALMERIN	
24		
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	PROOF OF SERVICE	