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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

SHERIFF CLAY PARKER, TEHAMA
COUNTY SHERIFF; HERB BAUER
SPORTING GOODS; CALIFORNIA RIFLE
AND PISTOL ASSOCIATION
FOUNDATION; ABLE'S SPORTING, INC.;
RTG SPORTING COLLECTIBLES, LLC;
AND STEVEN STONECIPHER,

Plaintiffs and Petitioners,

vs.

THE STATE OF CALIFORNIA; XAVIER
BECERRA, in his official capacity as Attorney
General for the State of California; THE
CALIFORNIA DEPARTMENT OF JUSTICE;
and DOES 1-25,

Defendants and Respondents.

Case No. 10CECG02116

**PLAINTIFFS' REPLY TO OPPOSITION
TO MOTION TO FILE SUPPLEMENTAL
EVIDENCE IN SUPPORT OF MOTION
FOR ATTORNEYS' FEES ON APPEAL;
DECLARATION OF ALEXANDER A.
FRANK**

Judge: Jeffrey Y. Hamilton
Dept.: 402
Date: March 27, 2018
Time: 3:30 p.m.

Action Filed: June 17, 2010

INTRODUCTION

Defendants present two arguments against Plaintiffs' Motion to File Supplemental Evidence. First, Defendants argue that the evidence Plaintiffs seek to present is unresponsive to the Court's initial request for supplemental evidence, as set forth in the Court's November 29, 2017 Order After Hearing. Second, Defendants argue that the proffered evidence was not properly authenticated. Neither argument is of any consequence. All Plaintiffs seek to provide is the most up-to-date version of a relevant document already submitted to the Court. And there is no genuine basis to challenge the reliability of that document. Consequently, Plaintiffs respectfully request that the Court grant Plaintiffs' motion and admit the requested supplemental evidence.

ARGUMENT

I. THE PROFFERED IRS FORM 990 IS RELEVANT AND RESPONSIVE TO CONCERNS RAISED IN THE COURT'S ORDER AFTER HEARING

Defendants' argument that the motion to file supplemental evidence should be denied because the proposed evidence is unresponsive to the Court's Order After Hearing lacks merit. As an initial matter, Plaintiffs *did* answer the Court's specific demand for evidence regarding CRPA Foundation's financial contribution to this litigation, presenting the sworn statements of Michel & Associates employees, as well as the ledger of CRPA Foundation amounts owed and amounts paid. (See Suppl. Villegas Decl., ¶¶ 6-8, Exs. B-C.) They further presented authorities regarding the sufficiency of that documentation in their reply to Defendants' court-ordered response. (See Pls.' Reply to Defs.' Resp. to CRPA Doc. Re Fees, pp. 6-7.) The evidence Plaintiffs seek to present via the present motion, as well as the 2015 IRS Form 990 submitted in December 2017, while not evidence of CRPA Foundation's financial contribution to this litigation, is relevant to Plaintiffs' fee motion in light of concerns raised by the Court's Order After Hearing.

As an initial matter, the NRA's 2016 IRS 990 form is merely the most up-to-date version of the form Plaintiffs already provided to the Court. That does not change the relevance of the information contained in any way—relevance which is manifest. In the Court's Order After Hearing, which signaled an intention to deny fee recovery to the extent the NRA funded the litigation but to grant fees to CRPA Foundation, the Court noted that a basis for the decision was its

1 finding that the CRPA Foundation has “negligible corporation and business membership,” but that
2 “the same cannot be said of the NRA.” (See Order, p. 9.) Rather, the Court preliminarily held that
3 “it may be inferred ‘[NRA’s] very existence depends upon the economic vitality of its members
4 and any benefit or burden derived by [NRA] from this lawsuit ultimately redounds to the
5 membership.’ ” (*Ibid.*) The order cites online information about how corporate and commercial
6 entities can financially contribute to the NRA’s activities as the basis for this contention. (*Id.*, p. 9,
7 fn. 2, citing [https://www.nraringoffreedom.com/guide-to-giving/ways-to-donate/corporate-](https://www.nraringoffreedom.com/guide-to-giving/ways-to-donate/corporate-partners/)
8 [partners/](https://www.nraringoffreedom.com/guide-to-giving/ways-to-donate/corporate-partners/).) But it cites nothing establishing whether and to what extent such entities actually donate
9 to the organization. (*Ibid.*) The Court’s order, raising for the first time the concern that the NRA
10 has a disqualifying pecuniary interest because its “very existence depends on the economic vitality
11 of its members,” incorrectly assumes that the NRA receives so much corporate support that it could
12 not or would not exist without it. (*Ibid.*)

13 Plaintiffs’ present request, as well as the previously filed 2015 IRS Form 990, merely seeks
14 to bring to the Court’s attention evidence proving the limited extent of corporate and commercial
15 contribution to the NRA. (Decl. of Matthew D. Cubeiro Supp. Pls.’ Mot. Attys.’ Fees on App., ¶ 2,
16 Ex. D; Decl. Anna M. Barvir Suppl. Decl. Supp. Pls.’ Mot. Attys.’ Fees on App., ¶ 2, Ex. A.)
17 Plaintiffs’ proffered evidence shows that the online information the Court referenced in its order is
18 not proof that the NRA has “considerable” corporate and business membership, and in fact is truly
19 no different than the CRPA Foundation is in this important regard. The proposed evidence will
20 indeed show that the NRA, like the CRPA Foundation, obtains the clear majority of its funds from
21 dues-paying individuals and not commercial interests. In other words, it is not a trade association
22 passing itself off as a civil rights concern. As such, the same rationale the Court employed to grant
23 the CRPA Foundation’s fees here ought to be employed to grant the remainder of the fees incurred
24 in this case. All Plaintiffs seek to do here is support the evidentiary record on this point.

25 Further, Plaintiffs’ submission of the NRA’s tax forms neither wastes the Court’s time nor
26 unfairly prejudices Defendants. For the Court re-opened the record to the admission and
27 consideration of further evidence after briefing was completed, specifically giving Defendants the
28 opportunity to weigh in on Plaintiffs’ supplemental evidence.

1 **II. THE PROFFERED IRS FORM 990 IS RELIABLE AND SHOULD BE ADMITTED**

2 The NRA's 2016 IRS Form 990 is simply the most up-to-date version of the same form
3 from 2015 that Plaintiffs have already submitted. Defendants' insistence that the form has not been
4 properly authenticated because it came from a third-party hosted website does not equate to a
5 reasonable concern about the document's authenticity or reliability. While the document was
6 available only at <https://assets.documentcloud.org/documents/4343410/NRA-2016-990.pdf> at the
7 time Plaintiffs sought leave to file it, identical copies are now available in various online locations,
8 including highly regarded sites for the publication of tax-exempt organizations' financial
9 information, including ProPublica, Foundation Center, and GuideStar.¹ The Court should have no
10 genuine concern as to its authenticity or reliability.

11 **CONCLUSION**

12 Because Plaintiffs' new evidence is clearly relevant to a material issue in the consideration
13 of Plaintiffs' fee motion, it should be admitted. Defendants' opposition presents no legitimate
14 reason that the Court should hold otherwise. Plaintiffs respectfully request the motion to file
15 supplemental evidence be granted.

16 Date: March 20, 2018

MICHEL & ASSOCIATES, P.C.

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18 s/ Anna M. Barvir
19 Anna M. Barvir
20 Attorney for Plaintiffs

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22 ¹ Decl. of Alexander A. Frank Supp. Reply, ¶ 3; ProPublica, Nonprofit Explorer: Research
23 Tax-Exempt Organizations, <https://projects.propublica.org/nonprofits/> (last visited March 20, 2018)
24 (provides a "database of summaries of 3 million tax returns from tax-exempt organizations and see
25 financial details such as their executive compensation and revenue and expenses," as well as "full
26 Form 990 documents wherever possible"); Foundation Center, Mission, Vision, Values,
27 <http://foundationcenter.org/about-us/mission-vision-values> (last visited March 20, 2018)
28 ("Foundation Center is the leading source of information about philanthropy worldwide. Through
data, analysis, and training, it connects people who want to change the world to the resources they
need to succeed."); GuideStar, About Us, <https://learn.guidestar.org/about-us/> (last visited March
20, 2018) ("Here at GuideStar we gather and disseminate information about every single IRS-
registered nonprofit organization. We provide as much information as we can about each
nonprofit's mission, legitimacy, impact, reputation, finances, programs, transparency, governance,
and so much more.")

1 **DECLARATION OF ALEXANDER A. FRANK**

2 I, Alexander A. Frank, declare as follows:

3 1. I am an attorney at the law firm Michel & Associates, P.C., attorneys of record for
4 Plaintiffs in this action. I have personal knowledge of the facts set forth herein and, if called and
5 sworn as a witness, could and would testify competently thereto.

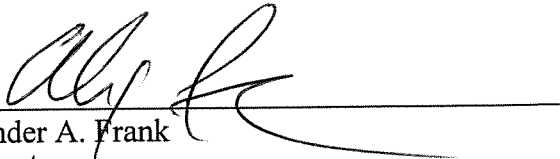
6 2. On March 16, 2018, I researched the availability of the NRA's IRS form 990 filings
7 on the internet. I discovered that various non-government websites have obtained these filings and
8 made them easily accessible for public viewing.

9 3. Copies of the NRA's 2016 IRS Form 990 are viewable on several websites that are
10 well-regarded for, among other things, their collection and publication of tax-exempt
11 organizations' financial information. As of the filing of this declaration, the 2016 IRS form 990 for
12 the NRA is viewable on at least three such websites. Those websites are viewable at the following
13 URLs, each of which I personally visited on or about March 20, 2018.

- 14 • ProPublica Nonprofit Explorer: [https://projects.propublica.org/nonprofits/](https://projects.propublica.org/nonprofits/organizations/530116130)
15 [organizations/530116130](https://projects.propublica.org/nonprofits/organizations/530116130) (last visited March 20, 2018);
16 • Foundation Center: [http://990s.foundationcenter.org/990_pdf_archive/530/](http://990s.foundationcenter.org/990_pdf_archive/530/530116130/530116130_201612_990O.pdf)
17 [530116130/530116130_201612_990O.pdf](http://990s.foundationcenter.org/990_pdf_archive/530/530116130/530116130_201612_990O.pdf) (last visited March 20, 2018);
18 • GuideStar: <https://www.guidestar.org/profile/53-0116130> (last visited March 20,
19 2018).

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Dated: March 20, 2018

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Alexander A. Frank
Declarant

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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 20, 2018, I served the foregoing document(s) described as:

**PLAINTIFFS' REPLY TO OPPOSITION TO MOTION TO FILE SUPPLEMENTAL
EVIDENCE IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ON APPEAL;
DECLARATION OF ALEXANDER A. FRANK**

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
Sacramento, CA 94244
Email: george.waters@doj.ca.gov

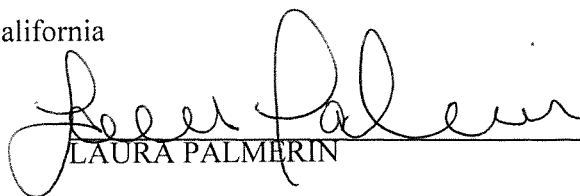
Counsel for Defendants and Respondents

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 error.

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.

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

Executed on March 20, 2018, at Long Beach, California


LAURA PALMERIN

PROOF OF SERVICE