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Attorneys for Defendant

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JAMES LINLOR, an individual, pro se,

Plaintiff,

vs.

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,

Defendant.

CASE NO. 17-cv-00203-MMA-JMA

DECLARATION OF C.D. MICHEL IN SUPPORT OF DEFENDANT'S MOTION FOR SECOND REQUEST FOR ATTORNEYS' FEES

Date: August 7, 2017
Time: 2:30 p.m.
Courtroom: 3D

DECLARATION OF C.D. MICHEL

I, Carl Dawson Michel, declare as follows:

1. I am the Senior Partner at Michel & Associates, P.C. and an attorney for Defendant in *James Linlor v. National Rifle Association of America*, 17-cv-00203-MMA-JMA. I am familiar with the record and all of the proceedings in this case, have personal knowledge of each facts stated in this declaration, and if called as a witness could competently testify to the facts contained in this declaration.

Defense Counsel's Background and Experience

2. In 1989, I graduated from Loyola Law School with a J.D. I have over 25 years of legal experience, beginning my career as a judicial clerk for the United States District Judge William J. Rea of the United States District Court in Los Angeles. I later worked as a criminal prosecutor and as an advocate with the Los Angeles Federal Public Defender's office.

3. I also practiced environmental and general civil litigation at the internationally renowned law firm O'Melveny & Meyers, LLP. During my career at O'Melveny & Meyers, LLP, I represented all manner of clients, from individuals to multinational corporations, and I gained extensive and varied experience handling all aspects of complex litigation. My experience includes representing Exxon Corporation regarding the Exxon Valdez oil spill, and serving as Staff Counsel to the "Christopher Commission," which investigated the Los Angeles Police Department in the wake of the Rodney King incident.

4. I have acted as lead counsel in more than 50 jury trials, and I have represented clients in numerous high-profile cases, garnering significant local, state, and national media attention.

5. I have also handled several notable firearms civil rights cases, and have been profiled several times in recognition of my firearms work in magazines, newspapers, and other publications. Most recently, I was profiled by the *California Lawyer* magazine in a feature cover article.

6. I have also published several articles, editorials, and other publications on issues of firearms law and civil rights, including the book *California Firearm Laws: A Guide to State and Federal Firearm Regulations*, the first in-depth and comprehensive treatment of state and federal firearms laws for California gun owners, judges, police, and attorneys.

7. I have conducted dozens of presentations and continuing legal education seminars on firearms law and the Second Amendment. I have appeared as a spokesperson for the National Rifle Association of America and the California Rifle & Pistol Association, Incorporated, in dozens of television and radio interviews. And I have served as an Adjunct Professor and Chapman University School of Law, where I taught courses on firearms law and law practice management.

8. Fourteen years ago, in *Madrid v. City of Los Angeles* (2003), the court found it reasonable for me to be compensated at a rate of $350 per hour. Attached hereto as Exhibit A, is a true and correct copy of the *Madrid* Stipulation for Dismissal, indicating my stipulated hourly rate in 2003.

9. Twelve years ago, in *California Side By Side Society v. City of Los Angeles* (2005), the court found it reasonable for me to be compensated at a rate of $375 per hour. Attached hereto as Exhibit B is a true and correct copy of the Notice of Motion and Motion for Attorney's Fees and Memorandum of Points and Authorities in Support, including the chart of hourly rates submitted in support thereof. Attached hereto as Exhibit C, is a true and correct copy of the *California Side By Side* Ruling on Plaintiffs' Motion for Attorney's Fees, approving plaintiffs' lodestar figure, including my hourly rate in 2005.

10. It has been recognized that firearms civil rights litigation attorneys charge rates within the range corresponding to the experience-level categories identified below:

/ / /

1 to 3 years	$255/hr to $450/hr
4 to 7 years	$480/hr
8 to 10 years	$650/hr
11 to 20 years	$640/hr to $800/hr
20+ years	$760/hr to $950/hr

The above rates were standard for each attorney who assisted in litigating *Parker (Heller) v. District of Columbia* during the period that the attorneys' services were rendered. Attached hereto as Exhibit D, is a true and correct copy of the Notice of Filing filed with the United States District Court of the District of Columbia in *Parker*.

11. Michel & Associates, P.C., is one of the largest, most recognized, and well-respected firearm practices in the nation, having represented gun-rights organizations, firearm retailers and manufacturers, and individual gun owners in countless actions throughout California. In fact, Defendant National Rifle Association of America has been a client of Michel & Associates (formerly Trutanich • Michel, LLP) for over two decades and has received legal counsel state-wide in both federal and state court in numerous areas of the law, including civil litigation, firearms law, and constitutional law.

12. Given that this lawsuit related to Defendant's membership notices and was initially filed in the San Diego Superior Court, Defendant elected to retain its my firm to defend this matter. Defendant's decision was based on the fact that Defendant is aware Michel & Associates, P.C. has a successful civil litigation practice *in addition to* its firearms law practice. Defendant's decision was also based on the fact that it would be unfamiliar with any new counsel's experience, expertise, or specialization.

13. Michel & Associates, P.C. used to have an attorney based in San Diego to assist with matters remotely, but this attorney has passed away.

14. Regardless of Michel & Associates, P.C.'s location, its attorneys'

hourly rates are reasonable in the San Diego legal community, as corroborated by attorneys Alan Beck and Darryl Yorkey. *See* Declarations of Alan Beck and Darryl Yorkey filed simultaneously herewith.

Role in Case

15. During the litigation for which Defendant seeks fees, I was categorized by Michel and Associates, P.C., as a "Partner.". My $600 hourly rate is well within the hourly rate charged by attorneys of similar skill, experience, and expertise in Los Angeles County. Attached hereto as Exhibit E is a true and correct copy of Michel & Associates, P.C.'s hourly rate schedule for civil matters like this one. These rates are consistent with, if not lower than, rates charged by comparable attorneys in or around Los Angeles, California.

16. I spent 2.1 hours assisting the Managing Partner, Joshua Robert Dale, and a former Associate, Ben A. Machida, with defending Defendant in the above-captioned matter.

17. I was primarily responsible for supervising the work of all professionals working on this matter and directing the course of the litigation. Specifically, my 2.1 hours included engaging in settlement negotiations with Plaintiff via email and telephone to discuss dismissing his lawsuit, as well as discussing and developing litigation strategy with my client's representatives and colleagues.

Authentication of Billing

18. Defendant's billing records, attached to the Declaration of Haydee Villegas-Aguilar filed simultaneously herewith, include true and accurate copies of my billing records for which fee recovery is sought. The records include detailed descriptions of the work I performed on this case.

19. In the regular course and scope of my daily business activities, I prepared descriptions contained in each billing record that shows my name as the "Timekeeper," and I did so at or near the time of the occurrence of the work that I

performed on this matter.

20. The descriptions contained in my billing records are a fair and accurate description of the work I performed on this matter and time spent on each tasks. In my professional judgment, the amount of time indicated for each task described in my billing records is a reasonable amount of time for me to have spent on the type of work described therein.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 22nd day of June, 2017.

/s/ C.D. Michel
C.D. Michel
Declarant

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Ruby Belyeu, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On June 22, 2017, I served the foregoing document(s) described as

DECLARATION OF C.D. MICHEL IN SUPPORT OF DEFENDANT'S MOTION FOR SECOND REQUEST FOR ATTORNEYS' FEES

on the interested parties in this action by placing
[ ] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

James Linlor
P.O. Box 231593
Encinitas, CA 92023

In Pro Per

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, 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.
Executed on June 22, 2017, at Long Beach, California.

__ (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.

__ (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 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.

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

X (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.

Ruby Belyeu
RUBY BELYEU

Exhibit A

ROCKARD J. DELGADILLO, City Attorney
GARY G. GEUSS, Assistant City Attorney
DON W. VINCENT, Assistant City Attorney
1650 City Hall East
200 North Main Street
Los Angeles, California 90012-4130
Telephone: (213) 485-1430
Facsimile: (213) 485-3958

Attorneys for Defendant City of Los Angeles, a municipal corporation, also erroneously sued as Los Angeles Police Department, a nonsuable entity

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DIANA MADRID, BAD BOY BAIL BONDS, Inc., a California Corporation, JEFF STANLEY, CRAIG STANLEY, CYNTHIA STANLEY,

Plaintiff,

vs.

CITY OF LOS ANGELES, a Municipality; LOS ANGELES POLICE DEPARTMENT; JAMES HAHN and MARTIN POMEROY in their official capacities as Mayor and Police Chief of LOS ANGELES; LAPD CAPTAIN BECK; LAPD WATCH COMMANDER SERGEANT GEORGE CAULFORD; LAPD SERGEANT LEWIS; and LAPD OFFICERS; SIMMS and ROBINSON,

Defendants.

CASE NO. CV 02-5990 DDP (Mcx)

STIPULATION FOR DISMISSAL [F.R.C.P. 41(a)]

FILED
CLERK U.S. DISTRICT COURT
01-08-03
JAN - 8 2003
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Filed

IT IS HEREBY STIPULATED by and between the parties DIANA MADRID, BAD BOY BAIL BONDS, Inc., a California corporation, JEFF STANLEY, CRAIG STANLEY, CYNTHIA STANLEY, (hereinafter referred to as "Plaintiffs") and the CITY OF LOS ANGELES, including any and all other named and unknown Defendants (hereinafter "Defendants"), to this action through their designated counsel as follows:

The Plaintiffs and Defendants have settled and resolved all of Plaintiffs' claims, asserted in the Complaint filed on July 31, 2002, the United States Central District Court.

ENTERED
JAN 10 2003

Los Angeles, entitled Diana Madrid v. City of Los Angeles, Case Number CV02-05990. The lawsuit for Deprivation of Constitutional Rights and Pendent State Claims included Causes of Action for: 1) Arbitrary and Uncontrolled Discretion Regarding Exercise of Free Expression Rights; 2) Vagueness, Chilling Effect on Exercise of Free Expression Rights; 3) No Public Purpose for Interference with Free Expression Rights; 4) No Public Purpose for Interference with Free Expression Rights.

In exchange for and in consideration of the covenants contained herein, Plaintiffs agree to dismiss, with prejudice, all of the claims against all Defendants in the above-mentioned lawsuit.

I. AGREEMENT

a. Release And Discharge

Plaintiffs acknowledge that in consideration of the covenants contained in this Agreement and the payments called for by this Agreement, Plaintiffs, for themselves, their executors, administrators and assignees, fully and forever release, waive and discharge all Defendants, including but not limited to CITY OF LOS ANGELES, a Municipality; LOS ANGELES POLICE DEPARTMENT; JAMES HAHN and MARTIN POMEROY in their official capacities as Mayor and Police Chief of LOS ANGELES; LAPD CAPTAIN BECK; LAPD WATCH COMMANDER SERGEANT GEORGE CAULFORD; LAPD SERGEANT LEWIS; and LAPD OFFICERS; SIMMS and ROBINSON, as well as all other named and unknown (doe) Defendants, from any and all liability in connection with the events alleged in said lawsuits, and further discharge the City's executors, administrators and assigns, and all other persons, firms, associations, corporations, attorneys, and each of them, from any and all past, present or future claims, demands, obligations, actions, causes of action, fee claims, rights, damages, costs, losses of services, attorneys fees and expenses and compensation of any nature whatsoever, which Plaintiffs may or might have against Defendants and all named and unknown (DOE) Defendants, by reason of any damages or injuries whatsoever sustained by Plaintiffs, either directly or indirectly arising from the claims asserted in the above-

mentioned Civil Complaint. This shall be a fully binding and complete Settlement Agreement between Plaintiffs and Defendants, their assigns and successors.

b. Payments

In consideration for this Stipulation for Dismissal, Defendants acknowledge as follows:

A. That the ordinance is constitutionally invalid;

B. That the City of Los Angeles will be required to repeal the ordinance;

C. The City of Los Angeles will pay to the plaintiffs $1,137.00 in nominal damages;

D. The City of Los Angeles will pay plaintiffs' attorneys fees and costs as follows:

1. $13,000.00 to Don B. Kates for 32.5 hours @ $400/hr.
2. $9,000.00 to Donald Kilmer for 30 hours @ $300/hr.
3. $1,544.00 to Trutanich & Michel broken down as follows:
   a. $840 for Chuck Michel for 2.4 hours @ 350/hr.
   b. $704 for Haydee Villegas for 6.4 hours @$110/hr.
4. $319.00 for filing fees, copy charges and service of process.

Payment will be made within 30 days of filing the dismissal. The instrument of payment will be made out payable to: "Attorney/Client Trust Account of the Law Offices of Donald Kilmer."

Plaintiffs specifically acknowledge and agree that in consideration for the sum paid and foregoing agreement by the Defendants included in this Stipulation, Plaintiffs now and forever waive any claim against Defendants, as well as all named and unknown (DOE) Defendants, for additional attorneys fees or costs, including those which may have been otherwise available under the laws of the State of California or any other state or territory.

That the above captioned action be and hereby is dismissed with prejudice, against the Defendants, CITY OF LOS ANGELES, a Municipality; LOS ANGELES POLICE

DEPARTMENT; JAMES HAHN and MARTIN POMEROY in their official capacities as Mayor and Police Chief of LOS ANGELES; LAPD CAPTAIN BECK; LAPD WATCH COMMANDER SERGEANT GEORGE CAULFORD; LAPD SERGEANT LEWIS; and LAPD OFFICERS; SIMMS and ROBINSON and each of its employees pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, with each side to bear their own costs.

DATED: Dec 17, 2002 Respectfully submitted,

LAW OFFICES OF DONALD KILMER

By: _____
DONALD E. J. KILMER, JR.

Attorney for Plaintiffs DIANA MADRID, BAD BOY BAIL BONDS, Inc., a California Corporation, JEFF STANLEY, CRAIG STANLEY, CYNTHIA STANLEY

DATED: December 3, 2002

ROCKARD J. DELGADILLO, City Attorney
GARY G. GEUSS, Assistant City Attorney
DON W. VINCENT, Assistant City Attorney

By: _____
DON W. VINCENT

Attorneys for Defendants, City of Los Angeles, et al.

ORDER

The parties having so stipulated and good cause appearing, it is hereby ordered, decreed and adjudged that the plaintiffs' complaint be dismissed with prejudice in its entire action.

DATED: 1-3-03

_____
HONORABLE DEAN D. PREGERSON
United States District Judge

Exhibit B

C. D. Michel - S.B.N. 144258
Glenn S. McRoberts - S.B.N. 144852
Don B. Kates - S.B.N. 039193
Jason A. Davis - S.B.N. 224250
TRUTANICH • MICHEL, LLP
180 East Ocean Ave.
Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Facsimile: 562-216-4445

Attorneys for Plaintiffs

FILED
CLERK, U.S. DISTRICT COURT
JUL 26 2005
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CALIFORNIA SIDE BY SIDE SOCIETY, CALIFORNIA ASSOCIATION OF FIREARMS RETAILERS, FIFTY CALIBER SHOOTERS ASSOCIATION, BARRETT FIREARMS MANUFACTURING, INC., CALIFORNIA RIFLE AND PISTOL ASSOCIATION, EDM ARMS, SPORTS AFIELD, and ROBERT KAHN Plaintiffs, v. CITY OF LOS ANGELES a municipality; and Does 1 - 10, Defendants.	CASE NO. EDCV04 - 01395 GAF (SGLX) **NOTICE OF MOTION AND MOTION FOR AWARD OF REASONABLE ATTORNEY'S FEES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS IN SUPPORT THEREOF** Date: August 29, 2005 Time: 9:30 a.m. Courtroom: 740

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CALIFORNIA STATE STATUTE

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT at 9:30 a.m. on August 29, 2005, or as soon thereafter as counsel may be heard, at the United States District Court for the Central District of California, Western Division, Roybal Building, 255 East Temple Street, Los Angeles, CA, Judge Gary A. Feess, Courtroom 740, plaintiffs will move for an order awarding reasonable attorney fees as they were "prevailing parties" in this case.

This motion is based upon the preliminary injunction issued by this court on May 2, 2005, which enjoined the operation of defendants' ordinance in certain respects. These issues became moot when defendants subsequently amended the ordinance in response to this lawsuit, wherefore plaintiffs are the prevailing party in those respects and are entitled to an award of attorney's fees under 42 U.S.C. §1988.

This motion is based upon this notice, the attached memorandum of points and authorities, the declarations in support thereof, and the complete files and records of this action, and such evidence as may be presented on the hearing of the motion.

Date: July 26, 2005

TRUTANICH • MICHEL, LLP:

C.D. Michel
Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On May 2, 2005, this Court granted Plaintiffs' Motion for Preliminary Injunction in part, finding that the City of Los Angeles' Large Caliber Firearm ("LCF") ordinance was preempted by state law as to its regulation of .50 caliber BMG rifles, and that an exception to the ordinance violated the equal protection clause of the United States Constitution. The City has amended its ordinance to comply with the Court's ruling. Thus plaintiffs have succeeded on two significant claims and have achieved the "judicial imprimatur" necessary to support an award of attorney's fees.

BACKGROUND

On June 10, 2003 defendant City of Los Angeles ("the City") enacted the ordinance involved in this case (hereinafter "Ordinance") banning the sale of rifles of .50 caliber.

The California Legislature enacted a ban on sale of .50 caliber BMG rifles on August 25, 2005, which became effective on January 1, 2005. It did so by bringing those rifles under the Assault Weapons Control Act (hereinafter "AWCA"), although those rifles are not, in fact, "assault weapons."

The City now concedes that the state enactment preempted the Ordinance as to .50 caliber BMG rifles. But the state enactment did not cause the City to exempt .50 caliber BMG rifles from the Ordinance, which continued to ban the acquisition or sale of .50 caliber BMG rifles by Los Angeles firearms dealers even to persons who had licenses or permits issued by the California Department of Justice (hereinafter "DOJ") to possess and transfer those rifles.

Prior to the passage of the City's ordinance, counsel for plaintiffs Jason Davis appeared before the City Council and indicated that the ordinance would be preempted by pending state legislation – AB50 – if that legislation should pass.

Further after AB50 passed in the state legislature, Mr. Davis informed the City Attorney's office on multiple occasions that the ordinance was preempted by state law. Nonetheless, the City refused to repeal the ordinance. (Declaration of Jason Davis, attached as Exhibit A at ¶6.)

Plaintiffs filed this lawsuit on November 5, 2004, eleven months after the state law took effect, and after it became apparent that the City was not going to repeal or cease enforcement of the Ordinance. The City asked plaintiffs for, and received, extensions of time to respond to their Complaint. In mid-February, 2005, the city attorney handling the case (hereinafter "opposing counsel") stated his intention to file a motion to dismiss based on standing grounds, and objecting to plaintiffs' inclusion of the police chief as a defendant. Plaintiffs' counsel responded with a memorandum showing that plaintiffs did have standing, but to avoid litigating a tangential issue plaintiffs nonetheless agreed to drop the police chief, the mayor, and the City Clerk from the case. As a result of this agreement, the City answered plaintiffs' complaint rather than filing a motion to dismiss.

Subsequently plaintiffs informed opposing counsel that they were preparing a motion for a preliminary injunction. Opposing counsel responded by mentioning that the Ordinance might be amended in some unspecified respect. Plaintiffs agreed to consider holding off on the motion subject to their being supplied with a copy of the proposed amendment. Weeks passed. Plaintiffs were never supplied with a copy of any proposed amendment. Inquiries of the Los Angeles City Clerk's office, with which any proposed amendment would have to be filed, elicited the information that no such proposed amendment had been filed with the City Clerk or was pending before the City Council. And in discussion with the city attorney handling the case, the City was unable to tell plaintiffs what the amorphous amendment proposed to affect – though, if any such amendment had been under consideration it would have been drafted by the Office of the City Attorney.

Plaintiffs therefore proceeded to file their motion, which they had been

preparing well before they were informed of the supposed amendment. In sum, plaintiffs sought the preliminary injunction in this case because their prior experience with the City indicated that unless they did so nothing would happen.[1]

---

[1] To understand that decision it is useful to consider the experiences of similar plaintiffs in such cases against CITY:

California Rifle & Pistol Ass'n. et al v. City of Los Angeles et al. L.A. Superior Court # BC 292730. This case involved a City ordinance banning "assault weapons." This ordinance was preempted by the state AWCA, Penal Code 12275ff. In 1997, the plaintiffs in this case wrote the City asking that the ordinance be repealed, and noting federal and state due process and other constitutional problems, as well as preemption issues. During the ensuing six years, the City Attorney repeatedly informed the Los Angeles City Council that its ordinance was void and requested a repeal of the ordinance. Finally, in 2003, the plaintiffs sued to void the ordinance. Only after that suit was filed, did the City repeal that ordinance – all the while claiming both to the plaintiffs and to the court that the ordinance had never been enforced. But the plaintiffs' freedom of information request elicited the information that at least three arrests had been made under that ordinance since 1995. (The City Attorney's records were too spotty to show what had happened in those cases, or whether there had been other arrests.) Moreover, at the very time that the City was claiming that ordinance had never been enforced the City was engaged in a major civil law suit to enforce that ordinance against firearms manufacturers and sellers. The City also claimed that its repeal of that ordinance was not related to the lawsuit and that the timing of the repeal was just coincidental. But plaintiffs secured a videotape of the Los Angeles City Council meeting in which the repeal occurred. The discussion of repeal featured an exchange in which a city councilman asked the deputy city attorney if the point of the repeal was to get rid of the lawsuit. The city attorney replied in the affirmative. (See declaration of C.D. Michel, attached as Exhibit B, at ¶15.)

Madrid v. City of Los Angeles U.S. Dist. Ct. (Central District) #CV 02-5990 DDP. In this case, employees of a bail bond company which is a client of this office were threatened with arrest by the Los Angeles Police Department ("LAPD") for distributing leaflets explaining the principles of bail and advertising the company. The threat was made under a Los Angeles Municipal Code section that had been declared unconstitutional by the California Supreme Court twenty-five years earlier – but never repealed by the City. The City Attorney's Office had advised LAPD to enforce it against our client. Calling the city attorney involved produced no response. Faxing the city attorney a copy of the draft 1983 complaint produced a promise that the City would look into the matter a get back to plaintiffs in a day or two. When a week's time and several phone calls produced no response, the case was filed and a copy of the complaint was served. Even this produced no response. But filing a motion for a preliminary injunction produced a promise of a settlement which was entered into, and an order of dismissal issued pursuant to the settlement. One of the provisions of the court order was that the ordinance would at long last be repealed. (See declaration of Donald Kilmer submitted herewith as Exhibit C.)

This Court denied plaintiffs' preliminary injunction motion in most respects. But it held plaintiffs had demonstrated both probable success and balance of hardships on two points: (a) that the Ordinance is preempted in relation to .50 cal. BMG rifles which the state AWCA covers and regulates differently; and (b) that equal protection was denied by an exception which would allow police officers to buy .50 caliber rifles for their private gun collections – something the Ordinance forbids ordinary law-abiding, responsible adults to do.

The City has subsequently amended the Ordinance to remove any coverage of .50 caliber BMG rifles and to limit police purchases to rifles to be used for duty purposes.[2]

Pursuant to this amendment being finally adopted, plaintiffs moved for voluntary dismissal of this case as to all issues except attorneys fees. This Court entered its order of dismissal on plaintiffs' motion to dismiss on July 12, 2005. The Court retained jurisdiction over the matters of attorney's fees and costs.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO AN AWARD OF REASONABLE FEES

Under the traditional American Rule, individual parties were required to bear the costs and attorney's fees of their own litigation. In suits that would both vindicate an individual's rights and benefit all other similarly situated plaintiffs, the courts developed the "private attorney general" doctrine to mitigate the harsh consequences of the traditional rule. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 267 n.42 (1975). Under the "private attorney general" doctrine, courts awarded attorney's fees to plaintiffs who, in the place of the

[2] This latter amendment is a face-saving charade. Police officers do not buy their own firearms because under California law the City is required to provide them. Nor is any officer likely to spend almost $8,000.00 of his own money on a rifle that he is only allowed to use on duty.

attorney general, litigated claims in the public interest. Souza v. Travisono, 512 F.2d 1137, 1139 (1st Cir. 1975) (vacated in light of Aleyska). In Aleyska, the Supreme Court abolished the common law "attorney general doctrine." 421 U.S. at 269. Congress responded quickly and passed the Civil Rights Attorneys Fees Awards Act (codified at 42 U.S.C. §1988, hereinafter referred to as "Section 1988") in 1976 with the intention of providing reasonable attorney fees to prevailing parties pursuant to civil rights statutes lacking fee-shifting provisions.

Subsection (b) of Section 1988 provides, in part, that "[i]n any action to enforce a provision of section[] . . . 1983 . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of its costs . . ."

Although Section 1988 is phrased in the permissive, providing that "the court, in its discretion, may allow" reasonable attorney's fees, the actual discretion of the court to not award attorney's fees in cases where a plaintiff is successful under section 1983 is severely limited. Prevailing plaintiffs in section 1983 actions "should ordinarily recover an attorney's fee unless special circumstances could render such an award unjust." Bauer v. Sampson, 261 F.3d 775, 785 (9th Cir. 2001) (internal citation omitted). See also Corder v. Gates, 947 F.2d 374, 379 (9th Cir. 1991) ("fee awards must ensure that civil rights lawyers receive reasonable compensation for their services..." "The purpose of a fee award is to encourage litigation and voluntary compliance with civil rights laws.")

A. Plaintiffs are the "Prevailing Party" for Purposes of Section 1988.

In order to recover fees under section 1988, a plaintiff must be considered a "prevailing party." Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct.1933 (1983). Whether particular plaintiffs are a "prevailing party" is a threshold question, the determination of which is subject to a "generous formulation." Id. Plaintiffs will be considered "prevailing parties" if they "succeed on *any significant issue* in litigation

which achieves *some of the benefit* the parties sought in bringing suit." Id. (citing Nadeau v. Helgemoe, 581 F.2d 275, 278-279 (1st Cir. 1978)) (emphases added).

In this case, plaintiffs succeeded on two significant issues: that the City's ordinance regulating .50 caliber BMG rifles was preempted by state law, and that the ordinance's exception for sales or transfers to peace officers violated the equal protection clause. Accordingly, plaintiffs have satisfied the "prevailing party" threshold for determination of whether they are entitled to attorney's fees. The scope of plaintiffs' success may be relevant to determining the reasonableness of the size of their fee award, but it is *not* relevant to the question of whether they are entitled to a fee award at all.

Moreover, it is irrelevant to the question of whether plaintiffs are "prevailing parties" that the plaintiffs did not obtain a judgment. The Ninth Circuit has specifically held that in order to be considered a "prevailing party," a plaintiff must only have obtained a "judicial imprimatur that alters the legal relationship between the parties." Watson v. County of Riverside, 300 F.3d 1092, 1096 (9th Cir. 2002). Although "judgements and consent decrees are examples of [a judicial imprimatur] . . . they are not the only examples." Id. Rather, a preliminary injunction carries all the "judicial imprimatur" necessary for "prevailing party" status. Id.

B. Denial of Fees to a Plaintiff Who Prevailed on *Any* Significant Issue in a 1983 Action Is Rare, and Must Be Specially Justified

Cases of courts denying fees to prevailing plaintiffs are rare, and involve highly unusual conditions. Tyler v. City of Manhattan, 866 F.Supp. 500, 501(D.Kan. 1994). For example, in Forest County Potawatomi Community of Wisconsin v. Norquist, 45 F.3d 1079, 1084-1085 (7th Cir. 1995), the Court denied attorney's fees to an Indian tribe which had made a compact with the state of Wisconsin that both the tribe and the state would bear the costs of litigation in any action to enforce the compact. In the instant case, plaintiffs and the City have made no such agreement.

The burden of proof that "special circumstances" exist for the denial of an award lies on the defendant. Williams v. Miller, 620 F.2d 199, 202 (8th Cir. 1980). Further, the "special circumstances" exception to the award of attorney's fees should be narrowly construed. Hatfield v. Hayes, 877 F.2d 717, 720 (8th Cir. 1989). There is a two-part test for determining when such "special circumstances" exist: "(1) whether allowing attorney's fees would further the purposes of §1988 and (2) whether the balance of the equities favors or disfavors the denial of fees." Bauer v. Sampson, supra, 261 F.3d at 786-786.

Numerous cases refute arguments that the City might make against a fee award in this matter. For instance, difficulty or even inability of a defendant to pay a fee award does not constitute a "special circumstance" justifying denial of a fee award. Entertainment Concepts, Inc. v. Maciejewski, 631 F.2d 497, 507-508 (7th Cir. 1980). Likewise, the financial ability of a of plaintiff to pay its lawyers does not justify denying attorney's fees. See, e.g., Riddell v. National Democratic Party, 624 F.2d 539, 543 (5th Cir. 1980); Hyundai Motor America v. J.R. Huerta Hyundai, Inc., 775 F.Supp. 915, 920 (E.D.La. 1991). The good faith or bad faith of a defendant in carrying out its actions is also irrelevant in determining whether attorney's fees should be awarded. Entertainment Concepts v. Maciejewski, 631 F.2d at 507; Love v. Mayor, City of Cheyenne, Wyo., 620 F.2d 235, 236 (10th Cir. 1980). Nor would mere uncertainty about the law justify denial of an attorney's fee award. Northcross v. Board of Education of Memphis City Schools, 611 F.2d 624, 635 (6th Cir. 1979).

II. THE AMOUNT OF FEES REQUESTED BY PLAINTIFFS IS REASONABLE

A. Plaintiffs' Fees are in Line with Prevailing Market Rates

Reasonable fees are "to be calculated according to the prevailing market rates in the relevant community," with close attention paid to the fees charged by

"lawyers of reasonably comparable skill, experience, and reputation." Davis v. City and County of San Francisco , 976 F.2d 1536, 1545-46 (9th Cir.1992). To that end plaintiffs have submitted declarations (Exhibits A through F) showing that the rates regularly charged are in line with attorneys of comparable experience and skill in the legal community. A prevailing plaintiff meets the burden of establishing reasonable hourly rates by submitting sworn declarations that the "requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Homans v. City of Albuquerque, 264 F.Supp.2d 972, 977 (D.N.M. 2003)

As noted in the attached declarations, a number of the attorneys who have worked on this case have an extensive specialized background in the field of firearms law. "[T]he special skill and experience of counsel should be reflected in the reasonableness of the hourly rates." Blum v. Stenson, 465 U.S. 886, 898, 104 S.Ct. 1541, 1549, 79 L. Ed. 2d 891(1984).

Moreover, plaintiffs have submitted an attorneys fee award given by this court earlier in 2004 in another § 1983 case against the City, Madrid v. City of Los Angeles. This award sets out the reasonable hourly rates of two of plaintiffs' counsel, Don Kates and C.D. Michel, which the City stipulated to in that case. (Exhibit G at p. 3.)

B. Even Where Plaintiffs Are Unsuccessful on the Major Thrust of their Suit, They are Still Entitled to Recover Fees as to Issues That Were Successfully Litigated.

After it has been established that a party is a "prevailing party" for purposes of fee recovery, the court must begin its analysis of a "reasonable fee" by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Hensley v. Eckerhart, supra, 461 U.S. at 433. In the instant case, plaintiffs' attorneys expended 513.80 hours at rates ranging from $250 to $400 per hour. (See attached table calculating plaintiffs' fees at $163,809.00, attached as

Exhibit H; see also billing entries attached as Exhibit I.) These rates are reasonable given the experience level of each attorney involved and due to the complexity of the issues involved. (See Declarations of attorneys, attached as Exhibits A through F.)

Where plaintiffs are "prevailing parties" but have succeeded only on some of their claims for relief, the court must engage in a two-step analysis to determine a reasonable fee award. First the court will determine if any of the work prepared by plaintiffs' counsel on an unsuccessful claim was unrelated to counsel's work on the successful claims. If the work on the unsuccessful claim was unrelated to work on the successful claims, the time spent on the unsuccessful claim must be excluded from the fee award. Hensley v. Eckerhart, 461 U.S. at 435. The court has noted that such instances of unrelated claims whose accompanying hours must be excluded are rare.[3]

The test for whether claims are related or unrelated is imprecise. Schwarz v. Secretary of Health & Human Services 73 F.3d 895, 903 (9th Cir. 1995). But generally an unsuccessful claim will be considered unrelated to a successful claim if the relief the unsuccessful claim sought was "intended to remedy a course of conduct entirely distinct from and separate from the course of conduct that gave rise to the injury on which the relief granted is premised." Id. "Thus, the focus is to be on whether the unsuccessful and successful claims arose out of the same 'course of

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[3] "It may well be that cases involving such unrelated claims are unlikely to arise with great frequency. Many civil rights cases will present only a single claim. In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Hensley v. Eckerhart, 461 U.S. at 435.

conduct.' If they didn't they are unrelated under Hensley." Id.

In the instant case, all of plaintiffs claims arose out of the same course of conduct: namely, the City's passing of an ordinance regulating Large Caliber Firearms. This is true for plaintiffs' preemption claims, for plaintiffs' first amendment claims, plaintiffs' equal protection claim, plaintiffs' dormant commerce clause claim, etc. Every one of plaintiffs' claims sought to redress the City's passing of its Large Caliber Firearm ordinance. Thus, every one of plaintiffs' claims was related to plaintiffs' two successful claims, and none of plaintiffs' hours must be excluded under the first prong for determining a reasonable award.

After the court has determined whether there were any unsuccessful claims whose hours must have been excluded, the court must determine if the plaintiffs achieved a level of success that justifies the hours expended. Hensley v. Eckerhart, 461 U.S. at 434. When plaintiffs have obtained "excellent results," their attorney should recover a fully compensatory fee. Id. at 435. But where plaintiffs have achieved only partial or limited success, the court may reduce the amount of the fee award. Id. at 436-37. The court can reduce the fee amount either by eliminating specific hours or by simply reducing the award to account for the limited success. Id. However, "[a] request for attorney's fees should not result in a second major litigation." Id. at 437.

In the instant case, plaintiffs' success was, admittedly, limited. Nonetheless, plaintiffs did succeed on significant issues and are therefore entitled to recover attorney's fees. Due to the interrelatedness of plaintiffs' claims, attempting to determine which of plaintiffs billing entries relate to plaintiffs successful claims and which related wholly to unsuccessful claims would be impracticable. For example, a good deal of time was spent preparing materials arguing that the ordinance was preempted by state law. This analysis applied equally to whether the City's restriction of .50 caliber BMG's was preempted, as well as to whether the City's restriction of other large caliber firearms was preempted. Because most of

plaintiffs' work was relevant to their successful claims, plaintiffs ask that this Court's reduction to plaintiffs' fees be minimal.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that this Court approve their reasonable request for fees.

Dated: July 26, 2005

TRUTANICH • MICHEL, LLP:

C.D. MICHEL
Attorney for Plaintiffs

Exhibit C

LINK: 56

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

SCANNED

Case No. EDCV04-1395-GAF (SGLx) Date September 6, 2005

Title California Side By Side Soc'y v. City of Los Angeles

ENTERED
CLERK, U.S. DISTRICT COURT
SEP - 8 2005
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Present: The Honorable **GARY ALLEN FEESS**

Marilynn Morris	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs: None

Attorneys Present for Defendants: None

DOCKETED ON CM
SEP - 8 2005
BY 001

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

Proceedings: **(In Chambers)**

RULING ON PLAINTIFFS' MOTION FOR ATTORNEY'S FEES

Plaintiffs, a group of firearm manufacturers, retailers, and enthusiasts, brought this suit against the City of Los Angeles (the "City" or "Defendant") to bar the enforcement of a local ordinance prohibiting the sale, transfer, offer for sale or display for sale of firearms between .50 and .60 caliber within the Los Angeles city limits. Plaintiffs sought a preliminary injunction, which the Court denied on all issues except two very narrow aspects of the ordinance. The Court enjoined: 1) the ordinance's regulation of a particular type of large caliber firearm – .50 BMG rifles – because sales and transfers of that particular weapon were comprehensively regulated by the state, and, therefore, local regulation was preempted; and 2) the ordinance's exception for peace officers, which violated equal protection. The remainder of the ordinance remained in force. However, the injunction dissolved six weeks after it was issued when an amended ordinance, which cured the defects, went into effect. In June 2005, Plaintiffs moved to dismiss their challenge to the ordinance. The Court granted the motion, retaining jurisdiction to resolve the question of attorney's fees.

Presently before the Court is Plaintiffs' motion for award of reasonable attorney's fees. The City opposes the motion on the ground that Plaintiffs do not qualify as a "prevailing party." The City also argues that, even if Plaintiffs are a prevailing party, the fee award, in view of Plaintiffs' "extensive failure" in obtaining relief, should be greatly reduced from the total billed fees of $163,809. Plaintiffs concede that their "success was, admittedly, limited," and that some reduction is therefore appropriate. However, Plaintiffs argue that because most of their work on

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV04-1395-GAF (SGLx) Date September 6, 2005

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the unsuccessful challenges to the ordinance was "relevant" to their successful claims, the reduction should be "minimal."

The Court concludes that, under Ninth Circuit authority, Plaintiffs qualify as a prevailing party and are entitled to an award of attorney's fees. However, the Court rejects Plaintiffs' argument that the reduction of the total billed fees should be "minimal" because the effort expended by Plaintiffs' counsel on unsuccessful issues was so "interrelated" to the effort expended on the two narrow successful issues, that any attempt to distinguish one from the other would be "impracticable."

Fortunately, the Court need not engage in an "impracticable" line-by-line analysis of Plaintiffs' voluminous billing records to reach an equitable result. "[A] district court does not abuse its discretion when it resorts to a mathematical formula, even a crude one, to reduce the fee award to account for limited success." Schwarz v. Secretary of Health & Human Servs., 73 F.3d 895, 905 (9th Cir. 1995) (emphasis added). Here, Plaintiffs sought to permanently enjoin the entire ordinance, and thereby prevent the City from limiting their ability to sell, transfer, and offer for sale every type of large caliber firearm within the City limits. In contrast, what Plaintiffs achieved was a short-lived injunction against enforcement of the ordinance's exception for police officers, and its regulation of a single firearm – .50 BMG rifles. As discussed in more detail below, in view of the very limited quantum of success achieved by Plaintiffs, the Court determines that a significant reduction in the $163,809 fee claim is appropriate.

A. Legal Standard

"Section 1988 provides that in actions brought 'to enforce a provision of [42 U.S.C. § 1983]," the court in its discretion may allow the prevailing party, other than the United States, a reasonable attorney's fee.'" Jensen v. San Jose, 806 F.2d 899, 900 (9th Cir. 1986) (quoting 42 U.S.C. § 1988). To be considered a prevailing party, "one must have obtained a 'judicial imprimatur' that alters the legal relationship of the parties, such as a judgment on the merits or a court-ordered consent decree." Watson v. County of Riverside, 300 F.3d 1092, 1096 (9th Cir. 2002) (quoting Buckhannon Board and Care Home, Inc. v. West Virginia Dept. of Health, 532 U.S. 598, 600 (2001)). Like a consent decree or judgment, "[a] preliminary injunction issued by a judge carries all the "judicial imprimatur" necessary to satisfy [the prevailing party standard set forth in] Buckhannon." Id.

In "a case of a partial or limited success," like the instant case, a court must engage in a "two-step process for calculating attorney's fees." First, the court must consider "whether 'the

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UNITED STATES DISTRICT COURT
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plaintiff failed to prevail on claims that were unrelated to the claims on which he succeeded.'" Id. (quoting Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)). "If unrelated, the final fee award may not include time expended on the unsuccessful claims." Schwarz, 73 F.3d at 901. Second, the court must consider "whether 'the plaintiff achieved a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award.'" Watson, 300 F.3d at 1096 (quoting Hensley, 461 U.S. at 434). "Deductions based on limited success are within the discretion of the district court." Id. (citing Sorenson v. Mink, 239 F.3d 1140, 1147 (9th Cir. 2001)). "[A] district court does not abuse its discretion when it resorts to a mathematical formula, even a crude one, to reduce the fee award to account for limited success." Schwarz, 73 F.3d at 905 (9th Cir. 1995) (collecting cases upholding percentage reductions).

B. Plaintiffs are a Prevailing Party

In the Ninth Circuit, "a plaintiff who succeeds in obtaining a preliminary injunction can be deemed a 'prevailing party' for purposes of [obtaining an attorney's fee award under] 42 U.S.C. § 1988, even though he did not recover other relief sought in the lawsuit." Watson, 300 F.3d at 1093. Nevertheless, the City argues that Plaintiffs are not a prevailing party here because Plaintiffs, unlike the plaintiff in Watson, received no benefit from the injunction they obtained. (Opp. at 10). The City contends that the injunction did not "materially alter the relationship between Plaintiffs and the City." (Id.); see also Watson, 300 F.3d at 1096 ("one must have obtained a 'judicial imprimatur' that alters the legal relationship of the parties"). This argument is without merit. In this case, the City was "prohibited from [enforcing the unamended ordinance against the Plaintiffs with regard to .50 BMG rifles during the life of the injunction] for one reason and one reason only: because [this Court] said so." Id. at 1093. The same is true of the police officer exception. "There was nothing voluntary about the [City's] inability [to enforce the ordinance with regard to .50 BMG rifles or the exception for police officers during the period of the injunction]." Id. The injunction, however limited in time and scope, altered the legal relationship of the City and Plaintiffs.

As Watson acknowledged, Plaintiffs would not be a prevailing party if they "score[d] an early victory by securing a preliminary injunction, then los[t] on the merits as the case play[ed] out and judgment [was] entered against [them] – a case of winning a battle but losing the war." Id. at 1096. But, that is not what happened in this case. Plaintiffs' preliminary injunction was "not dissolved for lack of entitlement," but, like the injunction in Watson, was "rendered moot" when the amended ordinance took effect. Id.

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UNITED STATES DISTRICT COURT
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The City argues that "Plaintiffs' claims were never rendered moot" because the "preliminary injunction was denied in all significant respects," and "Plaintiffs had for all practical purposes lost the case." (Opp. at 11). The City asserts "*[h]ad Plaintiffs not voluntarily dismissed the action* and allowed the case to 'play out,' the City would have been awarded judgment in their favor." (Opp. at 11) (emphasis added). Thus, the City concludes Plaintiffs not only lost the battle, but would have lost the war. (Id.).

But, of course, Plaintiffs *did* voluntarily dismiss – the case did not 'play out' with a judgment awarded to the City, and Plaintiffs did win an injunction, however limited. Moreover, that victory, though limited, was complete. The City may not now, or in the future, licitly reinstate the enjoined aspects of the ordinance. In other words, Plaintiffs left the battlefield after completely winning a very limited battle – and, thus, maintain their prevailing party status. While Plaintiffs' victory was very limited in time and scope, it is clear that the "prevailing party inquiry does not turn on the magnitude of the relief obtained. Although the size of the relief may impact the size of the eventual fee award, it does not affect eligibility for a fee award." Fischer v. SJB-P.D. Inc., 214 F.3d 1115, 1119 (9th Cir. 2000) (internal quotation marks omitted).

C. Plaintiffs' Limited Success Merits a Limited Fee Award

1. Plaintiffs' Successful and Unsuccessful Claims are Related

As explained above, in determining an appropriate fee award where, as here, the prevailing plaintiff has achieved limited success, the first step is to determine whether the plaintiff spent time on unrelated claims that were unsuccessful, and exclude such time, if any, from the award. Schwarz, 73 F.3d at 901. Although there is "no certain method of determining when claims are 'related' or 'unrelated,'" one "benchmark" used by the Ninth Circuit is "whether relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which the relief granted is premised." Schwarz, 73 F.3d at 902-03 (internal quotation marks omitted). Here, Plaintiffs argue, and the City does not dispute, that their successful and unsuccessful claims are related because they all arise out of the same course of conduct – the City's enactment of the challenged ordinance. The Court agrees that the claims are related, and no reduction need be made for time spent on unrelated claims.

2. Plaintiffs' Fees Must be Reduced in View of their Very Limited Success

The second inquiry "where a plaintiff is deemed 'prevailing' even though he succeeded on only some of his claims for relief," is whether the "results obtained" by the plaintiff justify a "fully compensatory fee" or something less. Hensley, 461 U.S. at 434-35 (internal quotation

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marks omitted). If results are "excellent," a "fully compensatory fee" is indicated. Id. However, where "a plaintiff has achieved only partial or limited success," a full fee award "may be an excessive amount" (id. at 436), and this consideration[] . . . may lead the district court to adjust the fee . . . downward." Id. at 434. "Deductions based on limited success are within the discretion of the district court." Watson, 300 F.3d at 1096.

Plaintiffs concede that the Court may reduce the fee award in view of their limited success. However, Plaintiffs argue that the reduction should be "minimal" due to the "interrelatedness" of their claims. (Mot. at 11). This argument is answered by the Supreme Court in Hensley, which teaches that where success is "partial or limited," a fee based on the hours billed on the case as a whole may be excessive "even where the plaintiff's claims were *interrelated*, nonfrivolous, and raised in good faith." Id. at 436 (emphasis added). "[T]he most critical factor is the degree of success obtained." Id.

Plaintiffs admit their success was limited. In reality, Plaintiffs' success was extraordinarily limited indeed. Plaintiffs sought to take away the City's legal authority to enforce the ordinance in its entirety, thereby preventing the City from being able to limit Plaintiffs' ability to sell, transfer, and advertise all types of large caliber firearms within Los Angeles. The ordinance withstood Plaintiffs' wide-ranging challenge with the exception of two narrow, technical aspects. As a result of Plaintiffs' success, Police officers could no longer purchase large caliber firearms for personal use, and the sale and transfer of .50 BMG rifles would be subject only to the already comprehensive regulation imposed by state law during the limited life of the injunction. Every other aspect of the ordinance was upheld. The sale, transfer and advertising of every other large caliber firearm remained subject to the ordinance's restrictions within the City. This very limited success moved Plaintiffs only a hair's breadth closer to their intended goal of obtaining the right to transfer, sell, and offer for sale all large caliber firearms within Los Angeles free from the illicit (in their view) burden of municipal regulation.

In view of the very limited degree of success achieved by Plaintiffs in this case, a large scale reduction of the total fee, based on the over 500 hours billed on this case as a whole, is in order. Based on the small percentage of success, the Court determines that a reduction of 75% of the requested $163,809 fee is appropriate. Schwarz., 73 F.3d at 905. Accordingly, the Court **GRANTS** Plaintiffs' motion for attorney's fees in the amount of $40,952.25.

IT IS SO ORDERED.

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHELLY PARKER, *et al.* Plaintiffs, v. DISTRICT OF COLUMBIA, *et al.*, Defendants.	)	Civil Action No. 03-0213 (EGS)

NOTICE OF FILING

Pursuant to the Court's direction at and after the motions hearing held on March 23, 2011, the District of Columbia provides the following information, provided by the firms that gave *pro bono* assistance to the District in this matter. Each firm provided standard rates for each attorney who assisted the District in this case during the period that the *pro bono* services were provided (2007–08). The District has placed those rates in a range within the corresponding experience-level groupings identified by the Court as follows:

1 to 3 years	$255/hr to $450/hr
4 to 7 years	$480/hr
8 to 10 years	$650/hr
11 to 20 years	$640/hr to $800/hr
20 + years	$760/hr to $950/hr

Each of the three firms explained that the quoted hourly rates can vary significantly depending upon the client and case at issue. In addition, it is common for the firms to use alternative fee arrangements, including flat or capped fees for appellate and other types of work as well as various other arrangements. With respect to the type of work at issue here (*i.e.*, Supreme Court work), the firms stated that they generally do not charge their highest rates, and frequently charge significantly lower than their highest rates (either through flat/capped fees or

otherwise), because of the value that those cases offer to the firms and their reputation. This explanation concerning their standard rates applies both to the period when the firms worked on this case, as well as to current rates.

DATE: April 6, 2011

Respectfully submitted,

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Exhibit E

MICHEL & ASSOCIATES, P.C.
Attorneys at Law

ATTORNEY FEE/RATE SCHEDULE

Timekeeper	Hourly Rate
Partner	$ 600
Of Counsel	$ 500
Managing Partner	$ 450
Associate 6	$ 350
Associate 5	$ 325
Associate 4	$ 300
Associate 3	$ 275
Associate 2	$ 250
Associate 1	$ 225
Senior Paralegal	$ 140
Paralegal	$ 125
Law Clerk	$ 125
Legal Asst.	$ 95

Responsible Attorney: Joshua R. Dale