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C.D. Michel – S.B.N. 144258
Sean A. Brady – S.B.N. 262007
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

DAVID GENTRY, JAMES PARKER,
MARK MIDLAM, JAMES BASS, and
CALGUNS SHOOTING SPORTS
ASSOCIATION,

Plaintiffs and Petitioners,

v.

XAVIER BECERRA, in His Official
Capacity as Attorney General For the State
of California; STEPHEN LINDLEY, in
His Official Capacity as Acting Chief for
the California Department of Justice,
BETTY T. YEE, in Her Official Capacity
as State Controller, and DOES 1 - 10,

Defendants and Respondents.

Case No. 34-2013-80001667

**DECLARATION OF C.D. MICHEL IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES**

(Filed concurrently with Notice of Motion &
Motion, Memorandum of Points & Authorities in
Support, Request for Judicial Notice, Proposed
Order, Declaration of Anna M. Barvir, Declaration
of Sean A. Brady, Declaration of Alexander A.
Frank, Declaration of Scott M. Franklin,
Declaration of Albert E. Peacock, III, and Haydee
Villegas, Exhibits A-I)

Hearing Date: January 14, 2022

Hearing Time: 10:00 a.m.

Department: 21

Judge: Hon. Shelleyanne W.L. Chang

Trial Date: August 24, 2018

Action Filed: October 16, 2013

FILED
Superior Court Of California,
Sacramento
10/12/2021
tcrowther
By _____, Deputy
Case Number:
34-2013-80001667

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DECLARATION OF C. D. MICHEL

I, Carl D. Michel, declare as follows:

1. I am an attorney licensed to practice law in the states of California, Texas, and the District of Columbia and before United States Supreme Court and the United States District Court for the Central District of California. I am a Founder and Senior Partner at the law firm Michel & Associates, P.C. (“MAPC”), attorneys of record for Plaintiffs in this action. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

Plaintiffs’ Counsel’s Background and Experience

2. In 1989, I graduated from Loyola Law School with a J.D. I have over 30 years of legal experience, beginning my career as a judicial law clerk for 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 & Myers, LLP. During my career at O’Melveny & Myers, 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 many high-profile cases, some earning considerable media attention.

5. I have also handled several notable firearms civil rights cases.

6. I have been profiled several times in recognition of my firearms law work in magazines, newspapers, legal trade publications, and other publications. For instance, I was profiled by *California Lawyer* magazine in a featured cover article.

7. I have also published several articles, editorials, and other publications on issues of firearms law and civil rights, including eight editions of the law book *California Firearm Laws: A*

1 *Guide to State and Federal Firearm Regulations*, the first in-depth and comprehensive treatment
2 of state and federal firearm laws for California gun owners, judges, police, and attorneys.

3 8. I have conducted dozens of presentations, and also continuing legal education
4 seminars on firearms law and the Second Amendment.

5 9. I taught several classes as an Adjunct Professor at Chapman University Fowler
6 School of law in Orange, California including *Firearms Law* and *Law Practice Management*.

7 10. I have appeared as a spokesperson for National Rifle Association of America and
8 California Rifle & Pistol Association, in dozens of television and radio interviews. And I have
9 served as an Adjunct Professor at Chapman University School of Law, where I taught courses on
10 firearms law and law practice management.

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

14 12. In *California Side By Side Society v. City of Los Angeles* (2005), the court found it
15 reasonable for me to be compensated at the rate of \$375 per hour. Attached hereto as **Exhibit E**,
16 is a true and correct copy of the *California Side By Side* Ruling on Plaintiffs' Motion for
17 Attorney's Fees, approving plaintiffs' lodestar figure, including my hourly rate in 2005.

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

20	1 to 3 years	\$255/hr to \$450/hr
21	4 to 7 years	\$480/hr
22	8 to 10 years	\$650/hr
23	11 to 20 years	\$640/hr to \$800/hr
	20+ years	\$760/hr to \$950/hr

24 The above rates were standard for each attorney who provided *pro bono* services to the District of
25 Columbia in litigating *Parker (Heller) v. District of Columbia*, D.D.C. Case No. 03-0213 (EGS),
26 during the period that the attorneys' services were provided. Attached hereto as **Exhibit F** is a
27 true and correct copy of the Notice of Filing filed with the United States District Court in *Parker*
28 *(Heller) v. District of Columbia*.

1 this matter and the time spent on each task between May 2013 and October 2021. *Id.*

2 20. In the regular course and scope of my daily business activities, I prepared the
3 descriptions contained in each billing record that shows my name as the “Timekeeper,” and I did
4 so at or near the time of the occurrence of the work that I performed on this matter.

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

9 **Role in the Litigation**

10 22. I assigned Sean A. Brady as “Responsible Attorney” in charge of litigating this
11 matter. Throughout the course of this case, I supervised Mr. Brady’s work, meeting or
12 corresponding with him regularly to assist in making strategic decisions related to the case.

13 23. I spent approximately **13.0** hours engaged in case management work. That time
14 breaks down as follows: (1) about 4.2 hours were spent engaged in case-management meetings to
15 discuss case status, strategy, and theories with the attorneys assigned to litigate this case; (2)
16 about 0.4 hours were spent communicating with the litigation team and the clients via phone; (3)
17 about 1.4 hours were spent communicating with the litigation team and the clients via email; (4)
18 about 1.3 hours were spent conducting research, reviewing, and analyzing documents from
19 potentially related cases, as well as Defendants’ Answer in this case; and (5) another 5.7 hours
20 was spent engaged in various other case management activities regarding pending discovery
21 matters and litigation strategies. Villegas Decl., Ex. A; Brady Decl., Ex. C.

22 24. I spent approximately **3.2** hours during the complaint phase of litigation. That time
23 breaks down as follows: (1) about 1.9 hours was spent in meetings with the litigation team about
24 the status of and strategies related to building this case through gathering relevant evidence and
25 preparing the complaint; and (2) about 1.3 hour was spent on intra-office communication,
26 including email and other correspondence, regarding the status of and strategies related to
27 preparing the complaint and building this case. Villegas Decl., Ex. A; Brady Decl., Ex. C.

28 25. I spent approximately **12.2** hours during the discovery phase of litigation. That

1 time breaks down as follows: (1) about 1.5 hour was spent in meetings and telephone conferences
2 with the litigation team about the status of and strategies for discovery; (2) about 0.8 hours was
3 spent on intra-office e-mail communication about the status and strategy for discovery; and (3)
4 about 9.9 hours were devoted to reviewing, analyzing, and making attorney notes on case-related
5 documents including correspondence from Defendant, Defendants' discovery responses,
6 deposition transcripts, Plaintiffs' filings (motions and letters to the Court), and Court orders re:
7 discovery motions. Villegas Decl., Ex. A; Brady Decl., Ex. C.

8 26. I spent approximately **2.0** hours during the motions phase of litigation. That time
9 breaks down as follows: (1) about 1.0 hour was spent engaging in meetings (0.9) and emails (0.1)
10 with the litigation team about the status of and strategies related to moving this case forward
11 through motions practice; and (2) 1.0 hour was reviewing, analyzing, and making attorney notes
12 on case-related documents including Plaintiffs' motion papers and Court orders. Villegas Decl.,
13 Ex. A; Brady Decl., Ex. C.

14 27. I spent approximately **3.6** hours during the summary adjudication phase of
15 litigation. All of that time was spent reviewing and analyzing documents filed by Plaintiffs and
16 Defendants to assist litigation team in developing law and motion strategies. Villegas Decl., Ex.
17 A; Brady Decl., Ex. C.

18 28. I spent approximately **5.9** hours during the bench trial phase of litigation. That
19 time breaks down as follows: (1) about 0.7 hour was spent supervising and managing the work of
20 the litigation team, through meetings and emails; and (2) about 5.2 hours were spent reviewing
21 and analyzing the trial briefs, Court rulings, and other documents filed in this case to assist
22 litigation team in developing case strategies. Villegas Decl., Ex. A; Brady Decl., Ex. C.

23 I declare under penalty of perjury under the laws of the state of California that the
24 foregoing is true and correct. Executed this 12th day of October, at Long Beach, CA.

25
26 

27 _____
28 C. D. Michel
Declarant

EXHIBIT D

1 **ROCKARD J. DELGADILLO**, City Attorney
2 **GARY G. GEUSS**, Assistant City Attorney
3 **DON W. VINCENT**, Assistant City Attorney
4 1650 City Hall East
5 200 North Main Street
6 Los Angeles, California 90012-4130
7 Telephone: (213) 485-1430
8 Facsimile: (213) 485-3958

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

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

Priority
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13 **DIANA MADRID, BAD BOY BAIL**
14 **BONDS, Inc., a California Corporation,**
15 **JEFF STANLEY, CRAIG STANLEY,**
16 **CYNTHIA STANLEY,**

17 *Plaintiff,*

18 vs.

19 **CITY OF LOS ANGELES, a Municipality;**
20 **LOS ANGELES POLICE DEPARTMENT;**
21 **JAMES HAHN and MARTIN POMEROY in**
22 **their official capacities as Mayor and Police**
23 **Chief of LOS ANGELES; LAPD CAPTAIN**
24 **BECK; LAPD WATCH COMMANDER**
25 **SERGEANT GEORGE CAULFORD; LAPD**
26 **SERGEANT LEWIS; and LAPD**
27 **OFFICERS; SIMMS and ROBINSON,**

28 *Defendants.*

CASE NO. CV 02-5990 DDP (Mcx)

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

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

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

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

ENTERED ON FILE
JAN 10 2003

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

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

10 I. AGREEMENT

11 a. Release And Discharge

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

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

3 b. Payments

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

- 6 A. That the ordinance is constitutionally invalid;
- 7 B. That the City of Los Angeles will be required to repeal the ordinance;
- 8 C. The City of Los Angeles will pay to the plaintiffs \$1,137.00 in nominal
9 damages;
- 10 D. The City of Los Angeles will pay plaintiffs' attorneys fees and costs as
11 follows:
- 12 1. \$13,000.00 to Don B. Kates for 32.5 hours @ \$400/hr.
 - 13 2. \$9,000.00 to Donald Kilmer for 30 hours @ \$300/hr.
 - 14 3. \$1,544.00 to Trutanich & Michel broken down as follows:
 - 15 a. \$840 for Chuck Michel for 2.4 hours @ 350/hr.
 - 16 b. \$704 for Haydee Villegas for 6.4 hours @\$110/hr.
 - 17 4. \$319.00 for filing fees, copy charges and service of process.

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

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

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

1 DEPARTMENT; JAMES HAHN and MARTIN POMEROY in their official capacities as
2 Mayor and Police Chief of LOS ANGELES; LAPD CAPTAIN BECK; LAPD WATCH
3 COMMANDER SERGEANT GEORGE CAULFORD; LAPD SERGEANT LEWIS; and
4 LAPD OFFICERS; SIMMS and ROBINSON and each of its employees pursuant to Rule
5 41(a) of the Federal Rules of Civil Procedure, with each side to bear their own costs.

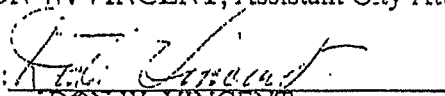
6 DATED: Dec 17, 2002 Respectfully submitted,

7 LAW OFFICES OF DONALD KILMER

8
9 By: 
10 DONALD E. J. KILMER, JR.

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

15 DATED: December 3, 2002 ROCKARD J. DELGADILLO, City Attorney
16 GARY G. GEUSS, Assistant City Attorney
17 DON W. VINCENT, Assistant City Attorney

18 By: 
19 DON W. VINCENT

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

21 ORDER

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

25 DATED: 1-8-03


26 
27 HONORABLE DEANE D. PREGERSON
28 United States District Judge

EXHIBIT E

LINK: 56 *ent*

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
DEPUTY
BY N/A

Present: The Honorable GARY ALLEN FEES

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

Attorneys Present for Plaintiffs: Attorneys Present for Defendants:

None None

Proceedings:

(In Chambers)

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

DOCKETED ON CM
SEP - 8 2005
BY FEES 001

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

SCANNED

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
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No: EDCV04-1395-GAF (SGLx)Date: September 6, 2005Title: California Side By Side Soc'y v. City of Los Angeles

SCANNED

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.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV04-1395-GAF (SGLx)

Date: September 6, 2005

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

SCANNED

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

LINK: 56

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV04-1395-GAF (SGLx)

Date: September 6, 2005

SCANNED

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

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 F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
SHELLY PARKER, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 03-0213 (EGS)
)	
DISTRICT OF COLUMBIA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

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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GEORGE C. VALENTINE
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF SACRAMENTO

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

7 On October 12, 2021, the foregoing document described as

8 **DECLARATION OF C.D. MICHEL IN SUPPORT OF PLAINTIFFS' MOTION FOR**
9 **ATTORNEYS' FEES**

10 on the interested parties in this action by placing

- 11 the original
12 a true and correct copy

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

14 Ryan A. Hanley
15 Deputy Attorney General
16 California Department of Justice
17 1300 I Street, Suite 125
18 P.O. Box 944255
19 Sacramento, CA 94244-2550
20 Ryan.Hanley@doj.ca.gov

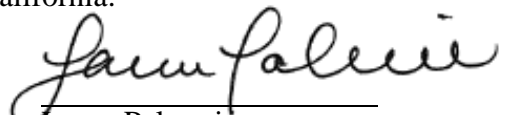
21 *Attorney for Defendants*

22 (**BY OVERNIGHT MAIL**) As follows: I am "readily familiar" with the firm's practice of
23 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the
24 practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
25 receipt on the same day in the ordinary course of business. Such envelope was sealed and
26 placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in
27 accordance with ordinary business practices.

28 (**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.

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

Executed on October 12, 2021, at Long Beach, California.



Laura Palmerin