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9 *Attorneys for the People of the State of California*

Attorney General's Office
Copy

FILED

MAY - 4 2018

CLERK OF THE SUPERIOR COURT
BY: G. HOYT, DEPUTY CLERK

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SHASTA

13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA, ex rel. Kamala D. Harris,**
15 **Attorney General of the State of California,**

Plaintiff,

16 v.

17
18 **DARREN PAUL ROSE, individually, and**
doing business as BURNING ARROW I and
19 **BURNING ARROW II,**

20 Defendants.

Case No. 176689

**NOTICE OF ENTRY OF RULING AND
ORDER GRANTING PEOPLE'S
MOTION FOR ATTORNEYS' FEES
AND COSTS ON APPEAL**

Date: April 23, 2018
Time: 8:30 a.m.
Dept: 3
Judge: The Honorable Stephen H. Baker

22 PLEASE TAKE NOTICE that on April 27, 2018, the Honorable Stephen H. Baker of
23 Shasta County Superior Court issued a Ruling and Order Granting People's Motion for
24 Attorneys' Fee and Costs on Appeal in the above-entitled action.

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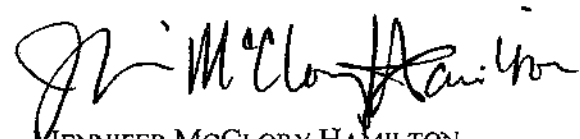
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A true and correct copy of the Ruling and Order Granting People's Motion for Attorneys' Fees and Costs on Appeal is attached as Exhibit A.

Dated: April 30, 3018

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California



JENNIFER MCCLORY HAMILTON
Deputy Attorney General
Attorneys for the People of the State of California

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **The People ex rel. Harris v. Rose**

No.: **Shasta County Superior Court Case No. 176689**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550.

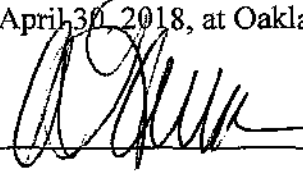
On April 30, 2018, I served the attached **Notice of Entry of Ruling and Order Granting People's Motion for Attorneys' Fees and Costs on Appeal** by placing a true copy thereof enclosed in a sealed envelope with the **Golden State Overnight Mail**, addressed as follows:

Michael A. Robinson
Fredericks Peebles & Morgan, LLP
2020 L Street, Suite 250
Sacramento, CA 95811
Attorney for Darren Rose

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 30, 2018, at Oakland, California.

Ann Lauber

Declarant



Signature

1 XAVIER BECERRA
Attorney General of California
2 KAREN LEAF
Senior Assistant Attorney General
3 BARRY D. ALVES
Deputy Attorney General
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APR 27 2018

CLERK OF THE SUPERIOR COURT
BY: G. HOYT, DEPUTY CLERK

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SHASTA

12
13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA, ex rel. Kamala D. Harris,**
15 **Attorney General of the State of California,**

16 Plaintiff,

17 v.

18 **DARREN PAUL ROSE, individually, and**
19 **doing business as BURNING ARROW I and**
BURNING ARROW II,

20 Defendants.

Case No. 176689

**RULING AND ORDER GRANTING
PEOPLE'S MOTION FOR ATTORNEYS'
FEES AND COSTS ON APPEAL**

Date: April 23, 2018

Time: 8:30 a.m.

Dept: 3

Judge: The Honorable Stephen H. Baker

21
22 This motion was heard on April 23, 2018. Appearing for Plaintiff and moving party was
23 Deputy Attorney General Jennifer McClory Hamilton. Defendant Darren Paul Rose did not make
24 an appearance or file a written opposition to the motion.

25 Plaintiff, People of the State of California, seek its attorneys' fees and costs associated
26 with Defendant, Darren Paul Rose, individually and dba Burning Arrow I and II's unsuccessful
27 appeal. Plaintiff was already the prevailing party at trial and was awarded attorneys' fees and
28

1 various costs. The award of the previous attorneys' fees was not appealed. Defendant did appeal
2 the judgment against him but the Third District Court of Appeal affirmed the judgment in full.
3 Now, Plaintiff is seeking its attorneys' fees and costs associated with the appeal. Work on appeal
4 is compensable when a statute or agreement authorizes attorneys' fees for the enforcement of an
5 underlying right. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 637 (dealing with PAGA claims).)
6 Attorneys' fees will be awarded as addressed below. Costs were awarded by the Third District
7 and are therefore awarded in their entirety.

8 At trial, the Court entered Judgment against Defendant and ordered him to pay \$765,000
9 in Unfair Competition Law ("UCL") penalties for 51,000 violations of the Tobacco Directory
10 Law ("Directory Law," Rev. & Tax. Code, § 30165.1), the Cigarette Fire-Safety and Firefighter
11 Protection Act ("Fire-Safe Act," Health & Saf. Code, §§ 14950-14960) and state excise tax laws
12 governing cigarettes (Rev. & Tax. Code, §§ 30101, 30108, 30123 & 30131.2). The Directory
13 Law states, "In any action brought by the state to enforce this section, the state shall be entitled to
14 recover the costs of investigation, expert witness fees, costs of the action, and reasonable
15 attorney's fees." (Rev. & Tax. Code, § 30165.1(p).) The Fire-Safe Act states, "the Attorney
16 General shall be entitled to recover costs of investigation, expert witness fees, costs of the action,
17 and reasonable attorney's fees" connected to enforcing the Fire-Safe Act. (Health & Saf. Code, §
18 14955(f).) The amount of reasonable attorneys' fees is typically calculated using the lodestar
19 formula which is the number of hours reasonably expended multiplied by the reasonable hourly
20 rate for each professional. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

21 In the prior motion for attorneys' fees the Court approved specific hourly rates. Plaintiff
22 now seeks to obtain the same hourly rates plus what they call a modest increase due to an increase
23 in the market rate and the increased respective experience of counsel. The increases range from
24 \$25 an hour to \$50 an hour. The rates are not substantial and would appear to be line with the
25 rates previously approved even with the increases. The Court finds that the attorney hourly rates
26 and the paralegal rate are reasonable.

27 A total of 216.5 of attorney hours and 39 paralegal hours have been requested. The Court
28 has reviewed these billings and finds that most of the hours requested are reasonable. The Court

1 finds that the time spent on a moot court was not necessary and was therefore unreasonable.
2 Plaintiff has requested \$88,952.50 in attorney/paralegal fees. Based on the above findings this
3 amount will be reduced by the following sums:

- 4 • \$3,400.00 (Mr. Hart's 10 hours for moot court at \$400 an hour, less 15%)
- 5 • \$2,656.25 (Ms. Henderson's 6.25 hours for moot court at \$500 an hour, less 15%)
- 6 • \$1,020.00 (Mr. Alves's 3 hours for moot court at \$400 an hour, less 15%)
- 7 • \$1,290.94 (Mr. Eckhart's 2.25 hours for moot court at \$675 an hour, less 15%)
- 8 • \$2,581.87 (Ms. Leaf's 4.5 hours for moot court at \$675 an hour, less 15%)
- 9 \$10,949.06 Total Reduction

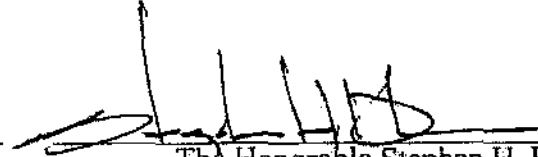
10 For these reasons, the Court will award attorneys' fees in the amount of \$78,003.44 (\$88,952.50
11 minus \$10,949.06). Costs are awarded in the amount of \$390.

12 IT IS HEREBY ORDERED that the People's motion is granted. Pursuant to the
13 foregoing, Plaintiff is hereby awarded \$78,393.44 in reasonable attorneys' fees and costs.

14 IT IS SO ORDERED.

15
16 Dated:

April 27, 2018



The Honorable Stephen H. Baker
Shasta County Superior Court Judge

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