UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SHERRIE BURAS MANTON and INDEPENDENT FIREARM OWNERS ASSOCIATION, INC. VERSUS SHERIFF RODNEY "JACK" STRAIN, JR., ET AL.	CIVIL ACTION NO.: 11-0785 SECTION: "R" MAGISTRATE: 03 JURY DEMAND

DEFENDANTS' MOTION TO TAX COSTS AND ATTORNEYS' FEES PURSUANT TO RULE 54(d)(1) & (2) OF FEDERAL RULES OF CIVIL PROCEDURE AND 28 U.S.C. § 1927

1. Relief Sought

NOW INTO COURT, through undersigned counsel, come Rodney J. "Jack" Strain, Jr., in his capacity as Sheriff of St. Tammany Parish, Al Strain, Fred Oswald, Brian O'Cull, Allen Schulkens, Randy Thibodeaux, Jerry Coyne, Jerry Rogers, Allen McGuire, Tim Lentz, and Charles M. Hughes, Jr., Esq., defendants herein, who, pursuant to Rule 54(d)(1) & (2) of the Federal Rules of Civil Procedure, Local Rules 54.2 & 54.3, and 28 U.S.C. § 1927, move this Honorable Court for an order awarding the herein-described costs and attorneys' fees in favor of the defendants/movers and against plaintiffs Sherrie Buras Manton & Independent Firearm Owners Association, Inc., and/or their counsel of record, Daniel G. Abel, Esq., and

Richard J. Feldman, Esq., pursuant to the judgment dismissing the plaintiffs' claims against them (Rec. doc. 50), which was in response to defendants/movers' motion for summary judgment (Rec. doc. 41), for the reasons more fully set out in the attached Memorandum in Support.

2. Grounds for Motion

The defendants unquestionably are the "prevailing party" in this matter vis-à-vis the plaintiffs and therefore are entitled to recover costs and reasonable attorneys' fees against the plaintiffs pursuant to 42 U.S.C. § 1988.

The defendants incurred reasonable attorneys' fees in the approximate total amount of $16,000 in their defense of this matter through the date of the granting of their motion for summary judgment, as summarized in the Bill of Costs attached as Exhibit "A" and the certification of account attached as Exhibit "B".

In addition, the defendants are convinced that counsel for the plaintiffs, Daniel G. Abel, Esq. and/or Richard J. Feldman, Esq., "unreasonably and vexatiously" multiplied the proceedings herein, pursuant to 28 U.S.C. § 1927 and therefore should be required to personally satisfy the costs and attorneys' fees incurred because of their conduct.

Finally, given the fact that, in accordance with FRCP Rule 54(d)(2)(B)(i), the instant motion is being filed within 14 days of the entry of judgment, the amounts provided herein are preliminary in nature, and the defendants expressly reserve the right to revise the amounts when more complete information becomes available, with the plaintiffs to be provided reasonable notice of such revisions.

3. Conclusion and Prayer

WHEREFORE, the moving defendants herein – Rodney J. "Jack" Strain, Jr., in his capacity as Sheriff of St. Tammany Parish, Al Strain, Fred Oswald, Brian O'Cull, Allen Schulkens, Randy Thibodeaux, Jerry Coyne, Jerry Rogers, Allen McGuire, Tim Lentz, and Charles M. Hughes, Jr., Esq. – request that the amounts set forth in the attached Bill of Costs be taxed as costs against the plaintiffs and/or Mr. Abel & Mr. Feldman, for the specific grounds urged herein.

Respectfully submitted:

TALLEY, ANTHONY, HUGHES & KNIGHT, L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2013, a copy of the foregoing Defendants' Motion to Tax Costs and Attorneys' Fees was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Daniel G. Abel, Esq. by operation of the court's electronic filing system.

/s/ Gary L. Hanes
GARY L. HANES

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SHERRIE BURAS MANTON and INDEPENDENT FIREARM OWNERS ASSOCIATION, INC.	CIVIL ACTION NO.: 11-0785
VERSUS	SECTION: "R"
SHERIFF RODNEY "JACK" STRAIN, JR., ET AL.	MAGISTRATE: 03
	JURY DEMAND

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO TAX COSTS AND ATTORNEYS' FEES PURSUANT TO RULE 54(d)(1) & (2) OF FEDERAL RULES OF CIVIL PROCEDURE AND 28 U.S.C. § 1927

MAY IT PLEASE THE COURT:

Introduction

Defendants Rodney J. "Jack" Strain, Jr., in his capacity as Sheriff of St. Tammany Parish, Al Strain, Fred Oswald, Brian O'Cull, Allen Schulkens, Randy Thibodeaux, Jerry Coyne, Jerry Rogers, Allen McGuire, Tim Lentz, and Charles M. Hughes, Jr., Esq. jointly submit this memorandum in support of their motion to tax costs and attorneys' fees against the plaintiffs herein, Sherrie Buras Manton and the Independent Firearms Owners Association, Inc., and/or their counsel of record, Daniel G. Abel, Esq. and Richard J. Feldman, Esq. On December 21, 2012, this Honorable Court granted the defendants'

motion for summary judgment (Rec. doc. 49), thereby rejecting and dismissing plaintiffs' claims against the defendants in their entirety. That order was then memorialized in a judgment issued on December 27, 2012 (Rec. doc. 50).

Pursuant to these facts, and as set forth more fully below, defendants are entitled to an order taxing costs and attorneys' fees against the plaintiffs themselves pursuant to Rule 54(d)(1) & (2) and 42 U.S.C. § 1988, on the ground that defendants are the prevailing party in this matter. Further, defendants are entitled to an order taxing those same costs and attorneys' fees against plaintiffs' counsel, Mr. Abel and Mr. Feldman, pursuant to 28 U.S.C. § 1927, on the ground that Mr. Abel and Mr. Feldman unreasonably and vexatiously multiplied the proceedings herein, causing continued needless and duplicative litigation.[1]

This Honorable Court already is well aware of the factual allegations underlying this suit, having summarized those facts on at least three occasions: Judge Vance's Order & Reasons (Rec. doc. 148) granting the defendants' motion for summary judgment in *Norman J. Manton, Jr. and Sherrie Buras Manton v. Rodney "Jack" Strain, Jr., et al.*, Docket No. 09-0339-"R"-03 (hereinafter "*Manton I*"), Magistrate Judge Knowles' Order and Reasons (Rec. doc. 171) regarding the defendants' Motion to Tax Costs and Attorneys' Fees in *Manton I*, and Judge Vance' Order & Reasons (Rec. doc. 49) granting defendants' motion for summary judgment in the instant matter (hereinafter "*Manton II*").

The most relevant ideas from those previous judicial determinations are the holdings that *Manton II* arises from the exact same fact scenario as *Manton I*, and that the causes of action asserted in *Manton II* could have been asserted in *Manton I*, thereby

[1] Defendants have no proof one way or the other, but they strongly suspect that the abuse of the judicial system caused by this case were the work of counsel for the plaintiffs more so than Mrs. Manton herself, who likely was an unwitting pawn of counsel as to this lawsuit.

justifying the dismissal of *Manton II* on the grounds of *res judicata*. As Judge Vance stated, "the two suits brought by Mrs. Manton share a nucleus of operative facts" (Rec. doc. 49, at 9). Judge Vance also concluded:

> In responding to defendants' motion for summary judgment, plaintiffs do not engage with the issue of *res judicata*, and they offer no arguments to refute defendants' contention that Mrs. Manton's earlier suit rested on the same facts at issue here. The Court therefore finds that this suit and the Mantons' earlier suit arise out of the same nucleus of operative facts. Mrs. Manton seeks to relitigate issues "that could have been raised in her earlier action." *Oreck Direct, LLC,* 560 F.3d at 401. Accordingly, her claims for damages and injunctive relief related to the search and seizure that occurred on January 24, 2008 are barred under the doctrine of *res judicata*.

Id., at 11.

The uncontestable facts are that Mrs. Manton, through her counsel Mr. Abel, has filed successive lawsuits against the defendants, that the first lawsuit was dismissed on its merits because the plaintiffs failed to tender evidence of a constitutional violation, and that the second lawsuit was summarily dismissed because it was duplicative and/or derivative of the first one. These facts more than justify imposition of the defendants' costs and attorneys' fees against her here. This point is the subject of Sections 1 and 2 below. And those same facts, in combination with the facts that Mr. Abel represented Mrs. Manton in both suits and that Mr. Abel offered absolutely no relevant argument to the defendants' *res judicata* defense more than justifies imposition of the defendants' costs and attorneys' fees against Mr. Abel personally, especially in light of his failure to even "engage" the defendants' *res judicata* defense or to "offer [any] arguments to refute" that defense, as was noted by Judge Vance. This point is set out in Section 3 below.

In Magistrate Judge Knowles' Order & Reasons denying defendants' request for attorneys' fees in connection with *Manton I*, he specifically referred to his decision as "a

close [call]." Rec. doc. 171, at 11 (emphasis added). If an award of attorneys' fees to the defendants in *Manton I* was in fact a close "No," then the answer to that same question here should be an overwhelming "Yes." The Court should send a clear and unambiguous message to Mr. Abel that his continuing abuse of the judicial system must cease.

Law & Argument

1. Costs Allowable Under 28 U.S.C. § 1920 et seq.

Rule 54(d)(1) of the Federal Rules of Civil Procedure provides in pertinent part: "Except when express provision therefore is made . . ., costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs." By way of the Court's order granting the defendants' motion for summary judgment, the defendants obtained a complete dismissal of all of the thirteen separate causes of action urged against them by the plaintiffs. Accordingly, the defendants unquestionably are the prevailing parties under Rule 54(d)(1), and they are therefore entitled to recover the costs allowed by 28 U.S.C. § 1920 et seq. These itemized costs are set forth in the attached Bill of Costs (Exhibit "A").

2. Recoverable Attorneys' Fees Pursuant to 42 U.S.C. § 1988

42 U.S.C. § 1988 provides in pertinent part:

> In any action or proceeding to enforce a provision of sections . . . 1983 . . . and 1986 of this title, . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs.

See also Walker v. City of Bogalusa, 168 F.3d 237, 239 (5th Cir. 1999). The plaintiffs' Complaint (Rec. doc. 1) makes it clear that their federal-law causes of action in this matter were brought pursuant to Sections 1983 and 1986 of Title 42, thereby bringing it within the ambit of the quoted provision. In addition, as mentioned above, the defendants

certainly were the "prevailing" parties in this proceeding, as the plaintiffs' suit against them was dismissed without the plaintiffs obtaining any relief whatsoever.

According to the relevant jurisprudence, in order for a successful defendant to recover attorneys' fee under § 1988, the defendant must show that the plaintiff's claims were frivolous, unreasonable, or groundless. *Brossette v. City of Baker*, 117 Fed.Appx. 315, 317, 2004 WL 2476493, *2 (5th Cir. 2004). As declared by the U.S. Supreme Court:

> A plaintiff should not be assessed his opponent' attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it became so. And, needless to say, if a plaintiff is found to have brought or continued such a claim in *bad faith*, there will be an even stronger basis for charging him with the attorney's fees incurred by the defense.

Christiansburg Garment Company v. EEOC, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978)(emphasis in original). "While Congress wanted to clear the way for suits to be brought . . ., it also wanted to protect defendants from burdensome litigation having no legal or factual basis." *Id.*, at 420. The Fifth Circuit has concluded that Congress intended a delicate balance to exist between "encouraging the policy of private plaintiffs effecting the vigorous vindication of civil rights, and protecting civil rights defendants from the burden of frivolous lawsuits." *Dean v. Riser*, 240 F.3d 505, 512 (5th Cir. 2001).

When determining whether claims such the ones brought by the plaintiffs in this case are frivolous, unreasonable, or without foundation, a district court should consider at least three factors: (1) whether the plaintiff established a prima facie case; (2) whether the defendant offered to settle; and (3) whether the court dismissed the case or held a full trial. *Fox v. Vice*, 594 F.3d 423, 427 (5th Cir. 2010); *United States v. Mississippi*, 921 F.2d 604, 609 (5th Cir. 1991); *Broyles v. Texas*, 2009 WL 2215781, *3 (S.D.Tex. 2009), *affirmed* 2010 WL 2465093 (5th Cir. 2010).

The court should view the situation as it appeared when the case moved through its various stages rather than from the perspective of hind-sight. *Broyles v. Texas*, 2009 WL 2215781, *6 (S.D.Tex. 2009). An award of attorneys' fees clearly should not be made in every case where there is a dismissal before the case reaches a jury. *See Hidden Oaks, Ltd. v. City of Austin*, 138 F.3d 1036, 1053 (5th Cir. 1998). But a finding of bad faith on the part of the plaintiff is *not* a necessary prerequisite to an award of attorneys' fees to a defendant. *Strain v. Kaufman County District Attorney's Office*, 23 F.Supp.2d 698, 700 (N.D.Tex. 1998). Instead, an award of attorneys' fees is appropriate and justified when "there was no material, admissible evidence to support the [plaintiff]'s civil rights claim." *Church of Scientology of California v. Cazares*, 638 F.2d 1272, 1290 (5th Cir. 1981).

In evaluating the instant matter with the Fifth Circuit's three-pronged test set out above, the plaintiffs' claims against the defendants certainly were either frivolous, unreasonable, or groundless.[2] As to the initial prong of the test – whether the plaintiffs established a prima facie case – the Court's findings as to the defendants' motion for summary judgment clearly speaks for itself and leads to the inevitable conclusion that the plaintiffs did not establish a prima facie case as to any of their causes of action. The sheer paucity and weakness of the plaintiffs' opposition to the defendants' motion for summary judgment, where the plaintiffs had their best shot to present their case, stands as strong support for this conclusion. Second, undersigned counsel for the defendants can unequivocally declare that absolutely no offer to settle was ever tendered to the plaintiffs in this matter. Finally, the record clearly reflects that this matter was dismissed against the

[2] It should be noted that the three elements of the *Christiansburg* test – "frivolous, unreasonable, ***or*** groundless" (emphasis added) – are stated in the disjunctive, meaning that a court need find only one of the conditions to be applicable, not all three. In this case, however, all three *are* present.

defendants pursuant to their motion for summary judgment; the matter did not proceed to trial. Thus, all three of the factors for making the determination of whether or not a claim was frivolous, unreasonable, or without foundation weigh strongly in favor of such a finding in this case.

In *Myers v. City of West Monroe*, 211 F.3d 289 (5th Cir. 2000), a motorist was unsuccessful in her § 1983 action against a municipality and three of its police officers in which she alleged an unreasonable search and seizure of her vehicle. The Fifth Circuit found that the district court had not abused its discretion in awarding attorneys' fees to the defendants, all of whom had been dismissed prior to submission of the case to the jury. The Court concluded that the plaintiff's claims against these defendants were without foundation based upon the complete lack of evidence submitted by the plaintiff, but that the plaintiff continued the litigation even after the lack of foundation became evident. The Court stated:

> [The plaintiff] offered no evidence at trial that [the defendant police officer] violated any of her rights and admitted that [the officer] obtained her consent to search her vehicle. Moreover, she put on no evidence that the stop of her vehicle violated the Fourth Amendment. She offered no evidence implicating the [defendant municipality]. Consequently, there is no basis from which to say these claims were not frivolous, yet she persisted in pressing these claims until dismissed by a Rule 50 motion of the defendants.

Id., at 293. For some other examples where an award of defendant's costs and/or attorneys' fees was held to be justified in factual contexts involving claims of unlawful search-and-seizure, wrongful arrest, and/or conspiracy, see *Fox v. Vice*, *supra*; *Hunter v. City of Monroe*, 128 Fed.Appx. 372, 2005 WL 846235 (5th Cir. 2005); *Brossette*, *supra*; *Hahn v. City of Kenner*, 1 F.Supp. 614 (E.D.La. 1998); *Strain*, *supra*.

Accordingly, the defendants have met their burden of proving that the plaintiffs' claims against them in this matter were frivolous, unreasonable, or groundless, such that an award of defendants' costs and attorneys' fees is appropriate under § 1988. Defendants therefore request that the costs and attorneys' fees set forth in the attached Bill of Costs (Exhibit "A") be taxed as costs against the plaintiffs.[3]

3. Allowance of Costs and Attorneys' Fees Pursuant to 28 U.S.C. § 1927

According to 28 U.S.C. § 1927:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiples the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Under this provision, a court can sanction an attorney whenever there is evidence of bad faith, improper motive, or reckless disregard of the duty owed by that attorney to the court. *Ingram v. Glast, Phillips & Murray*, 196 Fed.Appx. 232, 234, 2006 WL 1877269, *2 (5th Cir. 2006); *Conner v. Travis County*, 209 F.3d 794, 799 (5th Cir. 2000); *Edwards v. General Motors Corporation*, 153 F.3d 242, 246 (5th Cir. 1998). A court may use its inherent powers to sanction an attorney who acts in bad faith. *Conner*, *supra*; *Kipps v. Caillier*, 197 F.3d 765, 770 (5th Cir. 1999). Although the courts have consistently maintained that an award pursuant to § 1927 is to be "sparingly applied," such a sanction is justified when the proceedings in question "were unwarranted and should neither have been commenced nor

[3] In making this argument, the defendants are mindful that civil-rights plaintiffs are entitled to their "day in court" and that prevailing-party-defendant fee applications such as this one bear close scrutiny. But the facts here show a pattern of abuse as well as a disregard for clear, well-known law. A message should be sent signifying that this busy court will not permit such abuse without consequences.

persisted in." *F.D.I.C. v. Calhoun*, 34 F.3d 1291, 1297 (5th Cir. 1994); *Browning v. Kramer*, 931 F.2d 340, 345 (5th Cir. 1991).

In determining an award of attorneys' fees under § 1927, "[a] finding of *subjective* bad faith is not necessary so long as the moving party can demonstrate that the losing party's actions were in fact *objectively* frivolous, unreasonable, or without foundation." *Limone v. United States*, 815 F.Supp.2d 393, 399-400 (D.Mass. 2011)(emphasis added & internal quotations omitted). As stated by the Fifth Circuit, "advocacy simply for the sake of burdening an opponent with unnecessary expenditures of time and effort clearly warrants recompense for the extra outlays attributable thereto." *Batson v. Neal Spelce Associates, Inc.,* 805 F.2d 546 (5th Cir.1986). *See also Roberts v. Chevron U.S.A., Inc.*, 117 F.R.D. 581, 587 (M.D. La. 1987), *affirmed* 857 F.2d 1471 (5th Cir. 1988).

Specifically in reference to duplicative lawsuits such as this one, one court has declared: "The federal courts can ill afford the time required to dispose of such frivolous suits, and parties naturally have a right to be free from vexatious litigation over matters that have been conclusively settled in prior litigation." *Lee v. Criterion Insurance Company*, 659 F.Supp. 813, 821 (S.D.Ga. 1987). *See also Thiel v. First Federal Savings & Loan Association,* 646 F.Supp. 592, 597 (N.D.Ind. 1986); *Columbus v. United Pacific Insurance Company,* 641 F.Supp. 707 (S.D.Miss. 1986).

In this matter, Mr. Abel has not only operated in bad faith, but also with reckless disregard to the duties owed by him to this Court, first as regards to *Manton I* and even more so as to *Manton II*. This conclusion is demonstrated by the facts discussed herein above, i.e., the total lack of any factual basis whatsoever, apart from the plaintiffs' own bald assertions, to support the serious and substantial charges urged against the defendants in

both lawsuits. It is further illustrated by the fact that the causes of action alleged in *Manton II* were either identical to those asserted in *Manton I* or all could have been asserted in *Manton I*. There were no extenuating circumstances or developing factual situations to justify the bifurcation.

Both this Court and Mr. Manton himself certainly are aware of the requirement of FRCP Rule 11(b)(3) that "factual contentions" presented to a court in a pleading "have evidentiary support." Such clearly was not the case regarding this matter and it was not even "a close [call]" this time. In fact, Mr. Manton merely repeated many of the same unsupported, already-rejected allegations, despite Judge Vance's ruling in *Manton I*. It should also be noted that the plaintiffs and Mr. Abel conducted absolutely no discovery whatsoever in connection with *Manton II*, further evidence of the interconnected nature of the two suits and the bad faith in even pursuing the instant claim.

As recognized by one court in reference to application of § 1927:

> It is especially appropriate to impose sanctions in situations where the doctrine of res judicata and collateral estoppel plainly preclude re-litigation of the suit. The imposition of sanctions is one of the few options available to a court to deter and punish people who relitigate cases hopelessly foreclosed.

Katz v. Chalker, 2007 WL 3171383, *7 (D.Ariz. 2007)(internal citation omitted). *See also Reynolds v. U.S. Capitol Police*, 357 F.Supp.2d 19, 24 (D.D.C. 2004)("[W]here a party reiterates arguments that have already been unequivocally rejected by the Court and its pleadings reflect a deliberate decision to ignore an opinion of the Court which is the controlling law of the case, sanctions are warranted . . . ."); *Nothwang v. Payless Drug Stores Northwest, Inc.*, 139 F.R.D. 675, 676 (D.Or. 1991); *Robinson v. National Cash Register Company*, 808 F.2d 1119, 1131 (5th Cir. 1987).

In *Columbus v. United Pacific Insurance Company*, 641 F.Supp. 707 (S.D.Miss. 1986), *affirmed* 833 F.2d 1007 (5th Cir. 1987), the court found a suit to be precluded by *res judicata* and sanctioned the filing attorney, noting that "the instant suit is a 'mirror image' of the claims previously asserted against these Defendants. No new facts have been alleged." *Id*., at 711. In *Surface v. Commerce Bank of Hutchinson*, 1990 WL 129218 (D.Kan. 1990), the court was also faced with the issue of sanctions against an attorney who had filed a suit barred by *res judicata*. In awarding such sanctions, the court declared:

> The decision to continue with litigation in this case can only be characterized as unreasonable and vexatious in light of overwhelming authority indicating that plaintiffs' claims were precluded by the doctrines of res judicata and collateral estoppel. The fact that the defendants were required to file a motion for summary judgment based on collateral estoppel and res judicata is absurd. The continued pursuit of plaintiffs' claims by plaintiffs' counsel affirmatively shows the lack of objective good faith that would be needed to avert the imposition of sanctions and attorneys' fees.

Id., at *3. This case presents virtually the same scenario as were present in both *Columbus* and *Surface*: A second lawsuit against the same defendants based on the exact same facts. The fact that the defendants here were compelled to file a motion for summary judgment in order to get rid of this suit is equally "absurd" as it was in *Surface*, and Mr. Abel should be held responsible for this absurdity.

The purpose of 28 U.S.C. § 1927 is to discourage "baseless filings that burden courts and individuals alike with needless expense and delay." *Ratliff v. Stewart*, 508 F.3d 225, 232 (5th Cir. 2007), citing *Cooter & Gell v. Hartmaxx Corporation*, 496 U.S. 384, 398, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990). The issues of law surrounding the doctrine of *res judicata* – including the "common nucleus of fact" concept and the distain for piecemeal litigation – are well-known legal principles of which Mr. Abel was or should have been aware. Given the "baseless" nature of plaintiffs' lawsuit, the persistence with which it was

pursued in the face of *Manton I*, and the overtly egregious nature of Mr. Abel's misrepresentations and breaches of duty to this Court, this case is a perfect example of a situation where § 1927 should be applied. As a result, Mr. Abel should be required to personally satisfy the costs and attorneys' fees incurred because of his conduct, as set out in the attached Bill of Costs (Exhibit "A").[4]

As was stated in support of the similar motion filed in *Manton I*, Sheriff Strain certainly recognizes and appreciates the significant work-load undertaken by this Honorable Court and has no desire to unnecessarily contribute to it by way of this motion. But he nevertheless feels a constitutional duty to the tax-paying citizens of his jurisdiction, who will otherwise have to bear the costs being sought, to disincentivise these sorts of repeated spurious claims and vexatious behavior by taking the current action.

4. The Attorneys' Fees Charged In This Matter Were Reasonable And Necessary

Defendants submit that the legal services performed on their behalf in this matter were both reasonable in nature and necessarily incurred to defend this case through nearly two years of discovery, motion practice, and trial preparation. The plaintiffs' Complaint consisted of 59 numbered paragraphs taking up 21 pages and setting out a total of four separate causes of action, along with a request for injunctive relief.

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[4] As the Court may already be aware, *Manton I* and this case are not the first instances demonstrating Mr. Abel's distain for court rules or his only brushes with the issue of sanctions. *See Martin v. Magee*, 2012 WL 6644228 (5th Cir. 2012) where the Fifth Circuit imposed a $3,000 sanction against Mr. Abel personally, noting that the appeal in question was "devoid of legal merit and presented no cognizable basis for reversal." *Id*., at *1. *See also Chisesi v. Auto Club Family Insurance Company*, 374 Fed.Appx. 475, 2010 WL 785173 (5th Cir. 2010), where that same court imposed a $2,500 sanction against Mr. Abel's client and the Court declared: "Wild accusations that a routine insurance dispute is motivated by nefarious corporate motives and extended, irrelevant discussion of etymology and Chaucer have no place in a brief to this court." *Id*., at 477. The language from those cases sounds all too familiar.

The calculation of attorneys' fees under § 1988 is a two-step process. First, the court must calculate the "lodestar" fee. *Riley v. City of Jackson*, 99 F.3d 757, 760 (5th Cir. 1996). The lodestar amount is determined by multiplying the reasonable number of hours expended on the case by the reasonable hourly rates for the participating lawyers. *Thompson v. Connick*, 553 F.3d 836, 867 (5th Cir. 2008). Second, the court decides whether the lodestar amount should be adjusted upward or downward based on the circumstances of the case using the factors articulated in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717-19 (5th Cir.1974). Those factors include: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. The most important of these factors is the degree of success obtained. *Farrar v. Hobby*, 506 U.S. 103, 114, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992); *Migris v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998).

In this case, the defendants' degree of success was complete and unambiguous; a complaint in which the plaintiffs made assertions of serious misconduct on the part of the defendant was dismissed in its entirety without any finding of liability or assessment of damages. The billed rates charged by the attorneys representing the defendants ranged from $115 to $125 per hour, and the paralegal rate was $50 per hour. *See* Exhibit "B". These rates unquestionably were more than reasonable in light of the level of expertise

required and the rates charged in the prevailing market by medium-sized firms for comparable civil rights cases.

The defendants incurred reasonable attorneys' fees in the approximate total amount of $16,000 in their defense of this matter through the date of the granting of their motion for summary judgment, as also summarized in the attached Bill of Costs (Exhibit "A") and the attached billing summary (Exhibit "B").[5]

Finally, given the fact that, in accordance with FRCP Rule 54(d)(2)(B)(i), the instant motion is being filed within 14 days of the entry of judgment, the amounts provided herein are preliminary in nature, and the defendants expressly reserve the right to revise the amounts when more complete information becomes available, with the plaintiffs to be provided reasonable notice of such revisions.

Conclusion

The whole purpose of the doctrine of *res judicata*, and its underlying principle that all available causes of action should be presented in the same proceeding, is to prevent situations just like this one, where a plaintiff attempts to piece-meal his or her claims and ends up doing nothing but wasting the court's time. Knowledge of these facts can be fairly imputed to Mr. Abel and such knowledge serves as more than enough proof of his bad faith. To use a baseball analogy, if the defendants' request for costs and fees in connection with *Manton I* was a pitch just off the corner of the plate (as per Magistrate Judge Knowles "a close [call]" comment), then this motion is a strike right down the middle of the plate. The

[5] Upon order of the Court, defendants will submit the actual attorney billing entries under seal, as such reports contain confidential and privileged attorney-client communications and attorney work-product. *See* FRCP 54(d)(2)(B), (C) and (D); LR54.2. In addition, defendants will submit information regarding the professional background and experience of the individual attorneys and paralegals upon request from the Court.

lesson Mr. Abel should have learned last time was ignored and his second chance has now been wasted. As such, an award of fees and/or sanctions is warranted and appropriate.

For all of the foregoing reasons, the moving defendants herein request that the amounts set forth in the attached Bill of Costs be taxed as costs against the plaintiffs and/or Mr. Abel, for the specific grounds urged herein.

Respectfully submitted:

TALLEY, ANTHONY, HUGHES & KNIGHT, L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2013, a copy of the foregoing Memorandum in Support of Defendants' Motion to Tax Costs and Attorneys' Fees was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Daniel G. Abel, Esq. by operation of the court's electronic filing system.

/s/ Gary L. Hanes
GARY L. HANES

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SHERRIE BURAS MANTON and INDEPENDENT FIREARM OWNERS ASSOCIATION, INC.	CIVIL ACTION NO.: 11-0785
VERSUS	SECTION: "R"
SHERIFF RODNEY "JACK" STRAIN, JR., ET AL.	MAGISTRATE: 03
	JURY DEMAND

DEFENDANTS' BILL OF COSTS

Description	Amount
Attorneys' fees (see Exhibit "B")	$15,544.50
GRAND TOTAL	$15,544.50

Respectfully submitted:

TALLEY, ANTHONY, HUGHES & KNIGHT, L.L.C.

BY: /s/ Gary L. Hanes
CHARLES M. HUGHES, JR. (#14382)
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I hereby certify that on January 10, 2013, a copy of the foregoing Defendants' Bill of Costs was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Daniel G. Abel, Esq. by operation of the court's electronic filing system.

/s/ Gary L. Hanes
GARY L. HANES

TALLEY, ANTHONY, HUGHES & KNIGHT, L.L.C.

A LIMITED LIABILITY COMPANY

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WRITER'S EMAIL ADDRESS:

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PLEASE REPLY TO:
MANDEVILLE ADDRESS

January 10, 2013

I hereby certify that the attached is a true and correct account of the total time and expenses incurred to date in the case of *Sherrie Buras Manton, et al. v. Sheriff Rodney "Jack" Strain, Jr., et al.*, No. 11-0785 "R"(3).

Tammy R. Pierce
Billing Coordinator

Time and Expense Details

1/1/1900 - 1/10/2013

	Hours Worked	Hours To Bill	Hours On Bill	Fee Amount	Fee Billed	Expense Amount	Expense Billed
Client Totals	126.80	126.80	117.40	$15,544.50	$14,369.50	$0.00	$0.00

	Hours Worked	Hours To Bill	Hours On Bill	Fee Amount	Fee Billed	Expense Amount	Expense Billed
Report Totals	126.80	126.80	117.40	$15,544.50	$14,369.50	$0.00	$0.00

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SHERRIE BURAS MANTON and INDEPENDENT FIREARM OWNERS ASSOCIATION, INC. VERSUS SHERIFF RODNEY "JACK" STRAIN, JR., ET AL.	CIVIL ACTION NO.: 11-0785 SECTION: "R" MAGISTRATE: 03 JURY DEMAND

NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that Rodney J. Strain, Jr., in his capacity as Sheriff of St. Tammany Parish, Al Strain, Fred Oswald, Brian O'Cull, Allen Schulkens, Randy Thibodeaux, Jerry Coyne, Jerry Rogers, Allen McGuire, and Charles M. Hughes, Jr., Esq., all made defendants herein, will submit for hearing the accompanying Motion to Tax Costs And Attorneys' Fees before the appropriate section of the United States District Court for the Eastern District of Louisiana, namely, the Honorable Sarah S. Vance, Chief District Judge, in New Orleans, Louisiana, on the 27th day of February, 2013 at 10:00 o'clock A.M.

Respectfully submitted:

TALLEY, ANTHONY, HUGHES & KNIGHT, L.L.C.

BY: /s/ Gary L. Hanes
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/s/ Gary L. Hanes
GARY L. HANES