

1 Linda J. Linton, Esq. (Counsel for Service)  
2 (California Bar No. 177821)  
3 Linton & Associates, P.C.  
4 6900 S. McCarran Blvd., #2040  
5 Reno, NV 89509  
6 Telephone: (775) 333-0881  
7 Facsimile: (775) 333-0877  
8 [llinton@lintonlegal.com](mailto:llinton@lintonlegal.com)

6 Douglas S. Burdin, Esq.  
(D.C. Bar No. 434107)  
7 Anna M. Seidman, Esq.  
(D.C. Bar No. 417091)  
8 Safari Club International  
9 501 2<sup>nd</sup> Street N.E.  
10 Washington, D. C. 20002  
11 Telephone: (202) 543-8733  
12 Facsimile: (202) 543-1205  
13 [dburdin@safariclub.org](mailto:dburdin@safariclub.org)  
14 [aseidman@safariclub.org](mailto:aseidman@safariclub.org)  
15 Counsel for Plaintiff  
16 Safari Club International

13 **IN THE DISTRICT COURT FOR THE**  
14 **EASTERN DISTRICT OF CALIFORNIA**

15 SAFARI CLUB INTERNATIONAL )  
16 )  
17 Plaintiff, )  
18 v. )  
19 KAMALA D. HARRIS, in her official )  
20 capacity as the Attorney General of )  
21 California; CHARLTON H. BONHAM, )  
22 in his official capacity as the Director of )  
23 the California Department of Fish and )  
24 Wildlife )  
25 Defendants. )

2:14-cv-01856-GEB-AC  
**PLAINTIFF’S OPPOSITION TO  
HUMANE SOCIETY OF THE  
UNITED STATES ET AL.’S  
MOTION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF**  
Date: January 20, 2015  
Time: 9:00 a.m.  
Courtroom: 10, 13<sup>th</sup> Floor  
Judge: Hon. Garland E. Burrell, Jr.  
Action Filed: August 6, 2014

1 **I. INTRODUCTION**

2 Plaintiff Safari Club International (“Safari Club”) opposes the motion for leave to file an  
3 amicus brief by the Humane Society of the United States, et al. (“HSUS”). The motion is  
4 untimely; would cause undue prejudice to Safari Club at a time it must respond to the pending  
5 motion to dismiss (including preparing for the February 2 hearing); and contains duplicative,  
6 irrelevant, and other arguments that will not sufficiently assist the Court such as to overcome the  
7 lateness of the filing and prejudice to Safari Club.

8  
9 On August 6, 2014, Safari Club filed a lawsuit challenging a California law that imposes  
10 a complete ban on the importation (and subsequent transportation and possession) of mountain  
11 lions legally sport-hunted in other states and countries (“Import Ban”). If Safari Club is  
12 successful in this lawsuit, the Court will enjoin enforcement of the Import Ban and individuals  
13 will again be able to import, transport, and possess mountain lions legally hunted in other states  
14 or countries. HSUS purports to have significant interests in mountain lions and the Import Ban,  
15 yet, despite significant publicity about the lawsuit, failed to seek leave to participate in this case  
16 until over four months after Safari Club filed its complaint. As explained below, this undue  
17 delay in filing the motion for leave means that the hearing on the motion (and soonest time the  
18 Court could render a decision) will take place after Safari Club’s opposition to the State  
19 Defendants’ pending motion to dismiss is due and less than two weeks before the hearing on that  
20 motion to dismiss. HSUS offers no reason for its failure to file its motion in a timely manner,  
21 much less a reason that would justify the burden on Safari Club and the Court. HSUS can  
22 present any relevant, non-duplicative arguments at a later time in this litigation. For these  
23 reasons, the Court should deny the motion for leave to file an amicus brief.  
24  
25

1 **II. Timeline and Publicity Regarding this Lawsuit**

2 HSUS should have been aware of this lawsuit long before December 2014 or, if it was  
3 aware, should have filed sooner. As early as November 2013, the media reported that Safari  
4 Club was considering challenging the import ban.<sup>1</sup> On March 31, 2014, Safari Club announced  
5 that it definitely was moving forward with a lawsuit to challenge the import ban.<sup>2</sup> Safari Club  
6 filed this case on August 6, 2014, and publicized the filing the lawsuit. On August 7, Safari Club  
7 put out a press release and blog on the lawsuit.<sup>3</sup> Numerous media outlets and websites carried  
8 the story, including the Mountain Lion Foundation, an organization that opposed the hunting of  
9 mountain lions.<sup>4</sup> On August 12, 2014, the Archery Wire carried a story about Safari Club's  
10 lawsuit and two days later the Outdoor Wire published the same story.<sup>5</sup>

11  
12 The proceedings in this Court, including the deadlines applicable to the State Defendants'  
13 motion to dismiss, also were publicly available through PACER. After obtaining an extension to  
14

15  
16 <sup>1</sup> [http://www.weekendbowhunter.com/2013/11/sci-to-challenge-california-mountain-lion-import-](http://www.weekendbowhunter.com/2013/11/sci-to-challenge-california-mountain-lion-import-ban/)  
17 [ban/](http://www.weekendbowhunter.com/2013/11/sci-to-challenge-california-mountain-lion-import-ban/). All websites cited in this Opposition were accessed between December 18, 2014, and  
18 January 6, 2015.

19 <sup>2</sup> [https://firstforhunters.wordpress.com/2014/03/31/sci-moving-forward-with-legal-challenge-to-](https://firstforhunters.wordpress.com/2014/03/31/sci-moving-forward-with-legal-challenge-to-california-mountain-lion-import-ban/)  
20 [california-mountain-lion-import-ban/](https://firstforhunters.wordpress.com/2014/03/31/sci-moving-forward-with-legal-challenge-to-california-mountain-lion-import-ban/).

21 <sup>3</sup> [https://firstforhunters.wordpress.com/2014/08/07/sci-challenges-california-mountain-lion-](https://firstforhunters.wordpress.com/2014/08/07/sci-challenges-california-mountain-lion-import-ban-in-federal-court/)  
22 [import-ban-in-federal-court/](https://firstforhunters.wordpress.com/2014/08/07/sci-challenges-california-mountain-lion-import-ban-in-federal-court/).

23 <sup>4</sup> <http://www.americanhunter.org/blogs/sci-challenges-california-mountain-lion-import-ban;>

24 [http://www.mountainlion.org/newsstory.asp?news\\_id=1546;](http://www.mountainlion.org/newsstory.asp?news_id=1546;)

25 [http://www.courthousenews.com/2014/08/07/70185.htm;](http://www.courthousenews.com/2014/08/07/70185.htm)

[http://www.outdoorhub.com/pr/2014/08/07/sci-challenges-california-mountain-lion-import-ban-](http://www.outdoorhub.com/pr/2014/08/07/sci-challenges-california-mountain-lion-import-ban-federal-court/)  
[federal-court/](http://www.outdoorhub.com/pr/2014/08/07/sci-challenges-california-mountain-lion-import-ban-federal-court/).

<sup>5</sup> [http://www.archerywire.com/archived/2014-08-12\\_archery.html;](http://www.archerywire.com/archived/2014-08-12_archery.html)

[http://www.theoutdoorwire.com/archived/2014-08-14\\_tow.html.](http://www.theoutdoorwire.com/archived/2014-08-14_tow.html)

1 file a response to Safari Club’s complaint, Defendants Harris and Bonham (“State Defendants”),  
2 filed a motion to dismiss on October 6, 2014 (Dkt. 15). On October 17, 2014, Safari Club  
3 obtained an extension to respond to the motion to dismiss and set the hearing for February 2,  
4 2015. Based on this hearing date, Safari Club’s opposition to the motion to dismiss is due on  
5 January 16, 2015 (January 19 is a federal holiday).

6 HSUS has no excuse – and has offered none – for failing to learn of the lawsuit and file  
7 its motion in a timely manner. HSUS is a large, highly funded special interest group with  
8 significant media and other resources.<sup>6</sup> It claims to be “the nation’s largest and most effective  
9 animal protection organization.”<sup>7</sup> It claims to have “over 1.4 million members and constituents  
10 in California, ....” HSUS Mot. at 3. HSUS must be monitoring Safari Club’s litigation, as it has  
11 often timely learned of Safari Club’s litigation and intervened.<sup>8</sup> In light of these resources, its  
12 purported interest in mountain lions, and the publicly available information about the filing of  
13 Safari Club’s lawsuit, HSUS should have discovered the fact that Safari Club filed a federal  
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19 <sup>6</sup> For example, HSUS’ 2013 Consolidated Financial Statement lists total net assets of over \$240  
20 million and expenses on Advocacy and Public Policy of over \$60 million (pages 3 and 5).  
[http://www.humanesociety.org/assets/pdfs/financials/2013-hsus-and-affiliates-consolidated-  
financial-statements.pdf](http://www.humanesociety.org/assets/pdfs/financials/2013-hsus-and-affiliates-consolidated-financial-statements.pdf) .

21 <sup>7</sup> [http://www.humanesociety.org/about/?credit=web\\_id80916523](http://www.humanesociety.org/about/?credit=web_id80916523).

22 <sup>8</sup> See, e.g., website post regarding intervention in Safari Club lawsuit over polar bears,  
23 [http://www.humanesociety.org/news/resources/docket/safari\\_club\\_international\\_v.html](http://www.humanesociety.org/news/resources/docket/safari_club_international_v.html); website  
24 post noting development in Safari Club lawsuit over antelope species,  
[http://www.humanesociety.org/news/press\\_releases/2012/04/federal\\_rule\\_limiting\\_captive\\_0405  
12.html](http://www.humanesociety.org/news/press_releases/2012/04/federal_rule_limiting_captive_040512.html).

1 lawsuit challenging the mountain lion import ban. Upon discovery, it should have promptly  
2 moved to participate in the case, so as not to prejudice Safari Club.

3 Instead of filing a timely motion for leave, HSUS filed its motion on December 17, 2014  
4 and set a hearing for January 20, 2015, several days after Safari Club's opposition to the State  
5 Defendants' motion to dismiss is due and less than two weeks before the long-scheduled hearing  
6 on that motion. As explained below, the Court should deny the motion for leave to file an  
7 amicus brief due to HSUS' dilatory actions and the prejudice to Safari Club.

8  
9 **III. The Undue Delay in Filing the Motion and Prejudice to Safari Club are Grounds to  
Deny the Motion for Leave**

10 The Court should exercise its discretion to deny HSUS' motion for leave to file an  
11 amicus brief due to HSUS' unexplained failure to file this motion at an earlier time, when it  
12 would not have caused undue prejudice to Safari Club. The courts in this district have set forth  
13 the relevant factors, which include timeliness.

14  
15 "There is no inherent right to file an amicus curiae brief with the Court." *Long v.*  
16 *Coast Resorts, Inc.*, 49 F.Supp.2d 1177, 1178 (D.Nev.1999). This Court retains  
17 broad discretion to either permit or reject the appearance of amicus curiae.  
18 *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 (9th Cir.1987). "A court  
19 may grant leave to appear as an amicus if the information offered is **timely** and  
20 useful." *Waste Management of Pennsylvania, Inc.*, 162 F.R.D. 34, 36  
21 (M.D.Pa.1995). "An amicus brief should normally be allowed when a party is not  
22 represented competently or is not represented at all." *Ryan v. Commodity Futures*  
23 *Trading Comm.*, 125 F.3d 1062, 1063 (7th Cir.1997). "District courts frequently  
24 welcome amicus briefs from non-parties ... if the amicus has unique information  
25 or perspective that can help the court beyond the help that the lawyers from the  
parties are able to provide." *Sonoma Falls Developers, L.L.C. v. Nev. Gold &*  
*Casinos, Inc.*, 272 F.Supp.2d 919, 925 (N.D.Cal.2003) (quotations omitted). In  
addition, participation of amicus curiae may be appropriate where legal issues in a  
case have potential ramifications beyond the parties directly involved. *Id.*

1 *Rocky Mountain Farmers Union v. Goldstene*, No. CVF092234LJODLB, 2010 WL 1949146, at  
2 \*2 (E.D. Cal. May 11, 2010) (emphasis added). Other courts in this Circuit also include  
3 timeliness as a relevant factor. “The privilege of being heard amicus rests in the discretion of the  
4 court[,] which may grant or refuse leave according as it deems the proffered information **timely**,  
5 useful, or otherwise. *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir.1982).” *Cnty. Ass'n for*  
6 *Restoration of Env't (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash.  
7 1999) (emphasis added); *see also Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D.  
8 Nev. 1999) (same; denying leave to file amicus brief).

9  
10 HSUS’ discussion of the factors courts consider in determining whether to grant leave to  
11 file an amicus brief lacks any mention of timeliness. HSUS Mot. at 3. Despite the obvious  
12 lateness of its motion, HSUS offers no explanation for its undue delay in filing its motion.  
13 Instead, at the end of its brief, HSUS claims that its motion is “timely as it is submitted in  
14 advance of Plaintiffs’ [sic] opposition to Defendants’ motion [to dismiss].” *Id.* at 6. It then  
15 suggests that the time needed for Safari Club to respond to the amicus brief if the Court were to  
16 approve its submission, “could be accommodated without prejudice to the parties ....” *Id.* at 6  
17  
18 n.4.

19  
20 But Safari Club should not have to change its long-established hearing date to  
21 accommodate the dilatory filing of HSUS’ motion. Nor could rescheduling be done without  
22 prejudice to Safari Club’s interests. Undersigned counsel for Safari Club has already booked  
23 airfare to Sacramento and, following the hearing on February 2, to Las Vegas, where Safari  
24 Club’s annual convention will begin on February 3. Rescheduling the February 2 hearing, which  
25

1 has already been approved for an extended argument time, would entail cancelling and rebooking  
2 two flights, at great cost and inconvenience to Safari Club and its counsel. If the Court grants  
3 leave to file the amicus brief and the hearing date remains the same, Safari Club would have to  
4 devote resources to responding to the HSUS' brief it would otherwise devote to preparation for  
5 the hearing.<sup>9</sup>  
6

7 **IV. HSUS' Brief is Not Sufficiently Useful to Overcome the Late Filing and Prejudice to**  
8 **Safari Club in Expending Resources to Respond to the Amicus Briefs' Arguments,**  
9 **Including Irrelevant and Inappropriate Arguments**

10 In addition to not being timely, HSUS' proposed brief will not be significantly useful at  
11 this point, but will force Safari Club to expend resources just prior to the February 2 hearing  
12 responding to arguments, including proving that certain arguments are not relevant. The State  
13 Defendants have ably presented the arguments why they think Safari Club's claims should be  
14 dismissed prior to discovery and further fact development. *See Rocky Mountain Farmers Union,*  
15 *2010 WL 1949146, at \*2* ("An amicus brief should normally be allowed when a party is not  
16 represented competently or is not represented at all."). Although purporting to "endeavor[] not  
17 to duplicate Defendants in the presentation of facts or legal authority," HSUS' brief contains  
18 many of the same arguments and authorities as presented by the State Defendants. *See, e.g.,*  
19

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21  
22 <sup>9</sup> Safari Club's local counsel, Linda Linton, is recuperating from serious surgery and is  
23 unavailable to assist at this time. Undersigned counsel is primarily responsible for the  
24 preparation of this case, especially because the two other attorneys in Safari Club's office must  
25 prepare for Safari Club's convention, along with their already heavy litigation workload.

1 HSUS Am. Br. at 4 (discussing motion to dismiss standards), 5-9 (discussing Commerce Clause  
2 cases or arguments), 11-12 (discussing Equal Protection standards). Many of the additional  
3 arguments merely provide supplemental but not significantly different authority for the  
4 propositions already presented by the State Defendants.  
5

6 HSUS' brief also raises irrelevant or inappropriate arguments to which Safari Club will  
7 have to expend resources responding if the Court allows the filing of HSUS' brief. HSUS' brief  
8 asserts a justification for the import ban not advanced or endorsed by the State Defendants  
9 (either now or in the early 1990s when the State earlier defended the Import Ban). HSUS Am.  
10 Br. at 8-10. If the State Defendants did not try to justify the Import Ban on this basis, its  
11 relevance to the pending motion to dismiss is questionable. HSUS' brief argues another point  
12 not advanced by the State Defendants – that consideration of a ballot initiative in 1996  
13 concerning partial repeal of the 1990 proposition provides so-called “legislative history”  
14 regarding the 1990 Import Ban. *Id.* at 3.<sup>10</sup> This information provides no significant insight as it  
15 postdates the enactment of the Import Ban. HSUS' brief also, in direct contradiction of the  
16 caselaw they cite, questions the credibility of Safari Club's factual assertions. *Compare* HSUS  
17  
18  
19

20  
21 <sup>10</sup> HSUS' Request of Judicial Notice (Dkt. 18-3) asserts that the 1996 initiative is part of  
22 the “legislative history” of the 1990 initiative. Without conceding that any of the three exhibits  
23 are relevant or helpful (they are not) or admitting that the contents of the documents are true,  
24 Safari Club does not object to the Court taking judicial notice of these documents. If the Court  
25 allows the filing of HSUS' amicus brief, however, Safari Club would have to expend resources  
to explain why the 1996 ballot initiative (Exhibit A to HSUS' Request) is irrelevant and the two  
newspaper articles are of minimal value (Exhibits B-C).



1 Am. Br. at 4 (“[w]hen ruling on a motion to dismiss, a court must accept all factual allegations  
2 stated in a complaint as true, ....”) *with id.* at 7 (“the credibility of [Safari Club’s] claims is  
3 suspect ....”). Finally, the brief lamely asserts motives to Safari Club regarding the hunting of  
4 game animals that it clearly does not possess. *See id.* at 13 & n.3.

6 Regardless of the usefulness of HSUS’ amicus brief, if the Court grants the motion,  
7 Safari Club will have to expend its limited resources to respond to the amicus brief before the  
8 hearing. As only a motion to dismiss is pending before the Court, HSUS could seek an  
9 opportunity to present its arguments during later briefing in this case if it wants. At this late  
10 stage of the briefing on the motion to dismiss, however, the prejudice to Safari Club argues  
11 against allowing the untimely filing of the amicus brief.

13 **V. CONCLUSION**

14 HSUS’ motion for leave to file an amicus brief is not timely and HSUS has offered no  
15 explanation for its late filing. Allowing the brief will cause undue prejudice to Safari Club. In  
16 addition, HSUS’ brief will not significantly assist the Court such as to overcome the lateness of  
17 its filing, but would force Safari Club to expend resources just prior to the hearing to address  
18 arguments, including demonstrating that arguments are not relevant. For these reasons, the Court  
19 should deny the motion for leave to file an amicus brief.

1  
2 Dated this 6th day of January, 2015.  
3  
4

5 Respectfully submitted,

6 /s/ Douglas S. Burdin

Douglas S. Burdin, Esq.\*

(D.C. Bar No. 434107)

7 Anna M. Seidman, Esq.\*

(D.C. Bar No. 417091)

8 Jeremy E. Clare, Esq.\*

(D.C. Bar No. 1015688)

Safari Club International

501 2<sup>nd</sup> Street N.E.

Washington, D. C. 20002

11 Telephone: (202) 543-8733

12 Facsimile: (202) 543-1205

[dburdin@safariclub.org](mailto:dburdin@safariclub.org)

[aseidman@safariclub.org](mailto:aseidman@safariclub.org)

[jclare@safariclub.org](mailto:jclare@safariclub.org)

14 Linda J. Linton, Esq. (Counsel for Service)

(California Bar No. 177821)

Linton & Associates, P.C.

6900 S. McCarran Blvd., #2040

Reno, NV 89509

17 Telephone: (775) 333-0881

18 Facsimile: (775) 333-0877

[llinton@lintonlegal.com](mailto:llinton@lintonlegal.com)

19 Counsel for Plaintiff

20 Safari Club International

21 \* Pro Hac Vice Granted  
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25

**IN THE DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

SAFARI CLUB INTERNATIONAL )  
)  
Plaintiff, )  
)  
v. )  
)  
KAMALA D. HARRIS, in her official )  
capacity as the Attorney General of )  
California; CHARLTON H. BONHAM, )  
in his official capacity as the Director of )  
the California Department of Fish and )  
Wildlife, )  
)  
Defendants. )  
)  
\_\_\_\_\_ )

2:14-cv-01856-GEB-AC

**[PROPOSED] ORDER DENYING  
HUMANE SOCIETY OF THE  
UNITED STATES ET AL.'S  
MOTION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF**

Date: January 20, 2015  
Time: 9:00 a.m.  
Courtroom: 10, 13<sup>th</sup> Floor  
Judge: Hon. Garland E. Burrell, Jr.  
Action Filed: August 6, 2014

The Motion for Leave to File Amicus Curiae Brief by the Humane Society of the United States and the Fund for Animals was heard on January 20, 2015, at 9:00 a.m. in Courtroom 10, before the Honorable Garland E. Burrell, Jr., United States District Court Judge. Counsel for the plaintiff Safari Club International and amicus applicants Humane Society of the United States et al. appeared.

Having considered the amicus applicants' motion (Dkt. 18) and the opposition filed by Safari Club International, the other pleadings and documents on file in this case, and the arguments of the applicants and plaintiff, the Court will exercise its discretion to deny the motion for leave to file an amicus curiae brief. Therefore, the Court **DENIES** the amicus applicants' motion.

1 IT IS SO ORDERED.

2

3 Dated: \_\_\_\_\_

\_\_\_\_\_   
The Honorable Garland E. Burrell, Jr.

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