

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**SHERIFF CLAY PARKER, TEHAMA COUNTY
SHERIFF; HERB BAUER SPORTING GOODS;
CALIFORNIA RIFLE AND PISTOL
ASSOCIATION FOUNDATION; ABLE'S
SPORTING, INC.; RTG SPORTING
COLLECTIBLES, LLC; AND STEVEN
STONECIPHER,**

Plaintiffs and Respondents,

v.

**THE STATE OF CALIFORNIA; KAMALA D.
HARRIS, in her official capacity as Attorney General
for the State of California; AND THE CALIFORNIA
DEPARTMENT OF JUSTICE,**

Defendants and Appellants.

Case No. S215265

**SUPREME COURT
FILED**

AUG - 8 2016

Frank A. McGuire Clerk
Deputy

Fifth Appellate District, Case Nos. F062490, F062079
Fresno County Superior Court, Case No. 10CECG02116
The Honorable Jeffrey Y. Hamilton, Judge

**APPLICATION FOR LEAVE TO FILE LATE BRIEF;
DECLARATION OF CLINTON B. MONFORT IN SUPPORT**

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Counsel for Plaintiffs/Respondents

Pursuant to California Rules of Court, rules 8.50, 8.60, and 8.63, Plaintiffs and Respondents Sheriff Clay Parker, Herb Bauer Sporting Goods, California Rifle and Pistol Association, Able's Sporting, Inc., RTG Sporting Collectibles, LLC, and Steven Stonecipher ("Respondents"), through their attorneys of record, hereby respectfully request to file a late supplemental letter brief. This application is based on the declaration of Clinton B. Monfort attached hereto.

As detailed further below, good cause exists to grant Respondents' request. On July 20, 2016, this Court issued an order directing the parties to submit on or before August 3, 2016, supplemental letter briefs addressing whether the passage of Senate Bill No. 1235 (2015-2016 Reg. Sess.) has rendered moot Respondents' claims.

Respondents' counsel of record consists of attorneys from two offices in separate locations. Declaration of Clinton B. Monfort ("Monfort Decl.") ¶ 4. For unknown reasons, neither office for Respondents' counsel received any type of notification (e.g., mail or e-mail) or service relating to the Court's July 20, 2016 Order. Monfort Decl. ¶ 5-6. Counsel for Respondents first learned of the July 20 Order on August 3, 2016—when counsel received an electronic copy of Appellants' Supplemental Letter Brief. Monfort Decl. ¶¶ 2-3.

Upon receiving Appellants' letter brief, counsel for Respondents checked the Court's docket and saw—for the first time—the Court's July 20, 2016 docket entry. Monfort Decl. ¶ 8. Prior to that day, Respondents' counsel had not previously viewed, nor was aware of, the Court's July 20, 2016 docket entry. Monfort Decl. ¶ 7. Because business hours were coming to a close, without any fault of their own, counsel for

Respondents were unable to file a supplemental brief on August 3, 2016. Monfort Decl. ¶ 2-8. Immediately, Respondents' counsel contacted the Clerk for the California Supreme Court, who instructed counsel to file an Application for Leave to File Late Brief. Monfort Decl. ¶ 9.

On or about August 4, 2016, counsel for Respondents hired an attorney service to obtain a copy of the Court's July 20, 2016 Order. Monfort Decl. ¶ 10. Counsel for Respondents received the Order on August 4, 2016, and for the first time was able to view the Court's July 20, 2016 Order. Monfort Decl. ¶ 11.

The above reasons precluded Respondents' counsel from filing a supplemental brief by the August 3, 2016 deadline. Permitting Respondents' leave to file a late brief will serve the policy favoring adequate time to prepare briefs "that fully advance the parties' interests," and are "accurate, clear, concise, and complete submissions that assist the courts." Cal. Rules of Court, rule 8.63(a)(2). To Respondents' knowledge, granting Respondents' application will not unduly prejudice Appellants. A denial, however, unduly prejudices Respondents, who did not receive notice of the request for supplemental briefing prior to the brief being due.

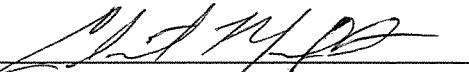
On August 4, 2016, Respondents' counsel spoke with Appellants' counsel and informed them of the above circumstances, agreeing to provide a courtesy copy of this application and letter brief when Respondents' send the brief out for filing. Monfort Decl. ¶ 13. On August 5, 2016, Respondents' counsel e-mailed Appellants' counsel a courtesy copy of Respondents' application and brief. Monfort Decl. ¶ 14.

Pursuant to California Rules of Court, rule 8.60, subdivision (f)(1), a copy of this Application has been delivered to the Respondents. Monfort Decl. ¶ 15.

For these reasons, Respondents respectfully request that the Court grant the Application for Leave to File Late Brief.

Dated: August 5, 2016

MICHEL & ASSOCIATES, P.C.

By: 
Clinton B. Monfort
Attorney for Respondents

DECLARATION OF CLINTON B. MONFORT

I, Clinton B. Monfort, declare as follows:

1. I am an attorney licensed to practice law before the courts of the State of California. I am an associate attorney of the law firm of Michel & Associates, P.C., counsel for Respondents Sheriff Clay Parker, Herb Bauer Sporting Goods, California Rifle and Pistol Association, Able's Sporting, Inc., RTG Sporting Collectibles, LLC, and Steven Stonecipher, in this action. I have personal knowledge of each fact stated in this declaration and if called as a witness I could and would competently testify thereto.
2. At approximately 4:36 P.M. on August 3, 2016, Respondents' counsel received an electronic copy of Appellants' Supplemental Letter Brief that was prepared in response to the Court's order of July 20, 2016.
3. Receipt of this brief marked the first time Respondents' counsel learned of the Court's July 20, 2016 Order requesting letter briefing from the parties addressing whether the passage of Senate Bill No. 1235 (2015-2016 Reg. Sess.) rendered the claims in this case moot.
4. Counsel of record for Respondents consists of attorneys from two separate law firms: Michel & Associates, P.C., located in Long Beach, California, and Bancroft, PLLC, located in Washington, D.C.
5. Neither service or notice of the Court's July 20, 2016 order, nor any notification that the Court's docket had been updated with a July 20, 2016 docket entry, were received via mail by the offices of any counsel of record for Respondents in this matter prior to receiving Appellants' Supplemental Letter Brief on August 3, 2016.

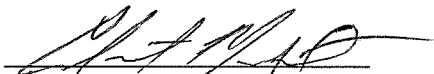
6. Neither notice of the Court's July 20, 2016 order, nor any notification that the Court's docket had been updated with a July 20, 2016 docket entry were received in the electronic mail accounts of Paul D. Clement, Carl Dawson Michel, Clinton B. Monfort, or Anna M. Barvir, or any other electronic mail account of Respondents' counsel, prior to receiving Appellants' Supplemental Letter Brief on August 2, 2016.
7. Counsel for respondents had not viewed, and were not aware of, the Court's docket entry of July 20 at any time prior to August 3, 2016.
8. Upon receiving Appellants' Supplemental Letter Brief, Respondents checked the Court's docket and viewed the July 20, 2016 docket entry in this case for the first time.
9. Immediately after viewing the July 20, 2016 docket entry, my office contacted the Clerk for the California Supreme Court, who instructed Respondents to file an Application for Leave to File a Late Brief.
10. On August 4, 2016, my office hired an attorney service to obtain a copy of the Court's July 20, 2016 Order.
11. On August 4, 2016, my office received for the first time a copy of the July 20, 2016 Order.
12. Respondents' Application for Leave to File Late Brief is made in good faith for the reasons of actual need set forth herein and not merely for the purpose of delay. To my knowledge, the requested late filing will not prejudice any party. (Cal. Rules of Court, rule 8.63(b)(1).).
13. On August 4, 2016, counsel for Respondents' spoke with counsel for Appellants and informed them that: (1) counsel for Respondents had not known about the July 20

Order until August 3; (2) that per the Court's instruction, Respondents intended to file an Application for Leave to File Late Brief; and (3) that counsel for Respondents would provide counsel for Appellants a courtesy electronic copy of their Application for Leave to File Late Brief when it is submitted for filing.

14. On August 5, 2016, counsel for Respondents sent counsel for Appellants an electronic copy of Respondents' Application for Leave to File Late Brief and an electronic copy of Respondents' Letter Brief.

15. Pursuant to California Rules of Court, rule 8.60, subdivision (f)(1), a copy of this Application has been delivered to Respondents

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed on August 5, 2014, in Long Beach, California.


Clinton B. Monfort
Declarant

DECLARATION OF SERVICE

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

On August 5, 2016, I served the foregoing document(s) described as:

Application for Leave to File Late Brief; Declaration of Clinton B. Monfort in Support

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

SEE ATTACHED "SERVICE LIST"

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

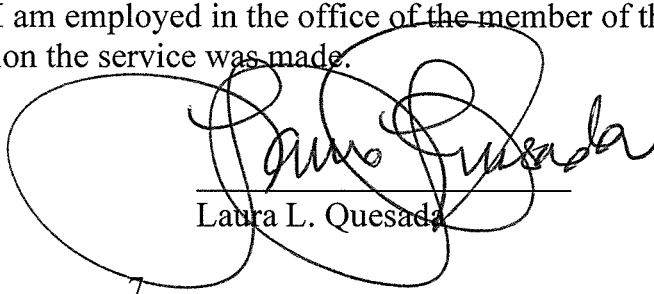
Executed on August 5, 2016, at Long Beach, California.

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on August 5, 2016, at Long Beach, California.

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

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



Laura L. Quesada

SERVICE LIST

SHERIFF CLAY PARKER ET AL. v. STATE OF CALIFORNIA ET AL.
CASE NO. S215265

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California Court of Appeal Fifth District court of Appeal 2424 Ventura Street Fresno, CA 93721	California Court of Appeal
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County of Fresno B.F. Sisk Courthouse Superior Court of California 11300 Street Fresno, CA 93721-2220	Superior Court of California
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Christianson; John D'Agostini; Michael
Downey; Steve Durfor; Dean Growdon;
Greg Hagwood; Dave Hencraft; Larry
Jones; Scott Jones; Jon E. Lopey; John
McMahon; James Mele; Margaret Mims;
J. Paul Parker; Ian S. Parkinson; Mike
Pointdexter; Martin A. Ryan; Dean
Wilson; and Donny Youngblood