

14-16840

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**KAMALA D. HARRIS, Attorney General of
California in her official capacity,**

Defendant and Appellant,

v.

**JEFF SILVESTER, BRANDON COMBS, THE
CALGUNS FOUNDATION, INC., a non-profit
organization, and THE SECOND
AMENDMENT FOUNDATION, INC., a non-
profit organization,**

Plaintiffs and Appellees.

On Appeal from the United States District Court
for the Eastern District of California

No. 11-cv-02137
The Honorable Anthony W. Ishii, Judge

**MOTION TO HOLD APPEAL IN ABEYANCE AND
DISCHARGE TIME SCHEDULING ORDER
UNTIL DISTRICT COURT RESOLVES MOTION
TO AMEND JUDGMENT**

KAMALA D. HARRIS
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General
JONATHAN M. EISENBERG
Deputy Attorney General

PETER H. CHANG
Deputy Attorney General
State Bar No. 241467
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5939
Fax: (415) 703-1234
Email: Peter.Chang@doj.ca.gov
*Attorneys for Appellant Kamala D.
Harris, California Attorney General*

Appellant Kamala D. Harris, Attorney General of California, hereby moves this Court to hold this appeal in abeyance and discharge the time scheduling order until the district court resolves Appellant's Motion to Amend Judgment currently pending before that court. This motion is unopposed.¹

The district court entered judgment in the underlying matter on August 25, 2014. (District Court Dkt. No. 107.) On September 22, 2014, Appellant timely filed a Motion to Amend Judgment under Federal Rule of Civil Procedure (FRCP) 59(e). (District Court Dkt. No. 110.) Appellant then filed a notice of appeal with the district court. (District Court Dkt. No. 111.) On September 25, 2014, the district court clerk processed the notice of appeal and notified this Court of the appeal. (District Court Dkt. No. 112.) On the same day, this Court docketed the appeal and issued a time scheduling order. (Dkt. Entry 1-4.)

Due to the pending Motion to Amend currently set for hearing before the district court on October 27, 2014, however, this appeal must be held in abeyance. Under Federal Rule of Appellate Procedure (FRAP) 4(a)(4)(B)(i), if a party files a notice of appeal before the district court resolves any motion listed in FRAP 4(a)(4)(A), such as a motion to amend judgment under FRCP 59(e), "the notice becomes effective to appeal a judgment or order, in whole or in part, when the

¹ On September 29, 2014, the undersigned counsel conferred with counsel for Appellees about the merits of this motion. Appellees do not oppose this motion.

order disposing of the last such remaining motion is entered.”. *See Leader Nat. Ins. Co. v. Industrial Indem. Ins. Co.*, 19 F.3d 444, 445 (9th Cir. 1994) (holding that, under FRAP 4(a)(4), a notice of appeal filed while a FRCP 59 motion is pending is “held in abeyance until the motion is resolved”); *see also Hodge ex rel. Skiff v. Hodge*, 269 F.3d 155, 157 n.4 (2d Cir. 2001)(“the notice of appeal must be held in abeyance by this Court until all [postjudgment motions listed in Fed. R. App. P. 4(a)(4)(A)] are disposed of, at which point the notice of appeal becomes effective”).

Therefore, Appellant respectfully requests that this Court hold this appeal in abeyance until the district court has resolved the pending Motion to Amend Judgment. Further, Appellant requests that the current briefing schedule set forth in the time scheduling order be discharged. After the district court resolves the motion, the notice of appeal will become effective, and Appellant will, at that time, request the clerk of the district court to re-notify this Court of the original notice of appeal or file an amended notice of appeal, as appropriate.

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Dated: September 29, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General
Jonathan M. Eisenberg
Deputy Attorney General

/s/ PETER H. CHANG

PETER H. CHANG
Deputy Attorney General
*Attorneys for Appellant Kamala D. Harris,
California Attorney General*

SA2012104659

CERTIFICATE OF SERVICE

Case Name: Silvester, Jeff v. Kamala Harris No. 1:11-cv-02137-AWI-SKO

I hereby certify that on September 29, 2014, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**MOTION TO HOLD APPEAL IN ABEYANCE AND DISCHARGE TIME
SCHEDULING ORDER UNTIL DISTRICT COURT RESOLVES MOTION TO AMEND
JUDGMENT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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 September 29, 2014, at San Francisco, California.

V. Sanchez
Declarant

/s/ V. Sanchez
Signature

POS.doc