

14-16840

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

Plaintiffs-Appellees,

v.

**KAMALA D. HARRIS, Attorney General
of California (in her official and individual
capacities),**

Defendant-Appellant.

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

No. 1:11-cv-02137-AWI-SKO
The Honorable Anthony W. Ishii, Judge

**APPELLANT'S UNOPPOSED MOTION TO EXTEND TIME
FOR FILING REPLY BRIEF**

KAMALA D. HARRIS
Attorney General of California

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Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney
General

JONATHAN M. EISENBERG
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*Attorneys for Defendant-Appellant
Kamala D. Harris, Attorney General of
California*

Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rule 21-2.2(b), Appellant Kamala D. Harris, as California Attorney General, respectfully moves for a 21-day extension of time, to and including June 30, 2015, in which to file the reply brief. Counsel for Appellees consent to this extension of time.

By Order entered on December 2, 2014, Appellant's reply brief is due within 14 days after service of the answering brief. Declaration of Peter H. Chang (Chang Decl.) ¶ 3. Appellees filed their answer brief on May 26, 2015. *Id.* Appellant's reply brief is thus due on June 9, 2015. *Id.*

Appellant had previously made a single streamlined request to extend time to file its opening brief. Chang Decl. ¶ 4. Appellant has filed no other requests to extend time, either for its opening brief or for its reply brief. *Id.* ¶ 5.

Appellant seeks this extension of time because Appellant's lead counsel, Jonathan Eisenberg, is currently affected by a health issue that precludes him from preparing the reply brief within the current deadline. Declaration of Jonathan M. Eisenberg (Eisenberg Decl.) ¶ 4. On June 1, 2015, the undersigned counsel was asked to prepare the reply brief in Mr. Eisenberg's place. Chang Decl. ¶ 6. While the undersigned counsel is also counsel of record, Mr. Eisenberg is the lead counsel and was responsible for drafting the opening brief. Eisenberg Decl. ¶ 3. Before Mr. Eisenberg's medical complication arose, he was also expected to prepare the reply brief. *Id.* ¶ 4. The undersigned counsel thus requests the

additional time so that he may have sufficient time to analyze the appellate issues and prepare the reply brief.

Appellant requests a 21-day extension because the undersigned counsel has, within the next three weeks, two hearings, a status conference, and a deposition, all of which require out-of-town travel. Chang Decl. ¶ 8. A 21-day extension, to and including June 30, would provide the undersigned counsel sufficient time to prepare the reply brief. With the extension, the brief will be filed within the time requested. Chang Decl. ¶ 9.

Counsel for Appellant have at all times exercised diligence; however, they could not have foreseen the medical complication that arose during the reply briefing period.

Counsel for Appellees consent to this motion for extension of time.
Eisenberg Decl. ¶ 5.

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Dated: June 2, 2015

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 Defendant-Appellant Kamala
Harris, Attorney General of California*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 2, 2015. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

BY: /S/ PETER H. CHANG

PETER H. CHANG

Deputy Attorney General

Counsel for Defendant-Appellant

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**DECLARATION OF PETER H. CHANG IN SUPPORT OF
APPELLANT'S MOTION TO EXTEND TIME
FOR FILING REPLY BRIEF**

I, Peter H. Chang, declare under penalty of perjury:

1. I am over 18 years of age. I make this declaration of my personal knowledge.
2. I am a Deputy Attorney General with the California Attorney General's Office.
3. By Order entered on December 2, 2014, Appellant's reply brief is due within 14 days after service of the answering brief. Appellees filed their answer brief on May 26, 2015. Appellant's reply brief is thus due on June 9, 2015.
4. Appellant had previously made a single streamlined request to extend time to file its opening brief.
5. Appellant has filed no other requests to extend time, either for its opening brief or for its reply brief.
6. On June 1, 2015, I was informed that Jonathan Eisenberg is affected by a health issue that prevents him from preparing the reply brief. I was then asked to prepare the reply brief in Mr. Eisenberg's place.
7. Prior to June 1, 2015, I did not expect to take the lead in preparing Appellant's reply brief.
8. Within the next three weeks, I have two hearings in Sacramento Superior Court, a status conference in Orange County Superior Court, and a deposition in Orange County.
9. With an extension of time, Appellant will file the reply brief within the time requested.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 2, 2015, at San Francisco, California.

/s/ Peter H. Chang
Peter H. Chang

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**DECLARATION OF JONATHAN M. EISENBERG IN SUPPORT OF
APPELLANT'S MOTION TO EXTEND TIME
FOR FILING REPLY BRIEF**

I, Jonathan M. Eisenberg, declare under penalty of perjury as follows:

1. I am over 18 years of age. I make this declaration of my personal knowledge.
2. I am a deputy attorney general with the California Attorney General's Office. I am counsel of record for Appellant (Kamala D. Harris, as Attorney General of the State of California) and the lead attorney for Appellant in the above-entitled action, *Silvester v. Harris*. I have been counsel of record and lead attorney for Appellant since the action was first filed in the trial court and the original complaint served on Appellant.
3. I was the lead attorney in preparing the opening brief in the pending appeal in this matter.
4. I was to be the lead attorney in preparing Appellant's reply brief herein, which brief is currently due on June 9, 2015. However, I am currently affected by a serious medical issue whose negative effects heightened over the weekend of May 30-31, 2015, and I determined that I am not able to effectively and timely prepare Appellant's reply brief.
5. On June 1, 2015, by a telephone call, I informed Donald F. Kilmer, counsel of record for Appellees herein, of my medical situation, and the need for a brief extension of the deadline for Appellant's reply brief to be filed, so that another attorney, Peter H. Chang, who is also a deputy attorney general with the California Attorney General's Office, and who also has been counsel of record for Appellant in this case at both the trial and appellate levels, may take over for me as lead attorney on Appellant's reply brief. That same day, Mr. Kilmer indicated by


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e-mail that he consent to the request for a short extension of the deadline for Appellants' reply brief to be filed.

I declare under penalty of perjury that the foregoing is true and correct, and that I executed this declaration on June 2, 2015, at Los Angeles, California.


Jonathan M. Eisenberg