

EXHIBIT A

From: Anthony Hakl
To: Don@DKLawOffice.com
Date: 9/8/2009 2:24 PM
Subject: RE: Pena v. Cid -- Rule 56(f) motion

Don:

Just to clarify, we think it is most efficient to have our motion to dismiss heard and resolved before moving on to expend the resources associated with discovery and the summary judgment stage, which is the typical order of things.

Also, we believe our motion to dismiss is well-taken and, if it is granted, it will dispose of this case. We did not bring the motion simply to frame the issues, as your e-mail suggests. My point was that in the event the motion were denied, the Court's order may very well give rise to additional issues that would need to be explored in the discovery process, in addition to those we have identified in our Rule 56(f) motion at this early stage of the case.

-Tony

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>>> Don Kilmer <don@dklawoffice.com> 9/8/2009 11:23 AM >>>
Tony:

Thank you for taking my call. In lieu of your office filing a Rule 56(f) motion (ex parte no less), I made the following offer to resolve this issue:

1. The parties would agree to move both motions (your Rule 12 and our Rule 56) to a later date. October 30, 2009 was suggested.
2. We would make our clients available for depositions as soon as possible so that you could explore your assertion of disputed facts.
3. Both motions could be heard on the same day in the interests of judicial economy.

Your office declined this offer and you indicated that you intended to file your Rule 56(f) motion tomorrow.

We discussed the fact that no discovery is necessary on the issue of incorporation of the Second Amendment against state action and you concurred in that assessment.

When I asked you what facts we raised in our Rule 56 motion that you thought would be "in dispute" regarding the handgun roster, you demurred and stated that you wanted to see how the judge framed the issues in the case in his ruling on your Rule 12 motion.

I offered to work with your office to create factual stipulations that would allow our Rule 56 motion to proceed alongside your rule 12 motion, and again you demurred by stating that you wanted your Rule 12 motion heard first.

So we are at an impasse. I wish I could say that I look forward to reading your Rule 56(f) motion. We will take the position that it is frivolous and brought for purposes of delay.

Cordially,

Donald E. J. Kilmer, Jr.
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-----Original Message-----

From: Anthony Hakl [<mailto:Anthony.Hakl@doj.ca.gov>]
Sent: Friday, September 04, 2009 3:56 PM
To: don@dklawoffice.com
Subject: Pena v. Cid -- Rule 56(f) motion

Mr. Kilmer:

We are in receipt of plaintiffs' motion for summary judgment filed on September 2. We intend to file a Rule 56(f) motion next week on September 9. We also plan to file an ex parte application for an order shortening time so the motion can be briefed, heard if necessary, and resolved prior to September 18, which is the last day for defendant to otherwise oppose the summary judgment motion (assuming personal service of the opposition).

I am sending this e-mail to comply with Local Rule 6-144(e), which requires that I ask whether you are agreeable to stipulating to an order shortening time. Are you agreeable to an expedited briefing schedule on our Rule 56(f) motion? I will file the motion next week and propose we defer to the Court to order appropriate opposition and reply dates and, if necessary, a hearing date so that the motion can be resolved prior to September 18.

-Tony

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