

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DEFENSE DISTRIBUTED; SECOND §
AMENDMENT FOUNDATION, INC; and §
CONN WILLIAMSON, §

Plaintiffs, §

v. §

Civil Action No. 1:15-CV-00372-RP

UNITED STATES DEPARTMENT OF §
STATE; MICHAEL POMPEO, in his official §
capacity as Secretary of State; §
DIRECTORATE OF DEFENSE TRADE §
CONTROLS; MIKE MILLER, in his official §
capacity as Acting Deputy Assistant §
Secretary of Defense Trade Controls §
; SARAH J. HEIDEMA, in her official §
capacity as Acting Director, Office of Defense §
Trade Controls Policy, Bureau of Political §
Military Affairs, Department of State, §

Defendants. §

Amended Notice of Appeal

Plaintiffs Defense Distributed, Second Amendment Foundation, Inc., and Conn Williamson file this amended notice of appeal. *See* Fed. R. App. P. 4(A)(4)(B); Dkt. 135 (Plaintiffs’ Protective Notice of Appeal).

Plaintiffs Defense Distributed, Second Amendment Foundation, Inc., and Conn Williamson appeal to the United States Court of Appeals for the Fifth Circuit from the final judgment comprised of document number 112, the July 27, 2018 “Stipulation of Dismissal with Prejudice,” and document number 113, the July 30, 2018 “Order,” as well as from document number 136, the October 10, 2018 “Order” denying their motion for post-judgment relief.

This is an amended notice of appeal. The original notice of appeal, Dkt. 135, was filed “protectively because the parties disagree about a procedural matter that impacts appellate deadlines.” Dkt. 135 at 1. “Specifically, a protective notice [was] called for by a dispute about the timeliness of Plaintiffs’ post-judgment motion for relief under Federal Rule of Civil Procedure 59 and Federal Rule of Civil Procedure 60.” *Id. see* Dkt. 117 (Plaintiffs’ motion). As the protective notice explained, the dispute pertained to appellate deadlines:

Plaintiffs submit that their motion for post-judgment relief was timely. *See* Dkt. 132 at 2-3. If so, “the time to file an appeal runs for all parties from the entry of the order disposing of the . . . motion,” Fed. R. App. P. 4(a)(4)(A), which has not occurred yet. Defendants submit that the motion was untimely. *See* Dkt. 125 at 3-4. If so, the notice of appeal would be due “within 60 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(B).

Hence, if Plaintiffs’ are correct about timeliness, a notice of appeal need not be filed at this time. But out of an abundance of caution, Plaintiffs file this notice protectively to guarantee appellate jurisdiction. This notice does *not* disrupt the need for a decision on Plaintiffs’ motion for relief under Rules 59 and 60. The Court should proceed to decide that in due course.

Dkt. 135 at 2.

The Court’s October 10 order disposed of the Plaintiffs’ motion for relief under Federal Rule of Civil Procedure 59 and Federal Rule of Civil Procedure 60. Dkt. 136. It held that the motion was timely and denied the motion. *Id.* On appeal, Plaintiffs intend to challenge the October 10 order (as well as the final judgment comprised of document numbers 112 and 113).

Federal Rule of Appellate Procedure 4(A)(4)(B) applies here. The original notice of appeal became effective when the Court entered the October 10 Order, *see* Fed. R. App. P. 4(A)(4)(B)(i), and Plaintiffs file this amended notice of appeal because they intend to challenge the October 10 Order, *see* Fed. R. App. P. 4(A)(4)(B)(ii).

Respectfully submitted,

FARHANG & MEDCOFF

BECK REDDEN LLP

By /s/Matthew Goldstein
Matthew Goldstein*
D.C. Bar No. 975000
mgoldstein@fmlaw.law
4801 E. Broadway Blvd., Suite 311
Tucson, AZ 85711
(202) 550-0040 | (520) 790-5433 (fax)

By /s/ Chad Flores
Chad Flores*
State Bar No. 24059759
cflores@beckredde.com
1221 McKinney St., Suite 4500
Houston, TX 77010
(713) 951-3700 | (713) 952-3720 (fax)

Josh Blackman
Virginia Bar No. 78292
joshblackman@gmail.com
1303 San Jacinto Street
Houston, TX 77002
(202) 294-9003 | (713) 646-1766 (fax)

*Admitted *pro hac vice*

Attorney for Plaintiff Defense Distributed

*Admitted *pro hac vice*

Attorneys for Plaintiffs Defense Distributed,
Second Amendment Foundation, Inc., and
Conn Williamson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served to all counsel of record through the Court's CM/ECF system on December 21, 2018.

/s/ Chad Flores
Chad Flores