

1 XAVIER BECERRA, State Bar No. 118517
Attorney General of California
2 MARK R. BECKINGTON, State Bar No. 126009
Supervising Deputy Attorney General
3 JOHN D. ECHEVERRIA, State Bar No. 268843
Deputy Attorney General
4 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 269-6249
Fax: (213) 897-5775
6 E-mail: John.Echeverria@doj.ca.gov
Attorneys for Defendants

7
8 George M. Lee, State Bar No. 172982
Douglas A. Applegate, State Bar No. 142000
SEILER EPSTEIN ZIEGLER & APPLGATE LLP
9 601 Montgomery Street, Suite 2000
San Francisco, CA 94111
10 Telephone: (415) 979-0500
Fax: (415) 979-0511

11
12 Raymond M. DiGuiseppe, State Bar No. 228457
LAW OFFICES OF RAYMOND MARK
DIGUISEPPE, PLLC
13 2 North Front Street, Fifth Floor
Wilmington, NC 28401
14 Telephone: (910) 713-8804
Fax: (910) 672-7705
15 *Attorneys for Plaintiffs*

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA
18 SACRAMENTO DIVISION
19

20 **WILLIAM WIESE, et al.,**
21
22 Plaintiff,
23
24 **XAVIER BECERRA, et al.,**
25 Defendant.
26

2:17-cv-00903-WBS-KJN

JOINT STATUS REPORT

Date: March 26, 2018
Time: 1:30 p.m.
Courtroom: 5, 14th Floor
Judge: Hon. William B. Shubb
Trial Date: None Set
Action Filed: April 28, 2017

27 Pursuant to the Court's Order entered on February 26, 2018 (Docket No. 77), and in
28 accordance with this Court's April 28, 2017 Order re Status (Pretrial Scheduling Conference)

1 (Docket No. 4) (the “April 28 Order”), the parties hereby jointly submit this Joint Status Report in
2 advance of the Scheduling Conference presently set for March 26, 2018, at 1:30 p.m.

3 **I. REQUEST FOR CONTINUANCE OF SCHEDULING CONFERENCE.**

4 On March 5, 2018, in accordance with Federal Rule of Civil Procedure 26(f)(1) and the
5 April 28 Order, the parties met and conferred by telephone to discuss discovery and scheduling
6 issues in this matter. During that conference, counsel for Defendants informed counsel for
7 Plaintiffs that Defendants will be filing a motion to dismiss the Third Amended Complaint for
8 Declaratory and Injunctive Relief (the “Third Amended Complaint”) (Docket No. 76) on or
9 before April 9, 2018.¹ Given the issues raised in the Court’s Order dismissing the Second
10 Amended Complaint (Docket No. 74) and Defendants’ planned motion to dismiss the Third
11 Amended Complaint, the parties agree that discovery, including the exchange of initial
12 disclosures under Federal Rule of Civil Procedure 26(a)(1), should be stayed pending the Court’s
13 resolution of the motion to dismiss.

14 On March 9, 2018, the parties further met and conferred by telephone to discuss the
15 propriety of requesting a stay of all of these proceedings herein, pending the outcome of the
16 California Attorney General’s appeal in *Duncan v. Becerra*, Ninth Circuit Court of Appeals
17 Docket No. 17-56081, currently set for oral argument on May 14, 2018. Defendants oppose the
18 issuance of any such stay in this matter, with the exception of a stay on discovery pending the
19 resolution of Defendants’ motion to dismiss the Third Amended Complaint, and believe that it
20 would be most productive and efficient if the Scheduling Conference is continued until the Court
21 has ruled on Defendants’ motion to dismiss. Plaintiffs would be willing to have this Court decide
22 whether such a stay of all proceedings would be appropriate and are prepared to appear at the
23 Scheduling Conference on March 26, 2018 to discuss the same.

24 Accordingly, Defendants respectfully request that the Court defer the Scheduling
25 Conference currently set for March 26, 2018 until the Court has resolved Defendants’ motion to
26 dismiss the Third Amended Complaint. Plaintiffs would request that the Court consider the

27 ¹ After the Rule 26(f) conference, on March 6, 2018, Defendants filed a stipulation of the
28 parties pursuant to Local Rule 144 to extend the deadline for Defendants to respond to the Third
Amended Complaint to April 9, 2018. (Docket No. 78.)

1 propriety of a stay of all proceedings herein, pending the outcome of the appeal in *Duncan v.*
2 *Becerra*, and would be prepared to appear at the Scheduling Conference.

3 **II. STATEMENTS ON SUBJECTS LISTED IN THE APRIL 28 ORDER.**

4 In addition to the parties' request for the Court to defer the Scheduling Conference in this
5 matter, the parties hereby provide statements on the subjects listed in paragraph 2 of the April 28
6 Order:

7 **a. Summary of the Claims**

8 Plaintiffs challenge California's prohibition on the possession of firearm magazines that can
9 hold more than ten rounds of ammunition, or "large-capacity magazines," as set forth in
10 California Penal Code § 32310. Plaintiffs claim that the prohibition (1) violates the Second
11 Amendment to the U.S. Constitution, (2) violates the Takings Clauses of the U.S. and California
12 Constitutions and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution,
13 (3) is unconstitutionally vague, (4) is unconstitutionally vague and overbroad, and (5) violates the
14 Equal Protection Clauses of the U.S. and California Constitutions.

15 **b. Status of Service**

16 All Defendants have been served with the Third Amended Complaint. There are no cross-
17 defendants in this action.

18 **c. Possible Joinder of Additional Parties**

19 The parties do not anticipate joining any additional parties in this action.

20 **d. Contemplated Amendments to the Pleadings**

21 Plaintiffs have filed a Third Amended Complaint and do not plan to further amend the
22 pleadings in this action.

23 **e. Jurisdiction and Venue**

24 The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367(a). Venue is proper
25 under 28 U.S.C. § 1391(b).

26 **f. Proposed Discovery Plan**

27 As discussed, *supra*, the parties agree that discovery and scheduling should be stayed
28 pending the Court's resolution of Defendants' planned motion to dismiss the Third Amended

1 Complaint. The parties request that the Court defer the Scheduling Conference until it has ruled
2 on the motion to dismiss and, if the Scheduling Conference is reset for a later date, require the
3 parties to propose a discovery plan in advance of the Scheduling Conference.

4 **g. Proposed Discovery Cut-Off Date**

5 As discussed, *supra*, the parties agree that discovery and scheduling should be stayed
6 pending the Court's resolution of Defendants' planned motion to dismiss the Third Amended
7 Complaint. The parties request that the Court defer the Scheduling Conference until it has ruled
8 on the motion to dismiss and, if the Scheduling Conference is reset for a later date, require the
9 parties to propose a discovery cut-off date in advance of the Scheduling Conference.

10 **h. Proposed Cut-Off Date for All Motions**

11 As discussed, *supra*, the parties agree that discovery and scheduling should be stayed
12 pending the Court's resolution of Defendants' planned motion to dismiss the Third Amended
13 Complaint. The parties request that the Court defer the Scheduling Conference until it has ruled
14 on the motion to dismiss and, if the Scheduling Conference is reset for a later date, require the
15 parties to propose a motion cut-off date in advance of the Scheduling Conference.

16 **i. Proposed Modification of Standard Pretrial Proceedings**

17 The parties do not anticipate proposing any modifications to the standard pretrial
18 proceedings due to any special nature of this action.

19 **j. Estimated Length of Trial**

20 If the action is not dismissed, and the case proceeds to trial, the parties estimate a bench
21 trial of up to seven (7) days.

22 **k. Statement of Related Cases**

23 There are no related cases pending in the Eastern District of California.

24 This case is similar to *Duncan v. Becerra*, No. 17-cv-01017-BEN-JLB, which is pending
25 before the Honorable Roger T. Benitez in the United States District Court for the Southern
26 District of California. In that action, the court entered a preliminary injunction enjoining
27 enforcement of the possession ban on large-capacity magazines, which the California Attorney
28

1 General has appealed to the Ninth Circuit Court of Appeals. The appeal has been fully briefed,
2 and oral argument has been set for May 14, 2018.

3 **I. Other Matters Discussed in Local Rule 240**

4 As discussed, *supra*, the parties agree that discovery and scheduling should be stayed
5 pending the Court's resolution of Defendants' planned motion to dismiss the Third Amended
6 Complaint. The parties request that the Court continue the Scheduling Conference as to any
7 discovery matters until it has ruled on the motion to dismiss. Plaintiffs are prepared to appear and
8 discuss the propriety of a stay of all proceedings, pending the outcome of the appeal in *Duncan v.*
9 *Becerra*.

10 There are no other matters discussed in Local Rule 240 that may add to the just and
11 expeditious disposition of this matter.

12 **m. Nongovernmental Corporate Disclosure Statement**

13 On June 5, 2017, Plaintiffs filed a Corporate Disclosure Statement pursuant to Federal Rule
14 of Civil Procedure 7.1. (Docket No. 8.) There have been no changes to the information
15 contained in the Corporate Disclosure Statement. In accordance with the April 28 Order, and for
16 the convenience of the Court, Plaintiffs provide the following information contained in their
17 Corporate Disclosure Statement:

- 18 • Plaintiff The Calguns Foundation, Inc. is a non-profit membership organization,
19 incorporated under the laws of California. This plaintiff does not have a parent
20 corporation, and no publicly held corporation owns 10% or more of its stock or
21 membership interest.
- 22 • Plaintiff Firearms Policy Coalition, Inc. is a non-profit membership organization,
23 incorporated under the laws of Delaware. This plaintiff does not have a parent
24 corporation, and no publicly held corporation owns 10% or more of its stock or
25 membership interest.
- 26 • Plaintiff Firearms Policy Foundation, Inc. is a non-profit membership organization,
27 incorporated under the laws of Delaware. This plaintiff does not have a parent
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

corporation, and no publicly held corporation owns 10% or more of its stock or membership interest.

- Plaintiff Second Amendment Foundation, Inc. is a non-profit membership organization, incorporated under the laws of Delaware. This plaintiff does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock or membership interest.

Dated: March 12, 2018

XAVIER BECERRA
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/ John D. Echeverria
JOHN D. ECHEVERRIA
Deputy Attorney General
Attorneys for Defendants

Dated: March 12, 2018

SEILER EPSTEIN ZIEGLER &
APPLEGATE LLP

/s/ George M. Lee
George M. Lee
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Case Name: **Wiese, William, et al. v.
Xavier Becerra, et al.**

Case No.: **2:17-cv-00903-WBS-KJN**

I hereby certify that on March 12, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

JOINT STATUS REPORT

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 March 12, 2018, at Los Angeles, California.

Colby Luong
Declarant

/s/ Colby Luong
Signature