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

<p>19 WILLIAM WIESE, et al.,</p> <p>20 Plaintiff,</p> <p>21 v.</p> <p>22 XAVIER BECERRA, et al.,</p> <p>23 Defendant.</p>	<p>2:17-cv-00903-WBS-KJN</p> <p>JOINT STATUS REPORT</p> <p>Courtroom: 5, 14th Floor Judge: Hon. William B. Shubb Trial Date: None Set Action Filed: April 28, 2017</p>
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26 Pursuant to the Court’s Order entered on September 24, 2018 (Dkt. No. 91), and in
27 accordance with this Court’s April 28, 2017 Order re Status (Pretrial Scheduling Conference)
28 (Dkt. No. 4) (the “April 28 Order”), the parties hereby jointly submit this Joint Status Report.

1 **I. UPDATE ON THE *DUNCAN V. BECERRA* APPEAL AND THE PARTIES' PROPOSED**
2 **DEADLINES.**

3 On October 31, 2018, the Ninth Circuit issued an Order in *Duncan v. Becerra*, Ninth
4 Circuit Case No. 17-56081, informing the parties that, after review of the parties' supplemental
5 briefing, the request for a vote on whether to rehear the appeal en banc has been withdrawn. (A
6 true and correct copy of this order is attached as Exhibit 1.) The mandate was issued later that
7 day. Now that the *Duncan* interlocutory appeal has been resolved, the parties herein agree that
8 the stay currently in place should be lifted to permit Defendants to file a motion to dismiss
9 Plaintiffs' Third Amended Complaint.

10 The parties propose that any scheduling conference be set on or after **January 7, 2019**, if
11 this Court finds it necessary or desirable.

12 In addition, the parties have met and conferred, and would propose the following dates and
13 deadlines for Defendants' motion to dismiss Plaintiffs' Third Amended Complaint:

14 (i) Defendants' notice of motion and supporting papers will be filed by January 21, 2019;

15 (ii) Plaintiffs' opposition and supporting papers will be filed by February 5, 2019;

16 (iii) Defendants' reply will be filed by February 12, 2019; and (iv) the hearing on Defendants'
17 motion to dismiss will be held on **February 19, 2019** at 1:30 p.m.

18 The parties agree that discovery in this action should be stayed pending resolution of
19 Defendants' motion to dismiss, in accordance with this Court's Order issued on March 12, 2018
20 (Dkt. No. 80).

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

22 In addition to advising the Court on the status of the *Duncan* appeal and proposing
23 deadlines for Defendants' motion to dismiss, the parties hereby provide statements on the subjects
24 listed in paragraph 2 of the April 28 Order:

25 **a. Summary of the Claims**

26 Plaintiffs challenge California's prohibition on the possession of firearm magazines that can
27 hold more than ten rounds of ammunition, or "large-capacity magazines," as set forth in
28 California Penal Code § 32310. Plaintiffs claim that the prohibition (1) violates the Second

1 Amendment to the U.S. Constitution, (2) violates the Takings Clauses of the U.S. and California
2 Constitutions and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution,
3 (3) is unconstitutionally vague, (4) is unconstitutionally vague and overbroad, and (5) violates the
4 Equal Protection Clauses of the U.S. and California Constitutions.

5 **b. Status of Service**

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

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

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

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

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

13 **e. Jurisdiction and Venue**

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

16 **f. Proposed Discovery Plan**

17 Pursuant to the Court's Order issued on March 12, 2018 (Dkt. No. 80), discovery in this
18 action has been stayed pending resolution of Defendants' motion to dismiss the Third Amended
19 Complaint. If the Third Amended Complaint survives a motion to dismiss, and the stay on
20 discovery is lifted, the parties will submit a discovery plan within 21 days of the Court's order on
21 the motion to dismiss.

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

23 Pursuant to the Court's Order issued on March 12, 2018 (Dkt. No. 80), discovery in this
24 action has been stayed pending resolution of Defendants' planned motion to dismiss the Third
25 Amended Complaint. If the Third Amended Complaint survives a motion to dismiss, and the stay
26 on discovery is lifted, the parties will submit a proposed discovery cut-off date within 21 days of
27 the Court's order on the motion to dismiss.

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

2 Pursuant to the Court’s Order issued on March 12, 2018 (Dkt. No. 80), discovery in this
3 action has been stayed pending resolution of Defendants’ planned motion to dismiss the Third
4 Amended Complaint. If the Third Amended Complaint survives a motion to dismiss, and the stay
5 on discovery is lifted, the parties will submit proposed motion cut-off dates within 21 days of the
6 Court’s order on the motion to dismiss.

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

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

10 **j. Estimated Length of Trial**

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

13 **k. Statement of Related Cases**

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

15 This case involves claims similar to those in *Duncan v. Becerra*, No. 17-cv-01017-BEN-
16 JLB, which is pending before the Honorable Roger T. Benitez in the United States District Court
17 for the Southern District of California.

18 **l. Other Matters Discussed in Local Rule 240**

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

21 **m. Nongovernmental Corporate Disclosure Statement**

22 On June 5, 2017, Plaintiffs filed a Corporate Disclosure Statement pursuant to Federal Rule
23 of Civil Procedure 7.1. (Dkt. No. 8.) There have been no changes to the information contained in
24 the Corporate Disclosure Statement. In accordance with the April 28 Order, and for the
25 convenience of the Court, Plaintiffs provide the following information contained in their
26 Corporate Disclosure Statement:

- 27 • Plaintiff The Calguns Foundation, Inc. is a non-profit membership organization,
28 incorporated under the laws of California. This plaintiff does not have a parent

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

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

1 Dated: November 14, 2018

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

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

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9 Dated: November 14, 2018

SEILER EPSTEIN ZIEGLER &
APPLEGATE LLP

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/s/ George M. Lee
(as authorized on November 14, 2018)
George M. Lee
Attorneys for Plaintiffs

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EXHIBIT 1

UNITED STATES COURT OF APPEALS

OCT 31 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VIRGINIA DUNCAN; et al.,

Plaintiffs-Appellees,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the State
of California,

Defendant-Appellant.

No. 17-56081

D.C. No.

3:17-cv-01017-BEN-JLB

Southern District of California,
San Diego

ORDER

Before: WALLACE and N.R. SMITH, Circuit Judges, and BATTIS,* District Judge.

A judge requested a vote on whether to rehear this case en banc pursuant to Federal Rule of Appellate Procedure 35(a). After reviewing the supplemental briefing submitted by the parties, the request has been withdrawn. The mandate shall issue forthwith.

* The Honorable Deborah A. Batts, Senior United States District Judge for the Southern District of New York, sitting by designation.

CERTIFICATE OF SERVICE

Case Name: **William Wiese, et al. v. Xavier** Case No. **2:17-cv-00903-WBS-KJN**
Becerra, et al.

I hereby certify that on November 14, 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 November 14, 2018, at Los Angeles, California.

Colby Luong
Declarant

/s/ Colby Luong
Signature