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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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WILLIAM WIESE, an individual;
JEERMIAH MORRIS, an individual;
LANCE COWLEY, an individual;
SHERMAN MACASTON, an individual;
CLIFFORD FLORES, individually
and as trustee of the Flores
Family Trust; L.Q. DANG, an
individual; FRANK FEDEREAU, an
individual; ALAN NORMANDY, an
individual; TODD NIELSEN, an
individual; THE CALGUNS
FOUNDATION; FIREARMS POLICY
COALITION; FIREARMS POLICY
FOUNDATION; and SECOND AMENDMENT
FOUNDATION,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of
California; and MARTHA SUPERNOR,
in her official capacity as
Acting Chief of the Department
of Justice Bureau of Firearms,

Defendants.

No. 2:17-cv-903 WBS KJN

ORDER

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1 The court previously lifted the stay in this case after
2 the Supreme Court vacated the judgment in Duncan v. Bonta, Case
3 No. 3:17-cv-1017-BEN (JLB) (S.D. Cal.), and the Ninth Circuit
4 remanded Duncan for further proceedings consistent with New York
5 State Rifle & Pistol Ass'n, Inc. v Bruen, 142 S. Ct. 2111 (2022).
6 (Docket No. 116.) Having considered plaintiffs' request to move
7 for summary judgment without any discovery and defendants'
8 request for discovery, the court allowed plaintiffs to file their
9 motion for summary judgment forthwith, with the caveat that the
10 court would consider a request for discovery under Federal Rule
11 of Civil Procedure 56(d) after plaintiffs moved for summary
12 judgment, should defendants feel discovery was necessary to
13 respond to plaintiffs' motion.

14 Plaintiffs have since moved for summary judgment and
15 defendants filed a counter-motion for summary judgment. (Docket
16 Nos. 123, 125.) Defendants contend that the evidence as
17 submitted by the parties shows their entitlement to summary
18 judgment, but they also request the opportunity to conduct
19 discovery in accordance with Rule 56(d) if the court is inclined
20 to grant judgment for plaintiffs. (Docket No. 125-1 at 52.)

21 Rule 56(d) states that:

22 If a nonmovant shows by affidavit or declaration that,
23 for specified reasons, it cannot present facts
essential to justify its opposition, the court may:

- 24 (1) defer considering the motion or deny it;
25 (2) allow time to obtain affidavits or declarations
26 or to take discovery; or
27 (3) issue any other appropriate order.

1 (Fed. R. Civ. P. 56.)

2 The court declines to opine at this stage whether it is
3 likely to grant or deny summary judgment as to any party.
4 Nevertheless, courts generally employ a "generous approach toward
5 granting [Rule 56(d)] motions," Berkeley v. Home Ins. Co., 68
6 F.3d 1409, 1414 (D.C. Cir. 1995), and "the Supreme Court has
7 restated the rule as requiring, rather than merely permitting,
8 discovery 'where the nonmoving party has not had the opportunity
9 to discover information that is essential to its opposition,'" Metabolife Int'l, Inc. v. Wornick, 264 F.3d 832, 846 (9th Cir.
10 2001) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250
11 n. 5, (1986)). See also Burlington N. Santa Fe R.R. Co. v.
12 Assiniboine & Sioux Tribes of Fort Peck Rsrv., 323 F.3d 767, 773
13 (9th Cir. 2003) (Rule 56(d) requests should granted "fairly
14 freely" where a party has not had "a realistic opportunity to
15 pursue discovery relating to its theory of the case.").


17 Here, however, defendants have not shown "by affidavit
18 or declaration" the specific reasons why they cannot present all
19 the facts necessary for their defense. Rather, they vaguely
20 state in their briefing that there are "numerous facts that
21 Plaintiffs identify as material but about which Defendants have
22 had no opportunity to take discovery" such as "the standing of
23 the individual and organizational plaintiffs" or "the methodology
24 and reliability" of a study cited by plaintiffs. (See Docket No.
25 125-1 at 53.) Defendants also do not estimate how long they need
26 for discovery, nor what specific discovery they request, such as
27 depositions, interrogatories, requests for production, requests
28 for admission, or otherwise. Accordingly, the court cannot

1 determine what discovery may be appropriate or necessary at this
2 time.

3 In light of the foregoing, defendants are hereby
4 ORDERED to file the appropriate affidavit or declaration with the
5 court setting forth the information required under Rule 56(d),
6 and shall specifically state what discovery defendants request,
7 including the identity of all witnesses they wish to depose and a
8 description of the nature of the questions they wish to address
9 to those witnesses. Defendants' proffer shall also include any
10 interrogatories and/or requests they intend to serve upon
11 plaintiffs and how long they need to conduct such discovery. The
12 declaration or affidavit shall be filed within seven days of the
13 date of this order. Plaintiffs may file any response to
14 defendants' submission within seven days. The court will then
15 review the parties' submissions and set a hearing on defendants'
16 request for discovery if necessary.

17 IT IS SO ORDERED.

18 Dated: June 9, 2023



19 WILLIAM B. SHUBB
20 UNITED STATES DISTRICT JUDGE
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