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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO BRANCH COURTHOUSE**

11 BARRY BAUER, STEPHEN
WARKENTIN, NICOLE FERRY,
12 LELAND ADLEY, JEFFREY
HACKER, NATIONAL RIFLE
13 ASSOCIATION OF AMERICA,
INC., CALIFORNIA RIFLE AND
14 PISTOL ASSOCIATION
FOUNDATION, HERB BAUER
15 SPORTING GOODS, INC.,

16 Plaintiffs

17 vs.

18 KAMALA HARRIS, in Her Official
Capacity as Attorney General For the
19 State of California; STEPHEN
LINDLEY, in His Official Capacity
20 as Acting Chief for the California
Department of Justice, and DOES 1-
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22 Defendants.
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) CASE NO. 1:11-cv-01440-LJO-MJS

) **STIPULATION TO EXTEND
DISCOVERY CUT-OFF DATES AND
[PROPOSED] ORDER**

I.

INTRODUCTION

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3 The parties, Plaintiffs Barry Bauer, Stephen Warkentin, Nicole Ferry, Leland
4 Adley, Jeffrey Hacker, National Rifle Association of America, Inc., California
5 Rifle and Pistol Association Foundation, Herb Bauer Sporting Goods, Inc.
6 (collectively “Plaintiffs”) and Defendants Attorney General Kamala D. Harris and
7 Chief of the Firearms Bureau Stephen Lindley (collectively “Defendants”), through
8 their respective attorneys of record, hereby jointly stipulate to a 60-day extension
9 of the currently scheduled discovery deadlines as set forth below.
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11 II.

12 **RECITALS/GROUNDS FOR RELIEF**

13 Pursuant to Rule 16, a party may seek modification of a scheduling order,
14 including modification of a discovery cut-off date, “only for good cause and with a
15 judge’s consent.” Fed. R. Civ. P. 16(b)(4). “Good cause” exists when a scheduling
16 deadline “cannot reasonably be met despite the diligence of the party seeking the
17 extension.” *Schaffner v. Crown Equipment Corporation*, No. C 09-00284 SBA,
18 2011 WL 6303408, at *2 (N.D. Cal. Dec. 16, 2011) (citing *Johnson v. Mammoth*
19 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). A party may establish good
20 cause by showing

21 (1) that [he or she] was diligent in assisting the court in creating
22 a workable Rule 16 order; (2) that [his or her] noncompliance with
23 a rule 16 deadline occurred or will occur, notwithstanding [his or
24 her] diligent efforts to comply, because of the development of
25 matters which could not have been reasonably foreseen or
26 anticipated at the time of the Rule 16 scheduling conference; and
27 (3) that [he or she] was diligent in seeking amendment of the Rule
28 16 order, once it became apparent that he or she could not comply
with the order.

26 *Hood v. Hartford Life & Accident Ins. Co.*, 567 F.Supp.2d 1221, 1224 (E.D. Cal.
27 2008) (citation omitted).

1 WHEREAS the current deadline to complete all non-expert discovery is
2 February 27, 2013.

3 WHEREAS Plaintiffs requested that Defendants stipulate to extend the
4 written discovery cut-off deadline because Plaintiffs believe that additional time is
5 needed to remedy a good faith misunderstanding between the parties and
6 adequately and fairly complete the discovery process;

7 WHEREAS the parties originally believed at the time of the Rule 16
8 scheduling conference that non-expert discovery would be completed by the
9 current discovery cut-off deadline and worked together to prepare a comprehensive
10 proposed scheduling report for the Court's convenience;

11 WHEREAS the parties encountered a good-faith misunderstanding as to the
12 appropriate scope of non-expert discovery in this case, which has resulted in
13 postponement of depositions and other issues and makes compliance with the
14 current discovery cut-off date unlikely;

15 WHEREAS the parties are currently and diligently negotiating in good faith
16 to resolve the misunderstanding and are currently in the process of re-evaluating
17 their prospective positions to reach an informal resolution and complete non-expert
18 discovery in light of developments;

19 WHEREAS the current non-expert discovery deadline is fast approaching
20 and is putting pressure on the parties, thereby creating a situation that may become
21 more adversarial than otherwise need be;

22 WHEREAS extending the deadline pursuant to this stipulation will allow the
23 parties an opportunity to negotiate informally to complete the discovery process
24 without further involvement with the court;

25 WHEREAS the parties make this request to extend the written discovery cut-
26 off date almost an entire month prior to its arrival, and only after diligent attempts
27 by both parties to avoid such, but ultimately concluding doing so is not feasible;

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1 AND WHEREAS, THE PARTIES STIPULATE AND AGREE TO THE
2 FOLLOWING:

3 1. To extend the non-expert discovery cut-off deadline 60 days, to
4 April 29, 2013.

5 **SO STIPULATED.**

6 Dated: January 22, 2013

MICHEL & ASSOCIATES, P.C.

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/s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs

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Dated: January 22, 2013

Deputy Attorney General

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/s/ Anthony R. Hakl
Anthony R. Hakl
(as approved on January 22, 2013)
Attorney for Defendants

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**PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS SO
18 ORDERED.**

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Date: _____, 2013

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Hon. Michael J. Seng
Magistrate Judge
United States District Court

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO BRANCH COURTHOUSE**

BARRY BAUER, STEPHEN WARKENTIN, NICOLE FERRY, LELAND ADLEY, JEFFREY HACKER, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., CALIFORNIA RIFLE AND PISTOL ASSOCIATION FOUNDATION, HERB BAUER SPORTING GOODS, INC.

**CASE NO.: 1:11-CV-01440-LJO-MJS
CERTIFICATE OF SERVICE**

Plaintiffs

vs.

KAMALA HARRIS, in Her Official Capacity as Attorney General For the State of California; STEPHEN LINDLEY, in His Official Capacity as Acting Chief for the California Department of Justice, and DOES 1-10.

Defendants.

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of:
**STIPULATION TO EXTEND DISCOVERY CUT-OFF DATES AND
[PROPOSED] ORDER**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Anthony R. Hakl, Deputy Attorney General
California Department of Justice
Office of the Attorney General
Civil Law Division
Government Law Section
1300 I Street, Suite 125
Sacramento, CA 94244

I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 22, 2013.

/s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs