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Attorneys for Plaintiffs

**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.,

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.

CASE NO. 1:11-cv-01440-LJO-MJS

**STIPULATION TO EXTEND  
DISCOVERY CUT-OFF DATES AND  
ORDER**

I.

**INTRODUCTION**

The parties, Plaintiffs 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. (collectively “Plaintiffs”) and Defendants Attorney General Kamala D. Harris and Chief of the Firearms Bureau Stephen Lindley (collectively “Defendants”), through their respective attorneys of record, hereby jointly stipulate to a 60-day extension of the currently scheduled discovery deadlines as set forth below.

II.

**RECITALS/GROUNDS FOR RELIEF**

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

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

*Hood v. Hartford Life & Accident Ins. Co.*, 567 F.Supp.2d 1221, 1224 (E.D. Cal. 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;

28

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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8  
9 /s/ C. D. Michel  
C. D. Michel  
10 Attorney for Plaintiffs

11 Dated: January 22, 2013

**Deputy Attorney General**

12  
13  
14 /s/ Anthony R. Hakl  
Anthony R. Hakl  
15 (as approved on January 22, 2013)  
Attorney for Defendants

16  
17 **ORDER**

18  
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21 The Stipulation of the parties is accepted and the deadline for discovery of  
22 non-expert witnesses is extended to April 29, 2013.

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25  
26 IT IS SO ORDERED.

27 Dated: January 23, 2013

/s/ *Michael J. Seng*  
28 UNITED STATES MAGISTRATE JUDGE