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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 VIRGINIA DUNCAN, et al.,  
11 Plaintiffs,  
12 v.

13  
14 XAVIER BECERRA, in his official  
capacity as Attorney General of the  
15 State of California,  
16 Defendants.

17-cv-1017-BEN-JLB

**JOINT MOTION TO EXTEND  
TIME TO FILE MOTIONS FOR  
SUMMARY JUDGMENT**

Judge: Hon. Jill L. Burkhardt  
Action Filed: May 17, 2017

1 COME NOW THE PARTIES, Plaintiffs Virginia Duncan, et al., and  
 2 Defendant Xavier Becerra, in his official capacity as Attorney General of the State  
 3 of California, by and through their respective counsel. Pursuant to Rules 6(b) and  
 4 16(b)(4) of the Federal Rules of Civil Procedure, Local Rules 7.1, 7.2, 16.1(f)(1)(a)  
 5 as well as the Honorable Jill L. Burkhardt's Civil Chambers Rules, the Parties  
 6 hereby jointly move the Court to extend the deadline for the filing of dispositive  
 7 motions by 31 days to and including March 5, 2018.

8 As required by the Civil Chambers Rules, this request is accompanied by the  
 9 declaration of counsel for Plaintiffs, Anna M. Barvir, "detailing the steps taken to  
 10 comply with the dates and deadlines set in the order, and the specific reasons why  
 11 deadlines cannot be met." Decl. of Anna M. Barvir Supp. Joint Mot. to Extend  
 12 Time ("Barvir Decl."). The Parties further represent that granting this motion  
 13 should not affect other dates in the Order because trial has not yet been set, pre-trial  
 14 disclosures and Memoranda of Contentions of Fact and Law are not due until May  
 15 4, 2018, and the Parties agree this case is likely to be disposed of via cross-motions  
 16 for summary judgment. Joint Discovery Plan at 9 (July 19, 2017), ECF No. 31.

17 On May 17, 2017, Plaintiffs filed their Complaint for Declaratory and  
 18 Injunctive Relief with this court. On August 4, 2017, this Court issued a Scheduling  
 19 Order Regulating Discovery and Other Pretrial Proceedings ("Order"). Under this  
 20 Court's Order, all discovery must be completed by February 2, 2018. All pre-trial  
 21 motions, including motions for summary judgment, must be filed by the same date.

22 Good cause exists to extend the deadline for dispositive motions. The Parties  
 23 are diligently engaged in discovery and expect to complete fact and expert  
 24 discovery by the Court-ordered date of February 2, 2018. Barvir Decl., ¶¶ 2-4, 7-12.  
 25 The Parties have met both the deadlines for exchange of expert reports and expert  
 26 rebuttals (October 6, 2017, and November 3, 2017, respectively). Barvir Decl., ¶¶  
 27 3-4. Additionally, the Parties have served and have been served with significant  
 28 written discovery. Barvir Decl., ¶ 2. Defendant has served on Plaintiffs six sets of

1 written interrogatories and six sets of requests for production of documents. Barvir  
2 Decl., ¶ 2. And Plaintiffs have served four sets of written interrogatories, four sets  
3 of requests for production of documents, and one set of requests for admissions.  
4 Barvir Decl., ¶ 2. Both parties are currently working on responses to these requests.  
5 Barvir Decl., ¶ 2.

6 The Parties have also been working together diligently and regularly via  
7 telephone and e-mail to schedule expert witness depositions since November 10<sup>th</sup>—  
8 mere days after the exchange of expert rebuttals. Barvir Decl., ¶¶ 3-4, 7-12. The  
9 scheduling of these depositions, however, has proven difficult and time-consuming  
10 for two reasons. First, the Parties have identified eight experts, most of whom are  
11 professors with extremely limited availability during the winter months due to final  
12 exams, the holidays, and pre-planned conferences. Barvir Decl., ¶¶ 3-4. Second, the  
13 eight identified experts reside all over the country—in California, Connecticut,  
14 Florida, Maryland, and New York. Barvir Decl., ¶ 6. Significant travel for counsel  
15 and/or the witnesses will thus be required, adding yet another difficulty to  
16 scheduling. Barvir Decl., ¶ 12. Regardless, the Parties are very close to setting a  
17 mutually agreeable deposition schedule. Barvir Decl., ¶ 14. And, as it turns out,  
18 most of these depositions cannot take place until January, with the last likely to take  
19 place on or around January 12, 2018. Barvir Decl., ¶ 13.

20 Further, with depositions not concluding until mid-January, Barvir Decl., ¶  
21 13, the parties may not have access to final transcripts by the February 2nd deadline  
22 for dispositive motions, Fed. R. Civ. Proc. 30 (upon request, deponents must be  
23 given 30 days after the transcript is made available to review for errors).

24 For these reasons, and because the Parties also require time to review the  
25 transcripts and other discovery, the Parties agree that it will be exceedingly difficult  
26 for the parties to file comprehensive motions for summary judgment, inclusive of  
27 all discovery that would prove helpful to the Court. Barvir Decl., ¶ 15 These  
28 concerns were raised in the Joint Discovery Plan filed by the Parties on July 19,

2017. Joint Discovery Plan at 10 (July 19, 2017), ECF No. 31. Indeed, Plaintiffs expressed that there would likely be issues with closing discovery on the same day dispositive motions are due to be filed:

Plaintiffs further believe that the breadth of discovery here, as well as the fact that this case is likely to be disposed of on summary judgment, justify providing the parties with an additional month to prepare dispositive motions that will be most helpful to the Court's handling of this matter.

*Id.* Defendant agreed. *Id.* at 11.

Therefore, based on the good cause presented herein, the Parties request that the Court grant this joint motion for extension and order that the last day to file dispositive motions is extended by 31 days to and including March 5, 2018.

Respectfully submitted,

Dated: December 1, 2017

MICHEL & ASSOCIATES, P.C.

*/s/ Anna M. Barvir*

ANNA M. BARVIR  
Attorneys for Plaintiffs Virginia  
Duncan, Richard Lewis, Patrick  
Lovette, David Marguglio,  
Christopher Waddell, and California  
Rifle & Pistol Association

Dated: December 1, 2017

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TAMAR PACHTER  
Supervising Deputy Attorney General  
ANTHONY P. O'BRIEN  
Deputy Attorneys General

*/s/ Alexandra Robert Gordon*

ALEXANDRA ROBERT GORDON  
Deputy Attorney General  
Attorneys for Defendant  
Attorney General Xavier Becerra

**DECLARATION OF ANNA M. BARVIR**

1  
2 1. I am an attorney at the law firm Michel & Associates, P.C., attorneys  
3 of record for Plaintiffs in this action. I am licensed to practice law before the United  
4 States District Court for the Southern District of California. I am also admitted to  
5 practice before the Eastern, Central, and Northern Districts of California, the courts  
6 of the state of California, the Supreme Court of the United States, and the D.C.,  
7 Fourth, Ninth, and Tenth Circuit Courts of Appeals. I have personal knowledge of  
8 the facts set forth herein and, if called and sworn as a witness, could and would  
9 testify competently thereto.

10 2. The parties have worked diligently to move discovery forward and  
11 presently expect to complete fact and expert discovery by the Court-ordered date of  
12 February 2, 2018. Indeed, Defendant has served on Plaintiffs six sets of written  
13 interrogatories and six sets of requests for production of documents. Plaintiffs have  
14 served four sets of written interrogatories, four sets of requests for production of  
15 documents, and one set of requests for admissions. Both parties are currently  
16 working on responses to these requests, with deadlines in late December and early  
17 January.

18 3. On October 6, 2017, the parties exchanged disclosures of expert  
19 witnesses. Defendant Xavier Becerra, through his counsel of record, served on  
20 Plaintiffs the expert reports of Dr. Lucy Allen, Dr. Louis Klarevas, and Dr.  
21 Christopher Koper. That same day, on behalf of Plaintiffs Virginia Duncan, et al., I  
22 directed my secretary to serve Defendant with the expert reports of Mr. Stephen  
23 Helsley and Mr. James Curcuruto.

24 4. On November 3, 2017, the parties exchanged disclosures of expert  
25 rebuttal reports. Defendant Xavier Becerra, through his counsel of record, served on  
26 Plaintiffs the expert report of Dr. John Donohue. That same day, on behalf of  
27 Plaintiffs Virginia Duncan, et al., I directed my secretary to serve Defendant with  
28 the expert reports of Dr. Gary Kleck and Dr. Carlisle Moody.

1           5.     Six of the eight designated expert witnesses are professors, many of  
2     whom have limited availability in December and January due to the administering  
3     and grading of final exams. Some also have conflicts due to attendance at pre-  
4     planned conferences.

5           6.     Six of the eight designated expert witnesses reside on the East Coast.  
6     Drs. Allen and Klarevas each reside in New York. Dr. Koper resides in Maryland.  
7     Mr. Curcuruto resides in Connecticut. Dr. Kleck resides in Florida. And Dr. Moody  
8     resides in Virginia. Mr. Helsley and Dr. Donohue reside in Northern California.  
9     While the parties are negotiating handling all depositions in three or four states,  
10    significant travel will still be required by counsel and witnesses.

11          7.     On November 10, 2017, Ms. Alexandra Robert Gordon, counsel of  
12    record for Defendant, called me to discuss the scheduling of expert depositions and  
13    potential concerns with filing cross-motions for summary judgment by the current  
14    deadline of February 2, 2018.

15          8.     During that telephone conference, Ms. Gordon and I each confirmed  
16    that we had been in touch with our respective experts regarding availability for  
17    depositions, and that we would provide potential dates as soon as we had  
18    confirmation from each witness. We also agreed that an extension for summary  
19    judgment would be likely and agreed to discuss the issue with our respective  
20    clients.

21          9.     On November 20, 2017, Ms. Gordon sent me an e-mail explaining  
22    that, likely owing to the holiday, her experts had been slow to respond to her  
23    requests for deposition availability, but that she would follow-up with them. I  
24    responded that day, explaining that I had not yet received confirmation from my  
25    experts regarding their availability. I followed up with each of my witnesses that  
26    day.

27          10.    Over the next few days, my expert witnesses slowly began to respond.  
28    On November 27, 2017, as soon as I had responses from three of my four

1 witnesses, I sent an e-mail to Ms. Gordon providing several available dates.

2 11. My final witness provided his availability on November 28, 2017, and  
3 I immediately informed opposing counsel. I also informed Ms. Gordon that my  
4 client would agree to an extension of the deadline to file cross-motions for  
5 summary judgment.

6 12. On November 28, 2017, Ms. Gordon provided deposition availability  
7 for each of her witnesses. And I immediately went to work preparing a proposed  
8 schedule for travel and depositions, taking into account the availability of witnesses  
9 and counsel, the holidays, and the significant travel needed for these depositions.  
10 That day, I exchanged multiple additional e-mails with Ms. Gordon regarding the  
11 proposed schedule, as well as other issues surrounding the taking of depositions.  
12 Ms. Gordon assured me that she would discuss the proposed schedule with her  
13 colleagues and respond shortly.

14 13. The schedule I proposed included travel to the East Coast to take six  
15 expert depositions during the first two weeks of January, with depositions being  
16 completed by January 12, 2018.

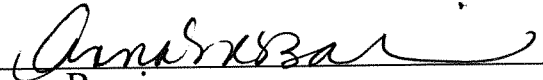
17 14. On November 30, 2017, I called Ms. Gordon to discuss the stipulation  
18 or joint motion for extension of time to file cross-motions for summary judgment  
19 and the grounds for same. During that call, Ms. Gordon informed that she would  
20 have a response to my proposed deposition schedule by December 1, 2017. Ms.  
21 Gordon then sent me a response with respect to most of the depositions on  
22 December 1, and expects to confirm the remaining few by early next week. The  
23 parties are thus very close to setting a mutually agreeable deposition schedule.

24 15. With discovery likely to be completed so late into January, the parties  
25 agree that it will be difficult to prepare and file motions for summary judgment,  
26 inclusive of all discovery that would prove helpful to the Court, by the current  
27 deadline of February 2, 2018. The parties therefore respectfully request that this  
28 Court extend the deadline to file dispositive motions by 31 days, to and including

1 March 5, 2018.

2 I declare under penalty of perjury that the foregoing is true and correct.

3 Executed within the United States on December 1, 2017.

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5 Anna Barvir  
6 Declarant  
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