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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA
18 SACRAMENTO DIVISION
19

20 **WILLIAM WIESE, et al.,**
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22 Plaintiff,
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24 **XAVIER BECERRA, et al.,**
25 Defendant.
26

2:17-cv-00903-WBS-KJN

JOINT STATUS REPORT

Date: July 30, 2018
Time: 1:30 p.m.
Courtroom: 5, 14th Floor
Judge: Hon. William B. Shubb
Trial Date: None Set
Action Filed: April 28, 2017

27 Pursuant to the Court's Order entered on March 23, 2018 (Dkt. No. 82), and in accordance
28 with this Court's April 28, 2017 Order re Status (Pretrial Scheduling Conference) (Dkt. No. 4)

1 (the “April 28 Order”), the parties hereby jointly submit this Joint Status Report in advance of the
2 Scheduling Conference presently set for July 30, 2018, at 1:30 p.m.

3 **I. REQUEST FOR EXTENSION OF STAY AND CONTINUANCE OF SCHEDULING**
4 **CONFERENCE.**

5 On March 23, 2018, the Court stayed the instant proceedings pending the outcome of the
6 California Attorney General’s appeal of the grant of a preliminary injunction in *Duncan v.*
7 *Becerra*, Ninth Circuit Case No. 17-56081, through and until the Scheduling Conference set for
8 July 30, 2018. Oral argument in the *Duncan* appeal was held on May 14, 2018, after which the
9 Ninth Circuit took the matter under submission. As of the date of this filing, the Ninth Circuit has
10 yet to issue a decision in the appeal. To provide additional time for the Ninth Circuit to issue a
11 decision, and because such a decision may provide guidance to this Court in ruling on
12 Defendants’ planned motion to dismiss Plaintiffs’ Third Amended Complaint, the parties
13 respectfully request that the Court continue the Scheduling Conference, and extend the stay of the
14 instant proceedings, by approximately two months, to September 24, 2018, or to another date that
15 is convenient for the Court, subject to any party’s ability to inform the Court of any developments
16 that would warrant a lifting of the stay and rescheduling the Scheduling Conference at an earlier
17 date, including the issuance of a decision in the *Duncan* appeal. Pursuant to Local Rule 137(b),
18 the parties have submitted herewith a proposed order conforming to this request.

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

20 In addition to the parties’ request for a continuance of the Scheduling Conference, and an
21 extension of the stay, to accommodate the forthcoming Ninth Circuit decision in *Duncan*, the
22 parties hereby provide statements on the subjects listed in paragraph 2 of the April 28 Order:

23 **a. Summary of the Claims**

24 Plaintiffs challenge California’s prohibition on the possession of firearm magazines that can
25 hold more than ten rounds of ammunition, or “large-capacity magazines,” as set forth in
26 California Penal Code § 32310. Plaintiffs claim that the prohibition (1) violates the Second
27 Amendment to the U.S. Constitution, (2) violates the Takings Clauses of the U.S. and California
28 Constitutions and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution,

1 (3) is unconstitutionally vague, (4) is unconstitutionally vague and overbroad, and (5) violates the
2 Equal Protection Clauses of the U.S. and California Constitutions.

3 **b. Status of Service**

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

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

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

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

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

11 **e. Jurisdiction and Venue**

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

14 **f. Proposed Discovery Plan**

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

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

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

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

27 Pursuant to the Court's Order issued on March 12, 2018 (Dkt. No. 80), discovery in this
28 action has been stayed pending resolution of Defendants' planned motion to dismiss the Third

1 Amended Complaint. If the Third Amended Complaint survives a motion to dismiss, and the stay
2 on discovery is lifted, the parties will submit motion cut-off dates after resolution of the motion to
3 dismiss.

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

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

7 **j. Estimated Length of Trial**

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

10 **k. Statement of Related Cases**

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

12 This case is similar to *Duncan v. Becerra*, No. 17-cv-01017-BEN-JLB, which is pending
13 before the Honorable Roger T. Benitez in the United States District Court for the Southern
14 District of California. In that action, the court entered a preliminary injunction enjoining
15 enforcement of the possession ban on large-capacity magazines, which the California Attorney
16 General has appealed to the Ninth Circuit Court of Appeals. The appeal has been fully briefed,
17 and oral argument has been set for May 14, 2018.

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

19 As discussed in Section I, *supra*, the parties request that the Court continue the Status
20 Conference and extend the stay by 60 days, or to a date that is convenient for the Court, to
21 provide additional time for the Ninth Circuit to issue a decision in the *Duncan* appeal; any such
22 decision may provide guidance for this Court's disposition of this action. There are no other
23 matters discussed in Local Rule 240 that may add to the just and expeditious disposition of this
24 matter.

25 **m. Nongovernmental Corporate Disclosure Statement**

26 On June 5, 2017, Plaintiffs filed a Corporate Disclosure Statement pursuant to Federal Rule
27 of Civil Procedure 7.1. (Docket No. 8.) There have been no changes to the information
28 contained in the Corporate Disclosure Statement. In accordance with the April 28 Order, and for

1 the convenience of the Court, Plaintiffs provide the following information contained in their
2 Corporate Disclosure Statement:

- 3 • Plaintiff The Calguns Foundation, Inc. is a non-profit membership organization,
4 incorporated under the laws of California. This plaintiff does not have a parent
5 corporation, and no publicly held corporation owns 10% or more of its stock or
6 membership interest.
- 7 • Plaintiff Firearms Policy Coalition, Inc. is a non-profit membership organization,
8 incorporated under the laws of Delaware. This plaintiff does not have a parent
9 corporation, and no publicly held corporation owns 10% or more of its stock or
10 membership interest.
- 11 • Plaintiff Firearms Policy Foundation, Inc. is a non-profit membership organization,
12 incorporated under the laws of Delaware. This plaintiff does not have a parent
13 corporation, and no publicly held corporation owns 10% or more of its stock or
14 membership interest.
- 15 • Plaintiff Second Amendment Foundation, Inc. is a non-profit membership
16 organization, incorporated under the laws of Delaware. This plaintiff does not have a
17 parent corporation, and no publicly held corporation owns 10% or more of its stock
18 or membership interest.

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Dated: July 16, 2018

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

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

Dated: July 16, 2018

SEILER EPSTEIN ZIEGLER &
APPLEGATE LLP

/s/ George M. Lee
(as authorized on July 16, 2018)
George M. Lee
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Case Name: **Wiese, William, et al. v. Xavier
Becerra, et al.**

No. **2:17-cv-00903-WBS-KJN**

I hereby certify that on July 16, 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 July 16, 2018, at Los Angeles, California.

Beth Capulong

Declarant

/s/ Beth Capulong

Signature