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13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**

15 MARK BAIRD and  
16 RICHARD GALLARDO,  
17 Plaintiffs,

18 v.

19 XAVIER BECERRA, in his official  
20 capacity as Attorney General of the State of  
21 California, and DOES 1-10,

22 Defendants.

Case No. 2:19-CV-00617-KJM-AC

**JOINT STATUS REPORT AND  
RULE 26(f) DISCOVERY PLAN**

Date: October 8, 2019  
Time: 10:00 a.m.  
Courtroom: 3  
Judge: Hon. Kimberly J. Mueller  
Trial Date: None set  
Action Filed: April 9, 2019

23 The parties to the above-entitled action jointly submit this JOINT STATUS REPORT  
24 AND RULE 26(f) DISCOVERY PLAN pursuant to Section 5 of this Court's April 10, 2019  
25 Order Setting Status (Pretrial Scheduling) Conference.

26 A. Summary of Claims and Legal Theories

27 *Plaintiffs: Mark Baird and Richard Gallardo*

28 Plaintiffs seek injunctive and declaratory relief in their challenge to Defendant's

1 enforcement of California’s pistol licensing scheme as it relates to the open carriage of handguns,  
2 loaded and unloaded, and the criminal penalties associated with the same. Plaintiffs’ legal  
3 theories arise from violations of the following Constitutional Amendments: Second, Fourth  
4 (interference with personal property), Fourteenth Amendments (substantive and procedural) as  
5 well as the Commerce Clause.  
6

7 More specifically, the right to bear arms is a core right protected by the Second  
8 Amendment. The Ninth Circuit has declared that “concealed carry” is not a right protected by the  
9 Second Amendment, which by default leaves “open carry” as the protected means of ‘bearing  
10 arms’ in public.

11 California has banned the open carriage of handguns in the state; since 2012, no open  
12 carry licenses have been issued in California. The state’s statutory scheme criminalizes the open  
13 carry of loaded and unloaded handguns in virtually all public places. In fact, were Plaintiffs to  
14 walk outside of their houses on their own property with an exposed handgun, they would be  
15 subject to imprisonment and fines. The statutory “may issue”, geographical (to the county of  
16 issuance), population size (counties under 200,000), and “good cause” restrictions on open carry  
17 violate the Second Amendment. The statutes also violate the Fourteenth Amendment right to  
18 intrastate travel (county of issuance and population size), Commerce Clause (right to intrastate  
19 travel), Fourth Amendment (interference with property and possessory interests by demarcating  
20 how one may carry their handgun), Fourteenth Amendment (procedural and substantive due  
21 process/how property may be carried).  
22

23  
24 *Defendant: Xavier Becerra*

25 Plaintiffs Mark Baird and Richard Gallardo allege that California’s statutory firearms  
26 licensing scheme—specifically California Penal Code sections 26150, 26155, 26350, and  
27 25850—violates Plaintiffs’ rights under the Second, Fourth, and Fourteenth Amendments to the  
28

1 Constitution. Sections 26150 and 26155 state that, in a county of less than 200,000 persons, the  
2 county sheriff or city police chief within the county “may issue . . . a license to carry loaded and  
3 exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon  
4 the person” if “good cause exists for issuance of the license.” Cal. Penal Code §§ 26150(b)(2)  
5 (county sheriff), 26155(b)(2) (city police chief). Section 26350 prohibits a person from “openly  
6 carrying an unloaded handgun” outside or inside a vehicle in public places. Cal. Penal Code §  
7 26350(a)(1), (a)(2). Section 25850 prohibits a person from “carrying a loaded firearm” outside or  
8 inside a vehicle in public places, and, “for the purpose of enforcing this section,” allows peace  
9 officers to examine a firearm “to determine whether or not [the] firearm is loaded.” Cal. Penal  
10 Code § 25850(a), (b).

11  
12 Defendant Attorney General Becerra has filed a motion to dismiss all but Plaintiffs’  
13 Second Amendment claims. Defendant has also opposed Plaintiffs’ preliminary injunction  
14 motion, which is based solely on Plaintiffs’ Second Amendment claims. Defendant denies  
15 liability on grounds that the relief that Plaintiffs seek in this lawsuit—to make the open carry of  
16 firearms in public available to all law-abiding individuals—does not square with over six  
17 centuries of Anglo-American law strictly limiting the open carry of firearms or with *District of*  
18 *Columbia v. Heller*, 554 U.S. 570 (2008) and its progeny.

19  
20  
21 B. Status of Service

22 Service of process has been completed upon the named defendant.

23 C. Joinder of Additional Parties

24 No additional parties are contemplated to be joined at this time.

25 D. Amendments to the Pleadings

26 The parties acknowledge Plaintiffs’ intention to amend the pleadings to remove causes of  
27 action under the Dormant Commerce Clause and agree to stipulate to such amendment pending  
28

1 the Court's determination of the defendant's pending Rule 12(b)(6) motion to dismiss. Plaintiffs  
2 reserve their right to otherwise amend their pleadings as justice so requires.

3 Defendant agrees to an amended pleading that simply removes the current causes of action  
4 under the Dormant Commerce Clause. With respect to any other amendments, and once the  
5 Court issues its Status (Pretrial Scheduling) Order, Defendant sees no reason to depart from the  
6 normal rule prohibiting any joinder of parties or amendments to pleadings without leave of court,  
7 good cause having been shown. See Fed. R. Civ. P. 16(b); *Johnson v. Mammoth Recreations,*  
8 *Inc.*, 975 F.2d 604 (9th Cir. 1992).

9  
10 E. Statutory Basis for Jurisdiction and Venue

11 Plaintiffs contend that this court has subject matter jurisdiction over Plaintiffs' claims  
12 under 28 U.S.C. § 1331 (action arising under the laws of the United States), 28 U.S.C. § 1343  
13 (original jurisdiction over actions seeking the protection of civil rights), 28 U.S.C. § 1361 (action  
14 to compel officer or agency to perform duty owed to Plaintiffs), 28 U.S.C. § 2201, §2202  
15 (declaratory judgment remedies), 42 U.S.C. § 1983 (civil action for deprivation of rights) 42  
16 U.S.C. §1988 (attorney's fees).

17 Venue is proper under 28 U.S.C. § 1391(b)(2) as a substantial portion of the events or  
18 omissions giving rise to the plaintiffs' claims occurred in this district, to wit, Shasta County and  
19 Siskiyou County.  
20

21 Defendants do not intend to contest Plaintiffs' lawsuit on grounds that the Court lacks  
22 jurisdiction or that venue is improper.  
23

24 F. Scheduling of Anticipated Discovery

25 No discovery has been taken to date.  
26  
27  
28

1            Plaintiffs

2            Plaintiffs propose the following schedule for fact and expert discovery:

3            Rule 26(a) Mandatory Initial Disclosures, Interrogatories, and Demands for Documents:  
4            to be served on or before November 1, 2019. Responses to the same to be served on or before  
5            December 1, 2019.

6            Depositions to be completed on or before February 28, 2020.

7            Expert reports to be exchanged on or before March 16, 2020; expert depositions to be  
8            completed on or before May 22, 2020.

9            Defendant

10           Defendant notes that California’s public carry laws have been subject to a number of  
11           Second Amendment challenges, several of which are ongoing:  
12             
13          

14           • In *Peruta v. County of San Diego*, the plaintiffs’ challenge to California’s  
15           regulation of the concealed carry of firearms in public places was rejected by a Ninth Circuit en  
16           banc panel, which held that the Second Amendment “does not protect in any degree the right to  
17           carry concealed firearms in public.” 824 F.3d 919, 939 (9th Cir. 2016) (en banc).

18           • In *Nichols v. Harris*, the district court rejected the same claim advanced here –  
19           that the Second Amendment guarantees a right to openly carry a firearm in public places. 17 F.  
20           Supp. 3d 989, 993-94, 1004-05 (C.D. Cal. 2014). The Ninth Circuit stayed the appeal pending  
21           resolution of *Young v. Hawaii*, which presents a similar challenge to Hawaii’s public carry laws.  
22           *Nichols v. Brown* (9th Cir.), No. 14-55873, ECF No. 119.

23           • In *Flanagan v. Harris*, the district court rejected the plaintiffs’ argument that the  
24           Second Amendment guarantees them some ability to carry a firearm—either concealed or  
25           openly—in most public places. 2018 WL 2138462, at \*10 (C.D. Cal. May 7, 2018). The appeal of  
26             
27             
28

1 that decision has also been stayed pending resolution of *Young, Flanagan v. Becerra* (9th Cir.),  
2 No. 18-55717, ECF No. 57.

3 In light of the number of similar cases under consideration by the Ninth Circuit and the  
4 likelihood that Plaintiffs will appeal an adverse ruling on their preliminary injunction motion, and  
5 in the interest of judicial economy, Defendant proposes that the Court stay discovery until after  
6 rulings on the preliminary injunction motion and motion to dismiss are issued. Once the Court  
7 rules, Defendant proposes that the Court order the following discovery schedule:  
8

- 9
- 10 • Initial disclosures due: One month after the Court's rulings are issued
  - 11 • Non-expert discovery cut-off: Four months after the Court's rulings are issued
  - 12 • Expert reports due: Four months after the Court's rulings are issued
  - 13 • Expert rebuttal reports due: Five months after the Court's rulings are issued
  - 14 • Expert discovery cut-off: Seven months after the Court's rulings are issued
  - 15 • Discovery motions due: Nine months after the Court's rulings are issued
- 16

17 For the foregoing reasons, if Plaintiffs appeal the ruling on their preliminary injunction motion,  
18 Defendant will request that the Court stay discovery until after the appeal is decided.

19 G. Dispositive Motions

20 Plaintiffs' Motion for a Preliminary Injunction (on the Second Amendment claims) is  
21 pending concurrently with Defendant's motion to dismiss (on all claims *except* the Second  
22 Amendment claims).

23 It is Plaintiffs' position that the claims are largely a question of law, such that fact  
24 discovery will not likely be dispositive of the causes of action. To the extent that expert discovery  
25 has a dispositive impact, proceeding through discovery on all causes of action pled,  
26 notwithstanding the pending motions, will best serve judicial economy. Irrespective of how the  
27

1 motions are determined and/or whether appellate review is sought, proceeding as if all claims  
2 have survived will not require substantial additional time. To the contrary, waiting for a  
3 determination and appeal on this, or any other case, would not be judicially economical.

4 Plaintiffs propose that a motion on the pleadings or motion for summary judgment be due  
5 three (3) months after the Court issues rulings on the motion for a preliminary injunction and  
6 motion to dismiss. Plaintiffs further propose a briefing schedule as follows: moving papers to be  
7 filed by Defendant as provided above; Plaintiffs' opposition/cross-motion to be filed within 45  
8 days; Defendant's opposition/reply to be filed within 20 days thereafter; and Plaintiffs' reply, if  
9 any, to be filed within 20 days thereafter.

11 Defendant

12 Defendant proposes that a motion for judgment on the pleadings or motion for summary  
13 judgment be due ten months after the Court issues rulings on the motion for preliminary  
14 injunction and motion to dismiss. Defendant does not oppose an extended briefing schedule  
15 consistent with what Plaintiffs propose above.

17 H. Anticipated Limitations on Use of Testimony

18 At this time, the parties have not identified such limitations.

19 I. Final Pre-trial Conference

20 A date for a final pre-trial conference is dependent upon the date by which the Court's  
21 Decision on the parties' motions to dismiss are rendered. If the Court hears a motion for summary  
22 judgment, the parties propose scheduling a pre-trial conference two (2) months after the Court  
23 issues a ruling on the motions for summary judgment.

24 J. A date for a trial is dependent upon the date by which the Court's Decision on the  
25 parties' motions are rendered. The parties estimate that a bench trial will take approximately three  
26 (3) days.  
27

1 K. Special Proceedings

2 The parties have not agreed to proceed before a Magistrate Judge.

3 L. Modification of Pre-Trial Procedures

4 At this time, the parties do not anticipate a modification of the pre-trial procedures.

5 M. Related Cases in the District

6 The parties are not aware of any related cases in this district.

7 N. Settlement Proceedings

8 The parties have met and conferred about their respective positions but do not expect that  
9 a settlement will be reached. The parties have no objection to the Court acting as the settlement  
10 judge.  
11

12 O. Other Matters to Conducive to an Expeditious Disposition of the Case

13 The parties are not aware of any other matters that may be conducive to an expeditious  
14 disposition of the case.  
15

16 Dated: October 1, 2019

Respectfully Submitted,

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1 Dated: October 1, 2019

Respectfully submitted,

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6 /s/ R. Matthew Wise  
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