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ATTORNEYS FOR PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**MARK BAIRD and RICHARD  
GALLARDO,**  
  
Plaintiffs,  
  
**v.**  
  
**ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
and DOES 1-10,**  
  
Defendants.

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

**SECOND AMENDED STATUS REPORT  
AND RULE 26(f) DISCOVERY PLAN**

Courtroom: 3  
Judge: Hon. Kimberly J. Mueller  
Action Filed: April 10, 2019

The parties to the above-entitled action jointly submit this SECOND AMENDED STATUS REPORT AND RULE 26(f) DISCOVERY PLAN in consideration of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, No. 20-843, 2022 WL 2251305 (U.S. June 23, 2022).

1           A.     Summary of Claims and Legal Theories

2           *Plaintiffs' Statement:*

3           Plaintiffs continue to seek injunctive and declaratory relief in their challenge to Defendant's  
4 enforcement of California's pistol licensing scheme as it relates to the open carriage of handguns,  
5 loaded and unloaded, and the criminal penalties associated with the same. The statutes challenged  
6 in this action are California Penal Codes §§ 25850, 26150; 26155; and 26350.

7           The Supreme Court's decision in *Bruen*, reiterated the scope of the Second Amendment as  
8 defined through text and history in *Heller* and confirmed in *McDonald*. *New York State Rifle &*  
9 *Pistol Ass'n, Inc. v. Bruen*, No. 20-843, 2022 WL 2251305 (U.S. June 23, 2022), abrogating *Young*  
10 *v. Hawaii*, 992 F.3d 765; *Gould v. Morgan*, 907 F.3d 659; *Drake v. Filko*, 724 F.3d 426; *Kachalsky*  
11 *v. County of Westchester*, 701 F.3d 81; *U.S. v. Masciandaro*, 638 F.3d 458, as well as Cal. Penal  
12 Code § 26150; Haw. Rev. Stat. § 134-2; Md.Code Ann., Public Safety § 5-306(a)(6)(ii); Mass. Gen.  
13 Laws Ann. ch. 140, § 131(d); N.J. Stat. Ann. § 2C:58-4(c); N.Y. Penal Law § 400.00(2)(f); and  
14 D.C. Code §§ 7-2509.11(1), 22-4506(a).

15           Specifically, the Court reaffirmed that the "core" right protected by the Second Amendment  
16 is the individual right to "self-defense" [*Bruen*, at \*7 ("In *Heller* and *McDonald*, we held that the  
17 Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-  
18 defense.")] and that "the Second Amendment guarantees 'an individual right to possess and carry  
19 weapons in case of confrontation,' *id.*, at 592, 128 S.Ct. 2783, and confrontation can surely take  
20 place outside the home." *Bruen*, at \*2, citing, *D.C. v. Heller*, 554 U.S. 570, 592 (2008).

21           The Court rejected the analytical framework applied in the Ninth Circuit, among others, to  
22 for analyzing Second Amendment challenges. "In keeping with *Heller*, we hold that when the  
23 Second Amendment's plain text covers an individual's conduct, the Constitution presumptively  
24 protects that conduct. To justify its regulation, the government may not simply posit that the  
25 regulation promotes an important interest. Rather, the government must demonstrate that the  
26 regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm  
27 regulation is consistent with this Nation's historical tradition may a court conclude that the  
28

1 individual's conduct falls outside the Second Amendment's "unqualified command." *Bruen*, at \*7  
2 citing, *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10, (1961).

3 The Ninth Circuit has declared that "concealed carry" is not a right protected by the Second  
4 Amendment. See, *Peruta v. Becerra*, 824 F.3d 919 (9th Cir. 2016) (Second Amendment right to  
5 keep and bear arms does not include, in any degree, right of member of general public to carry  
6 concealed firearms in public).

7 Viewing the plain text of the Second Amendment, and America's rich history and  
8 tradition of the free exercise of the right to open carry, the challenged statutes cannot withstand  
9 constitutional muster.

10 The subjective "moral character", "may issue", and "good cause" permissive and  
11 discretionary licensing of handguns, the statutory restrictions based on geography (to the county of  
12 issuance) and population size (counties under 200,000), violate the Second and Fourteenth  
13 Amendments.

14 *Defendant's Statement:*

15 As the Court noted in its July 7, 2022 Order, ECF No. 59, lifting the stay, the Supreme  
16 Court recently issued its opinion in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct.  
17 2111 (2022). In *Bruen*, the Supreme Court held unconstitutional New York's requirement that  
18 individuals show "proper cause" to obtain a license to carry firearms in public. 142 S. Ct. at  
19 2156. The Supreme Court also made clear that California's "analogue[]"—which requires a  
20 showing of "good cause" to secure a license to carry firearms in public, Cal. Penal Code §  
21 26150(a)(2)—is unconstitutional. *Id.* at 2124. The day after *Bruen* was decided, the Attorney  
22 General issued a legal alert recognizing that California's good cause requirement is no longer  
23 constitutional in light of *Bruen*. See Office of the Attorney General, *Legal Alert: U.S. Supreme*  
24 *Court Decision in New York State Rifle & Pistol Association v. Bruen*, No. 20-843 (June 24,  
25 2022), <https://oag.ca.gov/system/files/media/legal-alert-oag-2022-02.pdf>. The California  
26 Legislature is also currently considering legislation that would repeal this provision, as well as the  
27 good moral character requirement. See S.B. 918, 2021-2022 Reg. Sess. (Cal. 2022),  
28 [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB918](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB918).

1 In light of *Bruen*, Plaintiffs intend to file a Second Amended Complaint. Because S.B.  
2 918, if enacted, is likely to bear on the issues in dispute in this case, Defendant proposes that  
3 (1) Plaintiffs be given 60 days from the filing of this status report to file a Second Amended  
4 Complaint, and (2) the July 28, 2022 status conference be vacated and reset on a date  
5 approximately 30 days after the Second Amended Complaint is filed. This proposed schedule  
6 will conserve resources by providing the Court and the parties sufficient time to consider S.B.  
7 918's bearing on the case before the Court issues a new scheduling order. Defendant suggests  
8 that, seven days in advance of the rescheduled status conference, the parties submit a status report  
9 proposing a new schedule for the remainder of the case.

10 B. Status of Service

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

12 C. Joinder of Additional Parties

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

14 D. Amendments to the Pleadings

15 Plaintiffs are seeking, by order of the Court or consent of Defendant, to amend their  
16 pleadings consistent with the *Bruen* decision and its foundational references.

17 There is good cause to amend the pleadings in light of the *Bruen* decision. Plaintiffs hope  
18 to obtain Defendant's consent to avoid unnecessary motion practice, as this action was  
19 specifically stayed pending the *Bruen* decision.

20 As indicated above, Defendant proposes that Plaintiffs be given 60 days from the filing of  
21 this status report to file their Second Amended Complaint so that they have the opportunity to  
22 consider S.B. 918's bearing on the case, if the bill is enacted.

23 E. Statutory Basis for Jurisdiction and Venue

24 Plaintiffs contend that this court has subject matter jurisdiction over Plaintiffs' claims under  
25 28 U.S.C. § 1331 (action arising under the laws of the United States), 28 U.S.C. § 1343 (original  
26 jurisdiction over actions seeking the protection of civil rights), 28 U.S.C. § 1361 (action to compel  
27 officer or agency to perform duty owed to Plaintiffs), 28 U.S.C. § 2201, §2202 (declaratory  
28 judgment remedies), 42 U.S.C. § 1983 (civil action for deprivation of rights) 42 U.S.C. §1988

1 (attorney's fees).

2 Plaintiffs further contend that venue is proper under 28 U.S.C. § 1391(b)(2) as a substantial  
3 portion of the events or omissions giving rise to the plaintiffs' claims occurred in this district, to  
4 wit, Shasta County and Siskiyou County.

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

7 F. Scheduling of Anticipated Discovery

8 *Plaintiffs' Statement:*

9 Fact and expert discovery are complete. A schedule for summary judgment motions was  
10 set by the Court. After Defendant filed a motion for summary judgment, the parties filed a  
11 stipulation to stay the action pending the *Bruen* decision, which was So Ordered by the Court.

12 *Defendant's Statement:*

13 Because Defendant is not aware of the allegations or claims that Plaintiffs intend to bring  
14 in their Second Amended Complaint, they are unable to determine whether further fact and expert  
15 discovery will be necessary, and if so, an appropriate schedule for such discovery.

16 G. Dispositive Motions

17 *Plaintiffs' Proposed Schedule*

18 Plaintiffs request 30 days in which to file a Second Amended Complaint. Plaintiffs further  
19 request that the Court set a schedule for a motion and cross-motion for summary judgment as  
20 follows:

- 21 • Defendant's Motion for Summary Judgment to be filed within 30 days of the filing of  
22 Defendant's Answer to the Second Amended Complaint; Plaintiffs' Cross-Motion for  
23 Summary Judgment and Opposition within 30 days; Defendant's Reply and Opposition  
24 within 14 days; and Plaintiff's Reply 14 days thereafter.

25 In light of *Bruen*, Plaintiffs intend to file a motion for a preliminary injunction. The right to  
26 carry firearms for self-defense is guaranteed, and further enforcement of the unconstitutional  
27 statutes challenged in this action continues to cause irreparable harm. *Monterey Mech. Co. v*  
28 *Wilson*, 125 F3d 702, 715 (9th Cir 1997) ("We have stated that an alleged constitutional

1 infringement will often alone constitute irreparable harm.”) citing, *Associated General Contractors*  
2 *v. Coalition For Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991).

3 *Defendant’s Proposed Schedule:*

4 Given the circumstances noted above, and Plaintiffs’ intent to file their third preliminary  
5 injunction motion in this matter, it would be premature to issue a new scheduling order. Again,  
6 Defendant proposes that (1) Plaintiffs be given 60 days from the filing of this status report to file  
7 a Second Amended Complaint, and (2) the July 28, 2022 status conference be vacated and reset  
8 on a date approximately 30 days after the Second Amended Complaint is filed. This proposed  
9 schedule will conserve resources by providing the Court and the parties sufficient time to  
10 consider S.B. 918’s bearing on the case before the Court issues a new scheduling  
11 order. Defendant suggests that, seven days in advance of the rescheduled status conference, the  
12 parties submit a status report proposing a new schedule for the remainder of the case.

13 H. Anticipated Limitations on Use of Testimony

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

15 I. Final Pre-trial Conference

16 The parties propose scheduling a pre-trial conference two months after the Court issues a  
17 ruling on the parties’ motions for summary judgment.

18 J. Proposed Date for Trial

19 *Plaintiff’s Position:*

20 Plaintiffs contend that the issues to be resolved herein are questions of law.

21 *Defendant’s Position:*

22 A date for trial is dependent upon the date by which the Court’s decision on the parties’  
23 dispositive motions are rendered. Defendant estimates that a bench trial will take approximately  
24 three days.

25 K. Special Proceedings

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

27 L. Modification of Pre-Trial Procedures

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

2 M. Related Cases in the District

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

4 N. Settlement Proceedings

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

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

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

11 Dated: July 21, 2022

Respectfully Submitted,

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/s/ Amy L. Bellantoni  
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Dated: July 21, 2022

Respectfully submitted,

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/s/ R. Matthew Wise  
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Rob Bonta

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