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Attorneys for Plaintiffs

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 8 **IN THE UNITED STATES DISTRICT COURT**  
 9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
 10 **FRESNO BRANCH COURTHOUSE**

11 BARRY BAUER, STEPHEN  
 12 WARKENTIN, NICOLE FERRY,  
 13 LELAND ADLEY, JEFFREY  
 14 HACKER, NATIONAL RIFLE  
 15 ASSOCIATION OF AMERICA,  
 INC., CALIFORNIA RIFLE AND  
 PISTOL ASSOCIATION  
 FOUNDATION, HERB BAUER  
 SPORTING GOODS, INC.,

Plaintiffs

vs.

18 KAMALA HARRIS, in Her Official  
 19 Capacity as Attorney General For the  
 State of California; STEPHEN  
 20 LINDLEY, in His Official Capacity  
 as Acting Chief for the California  
 Department of Justice, and DOES 1-  
 21 10,

Defendants.

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

**STIPULATION TO VACATE RULE 16  
SCHEDULING ORDER AND ORDER**

1 I.

2 **INTRODUCTION**

3 The parties, Plaintiffs Barry Bauer, Stephen Warkentin, Nicole Ferry, Leland  
4 Adley, Jeffrey Hacker, National Rifle Association of America, Inc., California  
5 Rifle and Pistol Association Foundation, Herb Bauer Sporting Goods, Inc.  
6 (collectively “Plaintiffs”) and Defendants Attorney General Kamala D. Harris and  
7 Chief of the Firearms Bureau Stephen Lindley (collectively “Defendants”), through  
8 their respective attorneys of record, hereby jointly stipulate to vacate all deadlines  
9 contained in the current scheduling order, in light of Senate Bill 140 becoming law,  
10 which materially affected the nature of Plaintiffs’ case. The parties also jointly  
11 request that this Court order a case management conference at such time as the  
12 Court deems convenient in order to create a new scheduling order.

13 II.

14 **RECITALS/GROUNDS FOR RELIEF**

15 Pursuant to Rule 16, a party may seek modification of a scheduling order  
16 “only for good cause and with a judge’s consent.” Fed. R. Civ. P. 16(b)(4). “Good  
17 cause” exists when a scheduling deadline “cannot reasonably be met despite the  
18 diligence of the party seeking the extension.” *Schaffner v. Crown Equipment*  
19 *Corporation*, No. C 09-00284 SBA, 2011 WL 6303408, at \*2 (N.D. Cal. Dec. 16,  
20 2011) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9<sup>th</sup> Cir.  
21 1992). A party may establish good cause by showing:

- 22 (1) that [he or she] was diligent in assisting the court in creating  
23 a workable Rule 16 order; (2) that [his or her] noncompliance with  
24 a rule 16 deadline occurred or will occur, notwithstanding [his or  
25 her] diligent efforts to comply, because of the development of  
26 matters which could not have been reasonably foreseen or  
anticipat

27 *Hood v. Hartford Life & Accident Ins. Co.*, 567 F.Supp.2d 1221, 1224 (E.D. Cal.  
28 2008) (citation omitted).

1           WHEREAS the parties have been and are currently and diligently acting in  
2 good faith to reach a resolution on this case in a manner that most effectively  
3 utilizes resources of both parties as well as the resources of the Court (See  
4 Declaration of Sean A. Brady (hereinafter “Brady Decl.”) at ¶¶ 5-8);

5           WHEREAS Senate Bill 140 (SB 140), a bill appropriating monies collected  
6 from one of the Challenged Fees in this action, was recently signed into law by  
7 Governor Brown on May 1, 2013 (See Brady Decl. at ¶ 3);

8           WHEREAS SB 140 significantly alters the legal landscape with respect to  
9 this lawsuit such that it affects the scope of the legal challenge, as well as the  
10 discovery Plaintiffs will seek (See Brady Decl. at ¶ 4);

11           WHEREAS the parties worked together diligently to prepare a  
12 comprehensive proposed scheduling report for the Court’s convenience at the  
13 inception of this case, but at the time of the Rule 16 scheduling conference the  
14 parties could not have known that SB 140 would be passed into law and affect this  
15 lawsuit as it does (See Brady Decl. at ¶ 5) ;

16           WHEREAS both parties agreed that dedicating Court and party resources to  
17 continue discovery and litigation while the fate of SB 140 was pending would  
18 result in potential waste and they informally agreed to postpone Defendants’  
19 responses to Plaintiffs’ written discovery requests and Defendant Chief Lindley’s  
20 deposition until SB 140's fate was known so that both parties could evaluate SB  
21 140's impact on their respective positions without the mounting cost and pressure  
22 of litigation acting as a burden for both the Court and the parties (See Brady Decl.  
23 at ¶ 6);

24           WHEREAS the parties previously agreed to file a stipulation to vacate the  
25 scheduling order and stay the case pending resolution of SB 140, but were unable  
26 to file such stipulation before SB 140 passed (See Brady Decl. at ¶¶ 7-8);

27           WHEREAS the April 29, 2013 deadline to complete all non-expert  
28 discovery under the current scheduling order has passed, and there remain

1 outstanding discovery responses from Defendants, which could, without relief from  
2 the discovery cut-off, unnecessarily prompt discovery law and motion (See Brady  
3 Decl. at ¶ 10);

4 WHEREAS, as of the date that SB 140 was signed, the parties were engaged  
5 in meet-and-confer efforts regarding such written discovery responses, and, as a  
6 result of the passage of SB 140, such outstanding discovery responses no longer  
7 fully address the issues the parties seek to try in light of the passage of SB 140 (See  
8 Brady Decl. at ¶ ¶ 11-12);

9 WHEREAS Plaintiffs believe this action cannot be properly adjudicated  
10 without additional such discovery concerning the impact of SB 140 on the nature  
11 of the Challenged Fee, and desire to conduct new discovery to address the primary  
12 issues that will be relevant to the streamlined claims in the lawsuit, in lieu of  
13 bringing law and motion on the existing outstanding discovery (See Brady Decl. at  
14 ¶ 12);

15 WHEREAS other deadlines are fast approaching that will be impossible or  
16 unduly burdensome and prejudicial for Plaintiffs to meet (See Brady Decl. at ¶ 9);

17 WHEREAS the parties have been meeting and conferring since SB 140's  
18 passage into law in order to address the most effective and economic route for  
19 proceeding with this litigation (See Brady Decl. at ¶ 13);

20 WHEREAS the parties have agreed that the best course of action for the  
21 parties and the Court is for Plaintiffs to amend their complaint in light of SB 140,  
22 in order to reduce the issues to be tried and to streamline the lawsuit into a single  
23 Second Amendment claim challenging only one of the fees currently at issue in this  
24 litigation, and to set a new scheduling order accordingly (See Brady Decl. at ¶ 14);

25 WHEREAS the parties have been diligent and have acted in good faith in  
26 working together to seek amendment of the scheduling order promptly after the  
27 passage of SB 140 (See Brady Decl. at ¶ 16);

28 ///

1 THE PARTIES, THROUGH THEIR RESPECTIVE COUNSEL, HEREBY  
2 STIPULATE AND AGREE TO THE FOLLOWING:

3 1. To vacate all deadlines provided in the Court's Rule 16 Scheduling  
4 Order from August 10, 2012, including the extended deadline for discovery of non-  
5 expert witnesses provided in the Court's January 23, 2013 Order;

6 2. To request that this Court order a case management conference at such  
7 time or as the Court deems convenient.<sup>1</sup>

8 **SO STIPULATED.**

9  
10 Dated: May 22, 2013

**MICHEL & ASSOCIATES, P.C.**

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13 /s/ C. D. Michel  
14 C. D. Michel  
Attorney for Plaintiffs

15 Dated: May 22, 2013

**Deputy Attorney General**

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18 /s/ Anthony R. Hakl  
19 Anthony R. Hakl  
(as authorized on May 22, 2013)  
Attorney for Defendants

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**ORDER**

Good cause appearing, the above Stipulation in case number 1:11-cv-01440-LJO-MJS is approved and all post-August 10, 2012, dates and deadlines provided in the Court’s Rule 16 Scheduling Order, as amended to provide an extended deadline for discovery of non-expert witnesses as per the Court’s January 23, 2013 Order, are vacated. A further Scheduling Conference shall be held August 8, 2013 at 10:30 a.m. in Courtroom 6 (MJS) before Magistrate Judge Michael J. Seng.

IT IS SO ORDERED.

Dated: May 28, 2013

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