

## CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MATTHEW CARON; MATTHEW GUDGER; SECOND  
AMENDMENT FOUNDATION, INC.; S.C.O.P.E., INC.;  
LONG ISLAND FIREARMS, LLC,

NO. 13-CV-1211GLS/TWD

*Plaintiffs,*

-against-

ANDREW CUOMO, in his Official Capacity as Governor  
of the State of New York; and JOSEPH D'AMICO, in his  
Official Capacity as Superintendent of the Division of State  
Police,

*Defendants.*

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**IT IS HEREBY ORDERED that**, pursuant to Rule 16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable Therese Wiley Dancks, United States Magistrate Judge, on Wednesday, March 12, 2014 at 9:30 A.M. at the United States Courthouse, Syracuse, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below. That meeting must be attended in person or, if counsel for the parties are not located in the same city and do not agree to meet in person, then by telephone, and must be held at least twenty-one (21) days before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of that meeting, in the format set forth below, must be filed with the clerk within fourteen (14) days after the date of the Rule 26(f) meeting or not later than ten (10) days prior to the scheduled Rule 16 conference with the Court, whichever date is earlier. Matters which the Court will discuss at the status conference will include the following: (Insert a separate subparagraph as necessary if parties disagree):

- 1) JOINDER OF PARTIES:** Any application to join any person as a party to this action shall be made on or before the twelfth day of March, 2014.
- 2) AMENDMENT OF PLEADINGS:** Any application to amend the pleadings to this action shall be made on or before the twelfth day of March, 2014.

**3) DISCOVERY:** All discovery in this action shall be completed on or before the second day of September, 2014. (Discovery time table is to be based on the complexity of the action).

**4) MOTIONS:** All motions, including discovery motions, shall be made on or before the sixth day of October, 2014. (Non-Dispositive motions including discovery motions will be heard by the assigned Magistrate Judge).

**5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL:** The action will be ready to proceed to trial on or before the sixth day of April, 2015. It is anticipated that the trial will take approximately 4 days to complete. The parties request that the trial be held in Albany. (The proposed date for the commencement of trial must be within 18 months of the filing date).

**6) HAVE THE PARTIES FILED A JURY DEMAND:** no

**7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?**

Yes

**8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFFS' CLAIMS AND DEFENDANTS' DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS IF APPLICABLE)?**

Plaintiffs challenge New York's Penal Law section 265.37 as violative of the Second Amendment. Defendants assert that the statute, which simply caps the number of rounds permitted in ammunition feeding devices, is permitted under the Second Amendment.

**9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?**

Whether New York's Penal Law 265.37 violates the 2nd Amendment of the United States Constitution

**10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?**

Yes

**11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?**

Plaintiffs seek to have the statute enjoined as unconstitutional

**12) DISCOVERY PLAN**

**A) What changes (if any) should be made to the disclosure requirements under Rule 26(a), as well as to the limitations on discovery set forth in the Federal Rules of Civil Procedure, as amended?**

There is a question as to whether discovery will be necessary

**B) When will the mandatory disclosures required under Rule 26(a)(1) be made, or when were they made?**

There is a question as to whether disclosures are necessary

**C) Describe the timetable for discovery, identify the subjects to be addressed, state whether discovery should be conducted in phases, and discuss why there are no less costly and time consuming alternative methods available to obtain the same information:**

Should discovery be necessary, it will most likely involve experts. The timetable provides sufficient time to research experts and get reports and also builds in for holidays and vacations

**D) What forms of discovery does each party intend to pursue?**

Unknown at this time

**E) Are any protective orders required or requested under Fed. R. Civ. P. 26(c)?**

Unknown at this time

**13) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?**

Yes.

**14) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?**

The issue at bar here was ruled upon by the Western District of New York and is currently before the Second Circuit Court of Appeals

**15) IN CLASS ACTIONS, WHEN AND HOW WILL THE CLASS BE CERTIFIED?**

NA

**16) WHAT ARE THE PROSPECTS FOR SETTLEMENT?** Please circle below the prospects for settlement:

1      [2]      3      4      5      6      7      8      9      10

(VERY UNLIKELY)

(LIKELY)

**CANNOT BE EVALUATED PRIOR TO Rule 16 conference. (DATE)**

**HOW CAN SETTLEMENT EFFORTS BE ASSISTED?**

\*\*\*Settlement assistance efforts\*\*\*

(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference)

