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**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

- 4 **(1) ROBERT DRAPER;**  
5 **(2) ARIEL WEISBERG;**  
6 **(3) DONNA MAJOR;**  
7 **(4) ERIC NOTKIN;**  
8 **(5) ROBERT BOUDRIE;**  
9 **(6) BRENT CARLTON,**  
10 *collectively, the*  
11 **"CONSUMER PLAINTIFFS", and**  
12 **(7) CONCORD ARMORY, LLC;**  
13 **(8) PRECISION POINT FIREARMS, LLC;**  
14 *collectively, the*  
15 **"DEALER PLAINTIFFS", and**  
16 **(9) SECOND AMENDMENT**  
**FOUNDATION, INC.,**  
17 **(10) COMMONWEALTH SECOND**  
18 **AMENDMENT, INC.**  
19 *collectively, the*  
20 **"ORGANIZATIONS", and**

21 Plaintiffs

22 v.

23 **MARTHA COAKLEY,**  
24 *in her official capacity as*  
25 **ATTORNEY GENERAL OF**  
**MASSACHUSETTS**

26 Defendant  
27  
28

Civil Action No.  
1:14-CV-12471-NMG

**PLAINTIFFS' MOTION TO  
ENLARGE TIME TO FILE  
THEIR OPPOSITION TO  
THE DEFENDANT'S  
MOTION TO DISMISS  
THEIR COMPLAINT**

1 The CONSUMER PLAINTIFFS, DEALER PLAINTIFFS and ORGANIZATIONS (collectively  
2 hereafter “PLAINTIFFS”), by and through their attorney of record, hereby move this Honorable  
3 Court pursuant to Federal Rule of Civil Procedure 6(b)(1) to enlarge the time for the  
4 PLAINTIFFS to file their Opposition to the defendant ATTORNEY GENERAL’s Motion to Dismiss  
5 their Complaint (Docket No. 9, 22 August 2014). Per Local Rule 7.1(b)(2), the PLAINTIFFS’  
6 Opposition is currently due on Friday, 5 September 2014. PLAINTIFFS ask that this Court  
7 extend the filing deadline by one week to Friday 12 September 2014. Good cause exists to  
8 grant the current Motion.

9 The PLAINTIFFS contend that the kernel issue in this lawsuit is whether the  
10 Massachusetts Handgun Sales Regulation’s (940 CMR 16.00 *et seq.*) (hereafter “REGULATION”)  
11 use of the words “device that plainly indicates” to define the “load indicator” alternative design  
12 requirement for pistols sold or transferred into Massachusetts is so vague and/or ambiguous  
13 that it deprives the DEALER PLAINTIFFS of their due process rights under the 14th  
14 Amendment since they cannot reasonably know how to comply with such a vague description.  
15 That, in turn, has caused and continues to cause the DEALER PLAINTIFFS to fear an arbitrary  
16 enforcement action by the defendant ATTORNEY GENERAL should she disagree with their (the  
17 DEALER PLAINTIFFS’) interpretation of “load indicator”—an interpretation that both the  
18 DEALER PLAINTIFFS and CONSUMER PLAINTIFFS affirmatively sought from the defendant  
19 ATTORNEY GENERAL but which interpretation she refused to provide to them. Because they  
20 feared and fear arbitrary enforcement by the defendant ATTORNEY GENERAL, the DEALER  
21 PLAINTIFFS have declined and will not sell or transfer certain handguns in common use  
22 throughout the rest of the country to Massachusetts residents, including the CONSUMER  
23 PLAINTIFFS herein. Thus, PLAINTIFFS contend that the vague REGULATION’s violation of the  
24 DEALER PLAINTIFFS’ 14<sup>th</sup> Amendment rights has caused and continues to cause the direct  
25 infringement of and/or burdens the CONSUMER PLAINTIFFS’ 2<sup>nd</sup> Amendment rights.

26 Per Fed. R. Civ. P. 12(a)(1)(A)(i) the defendant ATTORNEY GENERAL was required to  
27 file her Answer or Motion to Dismiss within 21 days of having been served with the Complaint.  
28 However, the ATTORNEY GENERAL appealed to this court and received an additional 43 days

1 to prepare her Motion to Dismiss, effectively more than tripling the time she would otherwise  
2 have had to respond to the Complaint. The defendant ATTORNEY GENERAL also sought the  
3 PLAINTIFFS' assent to permit her to exceed the Local Rule 7.1(b)(4) 20-page limit for the  
4 memorandum in support of her Motion to Dismiss, which assent the PLAINTIFFS readily  
5 granted and this Court then allowed.

6 The product of these generous extensions of time and pages is a lengthy (25 page)  
7 Motion to Dismiss densely packed with argument and authorities addressing what the  
8 ATTORNEY GENERAL herself described as "complex Constitutional law questions" and  
9 "important public policy concerns". Her Motion to Dismiss addresses the constitutional limits  
10 of the various parties' standing to sue; her REGULATIONS' effect on and alleged non-  
11 implication of the CONSUMER PLAINTIFFS' 2<sup>nd</sup> Amendment rights; the constitutional  
12 standards of vagueness in statutes and regulations; the appropriate level of constitutional  
13 scrutiny to be applied to the subject firearm REGULATION as it relates to the CONSUMER  
14 PLAINTIFFS whom it is purportedly intended to protect, and the application of Pullman  
15 abstention in the maintenance or ceding of this Court's subject matter jurisdiction to the  
16 Massachusetts state courts.

17 Borrowing directly from the defendant ATTORNEY GENERAL's argument in her Motion  
18 for Enlargement of Time to Respond to the Complaint, "[w]hile the PLAINTIFFS [are] diligently  
19 researching these issues, responding to the [Motion to Dismiss] will require an extensive  
20 amount of drafting and related work." See Local Rule 7.1(b)(2) ("A party opposing a motion,  
21 shall file an opposition within 14 days after the motion is served, unless... (2) another period is  
22 fixed by rule or statute, or by order of the court."); cf. McLaughlin v. McDonald's Corp., 203  
23 F.R.D. 45, 50 n.4 (D. Mass. 2001) (the "good cause" test to modifying a scheduling order  
24 "requires a showing that despite due diligence by the party seeking the extension, the deadline  
25 in the scheduling order could not reasonably be met"). PLAINTIFFS have been diligently  
26 researching and writing their Opposition to the defendant ATTORNEY GENERAL's Motion to  
27 Dismiss, the sheer number of defenses raised and their complexity has rendered it extremely  
28 difficult to reasonably respond to the defendant ATTORNEY GENERAL's 25-page Motion to

1 Dismiss (which she had 64 days to prepare) within the comparatively short seven day filing  
2 deadline. This is the PLAINTIFFS' first request for an extension of any kind.

3 Despite the PLAINTIFFS' good faith effort to file their Opposition within the current time  
4 limit, faced with the looming 5 September 2014 deadline PLAINTIFFS' counsel contacted the  
5 defendant ATTORNEY GENERAL's counsel seeking the defendant's assent to additional time for  
6 the PLAINTIFFS' to submit their Opposition. The assistant attorney general handling this  
7 matter on behalf of the defendant ATTORNEY GENERAL has assented to this brief extension.

8 Respectfully submitted,

9  
10 Dated: 5 September 2014.

**ROBERT DRAPER; ARIEL WEISBERG;  
DONNA MAJOR; ERIC NOTKIN; ROBERTY  
BOUDRIE; BRENT CARLTON; CONCORD  
ARMORY, LLC; PRECISION POINT ARMORY,  
LLC; SECOND AMENDMENT FOUNDATION,  
INC. and COMMONWEALTH SECOND  
AMENDMENT, INC.**

14 By and through their attorney of record

15 **/s/ Alexander A. Flig**

16  
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**LOCAL RULE 7.1(a)(2) CERTIFICATION**

I hereby certify that I conferred with counsel for the defendant ATTORNEY GENERAL via  
e-mail and phone on 4 September 2014 and that counsel for the defendant ATTORNEY  
GENERAL assented to the relief sought by the instant motion.

**/s/ Alexander A. Flig**

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the Electronic Case Filing (ECF) system and thus copies will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF); paper copies will be sent to those indicated on the NEF as non-registered participants on or before 1 July 2014.

**/s/ Alexander A. Flig**

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