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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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 14

15 **VIRGINIA DUNCAN, RICHARD**
 16 **LEWIS, PATRICK LOVETTE,**
 17 **DAVID MARGUGLIO,**
 18 **CHRISTOPHER WADDELL, and**
 19 **CALIFORNIA RIFLE & PISTOL**
ASSOCIATION, INC., a California
corporation,

20 Plaintiffs,

21 v.

22 **XAVIER BECERRA, in his official**
 23 **capacity as Attorney General of the**
State of California; and DOES 1-10,

24 Defendants.
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17-cv-1017-BEN-JLB

DEFENDANT'S EX PARTE
APPLICATION TO STAY
JUDGMENT PENDING APPEAL

Date:
 Time:
 Judge: Hon. Roger T. Benitez
 Courtroom: 5A
 Action Filed: May 17, 2017

1 **TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant Xavier Becerra, in his official
4 capacity as the Attorney General of the State of California (“Defendant”), hereby
5 does apply to this Court for an order, under Federal Rule of Civil Procedure 62,
6 staying the Judgment entered in this action on March 29, 2019 (Dkt. No. 88)
7 pending appeal to the United States Court of Appeals for the Ninth Circuit.
8 Specifically, Defendant requests that the Court stay the Judgment—which declares
9 California Penal Code section 32310¹ unconstitutional and enjoined from
10 enforcement—to preserve the status quo pending appeal as it existed prior to entry
11 of the Judgment, whereby, during the pendency of the appeal, section 32310(a) and
12 (b) will remain in effect and section 32310(c) and (d) will remain subject to the
13 preliminary injunction issued on June 29, 2017 (Dkt. No. 28). Defendant
14 respectfully requests that this Court rule on this stay application by **April 5, 2019**.

15 To effectively preserve the status quo, and to prevent a sudden influx of large-
16 capacity magazines (LCMs) into the State of California (the “State”), Defendant
17 respectfully requests that the Court issue an immediate, temporary stay pending its
18 ruling on the application for a stay pending appeal. Even if this Court, or the Ninth
19 Circuit, ultimately issues a stay pending appeal, the State will suffer irreparable
20 injury if LCMs are permitted to flow into the State in the interim. Defendant
21 respectfully requests that such a temporary stay be issued by no later than **April 2,**
22 **2019**.

23 As discussed in the accompanying Memorandum of Points and Authorities in
24 Support of Ex Parte Application to Stay Judgment Pending Appeal (the
25 “Memorandum”), all four factors considered in such a stay request are satisfied.
26 *See Humane Soc’y of U.S. v. Gutierrez*, 558 F.3d 896, 896 (9th Cir. 2009) (“A party

27 _____
28 ¹ All subsequent statutory references are to the California Penal Code, unless otherwise noted.

1 seeking a stay must establish [1] that he is likely to succeed on the merits, [2] that
2 he is likely to suffer irreparable harm in the absence of relief, [3] that the balance of
3 equities tip in his favor, and [4] that a stay is in the public interest.” (citing *Winter*
4 *v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008))).

5 Defendant brings this ex parte application for good cause on the ground that
6 the State will suffer irreparable and immediate injury until a stay pending appeal is
7 issued. California has restricted the acquisition of LCMs for nearly two decades,
8 and until the Judgment is stayed pending appeal, individuals will be free to acquire
9 new LCMs, and there is evidence that sales have begun already. If Section 32310 is
10 ultimately reinstated by the Ninth Circuit, it will be difficult for the State to remove
11 these new LCMs.

12 This application is based on the Memorandum and the Declaration of John D.
13 Echeverria, filed concurrently herewith, as well as all records on file in this action.

14 Dated: April 1, 2019

Respectfully Submitted,

15 XAVIER BECERRA
16 Attorney General of California
17 MARK R. BECKINGTON
18 Supervising Deputy Attorney General
19 ANTHONY P. O’BRIEN
20 Deputy Attorney General

/s/ John D. Echeverria

21 JOHN D. ECHEVERRIA
22 Deputy Attorney General
23 *Attorneys for Defendant Attorney*
24 *General Xavier Becerra*