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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES FAHR, *et al.*,

12 Plaintiffs,

13 v.

14 CITY OF SAN DIEGO, *et al.*,

15 Defendants.
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Case No. 21-cv-1676-BAS-BGS

ORDER:

- (1) **GRANTING JOINT MOTION TO STAY PROCEEDINGS (ECF No. 31); AND**
- (2) **TERMINATING AS MOOT DEFENDANTS' MOTION TO DISMISS (ECF No. 22)**

21 At issue in the above-captioned lawsuit is the legality of Section 53.18 of Chapter
22 5 of the San Diego Municipal Code (“Section 53.18”), referred to by both parties
23 colloquially as San Diego’s “Ghost Gun Ban.” In essence, Section 53.18 renders it
24 unlawful for any person within the City of San Diego to “possess,” “purchase,”
25 “transport,” “receive,” “sell,” “transfer,” or “offer to transfer an unfinished frame or
26 receiver”—gun components that are necessary to self-manufacture an operable firearm—
27 unless those components are serialized. SDMC § 53.18(c)(1), (2). Plaintiffs challenge
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1 Section 53.18 as violative of both the Second Amendment and the Fifth Amendment
2 “Takings” clause. (Compl., ECF No. 1.)

3 On October 20, 2021, this Court denied Plaintiffs’ request to preliminarily enjoin
4 enforcement of Section 53.18 pending resolution of this action. (Order Denying Pls.’
5 Apps. for a Temporary Restraining Order and Prelim. Inj. (“P.I. Denial”), ECF No. 21.)
6 As to likelihood on the merits of Plaintiffs’ Second Amendment claim, this Court
7 assumed *arguendo* that the Second Amendment offers some degree of protection the right
8 to privately manufacture firearms as collateral to the “right to bear arms” and, applying
9 then-prevailing Ninth Circuit precedent, concluded Section 53.18 passed Second
10 Amendment scrutiny. (P.I. Denial at 5 (citing *Young v. Hawaii*, 992 F.3d 765 (9th Cir.
11 2021) (en banc) (finding intermediate scrutiny applies, and determining Section 53.18 is a
12 reasonable fit to the important government objectives of safety and criminal
13 investigations).) In so holding, this Court “found instructive” the decision of the
14 Honorable Miranda M. Du of the District of Nevada denying a request for preliminary
15 injunction against a “substantially similar Nevada law” based upon a practically
16 “identical constitutional challenge.” (P.I. Order at 7 n.10 (citing *Roger Palmer, et al. v.*
17 *Stephen Sisolak, et al.*, 3:21-cv-02680-MMD-CSD (D. Nev.) (“*Palmer*”), ECF No. 51).)

18 Shortly thereafter, Defendants moved to dismiss the Complaint in its entirety.
19 (Mot. to Dismiss, ECF No. 22.) While that Motion has been pending, this Court sought
20 two rounds of supplemental briefing: one to address the effect of new Department of
21 Justice regulations requiring serialization of unfinished frames and unfinished receivers
22 on Plaintiffs’ Second Amendment claims and the other to address intervening authority in
23 *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S.Ct. 2111 (2022) (“*Bruen*”). (ECF
24 Nos. 27, 30.)

25 On July 21, 2022, the parties jointly moved for a stay of the instant proceeding
26 pending the Ninth Circuit’s resolution of the appeal of District Judge Miranda Du’s order
27 dismissing the complaint in *Palmer, see id.*, 2022 WL 960594, at *1 (D. Nev. Mar. 29,
28 2022), which is based upon substantially the same ground as her previous order denying

1 preliminary relief, discussed above. (Joint Mot., ECF No. 31.) The parties agree that the
2 most efficient path forward is for this Court to wait and see how *Bruen* influences the
3 Ninth Circuit’s standard for assessing Second Amendment claims and whether the Ninth
4 Circuit agrees with District Judge Du’s disposition of *Palmer*. (Joint Mot. at 2–3.)

5 “[T]he power to stay proceedings is incidental to the power inherent in every court
6 to control the disposition of the causes on its docket with economy of time and effort for
7 itself, for counsel and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).
8 This power to stay proceedings includes the discretion to grant stays “pending resolution
9 of independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of*
10 *Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). “This rule applies whether the separate
11 proceedings are judicial, administrative, or arbitral in character, and does not require that
12 the issues in such proceedings are necessarily controlling of the action before the court.”
13 *I.K. ex rel. E.K. v. Sylvan Union Sch. Dist.*, 681 F. Supp. 2d 1179, 1190 (E.D. Cal. 2010).


14 The core issues presented in *Palmer* and this case are practically identical. Both
15 courts must decide whether the Second Amendment protects the right to privately
16 manufacture firearms for self-defense purposes and, if so, whether a law restricting the
17 possession, transfer, and sale of unserialized components necessary for the private
18 manufacture of a firearm is incompatible with the Second Amendment. If the Ninth
19 Circuit reverses or affirms the lower court’s decision in *Palmer*, or if the Ninth Circuit
20 enunciates a new standard for assessing the sufficiency of Second Amendment claims
21 following *Bruen* and remands the action back to the district court, this Court’s decision
22 regarding Defendants’ pending Motion, too, may be impacted. *See Leyva*, 593 F.2d at
23 863–64 (instructing a stay of proceedings is warranted if “pending resolution of
24 independent proceedings . . . bear upon the case”); *Johnson v. Five Points Ctr., LLC*, No.
25 18-cv-5551-JSC, 2019 WL 3503045, at *1–2 (N.D. Cal. Aug. 1, 2019) (granting motion
26 for stay “pending disposition of two appeals in the Ninth Circuit Court of Appeals
27 addressing the exact same issue regarding Defendant Starbucks’s counter practices as are
28 at issue here”). Thus, it is in the interest of economy of time and effort for this Court,

1 counsel, and the parties to stay this proceeding until the Ninth Circuit has resolved the
2 appeal in *Palmer*, rather than risk potential re-trial of the issues.

3 For these reasons, and because the parties jointly applied for a stay of proceedings,
4 the Court **GRANTS** the Joint Motion (ECF No. 31) and **STAYS for ninety days from**
5 **when this Order is electronically docketed.** The Court therefore **TERMINATES AS**
6 **MOOT** Defendants' motion to dismiss (ECF No. 22) and **VACATES** all deadlines until
7 further order of the Court. The parties **SHALL FILE** a joint status report **by no later**
8 **than October 17, 2022**, seven days prior to the conclusion of the 90-day stay.

9 **IT IS SO ORDERED.**

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11 **DATED: July 25, 2022**


Hon. Cynthia Bashant
United States District Judge