

1 XAVIER BECERRA  
Attorney General of California  
2 TAMAR PACHTER  
Supervising Deputy Attorney General  
3 NELSON R. RICHARDS  
ANTHONY P. O'BRIEN  
4 Deputy Attorneys General  
ALEXANDRA ROBERT GORDON  
5 Deputy Attorney General  
State Bar No. 207650  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5509  
Fax: (415) 703-5480  
8 E-mail:  
Alexandra.RobertGordon@doj.ca.gov  
9 *Attorneys for Defendant*  
*Attorney General Xavier Becerra*  
10

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
13  
14

15 **VIRGINIA DUNCAN, et al.,**

16 Plaintiffs,

17 v.  
18

19 **XAVIER BECERRA, in his official**  
20 **capacity as Attorney General of the**  
**State of California, et al.,**

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

**DEFENDANT ATTORNEY  
GENERAL XAVIER BECERRA'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO STAY  
PROCEEDINGS PENDING  
APPEAL**

Date: September 11, 2017

Time: 10:30 a.m.

Dept: 5A

Judge: Hon. Roger T. Benitez

Trial Date: None Set

Action Filed: May 17, 2017

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## INTRODUCTION

The Attorney General respectfully asks this Court to stay these proceedings in the exercise of its authority to control its docket, pending resolution of the appeal of the preliminary injunction earlier entered in this case. The Ninth Circuit's decision is likely to provide significant guidance, if not rulings of law, that will materially impact and/or affect this litigation. Accordingly, a stay of these proceedings pending appeal will prevent the Court and the parties from spending time and resources addressing issues and matters that may be rendered unnecessary by the determination in the Court of Appeals. Because this action is at an early stage, there is an accelerated briefing schedule in the Ninth Circuit, and this Court has enjoined the challenged law prohibiting the possession of large-capacity magazines, the requested stay will not prejudice plaintiffs. By contrast, forcing defendant the Attorney General to litigate, simultaneously and perhaps needlessly, the same legal issues before this Court and the Court of Appeals would cause substantial hardship and inequity. Given that the discovery cut off in this case, including expert discovery, as well as the deadline for all pretrial motions, has been set for February 2, 2018, and the final pretrial conference has been set for June 4, 2018, *see* ECF No. 38, the Attorney General will have to conduct and complete discovery, move for summary judgment, and possibly go to trial on the basis of legal standards that the Ninth Circuit may determine to be incorrect. Thus, law, equity, and the interests of economy and efficiency all weigh in favor of a stay pending appeal.

## BACKGROUND

Since 2000, California law has prohibited the manufacture, import, keeping or offering for sale, giving, or lending of large capacity magazines (LCMs), defined under Section 16740 of the Penal Code as "a feeding device with the capacity to accept more than 10 rounds." Cal. Stats. 1999, ch. 129, §§ 3, 3.5, presently codified at Cal. Penal Code § 32310. In 2013, California also enacted a ban on the purchase or receipt of LCMs. Cal. Stats. 2013, ch. 728 (A.B. 48) § 1 (amending

§ 32310(a)). California has also declared LCMs to be a “nuisance.” Cal. Penal Code § 32390. As recently amended by statute and initiative, California Penal Code section 32310 (Section 32310) prohibits, subject to certain exceptions, the possession of LCMs as of July 1, 2017. *See* Cal. Penal Code §§ 32310 (c) & (d); Cal. Stats. 2016, ch. 58 (S.B. 1446) §§ 1 & 2; Prop. 63.

Plaintiffs sued the Attorney General claiming that Section 32310 violates the Second Amendment, the Takings Clause, and the Due Process Clause. On June 29, 2017, this Court granted plaintiff’s motion for a preliminary injunction. *See* ECF No. 28. The Attorney General filed a notice of appeal from this Court’s order on July 27, 2017. ECF No. 32. On August 4, 2017, this Court entered a Scheduling Order setting the exchange of expert reports for October 6, 2017, the close of discovery and all pretrial motions for February 2, 2018, and the final pretrial conference for June 4, 2018. ECF No. 38.

## ARGUMENT

### **I. THIS COURT SHOULD GRANT A STAY OF ALL PROCEEDINGS PENDING APPEAL.**

A district court is authorized to issue a stay of proceedings pending an interlocutory appeal. 28 U.S.C § 1292(b). In addition, a district court may stay proceedings “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)); *see also Clinton v. Jones*, 520 U.S. 681, 706-07 (1997) (“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket”); *Robinson v. De la Vega*, 2008 WL 4748171, \*3 (S.D. Cal. Oct. 24, 2008) *San Diego Padres Baseball P’ship v. United States*, No. 99-CV-0828, 2001 WL 710601, \*1 (S.D. Cal. 2001). In particular, “[a] trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a

1 stay of an action before it, pending resolution of independent proceedings which  
2 bear upon the case.” *Leyva v. Certified Growers of Cal., Ltd.*, 593 F.2d 857, 863-  
3 64 (9th Cir. 1979); *see also Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708  
4 F.2d 1458, 1465 (9th Cir. 1983). This rule applies whether the separate  
5 proceedings are judicial, administrative, or arbitral in character, and does not  
6 require that the issues in such proceedings are necessarily controlling of the action  
7 before the court.” *Levy*, 593 F.2d at 864. Rather, a finding that the matters  
8 present substantially similar issues is sufficient. *See id.*

9 A stay is warranted where it prevents prejudice to one or both parties and  
10 serves the interests of judicial economy and efficiency. *See, e.g., Rivers*,  
11 980 F. Supp. at 1360 (citing Wright, Miller & Cooper, *Federal Practice and*  
12 *Procedure* § 3866 (1986)). When considering a motion to stay proceedings  
13 pending an interlocutory appeal, the Court applies the factors set forth in *Landis v.*  
14 *North Am. Co.*, 299 U.S. 248, 254 (1936), and *CMAX, Inc. v. Hall*, 300 F.2d 265,  
15 268 (9th Cir. 1962), which include: “(1) the possible damage which may result  
16 from granting of a stay; (2) the hardship or inequity which a party may suffer in  
17 being required to go forward; and (3) the orderly course of justice measured in  
18 terms of the simplifying or complicating of issues, proof, and questions of law  
19 which could be expected to result from a stay.” *CMAX*, 300 F.2d at 268; *see also*  
20 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005).<sup>1</sup> As set forth below,

21 <sup>1</sup> There is some apparent disagreement within the Ninth Circuit about the legal  
22 standard that applies to a motion to stay district court proceedings pending an  
23 interlocutory appeal. While many courts apply the standard set forth in *Landis*, *see,*  
24 *e.g., Lal v. Capital One Financial Corp.*, No. 16-6674-BLF, 2016 WL 282895, \*2-  
25 3 (N.D. Cal. Jan. 23, 2017); *Rollins v. Dignity Health*, No. 13-cv-01450-THE, 2014  
26 WL 6693891 (N.D. Cal. Nov. 26, 2014); *Welch v. Brown*, No. CIV. 2:12-2484  
27 WBS, 2013 WL 496382, \*1 (E.D. Cal. Feb. 7, 2013), other courts have employed  
28 the four-factor test set forth in *Nken v. Holder*, 556 U.S. 418 (2009). *See, e.g.,*  
*Castaneda v. Molinar*, No. CV 07-07241, 2008 WL 9449576, \*2 (C.D. Cal.  
May 20, 2008). *Nken* addresses whether to stay the enforcement of a court order or  
judgment pending appeal, not they stay of an action pending disposition of an  
appeal. *See, e.g., id.* at 425-26 (applying the four-factor test in the context of a  
request to stay an order of removal pending petition of review of order of removal);  
*McElrath v. Uber Technologies, Inc.*, No. 16-CV-07241-JSC, 2017 WL 1175591,  
(continued...)

1 all of these factors weigh in favor of staying this action.<sup>2</sup>

2 **A. A Stay Is Warranted Under the *Landis* Standard.**

3 **1. No Prejudice Will Result from a Stay.**

4 Given that this action is at a very early stage and that this Court has enjoined  
5 enforcement of Section 32310, plaintiffs will suffer no prejudice if a stay issues. In  
6 fact, a stay will benefit plaintiffs in the same way that it will benefit the Attorney  
7 General, as it will enable them to avoid expending resources on discovery and  
8 matters that may become moot in light of the Ninth Circuit's decision in the appeal  
9 in this case. *See Minor v. FedEx*, No. C 09-1375, 2009 WL 1955816, \*1 (N.D. Cal.  
10 Jul.6, 2009) (granting stay and determining that "[t]o the extent that both [p]laintiffs  
11 and [d]efendants will be able to tailor discovery and avoid duplicative or  
12 unnecessary tasks, this causes a benefit, rather than damage, to accrue to both  
13 parties."). Because this is an appeal from a preliminary injunction, there is an  
14 expedited briefing schedule in the Court of Appeals, and thus there is no threat of  
15 significant delay in resuming proceedings in this Court.<sup>3</sup> *See California Assoc. for*

16 (...continued)

17 \*5 (N.D. Cal. Mar. 30, 2017) (applying *Landis* factors because "the stay is not of a  
18 judgment, but rather pending disposition of" a case before the Supreme Court).  
19 Here, the Attorney General is not requesting a stay of the preliminary injunction; he  
20 is asking the Court to exercise its discretion to stay further proceedings pending  
21 appeal in order "to promote economy of time and effort for itself, for counsel, and  
22 for litigants." *CMAX*, 300 F.2d at 268. Should this Court grant the requested stay,  
23 the Court's order enjoining the enforcement of Section 32310 would remain in  
24 effect. Accordingly, the standard first articulated in *Landis* applies. *See, e.g.,*  
25 *Leyva*, 593 F.2d at 863-64. Regardless, and as discussed herein, the Attorney  
26 General's request for a stay is justified under both the *Landis* and the *Nken* tests.

22 <sup>2</sup> The district court in *Wiese v. Becerra*, which also involves a challenge to  
23 Section 32310 under the Second Amendment and Takings Clause, has ordered the  
24 parties to meet and confer and inform the court as to whether proceedings in that  
25 case should be stayed pending the appeal in this case. Case No. 2:17-cv-00903-  
26 WBS-KJN, ECF No. 56 (E.D. Cal.). The district court in *Wiese* notes that the  
27 parties in each case "make substantially similar arguments regarding whether  
28 California's large capacity ban violates the Second Amendment and Takings Clause  
of the United States Constitution. Thus, a decision by the Ninth Circuit regarding  
the Duncan case may be dispositive as to key issues in this case."

27 <sup>3</sup> The Ninth Circuit has granted the Attorney General's unopposed motion for  
28 a 29-day extension in which to file the Opening Brief in the Ninth Circuit. Ninth  
Circuit Case No. 17-56081, ECF Nos. 6 & 7. These additional 29 days will not  
(continued...)

1 *Health Services at Home v. Sebelius*, No. CV 11-10618, 2012 WL 893782, \*3  
2 (C.D. Cal. Mar. 13, 2012); Ninth Cir. R. 3-3. Accordingly, there is no meaningful  
3 possibility that the proposed stay would “work damage” to plaintiff. *Dependable*  
4 *Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007); *see*  
5 *also McElrath*, 2017 WL 1175591 at \*5-6 (stating that stay of “short, not indefinite,  
6 duration” would not cause damage).

7 **2. Defendant Will Suffer Considerable Hardship and Inequity**  
8 **If This Action Is Not Stayed.**

9 As noted above, a number of issues regarding the constitutionality of Section  
10 32310 currently are before the Ninth Circuit on appeal. Specifically, in reviewing  
11 the grant of a preliminary injunction, the Ninth Circuit will consider such  
12 dispositive issues of law as: (1) what is the appropriate test for determining the  
13 level of scrutiny to apply to Second Amendment claims; (2) what level of scrutiny  
14 applies to Section 32310; (3) what evidentiary showing the State is required to  
15 make in order to satisfy the applicable level of scrutiny; and (4) what is the  
16 appropriate legal framework for evaluating plaintiffs’ facial takings claim.

17 If this action is not stayed, the Attorney General will be forced to litigate the  
18 same issues simultaneously before the district and the appellate court, and without  
19 the guidance of the Court of Appeals. *See Gustavson v. Mars, Inc.*, No. 13-cv-  
20 04537, 2014 WL 6986421, \*3 (N.D. Cal. Dec. 10, 2014). Among other things, as a  
21 result of the Scheduling Order that has been entered in this case, ECF No. 38, the  
22 Attorney General and plaintiffs will be subject to potentially expensive and time-  
23 consuming discovery, expert discovery, and motion practice that may ultimately  
24 prove unnecessary. For example, in its Order, this Court repeatedly suggests that  
25 the Attorney General must provide scientific studies that establish the efficacy of  
26 LCM bans with a high degree of precision and near certainty. *See Order at 25-30,*  
27 (...continued)  
28 cause a meaningful delay or harm to plaintiffs.

1 40-46. This conclusion will dictate far more extensive discovery and the need for  
2 more and more comprehensive expert reports and studies than ultimately may be  
3 required. Similarly, the Court suggests that only mass shootings and use of LCMs  
4 within California is relevant data. *See* Order at 30. A decision on whether or not  
5 there is a geographic constraint on the evidence that can be used to defend this case  
6 will impact the scope of discovery. Further, an appellate decision on plaintiffs’  
7 takings claim, which may be resolved as a matter of law, could greatly limit, if not  
8 obviate, the need for any discovery on this cause of action. It could also be a basis  
9 for a motion for partial judgment on the pleadings thereby eliminating plaintiffs’  
10 takings claim and simplifying the case.

11 Having to expend time and resources litigating, including taking discovery and  
12 proceeding to summary judgment or trial, based on standards that the Ninth Circuit  
13 may reject, would impose an inequitable and unfair burden on the Attorney General  
14 (and the plaintiffs) that warrants granting a temporary stay pending appeal. *See,*  
15 *e.g., In re Lorazepam & Clorazepate Antitrust Litig.*, 208 F.R.D. 1, 6 (D.D.C. 2002)  
16 (granting stay and noting that “because two significant issues are currently pending  
17 before the Court of Appeals, one of which could dispose of this litigation while the  
18 other could substantially reshape it,” “proceeding headlong with discovery and  
19 other matters before this Court has the very real potential of unnecessarily wasting  
20 significant resources of all parties”); *Lakeland Vill. Homeowners Ass’n v. Great*  
21 *Am. Ins. Grp.*, 727 F. Supp. 2d 887, 897 (E.D. Cal. 2010) (granting stay during  
22 interlocutory appeal where “it would be a waste of judicial and party resources” to  
23 conduct discovery and motion practice while appeal was pending); *California*  
24 *Assoc. for Health Services at Home*, No. 2012 WL 893782, at \*2-3 (granting stay  
25 where Ninth Circuit decisions “are likely to narrow issues” in case).

### 26 **3. A Stay Would Promote the Orderly Course of Justice.**

27 A stay would promote economy of time and effort for the Court and the  
28 parties, as it would relieve both from expending time and resources on decisions

1 that may have to be reconsidered in light of the Ninth Circuit’s rulings, or that those  
2 rulings may render moot. *See Gustavson*, 2014 WL 6986421, at \*3 (“in  
3 determining whether the [orderly course of justice] factor weighs in favor of a stay,  
4 considerations of judicial economy are highly relevant.”). Indeed, district courts  
5 routinely stay proceedings where resolution of an appeal may provide guidance in  
6 deciding issues before the district court. *See, e.g., Washington v. Trump*, No. C17-  
7 0141JLR, 2017 WL 2172020, \*2–3 (W.D. Wash. May 17, 2017) (granting a stay of  
8 district court proceedings where appeal in related case “will likely settle many”  
9 issues and “simplify others, such that a stay will facilitate the orderly course of  
10 justice and conserve resources for both the court and the parties.”) (citation and  
11 internal punctuation omitted); *Fed. Home Loan Mortg. Corp. v. Kama*, CV 14-  
12 00137 ACK-KSC, 2016 WL 922780, \*8-9 (D. Haw. Mar. 9, 2016) (granting stay  
13 where Ninth Circuit’s resolution of related cases “w[ould] likely involve an analysis  
14 of” issues that would “provid[e] further guidance to the district court); *Pickup v.*  
15 *Brown*, No. 2:12-cv-02947, 2013 WL 411474, \*1 (E.D. Cal. Jan. 29, 2013)  
16 (“because the preliminary injunction appeal will resolve issues related to the  
17 constitutionality of [the statute] that this court will need to address in order to move  
18 forward, it will achieve efficiencies to await the outcome of the Ninth Circuit  
19 proceedings.”).<sup>4</sup> This approach not only preserves resources for the parties and the  
20 Court, but also “reduces the risk of inconsistent rulings” that might need to be  
21 “disentangle[d].” *Washington v. Trump*, No. C17-0141JLR, 2017 WL 1050354, \*5  
22 (W.D. Wash. Mar. 17, 2017).

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24  
25 <sup>4</sup> *See also Kotrous v. Goss-Jewett Co. of Northern California, Inc.*, No. Civ.  
26 S021520, 2005 WL 2452606, \*4-5 (E.D. Cal. Oct. 4, 2005) (“Because the issue  
27 before the Ninth Circuit may be dispositive of plaintiff’s federal claims, a stay of  
28 the proceedings at this point will promote economy of time and effort for both the  
parties and the court”); *San Diego Padres*, 2001 WL 710601, at \*1 (upholding stay  
because decision in pending Ninth Circuit appeal would simplify issues before the  
court).

1 By granting a stay, this Court can avoid unnecessarily addressing issues or  
2 questions of law that will be impacted, if not resolved, by the Court of Appeals'  
3 eventual resolution. Waiting for the Ninth Circuit's guidance before proceeding to  
4 discovery, motion practice, and/or trial, will streamline issues, proof, and questions  
5 of law and thus best serve the interests of judicial economy and efficiency. *See*  
6 *Landis*, 299 U.S. at 254-255; *Kotrous*, 2005 WL 2452606, at \*5.

7 **B. The *Nken* Standard, While Not Applicable, Is Satisfied.**

8 In the Ninth Circuit, the standard for granting a stay (of an order or judgment)  
9 on appeal is similar to that used to determine whether a preliminary injunction  
10 should be granted. *Golden Gate Rest. Ass'n v. City and County of San Francisco*,  
11 512 F.3d 1112, 1115-16 (9th Cir. 2008). In order to obtain a stay, a party must  
12 demonstrate: (1) it is likely to succeed on the merits of the appeal; (2) it will be  
13 irreparably injured in the absence of a stay; (3) issuance of a stay will not  
14 substantially injure the other party; and (4) the stay is in the public interest. *Leiva-*  
15 *Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011). The court takes a "flexible  
16 approach" to these factors and uses a "sliding scale," meaning that the factors are  
17 "balanced" so that "a stronger showing of one element may offset a weaker  
18 showing of another." *Id.* at 964-66. Thus, the applicant for a stay must show some  
19 combination of irreparable injury to its interests and the likelihood of success on  
20 appeal. If the movant can establish a likelihood that it will prevail on its appeal, it  
21 need only establish "a possibility of irreparable injury" to merit a stay pending  
22 appeal. *Golden Gate Rest. Ass'n*, 512 F.3d at 1115-16 (quoting *Lopez v. Heckler*,  
23 713 F.2d 1432, 1435-6 (9th Cir. 1983)). Similarly, however, if the movant can  
24 establish that "the balance of hardships tips sharply in its favor," it need only  
25 demonstrate that its appeal raises "serious legal questions." *Id.*

1                   **1. The Attorney General Is Likely to Prevail on Appeal.**

2           The first element, whether the applicant is likely to succeed on the merits,  
3 “addresses the merits of the appeal, not the merits of subsequent proceedings in the  
4 district court, and it is satisfied where the moving party shows that it has raised a  
5 ‘serious legal question’ on appeal.” *Pokorny v. Quixtar Inc.*, No. 07-00201 SC,  
6 2008 WL 1787111 at \*1 (N.D. Cal. Apr. 17, 2008). To meet this element, the  
7 Attorney General need not show he is “more likely than not” to succeed on appeal,  
8 but only a “reasonable probability” or a “substantial case on the merits.” *Richards*  
9 *v. Ernst & Young LLP*, No. C-08-04988 RMW, 2012 WL 92738, \*2 (N.D. Cal. Jan.  
10 11, 2012); *see also Lair v. Bullock*, 697 F.3d 1200, 1204 (9th Cir. 2012).

11           The Court’s determination that plaintiffs are likely to prevail on their claims  
12 that Section 32310 violates the Second Amendment, including its conclusion that  
13 the Attorney General failed to proffer sufficient evidence to demonstrate that the  
14 statute advances the State’s compelling interests, is at odds with every other court  
15 to consider the constitutionality of LCM bans. *See Fyock v. City of Sunnyvale*, 25  
16 F. Supp. 3d 1267, 1271 (N.D. Cal. 2014), *aff’d sub nom. Fyock v. Sunnyvale*, 779  
17 F.3d 991 (9th Cir. 2015) (“No court has yet entered a preliminary injunction against  
18 a law criminalizing the possession of magazines having a capacity to accept more  
19 than ten rounds, nor has any court yet found that such a law infringes the Second  
20 Amendment.”); *Kolbe v. Hogan*, 849 F.3d 114, 130-41 (4th Cir. 2017) (en banc);  
21 *New York State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 263-64 (2d Cir.  
22 2015), *cert denied sub nom, Shew v. Malloy*, 136 S. Ct. 2486 (2016) (*NYSRPA*);  
23 *Friedman v. City of Highland Park*, 784 F.3d 406, 411-12 (7th Cir.), *cert. denied*,  
24 136 S. Ct. 447 (2015); *Heller v. District of Columbia*, 670 F.3d 1244, 1260-64 (D.C.  
25 Cir. 2011) (*Heller II*); *San Francisco Veteran Police Officers Ass’n v. City of San*  
26 *Francisco*, 18 F. Supp. 3d 997, 1002-06 (N.D. Cal. 2014); *Colorado Outfitters*  
27 *Ass’n v. Hickenlooper*, 24 F. Supp. 3d 1050, 1067-74 (D. Colo. 2014), *vacated and*  
28

1 *remanded for lack of standing*, 823 F.3d 537 (10th Cir. 2016). Notably, another  
2 district court denied a motion for preliminary injunction in a nearly identical  
3 challenge to Section 32310, based on essentially the same record as in this case,  
4 holding that plaintiffs were unlikely to prevail on the merits of their Second  
5 Amendment and takings claims. *See Wiese v. Becerra*, No. CV 2:17-903 WBS  
6 KJN, 2017 WL 2813218, \*2-7 (E.D. Cal. June 29, 2017). Accordingly, the  
7 Attorney General has established at least a serious question, if not a likelihood of  
8 success, on the merits of these claims. *See Golden Gate Rest. Ass’n*, 512 F.3d at  
9 1119 (citations omitted).

10 **2. The Attorney General Will Suffer Irreparable Harm in the**  
11 **Absence of a Stay.**

12 The second *Nken* factor requires an applicant to show a probability of  
13 irreparable injury if the stay is not granted. *See Leiva-Perez v. Holder*, 640 F.3d  
14 962, 968 (9th Cir. 2011) (explaining that while the first factor asks “whether the  
15 stay petitioner has made a strong argument on which he could win,” the second  
16 factor asks the court to “anticipate what would happen as a practical matter  
17 following the denial of a stay”). In analyzing whether there is a probability of  
18 irreparable injury, the court should “focus on the individualized nature of  
19 irreparable harm and not whether it is ‘categorically irreparable.’” *Id.* at 969  
20 (quoting *Nken*, 556 U.S. at 435).

21 As discussed above, if a stay is denied, the Attorney General will be forced to  
22 spend limited resources litigating issues that may be substantially resolved,  
23 narrowed, or rendered moot by the Ninth Circuit’s decision in this case. Thus,  
24 while in general, litigation costs do not amount to irreparable harm, where, as here,  
25 an appeal will likely narrow the factual and legal issues in a case, forcing a party to  
26 spend large amounts of time and money on motion practice that is premature and  
27 discovery that may become irrelevant establishes “a possibility of irreparable  
28 injury” sufficient to merit a stay pending appeal. *Golden Gate Rest. Ass’n*, 512

1 F.3d at 1115–16; *see also id.* at 1119 (“[I]f there is a probability or strong  
2 likelihood of success on the merits, a relatively low standard of hardship is  
3 sufficient.”); *Lockyer*, 398 F.3d at 1112 (noting the importance of stays where an  
4 appeal could narrow factual and legal issues before the district court); *Todd v.*  
5 *Tempur-Sealy Int’l, Inc.*, No. 13-CV-04984-JST, 2016 WL 6082413,\*2 (N.D. Cal.  
6 Oct. 18, 2016); *Matera v. Google Inc.*, No. 15-CV-04062-LHK, 2016  
7 WL 454130,\*4 (N.D. Cal. Feb. 5, 2016); *Roe v. SFBSC Mgmt., LLC*, No. 14-CV-  
8 03616-LB, 2015 WL 1798926,\*2 (N.D. Cal. Apr. 17, 2015); *McCollough v.*  
9 *Minnesota Lawyers Mut. Ins. Co.*, No. CV-09-95, 2010 WL 441533 (D. Montana  
10 Feb. 3, 2010).

11 **3. Plaintiff Will Not Be Harmed by a Stay.**

12 In sharp contrast to the burden and expense faced by the Attorney General,  
13 plaintiffs will suffer no harm should this Court stay proceedings. The preliminary  
14 injunction entered by this Court on June 29, 2017, will remain in place and Section  
15 32310 cannot be enforced during the pendency of the appeal. Further, as the appeal  
16 is expedited, there is no threat of significant delay. Ninth Cir. R. 3-3.

17 **4. A Stay Is in the Public Interest.**

18 Finally, as to the fourth factor, the public interest “lies in conservation of  
19 judicial resources” and weighs in favor of granting the stay. *See Bradberry v. T-*  
20 *Mobile USA, Inc.*, No. C 06 6567 CW, 2007 WL 2221076, \*4 (N.D. Cal. Aug. 2,  
21 2007).

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Dated: August 7, 2017

XAVIER BECERRA  
Attorney General of California  
TAMAR PACHTER  
Supervising Deputy Attorney General  
NELSON R. RICHARDS  
ANTHONY P. O'BRIEN  
Deputy Attorneys General

*/s/ Alexandra Robert Gordon*  
ALEXANDRA ROBERT GORDON  
Deputy Attorney General  
*Attorneys for Defendant*  
*Attorney General Xavier Becerra*