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

15 **VIRGINIA DUNCAN, RICHARD**  
16 **LEWIS, PATRICK LOVETTE,**  
17 **DAVID MARGUGLIO,**  
18 **CHRISTOPHER WADDELL, and**  
**CALIFORNIA RIFLE & PISTOL**  
**ASSOCIATION, INC., a California**  
19 **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.  
25  
26  
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17-cv-1017-BEN-JLB

**RESPONSE TO PLAINTIFFS'**  
**OPPOSITION TO 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 Plaintiffs' Opposition to Defendant's Ex Parte Application to Stay Judgment  
 2 Pending Appeal (Dkt. No. 94) *confirms* the need for an immediate stay pending  
 3 Defendant's appeal of the Court's Judgment. Plaintiffs concede that the "legal  
 4 questions at the heart of this matter are 'serious,'" with respect to the first factor  
 5 considered in granting a stay. Opp'n at 5:9-10. As for irreparable harm, Plaintiffs  
 6 have submitted evidence that one out-of-state retailer has already processed and  
 7 shipped orders from "*thousands*" of California residents since the entry of  
 8 Judgment. Wylie Decl. ¶ 4 (emphasis added). And Plaintiffs have confirmed that  
 9 "[m]any" firearms-related businesses and individuals have "either begun selling and  
 10 shipping or had already purchased" large-capacity magazines. Barvir Decl. ¶ 8; *see*  
 11 *also id.*, Exs. 1, 2. This apparent flood of new large-capacity magazines into the  
 12 State poses an unacceptable danger to public safety. Beyond that, a stay is needed  
 13 to limit the number of people who will have "sold, shipped, or purchased  
 14 magazines over ten rounds" in the period between when the Court entered its order  
 15 and it (or the Ninth Circuit) grants a stay. Opp'n at 10:10-11. Indeed, even  
 16 Plaintiffs acknowledge that these newly purchased large-capacity magazines will be  
 17 rendered unlawful if Defendant prevails on appeal and that "the law will require  
 18 these individuals to divest themselves of their newly acquired magazines." Opp'n  
 19 at 8:11-12. A stay is necessary both to avoid the irreparable harm to public safety  
 20 and prevent the problems that may occur should the Court's decision be reversed on  
 21 appeal.

22 The evidence submitted by Plaintiffs supports the Defendant's request for  
 23 immediate judicial relief. An immediate stay of the judgment pending appeal is  
 24 required to preserve the status quo, prevent irreparable harm to the State and its  
 25 residents, and ensure an orderly process for reviewing the constitutionality of this  
 26 important public safety measure. In light of the new information presented by  
 27 Plaintiffs, Defendant requests that the Court issue a stay of the Judgment pending  
 28 appeal no later than **5:00 p.m., Thursday, April 4.**

1        If a stay is not in place by that time, Defendant, due to the urgency of this  
2 matter, will seek an emergency stay pending appeal before the Ninth Circuit Court  
3 of Appeals.

4 Dated: April 4, 2019

Respectfully Submitted,

5 XAVIER BECERRA  
6 Attorney General of California  
7 MARK R. BECKINGTON  
8 Supervising Deputy Attorney General  
9 ANTHONY P. O'BRIEN  
10 Deputy Attorney General

/s/ John D. Echeverria

11 JOHN D. ECHEVERRIA  
12 Deputy Attorney General  
13 *Attorneys for Defendant Attorney*  
14 *General Xavier Becerra*

## CERTIFICATE OF SERVICE

Case Name: **Virginia Duncan, et al. v.  
Xavier Becerra**

Case No.: **17-cv-1017-BEN-JLB**

I hereby certify that on April 4, 2019, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

### **RESPONSE TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S EX PARTE APPLICATION TO STAY JUDGMENT PENDING APPEAL**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 4, 2019, at Los Angeles, California.

\_\_\_\_\_  
John D. Echeverria  
Declarant

\_\_\_\_\_  
/s/ John D. Echeverria  
Signature