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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VIRGINIA DUNCAN, et al.,

Plaintiffs,

v.

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

Defendants.

17-cv-1017-BEN-JLB

**JOINT MOTION TO STAY  
LITIGATION OF ATTORNEYS'  
FEES AND COSTS PENDING  
APPEAL**

Judge: Hon. Roger T. Benitez  
Courtroom: 5A  
Action Filed: May 17, 2017  
Judgment: March 29, 2019

COME NOW THE PARTIES, Plaintiffs Virginia Duncan, et al., and Defendant Xavier Becerra, in his official capacity as Attorney General of the State of California (the "Attorney General") (collectively, the "Parties"), by and through their respective counsel, in accordance with Rules 6(b) and 7(b) of the Federal Rules of Civil Procedure, as well as Civil Local Rule 7.2, who hereby jointly move for an order staying all proceedings regarding attorneys' fees and/or costs in this action until 30 days after the completion of all appellate proceedings. The Parties' joint request is based on the good cause shown below.

On March 29, 2019, this Court granted Plaintiffs' motion for summary

1 judgment, declaring California Penal Code section 32310 unconstitutional and  
 2 enjoining its enforcement. ECF. No. 87. Minutes later, the Court entered a final  
 3 judgment in this case. ECF. No. 88. On April 4, 2019, the Attorney General filed a  
 4 notice of appeal to the Ninth Circuit. ECF No. 96. Later that day, this Court stayed  
 5 in part the judgment pending final resolution of the appeal. ECF No. 97. The filing  
 6 of the notice of appeal notwithstanding, Plaintiffs' bill of costs and motion for  
 7 attorneys' fees is currently due on April 12, 2019. *See* Fed. R. Civ. P. 54(d)(2)(B).

8 Under FRCP 54(d), a claim for attorneys' fees and costs must be filed no  
 9 later than 14 days after the entry of judgment, "[u]nless . . . a statute or a court order  
 10 provides otherwise." A district court may, however, defer litigation of attorneys'  
 11 fees and costs until a pending appeal has been decided. *See* Fed. R. Civ. P. 54 cmt.  
 12 (1993 amend.) ("If an appeal on the merits of the case is taken, the court may rule  
 13 on the claim for fees, may defer its ruling on the motion, or may deny the motion  
 14 without prejudice, directing under subdivision (d)(2)(B) a new period for filing  
 15 after the appeal has been resolved."). As this language suggests, the decision to stay  
 16 costs and fees litigation "is a matter within the court's discretion." *Lasic v. Moreno*,  
 17 No. 05-0161, 2007 WL 4180655, at \*1 (E.D. Cal. Nov. 21, 2007) (citing *Ass'n of*  
 18 *Mex.-Am. Educ. v. California*, 231 F.3d 572, 591-92 (9th Cir. 2000)).

19 Here, granting the requested stay would preserve judicial resources, the  
 20 Parties' resources, and allow the parties to focus on preparing the merits appeal for  
 21 the Ninth Circuit. Litigating the issue of attorneys' fees and costs now would  
 22 require the Court and the Parties to expend resources that may be wasted in the  
 23 event the Attorney General succeeds on appeal. *See e.g., Lasic* 2007 WL 4180655,  
 24 at \*2-3 (finding that it was in the interests of judicial economy, to defer ruling on  
 25 attorneys' fees and costs until the pending appeal was disposed). Indeed, "[i]t  
 26 would be an inefficient use of judicial resources to rule on [costs and fees] at this  
 27 time, and then to later re-evaluate the issue after the appeal is completed." *Id.*

28 The Parties thus agree that good cause exists for an order staying litigation of

1 attorneys' fees and costs during the pendency of the Attorney General's appeal of  
 2 this Court's judgment. And, based on that good cause, the Parties request that the  
 3 Court grant this joint motion for an order staying all proceedings regarding  
 4 attorneys' fees or costs in this action until 30 days after the completion of all  
 5 appellate proceedings.

6  
 7 Dated: April 12, 2019

MICHEL & ASSOCIATES, P.C.

8 /s/ Anna M. Barvir

9 ANNA M. BARVIR

10 *Attorneys for Plaintiffs Virginia*  
 11 *Duncan, Richard Lewis, Patrick*  
 12 *Lovette, David Marguglio,*  
 13 *Christopher Waddell, and California*  
 14 *Rifle & Pistol Association*

15  
 16 Dated: April 12, 2019

XAVIER BECERRA

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17 /s/ John D. Echeverria

18 JOHN D. ECHEVERRIA

Deputy Attorney General

*Attorneys for Defendant*

*Attorney General Xavier Becerra*

**CERTIFICATE OF SERVICE**

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

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

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

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**JOINT MOTION TO STAY LITIGATION OF  
ATTORNEYS' FEES AND COSTS PENDING APPEAL**

on the following parties by electronically filing the foregoing on April 12, 2019, with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.  
Executed on April 12, 2019, at Long Beach, CA.

/s/ Laura Palmerin

Laura Palmerin