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

13
14 **KIM RHODE et al.,**

15 Plaintiffs,

16 **v.**

17 **XAVIER BECERRA, IN HIS OFFICIAL**
18 **CAPACITY AS ATTORNEY GENERAL OF**
19 **THE STATE OF CALIFORNIA, et al.,**

20 Defendants.

3:18-cv-00802-BEN-JLB

**DEFENDANT'S MOTION TO
STAY ORDER GRANTING
PRELIMINARY INJUNCTION TO
ALLOW FOR INTERLOCUTORY
APPEAL (Fed. R. App. P. 8(a))**

Dept: 5A
Judge: Hon. Roger T. Benitez
Action Filed: 4/27/2018

1 Defendant Xavier Becerra, in his official capacity as the California Attorney
2 General, requests that this Court stay its order granting Plaintiffs' motion for
3 preliminary injunction pending appeal of that decision. *See* Fed. R. App. P. 8(a).
4 The Attorney General requests an immediate ruling on this motion. Immediate
5 action on this motion is necessary because the Attorney General is informed and
6 believes that ammunition vendors have already started selling ammunition without
7 background checks, creating the near certainty that prohibited persons—convicted
8 felons, violent misdemeanants, and others prohibited by law from possessing
9 firearms and ammunition—will have easy access to ammunition. If the Court has
10 not issued a ruling by 3:00 p.m. this afternoon, the Attorney General will consider
11 the motion as having been denied and will consider seeking a stay from the Ninth
12 Circuit shortly thereafter.

13 A request for a stay pending appeal is governed by four factors: (1) whether
14 the movant is likely to succeed on the merits, (2) whether the movant will be
15 irreparably injured absent a stay, (3) whether a stay will substantially harm the
16 other parties, and (4) whether a stay serves the public interest. *Leiva-Perez v.*
17 *Holder*, 640 F.3d 962, 963 (9th Cir. 2011). And where the balance of the equities
18 tilts strongly in favor of a stay, the moving party need only show a “substantial case
19 on the merits.” *Id.* at 970.

20 As to the merits, the Attorney General need not show that it is “more likely
21 than not that” he will win on the merits. *Levia-Perez*, 640 F.3d at 967. Instead, he
22 need only show a “reasonable probability” of prevailing; or that he has raised
23 “serious legal questions.” *Id.* at 967-968 (quotation marks omitted). And the Court
24 may grant a stay “even though its own approach may be contrary to movant’s view
25 of the merits.” *Washington Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d
26 841, 843 (D.C. Cir. 1977). For the reasons explained in his opposition to the
27 motion for a preliminary injunction, the Attorney General has (at a minimum) made
28

1 both a “substantial case on the merits” and raised “serious legal questions” about
 2 the legal issues addressed in the order. *Leiva-Perez*, 640 F.3d at 966-67.

3 In any event, the balance of the equities tips overwhelmingly in favor of a
 4 stay. The preliminarily enjoined background check provisions, Cal. Pen. Code
 5 §§ 30352, 30370(a)-(d), have been in effect for almost 10 months, and have
 6 resulted in over 750 prohibited people from purchasing ammunition from licensed
 7 ammunition vendors. The preliminarily enjoined restrictions on direct shipping and
 8 importation of ammunition, Cal. Pen. Code §§ 30313(a)-(b), 30314(a), have been in
 9 effect over two years.

10 In addition, the order will almost certainly result in prohibited persons
 11 purchasing ammunition. By contrast, no plaintiff has said he or she is unable to
 12 purchase ammunition. The Court had plaintiffs’ motion for preliminary injunction
 13 under consideration for eight months. Temporarily staying the order for a short
 14 time longer will cause no significant harm to plaintiffs, who have been living with
 15 the status quo for 10 months (or over two years in the case of the restrictions on
 16 importation and direct shipping). And a stay will promote public safety by
 17 preventing prohibited persons from easily purchasing ammunition over the internet
 18 or from their local vendor.

19 Dated: April 24, 2020

Respectfully Submitted,

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 21 XAVIER BECERRA
 Attorney General of California
 22 ANTHONY R. HAKL
 Supervising Deputy Attorney General

23
 24
 25 /s/ Nelson Richards
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 26 *Attorneys for Defendant Xavier*
Becerra, in his official capacity as
 27 *California Attorney General*
 28

CERTIFICATE OF SERVICE

Case Name: **Rhode v. Becerra** No. **3:18-cv-00802 BEN JLB**

I hereby certify that on April 24, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT'S MOTION TO STAY ORDER GRANTING PRELIMINARY
INJUNCTION TO ALLOW FOR INTERLOCUTORY 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 24, 2020, at Sacramento, California.

Tracie L. Campbell
Declarant

/s/ Tracie Campbell
Signature

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