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Attorney for Plaintiffs

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

VIRGINIA DUNCAN, et al.,

Plaintiffs,

v.

ROB BONTA, in his official capacity
as Attorney General of the State of
California,

Defendant.

17-cv-1017-BEN-JLB

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

Judge: Hon. Roger T. Benitez
Courtroom: 5A
Action Filed: May 17, 2017
Judgment: September 22, 2023

COME NOW THE PARTIES, Plaintiffs Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell, and the California Rifle & Pistol Association, Incorporated (collectively, “Plaintiffs”), and Defendant Rob Bonta, in his official capacity as Attorney General of the State of California (“Defendant”) (together with Plaintiffs, the “Parties”), by and through their respective counsel, in accordance with Rules 6(b), 7(b), and 58(d) of the Federal Rules of Civil Procedure, as well as Civil Local Rule 7.2, to jointly move for entry of final judgment and 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 September 22, 2023, this Court issued a final decision in Plaintiffs’ favor, declaring section 32310 unconstitutional under the Second Amendment and issuing a permanent injunction against the enforcement of the law. (Dkt. 149). The Court’s decision incorporated “[a]ll relevant findings of fact and conclusions of law set forth in the prior decision concluding § 32310 is unconstitutional.” (*Id.* at 2). The Court granted Defendant’s request for a stay of “any judgment in Plaintiffs’ favor” and stayed enforcement of the permanent injunction for ten days, giving the State time to seek a longer stay from the Ninth Circuit. (*Id.* at 70-71). Later that day, Defendant appealed. (Dkt. 150). He also later filed in the Ninth Circuit an emergency motion for a stay pending appeal. Emergency Motion for a Stay Pending Appeal and for an Interim Administrative Stay, *Duncan v. Bonta*, No. 23-55805 (9th Cir. Sept. 22, 2023) (ECF No. 2). That motion is still pending, but the Ninth Circuit entered an administrative stay through October 10, 2023, and ordered briefing on the motion, which is now complete. Order, *Duncan v. Bonta*, No. 55805 (9th Cir. Sept. 28, 2023) (ECF No. 3).

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

Here, pursuant to Federal Rule of Civil Procedure 58(d), the Parties request

1 that the Court enter a separate judgment, disposing of all claims asserted in this
2 action. In addition, the Parties request that the Court enter an order staying
3 proceedings in the district court relating to fees and costs of suit. Granting the
4 requested stay would preserve judicial resources and the Parties' resources and
5 allow the parties to focus on preparing the merits appeal for the Ninth Circuit.
6 Litigating the issue of attorneys' fees and costs now would require the Court and
7 the Parties to expend resources that may be wasted in the event Defendant succeeds
8 on appeal. *See e.g., Lasic* 2007 WL 4180655, at *2-3 (finding that it was in the
9 interests of judicial economy, to defer ruling on attorneys' fees and costs until the
10 pending appeal was disposed). Indeed, "[i]t would be an inefficient use of judicial
11 resources to rule on [costs and fees] at this time, and then to later re-evaluate the
12 issue after the appeal is completed." *Id.*

13 The Parties thus agree that judgment should be entered and that good cause
14 exists for an order staying litigation of attorneys' fees and costs during the
15 pendency of Defendant's appeal of this Court's decision. And, based on that good
16 cause, the Parties request that the Court grant this joint motion for an order staying
17 all proceedings regarding attorneys' fees or costs in this action until 30 days after
18 the completion of all appellate proceedings.

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1 Dated: October 6, 2023

MICHEL & ASSOCIATES, P.C.

2 /s/ Anna M. Barvir

ANNA M. BARVIR

Attorneys for Plaintiffs

4 Dated: October 6, 2023

ROB BONTA

Attorney General of California

R. MATTHEW WISE

Supervising Deputy Attorney General

ROBERT L. MEYERHOFF

KEVIN J. KELLY

Deputy Attorneys General

8 /s/ John D. Echeverria

JOHN D. ECHEVERRIA

Deputy Attorney General

Attorneys for Defendant Rob Bonta, in
his official capacity as Attorney

General of the State of California

13 **ATTESTATION OF E-FILED SIGNATURES**

14 I, Anna M. Barvir, am the ECF User whose ID and password are being used
15 to file this JOINT MOTION TO ENTER JUDGMENT AND STAY LITIGATION
16 OF ATTORNEYS' FEES AND COSTS PENDING APPEAL. In compliance with
17 Southern District of California Electronic Case Filing Administrative Policies and
18 Procedures Section 2(f)(4), I attest that all signatories have concurred in this filing.

19 Dated: October 6, 2023

/s/ Anna M. Barvir

Anna M. Barvir

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

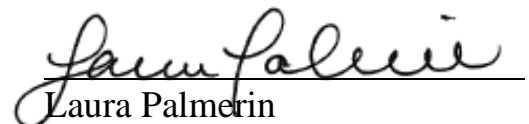
I have caused service of the following documents, described as:

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

on the following parties by electronically filing the foregoing on October 6, 2023, with the Clerk of the District Court using its ECF System, which electronically notifies them.

Rob Bonta
Attorney General of California
R. MATTHEW WISE
Supervising Deputy Attorney General
ROBERT L. MEYERHOFF
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Attorneys for Defendant

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 6, 2023, at Long Beach, CA.


Laura Palmerin