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15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE EASTERN DISTRICT OF CALIFORNIA  
17 SACRAMENTO DIVISION

19 **WILLIAM WIESE, et al.,**

20 Plaintiffs,

21 v.

23 **XAVIER BECERRA, et al.,**

24 Defendants.

2:17-cv-00903-WBS-KJN

**JOINT STATUS REPORT**

Date: May 13, 2019  
Time: 1:30 p.m.  
Courtroom: 5, 14th Floor  
Judge: Hon. William B. Shubb  
Trial Date: None Set  
Action Filed: April 28, 2017

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1 Pursuant to the Court’s Minute Order entered on April 2, 2019 (Dkt. No. 107), the parties  
2 hereby jointly submit this Joint Status Report. The parties conferred telephonically in accordance  
3 with Federal Rule of Civil Procedure (“FRCP”) 26(f) on March 6, 2019, March 26, 2019, March  
4 29, 2019 and April 1, 2019. The parties again conferred telephonically on April 29, 2019, to  
5 discuss the joint status report and the propriety of a stay of the case pending final resolution of the  
6 appeal in *Duncan v. Becerra*, 9th Cir. Case No. 19-55376.

7 **I. POTENTIAL STAY PENDING FINAL RESOLUTION OF THE *DUNCAN* APPEAL.**

8 On March 29, 2019, District Judge Benitez issued a final judgment and memorandum  
9 decision in *Duncan v. Becerra*, S.D. Cal. No. 3:17-cv-01017-BEN-JLB (“*Duncan*”), declaring  
10 California Penal Code section 32310 unconstitutional. (Dkt. No. 88.) On April 4, 2019, the  
11 California Attorney General appealed the judgment to the Ninth Circuit (Dkt. No. 96), and the  
12 district court stayed in part its judgment pending final resolution of the appeal (Dkt. No. 97). The  
13 district court’s stay of judgment reinstated the preliminary injunction, entered on June 29, 2017,  
14 enjoining enforcement of section 32310(c) and (d) during the pendency of the appeal. Thus,  
15 lawfully possessed large-capacity magazines may be retained until the *Duncan* appeal is finally  
16 resolved.

17 The Ninth Circuit has set a scheduling order in the appeal: the Attorney General’s opening  
18 brief is due by July 15, 2019, the appellees’ answering brief is due by August 15, 2019, and the  
19 Attorney General’s reply is due 21 days after service of the answering brief. Given the overlap  
20 with the claims at issue in the *Duncan* appeal, Defendants propose a stay of this case to avoid  
21 unnecessary duplication of labor by the parties and the Court. Plaintiffs do not oppose a stay.  
22 The parties’ respective positions on the propriety of a stay are set forth below.

23 **A. Defendants’ Position Regarding a Stay**

24 Defendants respectfully submit that this Court should stay these proceedings in the exercise  
25 of its authority to control its docket, pending final resolution of the appeal of the final judgment in  
26 *Duncan*. The Ninth Circuit’s decision is likely to resolve the constitutional claims at issue in this  
27 case on substantially the same record that would be developed in this case absent a stay and the  
28 same record considered by the six federal circuit courts that have upheld large-capacity magazine

1 restrictions under the Second Amendment. *See Worman v. Healey*, No. 18-1545, \_\_\_ F.3d \_\_\_,  
2 2019 WL 1872902 (1st Cir. Apr. 26, 2019); *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Attorney*  
3 *General N.J.*, 910 F.3d 106, 122-24 (3d Cir. 2018); *Kolbe v. Hogan*, 849 F.3d 114, 140-41 (4th  
4 Cir. 2017) (en banc); *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242, 262-64 (2d Cir.  
5 2015); *Friedman v. City of Highland Park*, 784 F.3d 406, 411-12 (7th Cir. 2015); *Heller v.*  
6 *District of Columbia*, 670 F.3d 1244, 1264 (D.C. Cir. 2011). A stay of these proceedings pending  
7 resolution of the *Duncan* appeal will prevent the parties and this Court from spending time and  
8 resources addressing issues that will, in all likelihood, be resolved by the result in *Duncan*.

9 A district court has the authority to stay proceedings “incidental to the power inherent in  
10 every court to control the disposition of the causes on its docket with economy of time and effort  
11 for itself, for counsel, and for litigants.” *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360  
12 (C.D. Cal. 1997) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)); *see also Clinton v.*  
13 *Jones*, 520 U.S. 681, 706-07 (1997) (“The District Court has broad discretion to stay proceedings  
14 as an incident to its power to control its own docket.”). In particular, “[a] trial court may, with  
15 propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay  
16 of an action before it, pending resolution of independent proceedings which bear upon the case.”  
17 *Leyva v. Certified Growers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also*  
18 *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983). “This rule  
19 applies whether the separate proceedings are judicial, administrative, or arbitral in character, and  
20 does not require that the issues in such proceedings are necessarily controlling of the action  
21 before the court.” *Leyva*, 593 F.2d at 864.

22 In considering a request for a stay of proceedings, the district court considers several  
23 factors: “[1] the possible damage which may result from granting of a stay, [2] the hardship or  
24 inequity which a party may suffer in being required to go forward, and [3] the orderly course of  
25 justice measured in terms of the simplifying or complicating of issues, proof, and questions of law  
26 which could be expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.  
27 1962) (citing *Landis*, 299 U.S. at 254-55). Each of these factors strongly supports a stay of  
28 proceedings pending final resolution of the *Duncan* appeal.

1           **First**, Plaintiffs will not be prejudiced by a stay. Section 32310(a) and (c) remain subject to  
2 the preliminary injunction issued in *Duncan*, and thus lawfully possessed large-capacity  
3 magazines may be retained by Plaintiffs during the appeal. The Ninth Circuit has issued a  
4 briefing schedule in the case set to begin in several months. Plaintiffs were not prejudiced by the  
5 stay of proceedings entered in this case during the appeal of the preliminary injunction in  
6 *Duncan*, and they will not be prejudiced if this case is stayed pending the appeal of the final  
7 judgment in *Duncan*. If anything, Plaintiffs would benefit from a stay by enabling them to avoid  
8 unnecessary expenditure of time and resources on discovery and motion practice that would  
9 become moot once the same constitutional questions are answered in *Duncan*. There is no  
10 meaningful possibility that a stay would “work damage” to Plaintiffs. *Dependable Highway Exp.,*  
11 *Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

12           **Second**, absent a stay, Defendants would be prejudiced if they are required to engage in  
13 active discovery and motion practice in this case while simultaneously defending the same law at  
14 the Ninth Circuit on substantially the same record. *See Lorazepam & Clorazepate Antitrust*  
15 *Litig.*, 208 F.R.D. 1, 6 (D.D.C. 2002) (granting stay and noting that “because two significant  
16 issues are currently pending before the Court of Appeals, one of which could dispose of this  
17 litigation while the other could substantially reshape it,” “proceeding headlong with discovery  
18 and other matters before this Court has the very real potential of unnecessarily wasting significant  
19 resources of all parties”).

20           **Third**, a stay pending final resolution of *Duncan* would serve the interests of judicial  
21 economy and efficiency. Now that this Court has dismissed Plaintiffs’ overbreadth and  
22 vagueness claims (Dkt. No. 103 at 9), the claims at issue in this case substantially overlap with  
23 the claims that the Ninth Circuit is reviewing in *Duncan*. Although Plaintiffs in this action have  
24 also asserted an equal protection claim, that claim is “subsumed by, and coextensive with,”  
25 Plaintiffs’ Second Amendment claim. *See Teixeira v. Cnty. of Alameda*, 822 F.3d 1047, 1052  
26 (9th Cir. 2016) (holding that “because [plaintiff’s] equal protection challenge is ‘no more than a  
27 [Second] Amendment claim dressed in equal protection clothing,’ it is ‘subsumed by, and  
28 coextensive with’ the former, and therefore is not cognizable under the Equal Protection Clause.”

1 (quoting *Orin v. Barclay*, 272 F.3d 1207, 1213 n.3 (9th Cir. 2001))), *vacated in part*, 854 F.3d  
2 1046 (9th Cir. 2016), *reh'g en banc*, 873 F.3d 670 (9th Cir. 2017) (affirming dismissal of equal  
3 protection claim for reasons stated in panel opinion), *cert. denied*, 138 S. Ct. 1988 (2018); *see*  
4 *also Kwong v. Bloomberg*, 723 F.3d 160, 170 n.19 (2d Cir. 2013) (“Like every Circuit to have  
5 addressed this issue, we simply conclude that plaintiffs should not be allowed to use the Equal  
6 Protection Clause ‘to obtain review under a more stringent standard’ than the standard applicable  
7 to their Second Amendment claim.” (quoting *Woollard v. Gallagher*, 712 F.3d 865, 873 n.4 (4th  
8 Cir. 2013))). At a minimum, the outcome in *Duncan* would provide guidance to this Court about  
9 the level of scrutiny that would otherwise apply to Plaintiffs’ equal protection claim. In any  
10 event, there is no requirement that an appeal must definitively resolve every cause of action to  
11 justify a stay. *See Levy*, 593 F.2d at 863-64.

12       Waiting for the Ninth Circuit’s determination on the claims at issue in this case before  
13 proceeding through discovery, motion practice, and/or trial will avoid unnecessary duplication of  
14 labor of the parties and the Court and thus best serves the interests of judicial economy and  
15 efficiency. *See Landis*, 299 U.S. at 254-55. District courts routinely stay proceedings where the  
16 resolution of an appeal may provide guidance in deciding issues before the district court or, as  
17 here, settle the issues before the court. *See, e.g., Washington v. Trump*, No. C17-011JLR, 2017  
18 WL 2172020, at \*2-3 (W.D. Wash. May 17, 2017) (granting stay of district court proceedings  
19 where appeal in related case “will likely ‘settle many’ issues and ‘simplify’ others, such that a  
20 stay will facilitate the orderly course of justice and conserve resources for both the court and the  
21 parties” (citations omitted)). This Court should stay the proceedings in this case until the *Duncan*  
22 appeal is finally resolved.

### 23                   **B. Plaintiffs’ Position Regarding a Stay and Scope of Claims**

24       If this Court deems such relief to be appropriate, Plaintiffs do not oppose the Defendants’  
25 request for a stay of these proceedings pending their appeal in *Duncan*. Plaintiffs are otherwise  
26 ready to proceed with their claims, and would further assert that the claims presented in the  
27 instant case are of greater scope than those presented in *Duncan*. Specifically, and in addition to  
28 the vagueness and overbreadth claims that have already been dismissed, Plaintiffs in the instant

1 case have directly challenged *all* aspects of Pen. Code § 32310 and § 32390, which, in  
2 conjunction with § 18010(b), subjects the now-lawfully held and protected personal property to  
3 “confiscation and summary destruction” whenever found within this state. (Plaintiffs in the  
4 present case have throughout challenged this particular provision, among the entire set of laws  
5 pertaining to possession of LCMs. See Third Amended Complaint, ¶¶ 64, 78, 99, and Prayer for  
6 Relief ¶ 1 at p. 35.) Plaintiffs here seek declaratory and injunctive relief as to Pen. Code §§  
7 32310, 32390, 32445, 32450. Finally, Count V of the Third Amended Complaint alleges an equal  
8 protection claim under the U.S. Constitution and the California Constitution.

9 All of these challenges are independently and separately subject to adjudication by this  
10 Court, notwithstanding any district court or appellate decision in *Duncan*. Nevertheless, to the  
11 extent that this Court believes that any published decision issued by the Ninth Circuit would be  
12 instructive as to the case as a whole, Plaintiffs would not oppose a stay in these proceedings.

13 Notwithstanding the parties’ position regarding a stay, Plaintiffs would point out that the  
14 parties appear to be in disagreement as to the scope of the claims presented herein, i.e., whether  
15 Plaintiffs herein have raised a facial or as-applied challenge to Pen. Code § 32310(a). Plaintiffs  
16 further disagree with the defense position that their Equal Protection claim is coextensive with or  
17 is somehow subsumed by their Second Amendment claim, since in the present case, it is  
18 undisputed that the possession of Large Capacity Magazines does, in fact, burden  
19 constitutionally-protected conduct. *See, e.g., Fyock v. City of Sunnyvale*, 779 F.3d 991, 999 (9th  
20 Cir. 2015) (large capacity magazine ban implicates the “core” of the Second Amendment).  
21 Therefore, and as this Court has held, Plaintiffs have properly alleged that the ban and its movie  
22 prop exemption burden the exercise of a fundamental right, such that strict scrutiny applies. *See*  
23 this Court’s Memorandum & Order re: Motion to Dismiss Third Amended Complaint (Dkt. #103)  
24 at 7:9-12. *Before* any stay is imposed, therefore, Plaintiffs would prefer to address any such  
25 disagreements before this Court, and amend their complaint if and to the extent necessary to  
26 conform to the relief ultimately sought, should the Court find it does not sufficiently allege such  
27 challenges.

28

1 **II. STATEMENTS ON SUBJECTS LISTED IN THE COURT’S APRIL 28, 2017 ORDER**

2 In addition to the parties’ respective views on whether this case should be stayed pending  
3 final resolution of the *Duncan* appeal, the parties hereby provide statements on the subjects listed  
4 in paragraph 2 of the April 28, 2017 Order:

5 **a. Summary of the Claims**

6 Plaintiffs challenge California’s prohibition on the possession of firearm magazines that can  
7 hold more than ten rounds of ammunition, or “large-capacity magazines,” as set forth in  
8 California Penal Code § 32310. Plaintiffs claim that the prohibition (1) violates the Second  
9 Amendment to the U.S. Constitution (Count I), (2) violates the Takings Clauses of the U.S. and  
10 California Constitutions and the Due Process Clause of the Fourteenth Amendment to the  
11 U.S. Constitution (Count II), and (3) violates the Equal Protection Clauses of the U.S. and  
12 California Constitutions (Count V). *See* Pls.’ 3d Am. Compl. for Declaratory & Injunctive Relief  
13 (the “Third Amended Complaint”) (Dkt. No. 76). The Court has dismissed with prejudice  
14 Plaintiffs’ claims that the prohibition is unconstitutionally vague (Count III) and is  
15 unconstitutionally vague and overbroad (Count IV). *See* Dkt. No. 103 at 9.

16 **b. Status of Service**

17 All defendants have been served with, and answered the Third Amended Complaint. There  
18 are no cross-defendants in this action.

19 **c. Possible Joinder of Additional Parties**

20 At present, the parties do not anticipate joining any additional parties in this action.

21 **d. Contemplated Amendments to the Pleadings**

22 The Plaintiffs will consider this prior to the Scheduling Conference. If a stay is imposed by  
23 this Court, the Plaintiffs would maintain that further amendments to the complaint may be  
24 appropriate after the Ninth Circuit issues an opinion in *Duncan*.

25 **e. Jurisdiction and Venue**

26 The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367(a). Venue is proper  
27 under 28 U.S.C. § 1391(b).  
28

1           **f. Proposed Discovery Plan**

2           As discussed in Section I, *supra*, Defendants have proposed a stay of proceedings pending  
3 final resolution of the *Duncan* appeal, which Plaintiffs do not oppose. Absent a stay of  
4 proceedings, the parties would submit a plan that conforms to the following proposed discovery  
5 cutoff dates set forth below.

6           **g. Proposed Discovery Cut-Off Date**

7           As discussed in Section I, *supra*, Defendants have proposed a stay of proceedings pending  
8 final resolution of the *Duncan* appeal, which Plaintiffs do not oppose. Absent a stay of  
9 proceedings, the parties would submit the following proposed discovery schedule:

10           Exchange of Initial Disclosures: June 17, 2019.

11           Fact Witness Discovery Cutoff: October 15, 2019.

12           Expert Witness Discovery Cutoff: December 15, 2019.

13           **h. Proposed Cut-Off Date for All Motions**

14           As discussed in Section I, *supra*, Defendants have proposed a stay of proceedings pending  
15 final resolution of the *Duncan* appeal, which Plaintiffs do not oppose. Absent a stay of  
16 proceedings, the parties would submit a deadline for filing dispositive motions by February 10,  
17 2020.

18           **i. Proposed Modification of Standard Pretrial Proceedings**

19           The parties do not anticipate proposing any modifications to the standard pretrial  
20 proceedings due to any special nature of this action.

21           **j. Estimated Length of Trial**

22           The parties estimate a bench trial of up to seven (7) days.

23           **k. Statement of Related Cases**

24           There are no related cases pending in the Eastern District of California.

25           This case is similar to *Duncan v. Becerra*, No. 19-55376, which is pending before the Ninth  
26 Circuit Court of Appeals.



1           **I. Other Matters Discussed in Local Rule 240**

2           As discussed in Section I, *supra*, Defendants have proposed a stay of proceedings pending  
3 final resolution of the *Duncan* appeal, which Plaintiffs do not oppose.

4           There are no other matters discussed in Local Rule 240 that may add to the just and  
5 expeditious disposition of this matter.

6           **m. Nongovernmental Corporate Disclosure Statement**

7           On June 5, 2017, Plaintiffs filed a Corporate Disclosure Statement pursuant to Federal Rule  
8 of Civil Procedure 7.1. (Docket No. 8.) There have been no changes to the information  
9 contained in the Corporate Disclosure Statement. In accordance with the April 28 Order, and for  
10 the convenience of the Court, Plaintiffs provide the following information contained in their  
11 Corporate Disclosure Statement:

- 12           • Plaintiff The Calguns Foundation, Inc. is a non-profit membership organization,  
13           incorporated under the laws of California. This plaintiff does not have a parent  
14           corporation, and no publicly held corporation owns 10% or more of its stock or  
15           membership interest.
- 16           • Plaintiff Firearms Policy Coalition, Inc. is a non-profit membership organization,  
17           incorporated under the laws of Delaware. This plaintiff does not have a parent  
18           corporation, and no publicly held corporation owns 10% or more of its stock or  
19           membership interest.
- 20           • Plaintiff Firearms Policy Foundation, Inc. is a non-profit membership organization,  
21           incorporated under the laws of Delaware. This plaintiff does not have a parent  
22           corporation, and no publicly held corporation owns 10% or more of its stock or  
23           membership interest.
- 24           • Plaintiff Second Amendment Foundation, Inc. is a non-profit membership  
25           organization, incorporated under the laws of Delaware. This plaintiff does not have a  
26           parent corporation, and no publicly held corporation owns 10% or more of its stock  
27           or membership interest.

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Unless ordered otherwise, the parties will be prepared to appear at the Scheduling Conference on May 13, 2019 to further discuss all relevant developments with this Court.

Dated: May 1, 2019

XAVIER BECERRA  
Attorney General of California  
MARK R. BECKINGTON  
Supervising Deputy Attorney General

/s/ John D. Echeverria  
(as authorized on May 1, 2019)

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Dated: May 1, 2019

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/s/ George M. Lee

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