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

15 **JAMES MILLER; PATRICK RUSS;
 WENDY HAUFFEN; NEIL
 16 RUTHERFORD; ADRIAN
 SEVILLA; RYAN PETERSON;
 17 GUNFIGHTER TACTICAL, LLC;
 JOHN PHILLIPS; PWGG, L.P.; SAN
 18 DIEGO COUNTY GUN OWNERS
 PAC; CALIFORNIA GUN RIGHTS
 19 FOUNDATION; SECOND
 AMENDMENT FOUNDATION; and
 20 FIREARMS POLICY COALITION,
 INC.,**

21 Plaintiffs,

22 v.

24 **CALIFORNIA ATTORNEY
 GENERAL XAVIER BECERRA;
 25 and DOJ BUREAU OF FIREARMS
 DIRECTOR BRENT ORICK,**

26 Defendants.
 27

19-cv-1537 BEN-JLB

**DEFENDANTS' NOTICE OF
 MOTION AND MOTION TO STAY
 PROCEEDINGS PENDING
 RESOLUTION OF RELATED
 APPEALS**

Date: January 27, 2020
 Time: 10:30 a.m.
 Courtroom: 5A
 Judge: Hon. Roger T. Benitez
 Trial Date: None Set
 Action Filed: August 15, 2019

1 **NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS**
2 **PENDING RESOLUTION OF RELATED APPEALS**

3 PLEASE TAKE NOTICE that, on January 27, 2020, at 10:30 a.m., or as soon
4 thereafter as the matter may be heard before the Honorable Roger T. Benitez in
5 Courtroom 5A of the Edward J. Schwartz U.S. Courthouse, located at 221 West
6 Broadway, San Diego, California 92101, Defendants Xavier Becerra, in his official
7 capacity as Attorney General of the State of California, and Brent E. Orick, in his
8 official capacity as Interim Director of the Department of Justice Bureau of
9 Firearms (together, “Defendants”) will and presently do move this Court to stay the
10 instant proceedings pending resolution of related appeals in *Rupp v. Becerra*,
11 No. 19-56004 (9th Cir.), and *Duncan v. Becerra*, No. 19-55376 (9th Cir.).

12 Defendants move for a stay on the ground that the *Rupp* and *Duncan* appeals,
13 which are currently pending before the Ninth Circuit Court of Appeals, bear
14 directly on the constitutional issues raised in the instant litigation. The outcome of
15 the related appeals will substantially narrow, if not resolve entirely, Plaintiffs’
16 claims in this case. A stay pending resolution of the *Rupp* and *Duncan* appeals will
17 thus promote the interests of judicial economy, the orderly resolution of
18 constitutional challenges to California’s Assault Weapons Control Act, and the
19 avoidance of inconsistent judicial rulings.

20 This motion is based on this filing, the concurrently filed Memorandum of
21 Points and Authorities in Support of Defendants’ Motion to Stay Proceedings
22 Pending Resolution of Related Appeals, and the papers and pleadings on file in this
23 action.
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Dated: December 13, 2019

Respectfully Submitted,

XAVIER BECERRA
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MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/ John D. Echeverria
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 DIRECTOR BRENT ORICK,**

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19-cv-1537 BEN-JLB

**MEMORANDUM OF POINTS AND
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 RESOLUTION OF RELATED
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INTRODUCTION

1
2 This case concerns a Second Amendment challenge to the California Assault
3 Weapons Control Act (the “AWCA”), including provisions defining firearms as
4 “assault weapons” based solely on the presence of a fixed large-capacity magazine
5 (“LCM”). The constitutionality of the AWCA and the State’s restrictions on LCMs
6 is under consideration in two appeals currently before the Ninth Circuit Court of
7 Appeals. This case should be stayed until those appeals are resolved, sparing the
8 Court and the parties substantial time and effort addressing questions that will
9 almost certainly be decided by the Ninth Circuit.

10 In the cases on appeal, the issues decided by the district courts bear directly on
11 the constitutional questions presented by the plaintiffs in this case. First, earlier this
12 year, in *Rupp v. Becerra*, 401 F. Supp. 3d 978 (C.D. Cal. 2019), *appeal docketed*,
13 No. 19-56004 (9th Cir. Aug. 28, 2019), the United States District Court for the
14 Central District of California, hearing a challenge brought under the Second
15 Amendment, upheld provisions of the AWCA that apply to semiautomatic,
16 centerfire rifles. Second, in *Duncan v. Becerra*, 366 F. Supp. 3d 1131 (S.D.
17 Cal. 2019), *appeal docketed*, No. 19-55376 (9th Cir. Apr. 4, 2019), this Court held
18 that the State’s restrictions on the acquisition and possession of LCMs under
19 California Penal Code section 32310 violated the Second Amendment.

20 The *Rupp* and *Duncan* appeals are proceeding quickly. The briefing in *Rupp*
21 is set to begin in early January 2020, and the Ninth Circuit is expected to hear oral
22 argument in *Duncan* in April 2020. In the interests of judicial economy and the
23 orderly administration of justice, this Court should stay this action until the Ninth
24 Circuit has had an opportunity to resolve each appeal.

BACKGROUND

I. THE ASSAULT WEAPONS CONTROL ACT

26 In 1999, the Legislature enacted Senate Bill 23 to, among other things, add a
27 flexible, features-based definition of “assault weapons” to the AWCA, which is
28

1 now codified at California Penal Code section 30515(a) (formerly Cal. Penal Code
2 § 12276.1(a)). Senate Bill 23 included several provisions regulating the possession,
3 sale, and use of assault weapons, including a prohibition on the registration or
4 possession of assault weapons by anyone under the age of 18 years and anyone who
5 is prohibited from possessing a firearm, restrictions which are now codified at
6 California Penal Code section 30950 (former Cal. Penal Code § 12285(d)).

7 Senate Bill 23 also imposed restrictions on the manufacture, importation, and
8 sale of LCMs capable of holding more than ten rounds of ammunition, now
9 codified at California Penal Code section 32310 (formerly Cal. Penal Code
10 § 12020(a)(2)). *See also* Cal. Penal § 16740 (formerly Cal. Penal Code
11 § 12020(c)(25)) (defining LCMs). In addition to restricting LCMs generally in that
12 separate section, Senate Bill 23 addressed LCMs in its assault-weapon restrictions
13 by including in its definition of an “assault weapon” semiautomatic, centerfire rifles
14 that have a fixed LCM and semiautomatic pistols that have a fixed LCM. *See id.*
15 §§ 30515(a)(2), (a)(5). For the past two decades, California has restricted the
16 manufacture, distribution, transportation, importation, sale, lending, and possession
17 of firearms that qualify as “assault weapons.” *Id.* §§ 30600(a), 30605(a).

18 **II. *DUNCAN V. BECERRA***

19 On May 17, 2017, certain individual plaintiffs and the California Rifle and
20 Pistol Association, Inc., filed a complaint in this Court asserting, *inter alia*, a
21 Second Amendment challenge to the LCM restrictions in California Penal Code
22 section 32310, including newly enacted restrictions on LCM possession codified in
23 section 32310(c) and (d). On June 29, 2017, this Court entered a preliminary
24 injunction, holding that the new possession restrictions violated the Second
25 Amendment and enjoining their enforcement. *Duncan v. Becerra*, 265 F. Supp. 3d
26 1106, 1139-40 (S.D. Cal. 2017), *aff'd*, 742 Fed. App'x 218 (9th Cir. July 17, 2018).
27 Thereafter, on March 29, 2019, the Court held that Penal Code section 32310 in its
28 entirety violated the Second Amendment. *Duncan*, 366 F. Supp. 3d at 1182-83.

1 The Court entered judgment that same day, and the Attorney General noticed an
2 appeal on April 4, 2019. To preserve the status quo pending appeal, the Court
3 stayed the final judgment and reinstated the preliminary injunction. *Duncan v.*
4 *Becerra*, No. 17-cv-1017-BEN-JLB, 2019 WL 1510340, at *3 (S.D. Cal. Apr. 4,
5 2019).

6 **III. RUPP V. BECERRA**

7 On April 24, 2017, certain individual plaintiffs and the California Rifle and
8 Pistol Association, Inc., filed a complaint for declaratory and injunctive relief in the
9 United States District Court for the Central District of California against the
10 California Attorney General, challenging under the Second Amendment the
11 AWCA's restrictions applicable to semiautomatic rifles. *Rupp v. Becerra*,
12 No. 17-cv-00746-JLS-JDE (C.D. Cal. Apr. 4, 2017). In particular, the plaintiffs
13 challenged, *inter alia*, California Penal Code sections 30510(a), 30515(a)(1)(A)-(C)
14 and (E)-(F), 30515(a)(3), 30520, 30600, 30605, 30925, and 30945. *Rupp*,
15 401 F. Supp. 3d at 983.

16 On July 22, 2019, the district court granted the Attorney General's motion for
17 summary judgment, upholding the AWCA under the Second Amendment. *Rupp*,
18 401 F. Supp. 3d at 988, 993-94. The court applied the two-step framework for
19 adjudicating Second Amendment claims that has been adopted by the Ninth Circuit,
20 which requires the court to (1) ask "whether the challenged law burdens conduct
21 protected by the Second Amendment," and (2) if so, "what level of scrutiny should
22 be applied." *Id.* at 984 (quoting *Fyock v. Sunnyvale*, 779 F.3d 991, 996 (9th
23 Cir. 2015)). The court held that, at the first step of the inquiry, the AWCA does not
24 burden conduct protected by the Second Amendment because "semiautomatic rifles
25 within the AWCA's scope are virtually indistinguishable from M-16s and thus are
26 not protected by the Second Amendment." *Id.* at 988; *see also id.* at 986-87 (citing
27 *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008), and *Kolbe v. Hogan*, 849
28 F.3d 114, 136 (4th Cir. 2017) (en banc)). Alternatively, the court held that (1) the

1 AWCA is subject to intermediate scrutiny because it does not “severely burden the
2 core of the Second Amendment right,” *id.* at 989 (noting “the chorus of circuits
3 applying intermediate scrutiny to assault weapon bans”), and (2) the “AWCA
4 withstands intermediate scrutiny,” *id.* at 993.

5 On July 31, 2019, the district court entered judgment in the Attorney General’s
6 favor. *Rupp v. Becerra*, No. 17-cv-00746-JLS-JDE (C.D. Cal. July 31, 2019)
7 (Dkt. 111). On August 27, 2019, the plaintiffs appealed the final judgment, *Rupp v.*
8 *Becerra*, No. 17-cv-00746-JLS-JDE (C.D. Cal. Aug. 27, 2019) (Dkt. 114), and the
9 appeal is currently pending before the Ninth Circuit. *Rupp v. Becerra*,
10 No. 19-56004 (9th Cir.).

11 **IV. THE INSTANT LITIGATION**

12 Approximately two weeks after the district court entered the final judgment in
13 *Rupp*, on August 15, 2019, Plaintiffs James Miller, Patrick Russ, Ryan Peterson,
14 and San Diego County Gun Owners Political Action Committee filed a complaint
15 in this Court, asserting a Second Amendment challenge to two provisions of the
16 AWCA that were not directly addressed in *Rupp*—provisions that define an “assault
17 weapon” as any semiautomatic, centerfire rifle or semiautomatic pistol with a fixed
18 LCM, Cal. Penal Code §§ 30515(a)(2), (a)(5). Dkt. 1. The initial complaint also
19 challenged, on their face and as applied to Plaintiffs, California Penal Code sections
20 30600, 30605, 30800, 30910, 30915, 30945, and 31000 to the extent they regulate
21 “assault weapons” as defined by sections 30515(a)(2) or 30515(a)(5). *See id.* ¶¶ 1,
22 32, 34.

23 One month after the notice of appeal was filed in *Rupp*, on September 27,
24 2019, Plaintiffs filed a First Amended Complaint, expanding the scope of their
25 Second Amendment challenge to *all* of the definitions of an “assault weapon” in
26 California Penal Code section 30515(a), including those subject to the appeal in
27
28

1 *Rupp*, and, in addition to the statutes challenged in the initial complaint, California
2 Penal Code section 30925, 30950, and 31005.¹

3 ARGUMENT

4 I. THE COURT SHOULD STAY ALL PROCEEDINGS PENDING RESOLUTION 5 OF THE *RUPP* AND *DUNCAN* APPEALS.

6 A district court has the discretion to stay proceedings in its own court. *Landis*
7 *v. N. Am. Co.*, 299 U.S. 248, 254 (1936). This power is “incidental to the power
8 inherent in every court to control the disposition of the causes on its docket with
9 economy of time and effort for itself, for counsel and for litigants.” *Id.*; *accord*
10 *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir.
11 1983). A district court may “find it is efficient for its own docket and the fairest
12 course for the parties to enter a stay of an action before it, pending resolution of
13 independent proceedings which bear upon the case,” whether “the separate
14 proceedings are judicial, administrative, or arbitral in character” and whether or not
15 “the issues in such proceedings are necessarily controlling of the action before the
16 court.” *Levy v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th
17 Cir. 1979)

18 A. The *Rupp* and *Duncan* Appeals Bear Directly on the 19 Constitutional Issues Raised in this Action.

20 This case is a Second Amendment challenge to the AWCA. Plaintiffs claim
21 that “[t]he so-called ‘assault weapons’ and ‘large-capacity’ magazines at issue in
22 this case are categorically protected by the Second Amendment” and that the
23 State’s assault-weapon “restrictions violate Plaintiffs’ and Plaintiffs’ members’
24 right to keep and bear arms protected by the Second Amendment.” Dkt. 9 ¶¶ 101,
25 104. The constitutionality of California’s restrictions on assault weapons, however,
26 was addressed by the district court in *Rupp*, and the constitutionality of California’s

27 ¹ Defendants have filed a motion to dismiss Plaintiffs’ claims challenging
28 California Penal Code sections 30800, 30915, 30925, 30945, 30950, 31000, and
31005. Dkt. 16.

1 restrictions on LCMs was addressed by this Court in *Duncan*. Both cases are
2 pending appellate review by the Ninth Circuit.

3 The appeal in *Rupp* squarely addresses the core constitutional question in this
4 action. As with this action, the *Rupp* plaintiffs brought a Second Amendment
5 challenge to, *inter alia*, the AWCA's definition of an "assault weapon" applicable
6 to rifles in California Penal Code section 30515(a)(1) and (a)(3), and also
7 challenged certain enforcement and registration provisions related to assault
8 weapons, *see* Cal. Penal Code §§ 30600, 30605, 30925, 30945.² *See Rupp*, 401 F.
9 Supp. 3d at 983. The district court in *Rupp* held that, *inter alia*, "the AWCA
10 withstands intermediate scrutiny" because "the Attorney General has more than met
11 his burden to show that there is a reasonable fit between the AWCA and protecting
12 public safety." *Id.* at 993. The judgment is now pending review before the Ninth
13 Circuit, and the eventual decision will resolve most of Plaintiff's constitutional
14 claims here, namely whether the AWCA's features-based definition of "assault
15 weapons" and restrictions of those weapons comport with the Second Amendment.
16 Even though *Rupp* did not involve a challenge to the AWCA's restrictions on
17 pistols and shotguns that qualify as "assault weapons," there is no reason to believe
18 that the Ninth Circuit's ruling would not apply equally to those restrictions, or at a
19 minimum, inform the Court's analysis of those restrictions.

20 The appeal in *Duncan* overlaps with the remaining issue in this action that was
21 not addressed in *Rupp*, namely whether the State can, consistent with the Second
22 Amendment, restrict semiautomatic, centerfire rifles and semiautomatic pistols with
23 fixed LCMs. The constitutionality of LCM restrictions will be addressed in the
24 *Duncan* appeal, including the sufficiency of the Attorney General's evidence in

25 _____
26 ² The *Rupp* case is both broader and narrower than this case. While this case
27 also challenges the AWCA's restrictions on semiautomatic pistols and shotguns,
28 the *Rupp* litigation was broader than the instant case because the plaintiffs also
challenged the lists of semiautomatic rifles defined as "assault weapons" by make
and model in California Penal Code section 30510(a) and section 5499 of title 11 of
the California Code of Regulations. *Rupp*, 401 F. Supp. 3d at 983.

1 defense of those restrictions. Accordingly, both the *Rupp* and *Duncan* appeals
2 address the constitutional issues raised in this case.

3 **B. All of the Factors that the Court Considers in Issuing a Stay**
4 **Weigh Heavily in Favor of a Stay.**

5 Given the substantial overlap of the constitutional and evidentiary issues
6 raised in this action and in *Rupp* and *Duncan*, this Court should issue a stay of
7 proceedings pending final resolution of the *Rupp* and *Duncan* appeals. In
8 determining whether to stay a case pending resolution of independent proceedings,
9 the Court considers the competing interests at stake, including “[1] the possible
10 damage which may result from the granting of a stay, [2] the hardship or inequity
11 which a party may suffer in being required to go forward, and [3] the orderly course
12 of justice measured in terms of the simplifying or complicating of issues, proof, and
13 questions of law which could be expected to result from a stay.” *Lockyer v. Mirant*
14 *Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d
15 265, 268 (9th Cir. 1962)) (internal numbers added). In addition, the Court
16 considers whether “the other proceedings will be concluded in a reasonable time in
17 relation to the urgency of the claims presented to the court.” *Levy*, 593 F.2d at
18 863. All of these factors weigh heavily in favor of a stay of this action.

19 **1. No Prejudice Will Result from a Stay.**

20 This action is still in the pleadings stage, and a stay pending resolution of the
21 related appeals will benefit Plaintiffs in the same way that it will benefit Defendants
22 and the Court—a stay will prevent the expenditure of resources on discovery and
23 motion practice that will in all likelihood become moot regardless of the outcomes
24 in the *Rupp* and *Duncan* appeals; at a minimum, those appeals will significantly
25 narrow the issues remaining in this case and would provide substantial guidance on
26 the standard of scrutiny applicable to the AWCA and the sufficiency of Defendants’
27 evidence defending it. *See Minor v. FedEx*, No. C 09-1375, 2009 WL 1955816, at
28 *1 (N.D. Cal. July 6, 2009) (granting stay₇ and determining that “[t]o the extent that

1 both [p]laintiffs and [d]efendants will be able to tailor discovery and avoid
2 duplicative or unnecessary tasks, this causes a benefit, rather than damage, to
3 accrue to both parties”). Moreover, the AWCA has been in effect for the past two
4 decades, and Plaintiffs did not file this action until nearly ten years after the United
5 States Supreme Court incorporated the Second Amendment right against the states
6 through the Fourteenth Amendment. *See McDonald v. City of Chicago*, 561 U.S.
7 742, 790 (2010). Plaintiffs cannot credibly argue that they would be unduly
8 prejudiced by a temporary stay, especially given the number of years the AWCA
9 has been in effect without being challenged by Plaintiffs.

10 A stay pending the *Rupp* and *Duncan* appeals will not prejudice Plaintiffs also
11 because Plaintiffs are unlikely to obtain permanent relief before the appeals are
12 complete. The *Rupp* and *Duncan* appeals will most likely be resolved before this
13 case is resolved.³ And even in the unlikely event that Plaintiffs were to prevail in
14 this action and obtain a final judgment before resolution of the *Rupp* and *Duncan*
15 appeals, any such judgment would likely be stayed pending appeal. *See Duncan*,
16 2019 WL 1510340, at *2 (“There is an immeasurable societal benefit of
17 maintaining the immediate status quo while the process of judicial review takes
18 place.”). The fact that Plaintiffs have filed a motion for a preliminary injunction to
19 enjoin the AWCA and related provisions in their entirety, Dkt. 22, does not change
20 the equation. Even if Plaintiffs were to prevail on their motion for a preliminary
21 injunction, a stay of any such injunction would be appropriate to maintain the status
22 quo pending resolution of an interlocutory appeal, and thus the *Rupp* and *Duncan*
23 appeals would likely be resolved before any injunction of the AWCA would go into
24 effect.

25 Moreover, it should be noted that Plaintiffs are not entitled to a preliminary
26 injunction in this action and, thus, will not be prejudiced by a stay of the briefing

27 _____
28 ³ *Duncan* is likely to be heard between April and June of 2020, and briefing
in *Rupp* is likely to be completed by April of 2020. *See, infra*, at 12.

1 and hearing on their motion. In contrast to the plaintiffs in *Duncan*, who
2 successfully obtained a “prohibitory” preliminary injunction to preserve the status
3 quo, *see Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1136 (2017) (issuing
4 preliminary injunction of newly enacted LCM-possession restrictions “to maintain
5 the *status quo*”), Plaintiffs are seeking a “mandatory” preliminary injunction of a
6 law that has been in effect for nearly two decades, which would go “well beyond
7 simply maintaining the status quo *pendente lite*.” *Stanley v. Univ. of S. Cal.*,
8 13 F.3d 1313, 1320 (9th Cir. 1994) (citation omitted). Mandatory preliminary
9 injunctions, like the one Plaintiffs are seeking, are “particularly disfavored” and
10 should be denied “unless the facts and law *clearly* favor the moving party.” *Id.*
11 (citation omitted and emphasis added). As the Ninth Circuit has explained,

12 It is so well settled as not to require citation of authority that the usual
13 function of a preliminary injunction is to preserve the status quo ante litem
14 pending a determination of the action on the merits. The hearing is not to be
15 transformed into a trial of the merits of the action upon affidavits, and it is not
16 usually proper to grant the moving party the full relief to which he might be
17 entitled if successful at the conclusion of a trial. This is particularly true
where the relief afforded, rather than preserving the status quo, completely
changes it.

18 *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808-09 (9th Cir. 1963). As a
19 matter of law, Plaintiffs cannot make the requisite “clear showing” that the facts
20 and the law favor preliminary injunctive relief because, regardless of the ultimate
21 merits of their claims, *every* federal circuit court that has reviewed the
22 constitutionality of assault weapons bans under the Second Amendment (five thus
23 far) has upheld them. *See Rupp*, 401 F. Supp. 3d at 990 (noting “the ‘unanimous
24 weight of circuit authority analyzing [and rejecting] Second Amendment challenges
25 to similar [assault-weapons] laws’” under intermediate scrutiny). And the only
26 district court within the Ninth Circuit to have evaluated the AWCA under the
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28

1 Second Amendment has upheld it under both steps of the Ninth Circuit’s two-step
2 framework. *See id.* at 988, 993.

3 Plaintiffs cannot claim that they would be prejudiced by a stay because they
4 are not entitled to a preliminary injunction in this case and would not obtain
5 injunctive relief before the Ninth Circuit issues the mandates in *Rupp* and *Duncan*.
6 For these reasons, Plaintiffs will not be prejudiced from a stay.

7 **2. Defendants Will Suffer Considerable Hardship and**
8 **Inequity Absent a Stay.**

9 In the *Rupp* and *Duncan* appeals, the Ninth Circuit will be determining
10 whether the AWCA and LCM restrictions burden the Second Amendment and, if
11 so, what level of constitutional scrutiny should apply to those restrictions and
12 whether the restrictions satisfy that level of scrutiny. *See Silvester v. Harris*, 843
13 F.3d 816, 820-21 (9th Cir. 2016). In connection with the proper application of the
14 two-step approach to the AWCA and the State’s LCM restrictions, the Ninth
15 Circuit will have to determine whether assault weapons and LCMs are protected by
16 the Second Amendment, whether there is historical precedent for the restrictions,
17 what level of scrutiny applies to the restrictions, and what evidentiary showing is
18 required to satisfy that level of scrutiny. Each of these issues will also need to be
19 litigated in this action. If this action is not stayed, the Attorney General would be
20 forced to litigate these issues simultaneously before this Court and the Ninth
21 Circuit. *See Gustavson v. Mars, Inc.*, No. 13-cv-04537-LHK, 2014 WL 6986421,
22 at *3 (N.D. Cal. Dec. 10, 2014) (noting that “guidance from the Ninth Circuit . . .
23 will, in fact, be material” to the question at issue and that “Defendant would clearly
24 suffer significant and potentially unnecessary hardship if compelled to proceed”
25 (citing *Landis*, 299 U.S. at 255)).

26 Absent a stay, the Attorney General (and Plaintiffs) would be required to
27 engage in expensive and time-consuming fact and expert discovery and motion
28 practice concerning issues that will in all likelihood be resolved by the Ninth

1 Circuit in reviewing the *Rupp* and *Duncan* appellate records. *See, e.g., In re*
 2 *Lorazepam & Clorazepate Antitrust Litig.*, 208 F.R.D. 1, 6 (D.D.C. 2002) (granting
 3 stay and noting that “because two significant issues are currently pending before the
 4 Court of Appeals, one of which could dispose of this litigation while the other
 5 could substantially reshape it,” “proceeding headlong with discovery and other
 6 matters before this Court has the very real potential of unnecessarily wasting
 7 significant resources of all parties”); *Cal. Ass’n for Health Servs. at Home v.*
 8 *Sebelius*, No. CV 11-10618, 2012 WL 893782, at *3 (C.D. Cal. Mar. 13, 2012)
 9 (granting stay where Ninth Circuit decisions “are likely to narrow issues” in the
 10 case). Accordingly, the substantial burden on Defendants absent a stay strongly
 11 supports the issuance of a stay pending resolution of the related appeals.

12 3. A Stay Will Promote the Orderly Course of Justice.

13 A stay will promote the interests of judicial economy, as it would relieve the
 14 Court from expending time and resources on decisions that will be resolved by the
 15 Ninth Circuit’s rulings in *Rupp* and *Duncan*. District courts routinely stay
 16 proceedings where resolution of an appeal will provide guidance in deciding issues
 17 before the court. *See, e.g., Washington v. Trump*, No. C17-0141JLR, 2017 WL
 18 2172020, at *2-3 (W.D. Wash. May 17, 2017) (granting stay of district court
 19 proceedings where appeal in a related case “will likely settle many” issues and
 20 “simplify others, such that a stay will facilitate the orderly course of justice and
 21 conserve resources for both the court and the parties” (internal citation and
 22 punctuation omitted)); *Fed. Home Loan Mortg. Corp. v. Kama*, No. 14-00137
 23 ACK-KSC, 2016 WL 922780, at *8-9 (D. Haw. Mar. 8, 2016) (granting stay where
 24 the Ninth Circuit’s resolution of related cases “w[ould] likely involve an analysis
 25 of” issues that would “provide further guidance to the district court”).

26 Allowing the Ninth Circuit to address the constitutional issues raised in this
 27 case will also “reduce[] the risk of inconsistent rulings” that might need to be
 28 “disentangle[d]” following resolution of the *Rupp* and *Duncan* appeals. *Hawai’i v.*

1 *Trump*, 233 F. Supp. 3d 850, 856 (D. Haw. 2017). A stay of this case simply makes
2 practical sense. For example, once *Duncan* was appealed to the Ninth Circuit, the
3 United States District Court for the Eastern District of California stayed a similar
4 case challenging California’s LCM restrictions under Second Amendment pending
5 resolution of the appeal. *See Wiese v. Becerra*, No. 17-9036-WBS-KJN (E.D. Cal.
6 May 8, 2019) (Dkt. 110). Waiting for the Ninth Circuit to address the precise
7 issues raised in this case before proceeding to discovery, motion practice, and trial
8 will streamline the issues, proof, and questions of law for this Court and thus will
9 serve the interests of judicial economy and efficiency. *See Landis*, 299 U.S.
10 at 254-55.

11 **4. The *Rupp* and *Duncan* Appeals Are Proceeding** 12 **Expediently.**

13 The final factor that the Court considers is whether the related proceedings
14 will be resolved in a reasonable amount of time relative to the urgency of Plaintiffs’
15 claims. *Levy*, 593 F.2d at 863. Here, Plaintiffs are challenging a law that has been
16 in effect for nearly 20 years, and their Second Amendment claims against it could
17 have been asserted long ago—at least as early as 2010, when the Second
18 Amendment was incorporated against the states through the Fourteenth
19 Amendment. There is no urgency to Plaintiffs’ claims. Moreover, the related
20 appeals are proceeding expeditiously. Merits briefing in the *Duncan* appeal is
21 complete, and the Ninth Circuit has indicated that it will be scheduling oral
22 argument at some point in April through June 2020. And merits briefing in *Rupp* is
23 set to begin on January 6, 2020 with the appellants’ opening brief, followed by the
24 Attorney General’s answering brief on February 5, 2020. *Rupp*, No. 19-56004 (9th
25 Cir. Nov. 20, 2019) (Dkt. 17) (approving appellants’ streamlined request for
26 extension of time to file opening brief). The lack of urgency of Plaintiffs’ claims
27 and the progress of the *Duncan* and *Rupp* appeals supports the issuance of a stay
28 pending their resolution.

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CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court stay all proceedings in this matter pending resolution of the Ninth Circuit appeals in *Rupp v. Becerra*, No. 19-56004 (9th Cir.), and *Duncan v. Becerra*, No. 19-55376 (9th Cir.).

Dated: December 13, 2019

Respectfully Submitted,

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/s/ John D. Echeverria
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CERTIFICATE OF SERVICE

Case Name: **James Miller, et al. v.
Xavier Becerra, et al.**

Case No. **19-cv-1537 BEN-JLB**

I hereby certify that on December 13, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS
PENDING RESOLUTION OF RELATED APPEALS**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS'
MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF RELATED
APPEALS**

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 December 13, 2019, at Los Angeles, California.

Colby Luong
Declarant

/s/ Colby Luong
Signature