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16
 17 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA

18 THE UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 THE STATE OF CALIFORNIA;
 22 EDMUND GERALD BROWN JR.,
 Governor of California, in his Official
 23 Capacity; and XAVIER BECERRA,
 24 Attorney General of California, in his
 Official Capacity,

25 Defendants.
 26

Case No. 2:18-cv-490-JAM-KJN

**PLAINTIFF'S MEMORANDUM IN
 SUPPORT OF PLAINTIFF'S MOTION
 FOR STAY PENDING APPEAL**

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1 Plaintiff the United States files this memorandum in support of its motion to stay district court
2 proceedings in this case pending resolution of Plaintiff's appeal. On August 9, 2018, the United States
3 filed a notice of appeal, appealing this Court's denial of the United States' motion for preliminary
4 injunction as to provisions of three California laws, AB 450, Cal. Lab. Code § 90.2; AB 103, Cal. Gov't
5 Code § 12532; and SB 54, Cal. Gov't Code §§ 7284.6(a)(1)(C), 7284.6(a)(1)(D), & 7284.6(a)(4). The
6 Government's opening brief is due today, September 18, 2018, and under the current schedule briefing
7 will be complete by November 2018. As explained below, the Ninth Circuit's decision is likely to
8 provide substantial guidance to this Court and the parties in resolving this case. Proceeding in the
9 absence of that guidance would be inefficient, waste the resources of the Court and the parties, and
10 potentially result in inconsistent rulings at the district court level that would need to be corrected in
11 light of the Ninth Circuit's decision. Defendants will not be harmed by a brief stay while the Ninth
12 Circuit considers an expedited appeal in this case, as, other than two provisions of AB 450, Cal. Gov't
13 Code §§ 7285.1 & 7285.2 and Cal. Lab. Code § 1019.2(a) & (b), the challenged laws remain in effect,
14 and Defendants have chosen not to appeal the Court's preliminary injunction of the two provisions
15 of AB 450 that it enjoined. This Court dismissed the majority of the United States' claims. As it
16 currently stands, only two provisions of AB 450 remain in litigation at this Court. It thus makes sense
17 for the Court to stay proceedings until after appeal in case the Ninth Circuit's decision expands the
18 scope of active litigation.

19 "The District Court has broad discretion to stay proceedings as an incident to its power to
20 control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). The Ninth Circuit has described
21 various factors that should be considered when evaluating a motion to stay:

22 Where it is proposed that a pending proceeding be stayed, the competing interests
23 which will be affected by the granting or refusal to grant a stay must be weighed.
24 Among these competing interests are the possible damage which may result from the
25 granting of a stay, the hardship or inequity which a party may suffer in being required
26 to go forward, and the orderly course of justice measured in terms of the simplifying
27 or complicating of issues, proof, and questions of law which could be expected to
28 result from a stay.

CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). All three factors warrant a stay of district court

1 proceedings in this case pending resolution of the appeal.

2 *First*, a stay in this case would promote judicial efficiency and protect public resources, as the
3 Ninth Circuit’s decision could greatly alter how this case proceeds in this Court. Currently, only two
4 provisions of one bill remain live in a suit that challenged three bills. This Court ruled that most of
5 the California statutes at issue in this case are constitutional as a matter of law. The Ninth Circuit’s
6 decision will evaluate those legal determinations de novo. In so doing, it could definitively resolve
7 some of the legal issues in this case, either by expanding the issues before this Court or confirming
8 this Court’s narrowing of them. Regardless of how the Ninth Circuit rules, its decision would provide
9 this Court with the full universe of legal issues that remain in the case and the binding legal guidance
10 that should apply going forward. Any deadlines set before that point, particularly regarding discovery
11 or dispositive motions, would be premature. A stay would thus “ensure[] that the proper scope” of
12 issues “will be known in advance of the deadlines for completion of discovery and the filing of
13 dispositive motions.” *McMenemy v. Colonial First Lending Grp., Inc.*, No. 2:14-CV-001482 JAM A, 2015
14 WL 1137344, at *2 (E.D. Cal. Mar. 12, 2015) (Mendez, J.).

15 Furthermore, a stay would serve “the orderly course of justice” by “simplifying” all pretrial
16 issues regarding the challenged statutes and AB 450 in particular. *CMAX, Inc.*, 300 F.2d at 268.
17 Currently, only a very narrow part of this case—challenges to discrete portions of AB 450 codified at
18 Cal. Gov’t Code §§ 7285.1 & 7285.2 and Cal. Lab. Code § 1019.2(a) & (b)—remains live at the district
19 court. Meanwhile, AB 450’s other provisions— Cal. Lab. Code § 90.2—are on appeal at the Ninth
20 Circuit. The Ninth Circuit appeal will therefore provide this Court with a comprehensive answer about
21 which provisions of AB 450 remain properly before it. Without a stay, there is a “substantial risk of
22 duplication of proceedings and waste of judicial resources” as the Court makes determinations on a
23 narrow portion of law before knowing whether the other provisions of that and other laws will also
24 be before it. *Id.* Additionally, if the remaining portion of this case were to continue until final judgment,
25 rendering the preliminary injunction moot, the Ninth Circuit would be required to rededicate its
26 resources to the entire case at that stage, even though it may properly determine the legal issues that
27 are before it at this time. The judicial resources dedicated to the appeal would thus become wasted.

1 Therefore, a stay is warranted to preserve judicial efficiency.

2 A stay will also “avoid possible inconsistent decisions.” *Sims v. AT&T Mobility Servs. LLC*, No.
3 2:12-CV-02702-JAM-AC, 2013 WL 753496, at *8 (E.D. Cal. Feb. 27, 2013) (Mendez, J.). The Court’s
4 decisions on the remaining issues before it, including how to manage those remaining issues, may be
5 inconsistent with the Ninth Circuit’s eventual holdings. This Court may be required to amend any
6 scheduling order to reflect the addition of new claims. Any future decisions that this Court would
7 make will benefit from the Ninth Circuit’s decisions on these issues.

8 *Second*, a stay will eliminate the “hardship and inequity” that the United States would otherwise
9 suffer in “being required to go forward” without guidance from the Ninth Circuit. *CMAX, Inc.*, 300
10 F.2d at 268. Defendants propose extensive discovery, over the course of over seven months. It would
11 be a burden on the United States’ resources to engage in pretrial activity, particularly discovery, on a
12 small portion of claims when it may be required to engage in more discovery on very similar issues
13 after the Ninth Circuit rules. Further, as stated *supra*, any discovery that is undertaken now and any
14 deadlines that may be set may be subject to modification or rendered moot in light of the Ninth
15 Circuit’s decision. The parties will need to devote time and resources to duplicative work to adhere to
16 new case management deadlines and adjust filings accordingly. It is in the public interest of the United
17 States to conserve resources by establishing the boundaries and timeframe for the entire scope of
18 discovery at once after taking into consideration the Ninth Circuit’s decision.

19 *Third*, Defendants will not suffer any harm from a stay. This Court’s orders denying the United
20 States’ motion for preliminary injunction and granting Defendants’ motion to dismiss left in operation
21 all of the challenged laws but two provisions of AB 450. Defendants do not plan to appeal this Court’s
22 preliminary injunction of those discrete portions of AB 450. They thus have accepted that injunction
23 throughout this litigation. As such, pending resolution of the appeal, the State of California will remain
24 able to enforce all of its challenged laws, except those two provisions of the injunction of which
25 Defendants did not appeal. A stay of the case would not upset that enforcement. And Defendants’
26 proposed schedule—providing a seven-month discovery window and a trial date fourteen months
27 away—demonstrates that they will not be prejudiced by a stay. Further, as the United States seeks
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1 expedited review of the denial of the preliminary injunction, any stay will be of limited duration.

2 *Finally*, Defendants' proposed schedule demonstrates that the United States will be harmed
3 without a stay while Defendants will not suffer prejudice. The United States maintains, and this Court
4 recognized, that the issues in this case are legal, not factual, in nature. Meanwhile, Defendants propose
5 extensive discovery that would be irrelevant to those purely legal issues. That lengthy discovery will
6 burden the United States as it awaits decision on its appeal and may require modification after the
7 Ninth Circuit's ruling. Furthermore, Defendants' willingness to engage in protracted discovery, and
8 hence their willingness to postpone a decision on the merits, shows that they will not be prejudiced
9 by a stay.

10 For the foregoing reasons, this Court should grant Plaintiff's motion for a stay of this case at
11 the district court pending resolution of the appeal.

12 DATED: September 18, 2018

Respectfully Submitted,

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