

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DONALD WELCH, ANTHONY DUK,
AARON BITZER,

Plaintiffs,

v.

NO. CIV. 2:12-2484 WBS KJN

ORDER RE: MOTION TO STAY

EDMUND G. BROWN, JR., Governor
of the State of California, In
His Official Capacity, ANNA M.
CABALLERO, Secretary of
California State and Consumer
Services Agency, In Her
Official Capacity, DENISE
BROWN, Director of Consumer
Affairs, In Her Official
Capacity, CHRISTINE
WIETLISBACH, PATRICIA
LOCK-DAWSON, SAMARA ASHLEY,
HARRY DOUGLAS, JULIA JOHNSON,
SARITA KOHLI, RENEE LONNER,
KAREN PINES, CHRISTINA WONG,
In Their Official Capacities
as Members of the California
Board of Behavioral Sciences,
SHARON LEVINE, MICHAEL BISHOP,
SILVIA DIEGO, DEV GNANADEV,
REGINALD LOW, DENISE PINES,
JANET SALOMONSON, GERRIE
SCHIPSKE, DAVID SERRANO
SEWELL, BARBARA YAROSLAYSKY,
In Their Official Capacities
as Members of the Medical

Board of California,
Defendants.

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On December 3, 2012, the court enjoined defendants from enforcing Senate Bill 1172 ("SB 1172") against plaintiffs Donald Welch, Anthony Duk, and Aaron Bitzer, and defendants appealed the order granting the preliminary injunction on January 1, 2013. The Ninth Circuit has set an expedited briefing schedule and the appeal is set to be heard the week of April 15, 2013, along with the appeal in the case of Pickup v. Brown, Civ. No. 2:12-2497 KJM EFB.¹ Defendants now seek a stay of the case pending resolution of that appeal.


After considering the parties' arguments in their briefs along with the interests served in staying the case, the court finds that granting defendants' motion for a stay will be fair to all parties as well as serve the interests of judicial economy. Cf. Leyva v. Certified Grocers of Cal., Ltd., 593 F.2d 857, 863-64 (9th Cir. 1979) ("A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending

¹ On January 29, 2013, Judge Mueller granted the parties' joint request for a stay pending resolution of the appeal in Pickup v. Brown. See Pickup v. Brown, Civ. No. 2:12-2497 KJM EFB, Docket No. 98 ("[T]here is no indication that a stay pending resolution of the preliminary injunction appeal would harm any of the parties, especially because they have jointly requested the stay. Moreover, because the preliminary injunction appeal will resolve issues related to the constitutionality of SB 1172 that this court will need to address in order to move forward, it will achieve efficiencies to await the outcome of the Ninth Circuit proceedings.").

1 resolution of independent proceedings which bear upon the
2 case."). It is expected that the appeal will resolve an issue
3 that is central to this case in which two judges of this court
4 reached differing conclusions, namely, whether it is likely that
5 SB 1172 violates the First Amendment. As the court in this
6 action enjoined defendants from enforcing SB 1172 against
7 plaintiffs, and the Ninth Circuit enjoined enforcement of SB 1172
8 pending resolution of the appeal in Pickup, plaintiffs here will
9 not suffer harm in waiting for a decision from the Ninth Circuit
10 before continuing to litigate this action.

11 IT IS THEREFORE ORDERED that defendants' motion for a
12 stay be, and the same hereby is, GRANTED. All proceedings in
13 this action are hereby STAYED pending the appeal in Pickup v.
14 Brown, Civ. No. 2:12-2497 KJM EFB. The hearing previously set
15 for February 11, 2013, at 2:00 p.m. is VACATED. Upon resolution
16 of the pending appeal, counsel shall take the necessary steps to
17 inform the Clerk and arrange to have this matter set for further
18 status conference.

19 DATED: February 6, 2013

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21 WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
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