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9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11

12 **MOBILIZE THE MESSAGE, LLC;**
 13 **MOVING OXNARD FORWARD,**
 14 **INC.; and STARR COALITION**
FOR MOVING OXNARD
FORWARD,

15 Plaintiffs,

16 v.

17 **ROB BONTA, in his official capacity**
 18 **as Attorney General of California,**

19 Defendant.

2:21-cv-05115-VAP-JPR

**DEFENDANT ROB BONTA'S
 OPPOSITION TO PLAINTIFFS'
 MOTION TO STAY
 PROCEEDINGS PENDING
 APPEAL**

Date: September 20, 2021
 Time: 2:00 P.M.
 Courtroom: 8A
 Judge: The Honorable
 Virginia A. Phillips
 Trial Date: Not set
 Action Filed: 6/23/2021

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INTRODUCTION

Plaintiffs Mobilize the Message, LLC, *et al.*, filed suit to enjoin aspects of Assembly Bill 5 (AB 5), claiming that it violates their First Amendment rights. Although AB 5 was enacted in September 2019, Plaintiffs did not file suit until two months ago. Having long delayed in bringing their legal claims, they now ask this Court to stay its proceedings, so that they can obtain expedited review in the Court of Appeals of this Court’s recent order denying their motion for preliminary injunctive relief. The Court should deny the Plaintiffs’ motion to stay proceedings.

Plaintiffs bear the burden to show a stay is warranted, but fail to meet their burden in any meaningful way. Plaintiffs argue that a separate and unrelated appeal, *American Society of Journalists and Authors v. Bonta*, might be decided soon, and *might* impact the issues here. (ECF No. 29-1 at 1-2.) But there is no reasonable guarantee that that case will be decided soon, or that it will impact the legal issues in this matter. And Plaintiffs’ allegations that they will be harmed if a stay of proceedings is not granted are undermined by the fact that they waited almost two years to file this suit.

Ultimately, as the Court of Appeals has repeatedly explained, district courts should not stay proceedings merely because a party files an interlocutory appeal from the denial of a preliminary injunction motion. This case presents no persuasive reason to depart from the general rule.

RELEVANT BACKGROUND

Plaintiffs raise First Amendment challenges to the “ABC” test under AB 5, a “generally applicable labor law” pertaining to the classification of employees and independent contractors. *Cal. Trucking Ass’n v. Bonta*, 996 F.3d 644, 664 (9th Cir. 2021). They claim that the application of the ABC test under AB 5 to two groups of workers—doorknockers and signature gatherers— violates the Constitution. (See generally, ECF No. 1.)

1 AB 5 was signed into law in September 2019, and went into effect on January
2 1, 2020. (ECF No. 1 at 4-5 ¶¶ 13-15.) Yet Plaintiffs did not bring their claims here
3 until June 2021. In short, Plaintiffs delayed almost two years after AB 5 was
4 enacted, and over 15 months after it went into effect, before filing suit and seeking
5 preliminary injunctive relief.

6 On August 9, 2021, this Court denied Plaintiffs’ motion for a preliminary
7 injunction, which sought to preclude the application of the ABC test to classify
8 Plaintiffs’ doorknockers and signature gatherers as employees. (ECF No. 24.) The
9 Court concluded, contrary to Plaintiffs’ allegations, that “the challenged exemptions
10 in AB 5 are neither content-based nor otherwise require heightened scrutiny.” (*Id.*
11 at 7.) Instead, the exemptions Plaintiffs focus on, which are “based on the types of
12 products sold or services rendered, . . . are directly related to the occupation or
13 industry of a worker as opposed to statements the worker uses to sell such goods or
14 perform such services.” (*Id.* at 8.) The Court also concluded that Plaintiffs failed
15 to show the need for emergency injunctive relief, given their long delay in bringing
16 their claims. “Although Plaintiffs now claim there is urgency given the upcoming
17 2022 elections, Plaintiffs have failed to explain their delay in seeking their
18 requested relief for a declaration that AB 5 should not apply to their workers.” (*Id.*
19 at 10-11.)

20 Plaintiffs appealed this Court’s order denying preliminary injunctive relief.
21 (ECF No. 25.)

22 LEGAL STANDARD

23 District courts have “broad discretion to stay proceedings as an incident to
24 [their] power to control [their] own docket.” *Clinton v. Jones*, 520 U.S. 681, 706
25 (1997); *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir.
26 1979) (“A trial court may, with propriety, find it is efficient for its own docket and
27 the fairest course for the parties to enter a stay of an action before it, pending
28 resolution of independent proceedings which bear upon the case.”).

1 As the party seeking the stay, Plaintiffs bear the burden to establish that the
2 circumstances justify this Court’s exercise of its discretion to stay proceedings.
3 *Nken v. Holder*, 556 U.S. 418, 433-34 (2009); *Stiner v. Brookdale Senior Living,*
4 *Inc.*, 383 F. Supp. 3d 949, 953 (N.D. Cal. 2019) (addressing motion to stay in
5 arbitration context).

6 ARGUMENT

7 Plaintiffs have not met their burden to show that the interests of justice
8 warrant staying proceedings in this Court pending their interlocutory appeal from
9 the order denying preliminary injunctive relief.

10 When considering a motion to stay, a district court considers the following
11 factors: “the possible damage which may result from the granting of a stay, the
12 hardship or inequity which a party may suffer in being required to go forward, and
13 the orderly course of justice measured in terms of the simplifying or complicating
14 of issues, proof, and questions of law which could be expected to result from a
15 stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005). These
16 factors weigh against staying this action.

17 Plaintiffs argue that they will be prejudiced if a stay of proceedings is not
18 granted because their appeal might be rendered moot if judgment is entered against
19 them while the appeal is pending. (ECF No. 29-1 at 6.) Plaintiffs then assert that
20 “a subsequent appeal would set them back to square one,” and argue they would be
21 prejudiced because it may take longer to achieve an ultimate resolution. (*Id.* at 6.)
22 But any “prejudice” that may result from an ultimate resolution being achieved in
23 the normal course is attributable to Plaintiffs’ deliberate choice to delay filing suit.
24 (ECF No. 24 at 10 [in denying preliminary injunction motion, concluding that
25 “Plaintiffs’ two-year delay in filing this Motion weights against irreparable
26 harm.”].) And, contrary to Plaintiffs’ assertions, there are no “harms of inefficient
27 litigation” that will be mitigated through a stay. *See Mohamed v. Uber Techs.*, 115
28 F. Supp. 3d 1024, 1032-33 (N.D. Cal. 2015) (“[N]early all courts ‘have concluded

1 that incurring litigation expenses does not amount to an irreparable harm.”)
2 (citation omitted). Any inefficient litigation is attributable instead to Plaintiffs’
3 decision to seek interlocutory review, which will lead to parallel proceedings in the
4 appellate court and this Court. In any event, such concerns are potentially present
5 in any case seeking preliminary injunctive relief. Yet the case law makes clear that
6 a stay of proceedings should generally not be entered in these circumstances.

7 This Court thus has “broad discretion to decide whether a stay is appropriate
8 to ‘promote economy of time and effort for itself, for counsel, and for litigants.’”
9 *Ass’n of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094
10 (E.D. Cal. 2008) (citation omitted). But the Ninth Circuit has stated that district
11 courts should not stay their proceedings pending appeal of preliminary injunction
12 orders. *Cal. v. Azar*, 911 F.3d 558, 583 (9th Cir. 2018) (“We have repeatedly
13 admonished district courts not to delay trial preparation to await an interim ruling
14 on a preliminary injunction.”); *Melendres v. Arpaio*, 695 F.3d 990, 1002-03 (9th
15 Cir. 2012) (“We applaud how the district court has expedited this sensitive case and
16 moved with appropriate speed towards a final disposition.”). As the Court of
17 Appeals has noted, “in many cases, appeal of district courts’ preliminary
18 injunctions will result in unnecessary delay to the parties and inefficient use of
19 judicial resources.” *Sports Form, Inc. v. United Press Intern., Inc.*, 686 F.2d 750,
20 753 (9th Cir. 1982). For these reasons, district courts have denied requests to stay
21 proceedings pending an interlocutory appeal from a preliminary injunction order.
22 *See, e.g., Washington v. Azar*, No. 1:19-cv-03040-SAB, 2019 WL 7819662, at *1
23 (E.D. Wash. June 14, 2019) (“The Court takes heed of the Ninth Circuit’s
24 admonishments and declines to stay the proceedings.”); *Vasquez v. Ahlin*, No. 1:10-
25 cv-01973-DAD-JDP, 2019 WL 4302279, at *6 n.5 (E.D. Cal. Sept. 11, 2019)
26 (“[A]n interlocutory appeal ordinarily does not warrant a stay of proceedings.”).

27 Plaintiffs argue that another appeal, *American Society of Journalists and*
28 *Authors v. Bonta*, might be decided soon, and that the decision might impact the

1 issues here. (ECF No. 29-1 at 1-2.) But there is no guarantee that that case will be
2 decided soon, or that it will impact the legal issues in this matter, making a stay
3 here unjustified. *See, e.g., Tesoro Refining & Mktg. Co. LLC v. City of Long*
4 *Beach*, No. 2:16-cv-06963-VAP-FFMx, 2019 WL 4422666, at *2 (C.D. Cal. May
5 31, 2019) (denying motion to stay, concluding that staying “action based on a
6 possibility of a preclusive decision elsewhere is not enough to demonstrate that
7 those other proceedings ‘bear upon the case’”) (citation omitted). Ultimately, as
8 other district courts have noted, “the filing of an interlocutory appeal does not
9 automatically stay proceedings in the district court.” *Ass’n of Irrigated Residents*,
10 634 F. Supp. 2d at 1094.

11 Plaintiffs argue, relying on *National Association of African-American Owned*
12 *Media v. Charter Communications*, No. CV 16-609-GW, 2016 WL 10647193 (C.D.
13 Cal. Dec. 12, 2016), that the “potential mootness of an interlocutory appeal is ‘a
14 sufficient basis’ for staying the proceedings.” (ECF No. 29-1 at 6.) But that case
15 involved an interlocutory appeal under 28 U.S.C. section 1292(b), under which a
16 district court certifies that an appeal involves a “controlling question of law,” for
17 which there is a “substantial ground for difference of opinion,” and that an
18 immediate appeal “may materially advance the ultimate termination of the
19 litigation.” None of those factors are applicable here, nor has there been any
20 determination regarding the viability of Plaintiffs’ appellate issues. And although
21 the court in *Unitek Solvent Services, Inc. v. Chrysler Group LLC*, No. 12-00704
22 DKW, 2014 WL 12576648 (D. Haw. Jan. 14, 2014), concluded that a stay of
23 proceedings was warranted pending interlocutory appeal of an order denying a
24 preliminary injunction, it did not address the Ninth Circuit’s admonitions in *Azar*
25 and *Melendres* discussed above.

26 Plaintiffs’ motion also argues at length regarding whether the stay standard
27 under *Landis v. North American Co.*, 299 U.S. 248 (1936), or *Nken*, 556 U.S. at
28 418, applies here. (ECF No. 29-1 at 3-5 & 7-8.) Ultimately, whether this Court

1 concludes that the *Landis* or the *Nken* standard applies is irrelevant. Plaintiffs
2 cannot meet their burden under either standard (as explained above), and there is no
3 genuine reason to depart from the general rule, as articulated by the Court of
4 Appeals, that a district court should not stay its proceedings pending a preliminary
5 injunction appeal.

6 **CONCLUSION**

7 For these reasons, this Court should deny Plaintiffs’ motion to stay
8 proceedings.

9
10 Dated: August 30, 2021

Respectfully submitted,

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12 Attorney General of California
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Supervising Deputy Attorney General

14 /s/ Jose A. Zelidon-Zepeda

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CERTIFICATE OF SERVICE

Case Name: **Mobilize the Message, LLC et al. v. Rob Bonta**
Case No. **2:21-cv-05115-VAP-JPR**

I hereby certify that on August 30, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANT ROB BONTA'S OPPOSITION TO PLAINTIFFS' MOTION TO STAY PROCEEDINGS PENDING APPEAL

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 and the United States of America the foregoing is true and correct and that this declaration was executed on August 30, 2021, at San Francisco, California.

Robert Hallsey
Declarant

/s/ Robert Hallsey
Signature