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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FIREARMS POLICY  
COALITION, INC.; CALIFORNIA  
GUN RIGHTS FOUNDATION;  
SAN DIEGO COUNTY GUN  
OWNERS PAC,

Plaintiffs,

v.

CITY OF SAN DIEGO; COUNTY  
OF IMPERIAL; COUNTY OF  
ALAMEDA; COUNTY OF  
VENTURA; COUNTY OF LOS  
ANGELES; CITY OF SAN JOSE;  
and COUNTY OF SANTA CLARA,

Defendants.

Case No. 3:23-cv-400-LL-VET

**DEFENDANTS' JOINT  
OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
AN INJUNCTION PENDING  
APPEAL**

1 This Court should deny Plaintiffs' Motion for an Injunction Pending Ap-  
 2 peal ("Motion"; Dkt. 61) for multiple reasons.<sup>1</sup> First, the Court lacks jurisdic-  
 3 tion to grant the relief Plaintiffs seek, given that the Court has now dismissed  
 4 Plaintiffs' case with prejudice for lack of subject matter jurisdiction (Dkts. 56,  
 5 57). *See Roman Catholic Archbishop of Wash. v. Sebelius*, Civil Action No. 13-  
 6 1441, 2013 WL 12333208, at \*2 (D.D.C. Dec. 23, 2013) (concluding that where  
 7 the court had previously dismissed certain plaintiffs' claims for lack of subject  
 8 matter jurisdiction, "the Court lacks the power to enter an injunction pending  
 9 appeal on behalf of" those plaintiffs); *Nat'l Athletic Trainers' Ass'n v. U.S. Dep't*  
 10 *of Health & Human Servs.*, No. Civ.A.3:05CV1098-G, 2005 WL 1923566, at \*2  
 11 (N.D. Tex. Aug. 11, 2005) (same); *see also* Dkt. 63 at 3 (reiterating, in denying  
 12 Plaintiffs' Ex Parte Application, the Court's prior holding that "Plaintiffs do  
 13 not have standing to pursue their case").

14 Plaintiffs have another avenue for relief. Because this Court lacks juris-  
 15 diction, obtaining an injunction pending appeal from this Court is "impractica-  
 16 ble" for Plaintiffs. They thus may move for an injunction in the Ninth Circuit  
 17 in the first instance, where their appeal is already pending (Dkt. 58). *See* Fed.  
 18 R. App. P. 8(a)(2)(A)(i).

19 Plaintiffs' Motion is also meritless. *See Sebelius*, 2013 WL 12333208, at  
 20 \*2 n.3 (addressing the merits of plaintiffs' motion in the alternative); *Higginson*  
 21 *v. Becerra*, Case No. 17cv2032-WQH-JLB, 2018 WL 1638289, at \*3 (S.D. Cal.  
 22 Apr. 5, 2018) (treating court's previous Rule 12(b)(1) dismissal as factor weigh-  
 23 ing against merits of injunction pending appeal). The standard for a motion for  
 24 an injunction pending appeal is similar to that for a preliminary injunction  
 25 motion. *Feldman v. Ariz. Sec'y of State's Office*, 843 F.3d 366, 367 (9th Cir.  
 26 2016) (Order). Thus, Plaintiffs must prove (1) a likelihood of success on the  
 27

28 <sup>1</sup> All Defendants join in this Joint Opposition.

1 merits, (2) a likelihood of irreparable harm absent the injunction, (3) that the  
2 balance of the equities tip in their favor, and (4) that the injunction is in the  
3 public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009).  
4 An injunction pending appeal is an “extraordinary remedy that may only be  
5 awarded upon a clear showing that the plaintiff is entitled to such relief.” *Pro-*  
6 *tect Our Cmtys. Found. v. U.S. Dep’t of Ag.*, 845 F.Supp.2d 1102, 1105 (S.D.  
7 Cal. 2012) (citation omitted).

8 Plaintiffs have not come close to making that clear showing. In particu-  
9 lar, because a likelihood of success is the most important factor, a court need  
10 not even consider the other factors if the movant fails to make that threshold  
11 showing. *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir.  
12 2017). In their Motion, Plaintiffs simply reiterate the same arguments regard-  
13 ing standing, ripeness, and joinder that this Court has already rejected. *See*  
14 Dkt. 61 at 9-18; Dkt. 19 at 1-5, 6-10. They are no more meritorious this second  
15 time around. *See McCammon v. United States*, 584 F. Supp. 2d 193, 196, 198  
16 (D.D.C. 2008) (denying injunction where movant failed to call into question the  
17 bases for the court’s prior Rule 12(b)(1) dismissal); *see also* Dkt. 63 at 3 (reaf-  
18 firming that “Plaintiffs do not have standing”). Accordingly, because Plaintiffs  
19 clearly lack standing and their case is unripe—and because, in any event, all  
20 Defendants are improperly joined—Plaintiffs are unlikely to succeed on the  
21 merits and the Court should deny the Motion.

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2  
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