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16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
18 **SAN FRANCISCO DIVISION**

19 The COUNTY OF SAN MATEO, individually  
and on behalf of THE PEOPLE OF THE  
20 STATE OF CALIFORNIA,

21 Plaintiff,

22 v.

23 CHEVRON CORP., et al.,

24 Defendants.

First Filed Case: No. 3:17-cv-4929-VC  
Related Case: No. 3:17-cv-4934-VC  
Related Case: No. 3:17-cv-4935-VC

**DEFENDANTS' MOTION TO STAY  
PENDING APPEAL OF REMAND ORDER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Case No. 3:17-cv-4929-VC

THE HONORABLE VINCE CHHABRIA

The CITY OF IMPERIAL BEACH, a  
municipal corporation, individually and on  
behalf of THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

Case No. 3:17-cv-4934-VC

The COUNTY OF MARIN, individually and  
on behalf of THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

Case No. 3:17-cv-4935-VC

**NOTICE OF MOTION AND MOTION TO STAY\***

TO THE COURT, THE CLERK, AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, Defendants will and hereby do move this Court to stay these proceedings until the resolution of Defendants’ appeal of this Court’s March 16, 2018 order remanding these proceedings to the Superior Court of the State of California (No. 17-cv-04929, ECF No. 223; No. 17-cv-04934, ECF No. 207; No. 17-cv-04935, ECF No. 208) (the “Remand Order”). Defendants filed their notice of appeal on March 26, 2018. No. 17-cv-04929, ECF No. 232; No. 17-cv-04934, ECF No. 216; No. 17-cv-04935, ECF No. 217.

By way of this Motion, Defendants seek an order staying these proceedings, including, *inter alia*, staying the Clerk of the Court from mailing the Remand Order to the Superior Court of the State of California, until final resolution of Defendants’ appeal. Absent a stay, potentially unnecessary litigation—including potentially inconsistent rulings, as well as litigation’s attendant costs and burdens on the parties and the courts—will proceed in state court even though the Ninth Circuit may issue a ruling effectively nullifying those proceedings. All applicable factors to be considered by this Court weigh in favor of a stay.

This Motion is based upon this Notice of Motion and Motion to Stay, the Memorandum of Points and Authorities in support of the Motion, the papers on file in this case, any oral argument that may be heard by the Court, and any other matters that the Court deems appropriate.

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\* This Notice of Motion and Motion to Stay is submitted subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

March 26, 2018

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**TABLE OF AUTHORITIES**

**Cases**

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3 *Alliance for the Wild Rockies v. Cottrell*,

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5 *Am. Elec. Power Co., Inc. v Connecticut*,

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7 *Brown v. Wal-Mart*,

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9 *Cabalce v. Thomas E. Blanchard & Assocs., Inc.*,

10 797 F.3d 720 (9th Cir. 2015).....3, 12

11 *Cal. Dump Truck Owners Ass’n v. Nichols*,

12 784 F.3d 500 (9th Cir. 2015).....10

13 *Carter v. Evans*,

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15 *In re Cintas Corp. Overtime Pay Arbitration Litig.*,

16 2007 WL 1302496 (N.D. Cal. May 2, 2007) .....6

17 *Citibank, N.A. v. Jackson*,

18 2017 WL 4511348 (W.D.N.C. Oct. 10, 2017).....14, 15

19 *Clark v. Kempton*,

20 593 Fed. App’x 667 (9th Cir. 2015).....6

21 *Dalton v. Walgreen Co.*,

22 2013 WL 2367837 (E.D. Mo. May 29, 2013).....14, 15

23 *Decatur Hosp. Auth. v. Aetna Health, Inc.*,

24 854 F.3d 292 (5th Cir. 2017).....1, 4

25 *In re Friedman*,

26 2011 WL 1193470 (D. Ariz. Mar. 29, 2011) .....8

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*Goncalves ex rel. Goncalves v. Rady’s Children’s Hosp. San Diego*,

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*Grable & Sons Metal Prods., Inc. v. Darue Eng’g. & Mfg.*,

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*Hiken v. Dep’t of Def.*,

2012 WL 1030091 (N.D. Cal. Mar. 27, 2012).....13

*Jacks v. Meridian Res. Co., LLC*,

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1 *Kircher v. Putnam Funds Trust*,  
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3 *Krangel v. Gen. Dynamics Corp.*,  
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5

6 *Landis v. N. Am. Co.*,  
299 U.S. 248 (1936).....2

7 *Leiva-Perez v. Holder*,  
640 F.3d 962 (9th Cir. 2011).....3, 14

8

9 *Lu Junhong v. Boeing Co.*,  
792 F.3d 805 (7th Cir. 2015).....1, 4, 5

10 *Manier v. Medtech Prods., Inc.*,  
29 F. Supp. 3d 1284 (S.D. Cal. 2014).....2

11

12 *Mays v. City of Flint, Mich.*,  
871 F.3d 437 (6th Cir. 2017).....1, 4

13 *McCullough v. Evans*,  
600 Fed. App’x 577 (9th Cir. 2015).....6

14

15 *Native Vill. of Kivalina v. ExxonMobil Corp.*,  
696 F.3d 849 (9th Cir. 2012).....7, 8

16 *Nken v. Holder*,  
556 U.S. 418 (2009).....3

17

18 *Northrop Grumman Tech. Servs., Inc. v. DynCorp Int’l LLC*,  
2016 WL 3346349 (E.D. Va. June 16, 2016) .....2, 13, 14, 15

19 *Patel v. Del Taco*,  
446 F.3d 996 (9th Cir. 2006).....5, 6

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21 *Providence Journal Co. v. Fed. Bureau of Investigation*,  
595 F.2d 889 (1st Cir. 1979).....13

22 *Raskas v. Johnson & Johnson*,  
2013 WL 1818133 (E.D. Mo. Apr. 29, 2013).....14, 15

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24 *Reed v. Fina Oil & Chemical Co.*,  
995 F. Supp. 705 (E.D. Tex. 1998) .....11

25 *Ruppel v. CBS Corp.*,  
701 F.3d 1176 (7th Cir. 2012).....12

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27 *Savoie v. Huntington Ingalls, Inc.*,  
817 F.3d 457 (5th Cir. 2016).....10, 11

28 *Steel Co. v. Citizens for a Better Env’t*,  
523 U.S. 83 (1998).....9

1 *U.S. Bank Nat. Ass’n v. Azam*,  
 2 582 Fed. App’x 710 (9th Cir. 2014).....6  
 3 *United States v. Real Prop. & Improv. Located at 2366 San Pablo Ave., Berkeley, Cal.*,  
 4 2015 WL 525711 (N.D. Cal. Feb. 6, 2015) .....15  
 5 *In re Valley Health Sys.*,  
 6 584 Fed. App’x 477 (9th Cir. 2014).....12  
 7 *Virginia v. United States*,  
 8 74 F.3d 517 (4th Cir. 1996).....10  
 9 *Watson v. Phillip Morris Cos., Inc.*,  
 10 551 U.S. 142 (2007).....12  
 11 *Winters v. Diamond Shamrock Chem. Co.*,  
 12 149 F.3d 387 (5th Cir. 1998).....11  
 13 *Yamaha Motor Corp., U.S.A. v. Calhoun*,  
 14 516 U.S. 199 (1996).....5  
 15  
 16 **Statutes**  
 17 28 U.S.C. § 1292 .....2, 5  
 18 28 U.S.C. § 1441 .....4, 5, 6  
 19 28 U.S.C. § 1442 .....1, 2, 3, 4, 5, 6  
 20 28 U.S.C. § 1447 .....1, 2, 3, 4, 5, 6, 13  
 21 43 U.S.C. § 1349 .....10  
 22  
 23 **Other Authorities**  
 24 Appellants’ Opening Brief, *Patel v. Del Taco, Inc.*, 2004 WL 3250818 (Dec. 21, 2004).....6  
 25  
 26 **Rules**  
 27 9th Cir. R. 27-2 .....2  
 28 9th Cir. R. 35-1 .....6  
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**Treatises**  
 9 J. Moore & B. Ward, *Moore’s Federal Practice* ¶ 110.25 (2d ed. 1995) .....5  
 14C Wright et al., *Federal Practice & Procedure* § 3726 (2d ed.) (updated Apr. 2017).....10  
 15A Wright et al., *Federal Practice & Procedure* § 3914.11 (2d ed.) (updated Apr. 2017).....1, 5

1 16C Wright et al., Federal Practice & Procedure § 3929 (2d ed.) (updated Apr. 2017).....5

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**MEMORANDUM OF POINTS AND AUTHORITIES**<sup>1</sup>

**I. INTRODUCTION**

Less than one month before this Court ordered these cases back to state court for lack of federal jurisdiction, Judge Alsup declined to remand nearly identical claims. As Judge Alsup concluded, “the scope of the worldwide predicament [addressed in these cases] demands the most comprehensive view available, which in our American court system means our federal courts and our federal common law.” No. 17-cv-06011, ECF No. 134 (“Alsup Order”) at 5. And now that the plaintiffs have decided *not* to seek interlocutory appeal of Judge Alsup’s ruling, those cases will proceed in federal court. Thus, this Court’s Remand Order provides the only avenue for immediate appellate review of these important and complex questions of federal jurisdiction.

Although appellate review of remand orders is typically unavailable under 28 U.S.C. § 1447(d), an appeal as-of-right *is* available where, as here, removal was based in part on the federal officer removal statute, Section 1442. Moreover, on appeal, the Ninth Circuit has jurisdiction to review the entire Remand Order, including the other grounds for removal. *See Lu Junhong v. Boeing Co.*, 792 F.3d 805, 811 (7th Cir. 2015); *Decatur Hosp. Auth. v. Aetna Health, Inc.*, 854 F.3d 292, 296 (5th Cir. 2017); *Mays v. City of Flint, Mich.*, 871 F.3d 437, 442 (6th Cir. 2017); *see also* 15A Wright et al., *Federal Practice & Procedure* § 3914.11 (2d ed.) (updated Apr. 2017) (“Review should . . . be extended to all possible grounds for removal underlying the order.”) (surveying the case law on this point). The appeal of this Court’s Remand Order will therefore present the Ninth Circuit with critical questions of federal jurisdiction that will affect global warming-related claims nationwide, including: (1) whether nuisance claims addressing the national and international phenomenon of global warming are necessarily governed by federal common law; and (2) if so, whether federal courts retain jurisdiction over such federal common law claims notwithstanding Congressional displacement of federal common law remedies.

In entering their divergent remand orders, *both* this Court and Judge Alsup recognized the

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<sup>1</sup> This motion is submitted subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

1 critical importance of the jurisdictional issues at stake in these cases, as well as the substantial bene-  
 2 fits of immediate appellate review. Judge Alsup certified his order for interlocutory review under  
 3 Section 1292 *sua sponte*, noting that “the issue of whether plaintiffs’ nuisance claims are removable  
 4 on the ground that such claims are governed by federal common law” is “a controlling question of  
 5 law as to which there is substantial ground for difference of opinion and that its resolution by the  
 6 court of appeals will materially advance the litigation.” Alsup Order at 8–9. And this Court stayed  
 7 its Remand Order for 42 days so the parties could “address[] the propriety of a stay pending appeal.”<sup>2</sup>  
 8 Remand Order at 5. Given the global implications of the lawsuits and the billions of dollars at stake,  
 9 it would make no sense for both sets of cases to proceed simultaneously, with one set in state court  
 10 and one set in federal court. Indeed, if the remand is carried out, there is a “real chance that [Defend-  
 11 ants’] right to meaningful appeal will be permanently destroyed by an intervening state court judg-  
 12 ment.” *Northrop Grumman Tech. Servs., Inc. v. DynCorp Int’l LLC*, 2016 WL 3346349, at \*4 (E.D.  
 13 Va. June 16, 2016).

14 In short, these cases “raise national and perhaps global questions,” Remand Order at 5, that  
 15 should be decided by the Ninth Circuit to avoid piecemeal litigation in state and federal court. A stay  
 16 of the Remand Order pending appeal is the only way to ensure the uniformity these cases demand.<sup>3</sup>

## 17 II. LEGAL STANDARD

18 District courts have the inherent power to stay proceedings pending before them. *See Landis*  
 19 *v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). This includes the authority to stay remand orders pend-  
 20 ing appeal. *See, e.g., Manier v. Medtech Prods., Inc.*, 29 F. Supp. 3d 1284, 1287 (S.D. Cal. 2014). In  
 21 deciding whether to enter a stay, courts consider the following factors: “(1) whether the stay appli-  
 22 cant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant

23 \_\_\_\_\_  
 24 <sup>2</sup> This Court also offered the parties an opportunity to address “whether the matter should be certi-  
 25 fied for interlocutory appeal.” Remand Order at 5. Section 1292 certification is not needed in this  
 26 case, however, because Defendants have a right to appeal under 1447(d) because they removed under  
 27 Section 1442. Also, if the Remand Order, or any issues therein, were determined *not* to be reviewable  
 on appeal due to Section 1447(d), Section 1292 certification would not overcome the bar to appel-  
 late review. *See Krangel v. Gen. Dynamics Corp.*, 968 F.2d 914, 914 (9th Cir. 1992) (per curiam)  
 (“We hold that 28 U.S.C. § 1447(d) bars this court from granting review under section 1292(b).”).

28 <sup>3</sup> At minimum, the Court should extend the temporary stay to preserve Defendants’ right to seek a  
 prompt stay from the Ninth Circuit. *See* 9th Cir. R. 27-2 (where district court stays order pending  
 disposition of application for stay in the Ninth Circuit, such application must be filed within 7 days).

1 will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the  
 2 other parties interested in the proceeding; and (4) where the public interest lies.” *Leiva-Perez v.*  
 3 *Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (per curiam) (quoting *Nken v. Holder*, 556 U.S. 418, 434  
 4 (2009)). To establish that they are “likely to succeed on the merits,” Defendants need show only that  
 5 their appeal raises “serious legal questions”; Defendants “need not demonstrate that it is more likely  
 6 than not that they will win on the merits.” *Id.* at 966–68. The Ninth Circuit also uses the following  
 7 “essentially interchangeable” formulations for satisfying this prong: a “substantial case on the mer-  
 8 its,” a “reasonable probability” of success, or a “fair prospect” of success. *Id.* at 967–68. While  
 9 “[t]he first two factors . . . are the most critical,” *Nken*, 556 U.S. at 434, the Ninth Circuit balances  
 10 each of these factors using a flexible “sliding scale” approach such that ““a stronger showing of one  
 11 element may offset a weaker showing of another.”” *See Leiva-Perez*, 640 F.3d at 964 (quoting *Alli-*  
 12 *ance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

### 13 **III. ARGUMENT**

#### 14 **A. Defendants’ Appeal Raises Many Serious Legal Questions About Federal Jurisdiction** 15 **Over Global Warming-Related Nuisance Claims**

16 Defendants’ appeal undoubtedly raises serious legal questions regarding this Court’s subject  
 17 matter jurisdiction—complex and novel issues that have already divided two jurists in this district.  
 18 Moreover, Defendants’ appeal of this Court’s remand order allows the Ninth Circuit to address these  
 19 issues *now*, before these cases go back to state court, raising the risk of inconsistent outcomes in these  
 20 cases and the nearly identical cases being litigated on the merits before Judge Alsup.

##### 21 **1. This Court’s Remand Order Is Appealable As Of Right**

22 Defendants have a clear right to appeal the Remand Order because they removed these cases  
 23 under the Federal Officer Removal Statute, 28 U.S.C. § 1442. ECF No. 1 at 1 (San Mateo). While  
 24 normally “[a]n order remanding a case to the State court from which it was removed is not reviewa-  
 25 ble on appeal,” an “order remanding a case to the State court from which it was removed pursuant to  
 26 section 1442 or 1443 of this title *shall be* reviewable by appeal or otherwise.” 28 U.S.C. § 1447(d)  
 27 (emphasis added); *see Cabalce v. Thomas E. Blanchard & Assocs., Inc.*, 797 F.3d 720, 727 n. 1 (9th  
 28 Cir. 2015) (“Because this case was removed from state court pursuant to 28 U.S.C. § 1442, we have  
 jurisdiction to review the order remanding the action to state court.”).

1 On appeal, the Ninth Circuit may consider all bases for removal advanced by the removing  
2 parties. The plain language of 28 U.S.C. § 1447(d) authorizes review of the *order* remanding a case  
3 removed under Section 1442, not a portion of the order. 28 U.S.C. § 1447(d) (“An *order* remanding  
4 a case to the State court from which it was removed is not reviewable on appeal or otherwise, except  
5 that an *order* remanding a case to the State court from which it was removed pursuant to section 1442  
6 or 1443 of this title shall be reviewable by appeal or otherwise.”) (emphasis added); *see also Kircher*  
7 *v. Putnam Funds Trust*, 547 U.S. 633, 641 n.8 (2006) (“Congress has, when it wished, expressly  
8 made 28 U.S.C. § 1447(d) inapplicable to particular remand *orders*.”) (emphasis added).

9 As the Seventh Circuit held in a thorough and well-reasoned opinion based on the plain lan-  
10 guage of Section 1447(d), “[t]o say that a district court’s ‘order’ is reviewable is to allow appellate  
11 review of the *whole* order, not just of particular issues or reasons.” *Lu Junhong*, 792 F.3d at 811.  
12 The court further noted that “[i]f we go beyond the text of § 1447(d) to the reasons that led to its en-  
13 actment, we reach the same conclusion” because Section 1447(d) “was enacted to prevent appellate  
14 delay in determining where litigation will occur.” *Id.* at 813 (citing *Kircher*, 547 U.S. at 640). And  
15 “[s]ince the suit must be litigated somewhere, it is usually best to get on with the main event.” *Id.*  
16 “The marginal delay from adding an extra issue to a case where the time for briefing, argument, and  
17 decision has already been accepted is likely to be small.” *Id.*

18 The Fifth and Sixth Circuits are in agreement that the entire remand order is appealable under  
19 these circumstances. In *Decatur Hospital Authority*, the Fifth Circuit expressly adopted the Seventh  
20 Circuit’s reasoning: “Like the Seventh Circuit, ‘[w]e take both Congress and *Kircher* at their word in  
21 saying that, if appellate review of an ‘order’ has been authorized, that means review of the ‘order.’  
22 Not particular reasons *for* an order, but the order itself.” 854 F.3d at 296 (quoting *Lu Junhong*, 792  
23 F.3d at 812). And in *Mays*, the Sixth Circuit held that where an “appeal of the remand order is au-  
24 thorized by 28 U.S.C. § 1447(d) because the . . . Defendant[] removed the case under 28 U.S.C.  
25 § 1442,” the court’s “jurisdiction to review the remand order also encompasses review of the district  
26 court’s decision on . . . alternative ground[s] for removal [such as] 28 U.S.C. § 1441.” 871 F.3d at  
27 442 (citing *Lu Junhong*, 792 F.3d at 811–13). In addition, the leading treatise on federal jurisdiction  
28

1 agrees that appellate review of a remand order made reviewable under § 1447(d) “should . . . be extended to all possible grounds for removal underlying the order. Once an appeal is taken there is very  
2 little to be gained by limiting review[.]” 15A Wright et al., Federal Practice & Procedure § 3914.11.  
3 In short, “once Congress has authorized appellate review of a remand order—as it has authorized review of suits removed on the authority of § 1442—a court of appeals has been authorized to take the  
4 time necessary to determine the right forum.” *Lu Junhong*, 792 F.3d at 813.  
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7 The Supreme Court has reached the same conclusion in the directly analogous context of interlocutory review under 28 U.S.C. § 1292(b). *See Yamaha Motor Corp., U.S.A. v. Calhoun*, 516  
8 U.S. 199, 205 (1996). In *Yamaha*, the Court observed that “the text of § 1292(b) indicates” that “appellate jurisdiction applies to the *order* certified to the court of appeals, and is not tied to the particular  
9 question formulated by the district court.” *Id.* at 205. Taking that language at face value, the  
10 Court explained that “the appellate court may address any issue fairly included within the certified order because ‘it is the *order* that is appealable, and not the controlling question identified by the district  
11 court.’” *Id.* (quoting 9 J. Moore & B. Ward, Moore’s Federal Practice ¶ 110.25[1], p. 300 (2d ed. 1995)); *see also* 16C Wright et al., Federal Practice & Procedure § 3929 (“[T]he court of appeals  
12 may review the entire order, either to consider a question different than the one certified as controlling or to decide the case despite the lack of any identified controlling question.”). The Court’s reasoning in *Yamaha* applies with equal force to Section 1447(d), which likewise authorizes appellate  
13 review of remand “orders” in cases removed under Section 1442.<sup>4</sup>  
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20 The Ninth Circuit has not yet considered the scope of review of a remand order in a case removed, in part, under section 1442. It has, however, briefly addressed the issue in a case predating  
21 the Removal Clarification Act of 2011, which authorized review of remand orders in cases removed under Section 1442. In *Patel v. Del Taco*, 446 F.3d 996 (9th Cir. 2006), the court held, without any  
22 reasoning or analysis, that it “lack[ed] jurisdiction to review the remand order based on § 1441,” even  
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25 <sup>4</sup> Nevertheless, at least one other court has “come to a contrary conclusion.” *Lu Junhong*, 792 F.3d at 811 (citing *Jacks v. Meridian Res. Co., LLC*, 701 F.3d 1224, 1229 (8th Cir. 2012), which held that Section 1447(d) precluded it from reviewing whether removal was proper under federal common law, even though the case was also removed under § 1442 and CAFA). However, “*Jacks* did not discuss the significance of the statutory reference to review of an ‘order,’” and neither party in *Jacks*  
26 “made a coherent argument” as to the reviewability of the entire order. *Lu Junhong*, 792 F.3d at 812.  
27  
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1 though it had “jurisdiction to review the remand order based on 28 U.S.C. § 1443(1).” *Id.* at 998.<sup>5</sup>  
 2 *Patel* is not controlling here, however, for several reasons. First, *Patel* did not involve appeal of a  
 3 remand order from a case removed under section 1442, but dealt exclusively with removal under Sec-  
 4 tion 1443. *Id.* at 998–99. Second, the defendants in *Patel* removed plaintiff’s petition to confirm ar-  
 5 bitration solely under Section 1443—they did not invoke any other federal statute in their notice of  
 6 removal. *Id.* at 998; see Appellants’ Opening Brief (“AOB”), *Patel v. Del Taco, Inc.*, 2004 WL  
 7 3250818 (Dec. 21, 2004) (“[T]his case was not removed from state court on the basis of federal  
 8 question jurisdiction. Rather it was removed under the specific grant given by Congress under 28  
 9 U.S.C. § 1443(1).”).<sup>6</sup> And, third, the defendants in *Patel* did not argue that review of the entire re-  
 10 mand order was authorized by the plain language of Section 1447(d). See AOB, 2004 WL 3250818.  
 11 In short, the question whether Section 1447(d) authorizes review of the entire remand “order” in  
 12 cases removed under Section 1442 was neither argued nor presented in *Patel*, and intervening law—  
 13 the Removal Clarification Act of 2011—makes *Patel* an outdated outlier in any event.<sup>7</sup>

## 14 2. There Are Several Compelling Grounds For Federal Jurisdiction

15 With the entire Remand Order before the Ninth Circuit, Defendants have a substantial likeli-  
 16 hood of success on several removal grounds, including the very issues of federal common law juris-  
 17 diction that divided two judges in this district.

18 *First*, as Judge Alsup’s order denying remand confirms, Defendants have a “reasonable prob-  
 19 ability” of demonstrating that removal was proper under Section 1441 because Plaintiffs’ claims are

20 <sup>5</sup> *Patel* has been cited for that proposition in four subsequent decisions, all of them unpublished.  
 21 See *Clark v. Kempton*, 593 Fed. App’x 667, 668 (9th Cir. 2015); *U.S. Bank Nat. Ass’n v. Azam*, 582  
 22 Fed. App’x 710, 711 (9th Cir. 2014); *Carter v. Evans*, 601 Fed. App’x 527, 528 (9th Cir. 2015);  
*McCullough v. Evans*, 600 Fed. App’x 577, 578 (9th Cir. 2015).

23 <sup>6</sup> The propriety of removal under Section 1441 arose because, rather than filing a separate petition  
 24 of removal, the defendants “joined their removal petition to [a] federal civil rights complaint” they  
 25 had separately filed in federal court. *Patel*, 446 F.3d at 998. The defendants contended that “a basis  
 exists for removal under 28 U.S.C. §§ 1441(c) and 1367 since the state court petition was not re-  
 moved in and of itself but was joined to the federal question claims brought [directly in district court]  
 under 42 U.S.C. §§ 1981, 1983, 1985(3), and 3604[.]” AOB, *Patel*, 2004 WL 3250818.

26 <sup>7</sup> To the extent there is any doubt about the reviewability on appeal of the entire order, that ques-  
 27 tion is itself a substantial question of law on which the federal circuit courts are split—another reason  
 28 to grant a stay. See *In re Cintas Corp. Overtime Pay Arbitration Litig.*, 2007 WL 1302496, at \*2–3  
 (N.D. Cal. May 2, 2007) (granting stay where “there [was] a substantial circuit split on this jurisdic-  
 tional issue”). Indeed, the circuit split makes the issue ripe for *en banc* or Supreme Court review.  
 See Fed. R. App. P. 35(a)-(b); 9th Cir. L.R. 35-1; S. Ct. R. 10(a).

1 “necessarily governed by federal common law.” Alsup Order at 3. In *Am. Elec. Power Co., Inc. v*  
2 *Connecticut*, 564 U.S. 410 (2011) (“*AEP*”), an action also involving global warming-based nuisance  
3 claims, the Supreme Court reaffirmed that federal common law governs public nuisance claims in-  
4 volving “air and water in their ambient or interstate aspects.” *Id.* at 421–22 (2011) (citation omit-  
5 ted). Following *AEP*, the Ninth Circuit held that public nuisance claims seeking damages for rising  
6 sea levels resulting from global warming were properly brought under federal common law. *Native*  
7 *Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 855–56 (9th Cir. 2012) (“federal common law  
8 can apply to transboundary pollution suits”). Relying on these precedents, Judge Alsup concluded  
9 that, “[t]aking the complaints at face value, the scope of the worldwide predicament demands the  
10 most comprehensive view available, which in our American court system means our federal courts  
11 and our federal common law.” Alsup Order at 4–5.

12 Although this Court held that “federal common law does *not* govern [Plaintiffs’ claims],” Re-  
13 mand Order at 2, it did not disagree that the cases are inherently federal in nature. Indeed, the Court  
14 recognized that “plaintiffs in the current cases are seeking similar relief based on similar conduct” to  
15 the plaintiffs in *AEP* and *Kivalina*. *Id.* at 2. This Court thus apparently agrees that these cases *would*  
16 *be* governed by federal common in the absence of federal legislation displacing it. But whereas this  
17 Court held that Plaintiffs’ claims were entirely displaced by the Clean Air Act (“CAA”), *id.*, Judge  
18 Alsup concluded—for two independent reasons—that *AEP* and *Kivalina* “did not recognize the dis-  
19 placement of the [plaintiffs’] federal common law claims[.]” Alsup Order at 6.

20 First, according to Judge Alsup, the plaintiffs’ claims were distinguishable from the displaced  
21 claims in *AEP* and *Kivalina* because rather than directly targeting emissions, the plaintiffs had “fix-  
22 ated on an earlier moment in the train of industry, the earlier moment of production and sale of fossil  
23 fuels, not their combustion.” Alsup Order at 6. And although the CAA “spoke directly” to “domestic  
24 emissions of greenhouse gas,” the Act did not speak directly to the issue of fossil fuel extraction and  
25 production. *Id.* at 7. This Court disagreed, concluding that “*Kivalina* stands for the proposition that  
26 federal common law is not just displaced when it comes to claims against domestic sources of emis-  
27 sions but also when it comes to claims against energy producers’ contributions to global warming and  
28 rising sea levels.” Remand Order at 2.

1 Second, Judge Alsup held that, “unlike *AEP* and *Kivalina*, which sought only to reach *domestic*  
2 *conduct*, plaintiffs’ claims here attack behavior *worldwide*.” Alsup Order at 7 (emphasis added).  
3 Judge Alsup reasoned that because “some of the fuel produced by defendants” is consumed outside  
4 the United States, “greenhouse gases emanating from overseas sources are equally guilty (perhaps  
5 more so) of causing plaintiffs’ harm.” *Id.* “Yet these foreign emissions are out of the EPA and Clean  
6 Air Act’s reach[,]” and thus, Judge Alsup held, the “Clean Air Act does not provide a sufficient legis-  
7 lative solution to the nuisance alleged to warrant a conclusion that this legislation has occupied the  
8 field to the exclusion of federal common law.” *Id.* This Court apparently disagreed, holding that  
9 *AEP* “did not confine its holding about the displacement of federal common law to particular sources  
10 of emissions, and *Kivalina* did not apply [*AEP*] in such a limited way.” Remand Order at 2–3.

11 A stay is thus warranted because Defendants’ appeal presents the “serious legal question” of  
12 whether federal common law nuisance claims alleging that the defendants’ *worldwide extraction* of  
13 fossil fuels contributed to global warming are displaced by federal legislation addressing *domestic*  
14 *emissions*. See *Brown v. Wal-Mart*, 2012 WL 5818300, at \*3 (N.D. Cal. Nov. 15, 2012) (granting  
15 stay where the district courts were split); *In re Friedman*, 2011 WL 1193470 (D. Ariz. Mar. 29, 2011)  
16 (“Appellants have a reasonable chance of prevailing on appeal” given “split of trial court authority”).

17 Moreover, the appeal presents the related question of whether claims that would be governed  
18 by federal common law may be litigated under state law if Congress has displaced the otherwise con-  
19 trolling federal common law. Although this Court held that “these cases should not have been re-  
20 moved to federal court on the basis of federal common law that no longer exists,” Remand Order at 3,  
21 that is not how the Supreme Court or Ninth Circuit have described displacement. Rather, the Su-  
22 preme Court held in *AEP* that “the Clean Air Act and the EPA actions it authorizes displace any fed-  
23 eral common law right to seek abatement” of domestic greenhouse gas emissions, *id.* at 424, and thus  
24 that “federal judges may [not] set limits on greenhouse gas emissions in the face of a law empower-  
25 ing EPA to set the same limits,” *id.* at 429. See *Kivalina*, 696 F.3d at 857 (“Judicial power can afford  
26 no remedy unless a right that is subject to that power is present.”). *AEP* and *Kivalina* have thus de-  
27 scribed displacement as a limitation on the power of federal judges to award remedies—not as alter-  
28 ing the basic nature of the displaced claims or affecting the court’s jurisdiction. See *Kivalina*, 696

1 F.3d at 857 (“[D]isplacement of a federal common law right of action means displacement of reme-  
2 dies.”); *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998) (“It is firmly established in our  
3 cases that the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction”).  
4 Thus, even if Plaintiffs’ global warming claims *are* completely displaced—a disputed issue—there is  
5 a serious legal question about whether they can be governed by state law.

6 **Second**, there is a legitimate dispute as to whether Plaintiffs’ claims necessarily raise a federal  
7 issue by, *inter alia*, calling into question the balance struck by the federal government regarding regu-  
8 lation of carbon-producing energy sources. Under the “common-sense” inquiry set forth in *Grable &*  
9 *Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 312-13 (2005), this  
10 action raises substantial federal issues regarding, *inter alia*, the federal government’s foreign affairs  
11 powers and regulatory authority over fossil fuel production and emissions. *See* Defendants’ Joint Op-  
12 position to Motion to Remand, ECF No. 195 (San Mateo) (“Opp.”) at 14–28. As Defendants have  
13 explained, resolution of Plaintiffs’ claims necessarily requires interpreting federal statutes governing  
14 Defendants’ conduct, and adjudicating whether the federal agencies implementing those statutes  
15 struck the proper cost-benefit balance between promoting energy production, on the one hand, and  
16 protecting the environment, on the other. *See id.* at 17–21. Additionally, Plaintiffs’ allegations that  
17 Defendants misled regulators about the dangers of fossil fuels necessarily require adjudication of De-  
18 fendants’ disclosure obligations to those regulators under federal law, including under various federal  
19 statutes. *See id.* at 23–25; *see also* ECF No. 194 (arguing Plaintiffs’ claims present choice-of-law  
20 question governed exclusively by federal choice-of-law rules).

21 **Third**, there is a substantial question whether Plaintiffs’ claims are completely preempted by  
22 the CAA, which established a comprehensive regime for the regulation of emissions and which pro-  
23 vides the exclusive means of challenging federal regulatory actions. *See* Opp. at 30–31. Because this  
24 action effectively seeks to second-guess the federal government’s decisions as to regulation of green-  
25 house gas emissions, the CAA completely preempts Plaintiffs’ claims. *See id.* at 30–34. Although  
26 this Court held that the CAA’s savings clause “suggest[s] that Congress did not intend the federal  
27 causes of action under those statutes ‘to be exclusive,’” Remand Order at 3, the CAA’s cooperative  
28 federalism approach, which allows states to establish standards applicable within state boundaries, is

1 fully consistent with complete preemption of state law claims effectively challenging federal  
2 emissions standards. Opp. at 30–31; *see Cal. Dump Truck Owners Ass’n v. Nichols*, 784 F.3d 500,  
3 506 (9th Cir. 2015) (CAA “channel[s] review of final EPA action exclusively to the courts of  
4 appeals, regardless of how the grounds for review are framed” (quoting *Virginia v. United States*, 74  
5 F.3d 517, 523 (4th Cir. 1996))). Whether the CAA completely preempts Plaintiffs’ claims is, at  
6 minimum, a serious legal question supporting a stay.

7 **Fourth**, Defendants have a substantial argument that the Outer Continental Shelf Lands Act,  
8 (“OCSLA”), confers federal jurisdiction over this action. OCSLA gives federal district courts origi-  
9 nal jurisdiction over actions that “aris[e] out of, or in connection with . . . any operation conducted on  
10 the Outer Continental Shelf which involves exploration, development, or production of the minerals,  
11 of the subsoil and seabed of the [OCS].” 43 U.S.C. § 1349(b)(1). This Court superimposed a “but  
12 for” causation standard onto OCSLA jurisdiction, Remand Order at 4, but the statutory language says  
13 nothing of the sort. Plaintiffs allege that their injuries were caused by Defendants’ “extraction [and]  
14 production . . . of coal, oil and natural gas,” Compl. ¶ 3, a significant portion of which occurred on  
15 the OCS, *see* Opp. at 34–35. It would be remarkable and inexplicable for a complaint challenging the  
16 legality of *all* OCS activity not to be removable under OCSLA.

17 **Fifth**, there is a causal nexus between at least one of Plaintiffs’ claims and Defendants’ al-  
18 leged activities taken pursuant to a federal officer’s directions. Because “removal of the entire case is  
19 appropriate so long as a single claim satisfies the federal officer removal statute,” Defendants need  
20 not establish a causal nexus to each of Plaintiffs’ claims. *Savoie v. Huntington Ingalls, Inc.*, 817 F.3d  
21 457, 465 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 339 (2016); *see also* 14C Wright et al., Federal  
22 Practice & Procedure § 3726 (“Section 1442(a)(1) authorizes removal of the entire case even if only  
23 one of the controversies it raises involves a federal officer or agency”). Moreover, “the ‘hurdle  
24 erected by the [causal-connection] requirement is quite low,’” and the moving party “need show only  
25 that the challenged acts ‘occurred because of what they were asked to do by the Government.’” *Gon-*  
26 *calves ex rel. Goncalves v. Rady’s Children’s Hosp. San Diego*, 865 F.3d 1237, 1244–45 (9th Cir.  
27 2017) (alteration in original) (citations omitted).

28 As Defendants explained—and the Court has not found otherwise—Defendants extracted,

1 produced, distributed, advertised, and sold fossil fuels at the direction of federal officers. *See* Opp. at  
 2 41–48.<sup>8</sup> Plaintiffs’ strict liability design defect cause of action targets this *exact* conduct. *See* San  
 3 Mateo Compl. ¶ 218 (alleging that “Defendants . . . extracted, refined, . . . advertised, promoted,  
 4 and/or sold fossil fuel products”). The “causal nexus” requirement has thus been satisfied at least as  
 5 to the strict liability claim. *See Savoie*, 817 F.3d at 465–66 (finding a causal nexus to plaintiff’s strict  
 6 liability claim where defendant was compelled to use asbestos under its contract with the government  
 7 and the government exercised control to ensure such compliance). It is thus irrelevant whether some  
 8 of Plaintiffs’ *other* claims are “based on a wider range of conduct”—such as promotion, lobbying ac-  
 9 tivities, etc. Remand Order at 5.

10 Nor does the fact that Defendants conducted some of their extraction activities outside the  
 11 control of federal officers preclude the requisite “causal nexus.” In *Reed v. Fina Oil & Chemical Co.*,  
 12 995 F. Supp. 705 (E.D. Tex. 1998), for example, the plaintiff alleged harm due to exposure to a  
 13 chemical produced by the defendant from 1944 to 1979. Although the defendant had produced the  
 14 chemical under the direction of the federal government from 1944 to 1955—less than half the dura-  
 15 tion of the alleged misconduct—the court concluded that the “nexus present during those ten years is  
 16 sufficient to support § 1442(a)(1) removal.” *Id.* at 712. Similarly, in *Lalonde v. Delta Field Erec-*  
 17 *tion*, 1998 WL 34301466 (M.D. La. Aug. 6, 1998), the plaintiff alleged injury resulting from work he  
 18 performed from 1947 to 1976 on the defendant’s premises. *Id.* at \*1. The defendant presented evi-  
 19 dence that it had acted under the direction of the government from 1943 to 1955, *id.*, and the court  
 20 held that this 11-year window of government control established a “causal connection” between the

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21  
 22 <sup>8</sup> For example, the government commanded Chevron Corporation’s predecessor to extract oil from  
 23 Elk Hills during wartime, with the contract repeatedly emphasizing the government’s control over  
 24 such activities. *See* Opp. at 42–43. Additionally, Defendants operate under leases governed by the  
 25 OCSLA, pursuant to which the federal government dictates that Defendants *must* (i) extract fossil  
 26 fuels, (ii) sell fuel to certain identified entities, and (iii) provide minimum royalty payments. Opp. at  
 27 44. Courts have routinely held that these types of contractual obligations support federal officer re-  
 28 moval. *See* Opp. at 45–48 (discussing cases). Moreover, under its contracts with the Navy Exchange  
 Service Command, CITGO distributed, advertised, and sold fuels called for under the government’s  
 contractual requirements, which included fuel specifications, designated delivery quantities, and  
 Navy supervision through the analysis of the fuel and inspection of deliveries. Opp. at 45 (discussing  
 these Agreements); *see also Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 400 (5th Cir.  
 1998) (“the government’s detailed specifications . . . and . . . on-going supervision . . . demonstrate  
 that the defendants acted pursuant to federal direction and that a direct causal nexus exists”).

1 claims and the defendants' conduct, notwithstanding the two decades during which the defendant was  
2 not acting under the control of a federal officer. *Id.* at \*5–6.<sup>9</sup>

3 **Finally**, Defendants have raised a substantial issue as to whether bankruptcy removal was  
4 proper because these cases have a “close nexus” to one or more confirmed bankruptcy plans. *Opp.* at  
5 49. Although this Court held that there was not a “sufficiently close nexus between the plaintiffs’  
6 lawsuits” and the confirmed plans of Peabody Energy Corporation and Arch Coal, Inc., Remand Or-  
7 der at 5, the Bankruptcy Court has already been required to interpret Peabody’s bankruptcy plan in  
8 light of Plaintiffs’ claims. *Opp.* at 50.<sup>10</sup> Because “a close nexus” exists where “a court must interpret  
9 the bankruptcy plan and confirmation order to determine whether [plaintiffs’] claims were discharged  
10 or [plaintiffs] are enjoined from bringing suit,” the close nexus requirement is satisfied here. *In re*  
11 *Valley Health Sys.*, 584 Fed. App’x 477, 479 (9th Cir. 2014). Plaintiffs’ claims also have the requi-  
12 site nexus with countless other bankruptcy plans that are implicated by Plaintiffs’ claims, as well as  
13 plans implicated by the third-party claims that Defendants intend to assert should this action proceed.  
14 *See Opp.* at 51–52. Moreover, although this Court held that Plaintiffs “suits are aimed at protecting  
15 the public safety and welfare,” there is, at minimum, a serious legal question whether claims brought  
16 by Plaintiffs seeking “billions of dollars” in compensatory damages, plus untold “punitive and exem-

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18  
19 <sup>9</sup> The Court cited *Watson v. Phillip Morris Companies, Inc.*, 551 U.S. 142, 157 (2007), and  
20 *Cabalce*, 797 F.3d at 728, but neither case supports remand here. Remand Order at 5. In *Watson*, the  
21 defendant argued that it was operating under authority “delegated” by the FTC, but the Court found  
22 “no evidence of any delegation of legal authority from the FTC to the industry association to under-  
23 take testing on the Government agency’s behalf.” 551 U.S. at 156. Although there was “considera-  
24 ble regulatory detail and supervision,” the Court held there was “nothing that warrant[ed] treating the  
25 FTC/Philip Morris relationship as distinct from the usual regulator/regulated relationship.” *Id.* at  
26 157. Here, by contrast, Defendants have acted pursuant to detailed contracts with the government  
27 that helped “achieve an end [the government] would have otherwise used its own agents to com-  
28 plete”—i.e., the extraction of fossil fuels from federal lands and the production of fuel for the mili-  
29 tary. *See Ruppel v. CBS Corp.*, 701 F.3d 1176, 1182 (7th Cir. 2012). The Ninth Circuit’s decision in  
30 *Cabalce* is also inapposite, as there the record was “bereft” of any “factual support” for the defend-  
31 ant’s assertion that it was “operat[ing] under federal supervision or control.” 797 F.3d at 728. That is  
32 not the case here, where Defendants have submitted detailed evidence demonstrating federal supervi-  
33 sion and control over their extraction activities. ECF No. 1 Exs. C, D, F; ECF Nos. 195-6–195-13  
34 (Walton declaration and supporting exhibits).

<sup>10</sup> Arch and Plaintiffs entered into a stipulation providing that any action in the Peabody bank-  
ruptcy proceedings that results in dismissal of any of Plaintiffs’ claims against Peabody will also re-  
quire dismissal of those claims against Arch. *Opp.* at 50.

1 plary damages”—as well as “all profits Defendants obtained” from fossil fuel-related business con-  
 2 ducted since 1965, Compl. ¶¶ 235, 247—are shielded from removal by the public safety exception.

3 In short, Defendants’ appeal raises many serious legal questions.

4 **B. Defendants Will Suffer Irreparable Harm Absent A Stay**

5 Once the clerk mails the certified copy of the remand order to the State Court, “the State  
 6 Court may thereupon proceed with such case.” 28 U.S.C. § 1447(c). Absent a stay of the remand or-  
 7 der, the parties will therefore proceed simultaneously along at least three tracks: they will brief and  
 8 argue Defendants’ appeal of the remand order in the Ninth Circuit while litigating Plaintiffs’ nuisance  
 9 claims in three different state courts (at least until they could be coordinated before a single state  
 10 court)—all the while litigating nearly identical cases in federal district court before Judge Alsup (not  
 11 to mention the other nearly identical case pending in the Southern District of New York). This is ex-  
 12 actly the “patchwork” approach Judge Alsup explained “would be unworkable.” Alsup Order at 5.

13 Further, denying the stay motion could potentially render Defendants’ right to appeal hollow  
 14 if the state court undertakes to issue rulings on the merits. *Cf. Providence Journal Co. v. Fed. Bureau*  
 15 *of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979) (“Meaningful review entails having the reviewing  
 16 court take a fresh look at the decision of the trial court before it becomes irrevocable.”); *Hiken v.*  
 17 *Dep’t of Def.*, 2012 WL 1030091, at \*2 (N.D. Cal. Mar. 27, 2012) (balance of hardships tipped in fa-  
 18 vor of granting stay because right to appeal an order to disclose information “would become moot”  
 19 absent of a stay). Because any “intervening state court judgment or order could render the appeal  
 20 meaningless,” Defendants face “severe and irreparable harm if no stay is issued.” *Northrop Grum-*  
 21 *man*, 2016 WL 3346349, at \*4.

22 In addition, Defendants will be irreparably harmed if they are forced to litigate simultaneously  
 23 their federal appeal and the remanded state court actions. Even if Defendants’ appeal is expedited,  
 24 the proceedings in the Ninth Circuit will consume some substantial period of time. During that time,  
 25 the state courts would undoubtedly rule on various motions such as demurrers and discovery motions.  
 26 There is a concrete and substantial risk that these motions would be decided differently than they  
 27 would be in federal court. For example, Plaintiffs may argue that California state courts have differ-  
 28 ent pleading standards than federal courts, raising the possibility that the outcome of a demurrer in

1 state court would be different than a motion to dismiss in federal court. As a result, Defendants may  
2 be forced to engage in expensive and burdensome discovery in state court that would have been  
3 avoided had the case remained in federal court. There is no way to un-ring the bell as a practical mat-  
4 ter because Defendants are unlikely to recover much (if any) of their discovery costs from the gov-  
5 ernmental Plaintiffs in this case. Such unrecoverable expenses constitute quintessential irreparable  
6 harm. *See Raskas v. Johnson & Johnson*, 2013 WL 1818133, at \*2 (E.D. Mo. Apr. 29, 2013); *Citi-*  
7 *bank, N.A. v. Jackson*, 2017 WL 4511348, at \*2 (W.D.N.C. Oct. 10, 2017) (granting motion to stay  
8 remand and noting litigation costs would be avoided); *cf. Golden Gate Rest. Ass'n v. City & Cty. of*  
9 *S.F.*, 512 F.3d 1112, 1125 (9th Cir. 2008) (considering “otherwise avoidable financial costs” in irrep-  
10 arable harm analysis).

11 Moreover, if the Ninth Circuit ultimately concludes that Defendants properly removed this  
12 action, this Court would have to wrestle with the effects of state court rulings made while the Re-  
13 mand Order was on appeal. This would create a “rat’s nest of comity and federalism issues” that  
14 would need to be untangled if the Ninth Circuit reverses. *Northrop Grumman*, 2016 WL 3346349 at  
15 \*4. District courts routinely grant motions to stay remand orders pending appeal precisely because of  
16 the risk of inconsistent outcomes and other burdens posed by simultaneous state and federal court liti-  
17 gation. *See, e.g., id.* at \*3 (collecting cases); *Raskas*, 2013 WL 1818133, at \*2 (staying remand order  
18 due to risk of “inconsistent outcomes if the state court rules on any motions while the case is pend-  
19 ing” on appeal); *Dalton v. Walgreen Co.*, 2013 WL 2367837, at \*2 (E.D. Mo. May 29, 2013) (grant-  
20 ing stay to guard against “potential of inconsistent outcomes if the state court rules on any motions  
21 while the appeal is pending”).

### 22 **C. The Balance Of Harms Tilts Sharply In Defendants’ Favor**

23 “Where, as is the case here, the government is the opposing party,” the third and fourth stay  
24 factors (*i.e.*, harm to the opposing party and the public interest) “merge” and should be considered  
25 together. *See Leiva-Perez*, 640 F.3d at 970. Plaintiffs will not be harmed if the Court grants Defend-  
26 ants’ Motion. In fact, they will benefit from a stay. With a stay in place, Plaintiffs will avoid the  
27 same risk of harm from potentially inconsistent outcomes in remanded state court proceedings as De-  
28

1 defendants. *See Raskas*, 2013 WL 1818133 at \*2. Similarly, a stay would conserve Plaintiffs’ re-  
2 sources—financial and otherwise—by allowing them to litigate Defendants’ appeal without being  
3 saddled with simultaneous state court litigation. *See Dalton*, 2013 WL 2367837 at \*2 (“neither party  
4 would be required to incur additional expenses from simultaneous litigation”). Moreover, “conserv-  
5 ing judicial resources and promoting judicial economy” is a recognized ground for a stay, and a stay  
6 here would prevent the state courts from being burdened by potentially unnecessary litigation. *See*  
7 *Raskas*, 2013 WL 1818133 at \*2; *see also United States v. Real Prop. & Improv. Located at 2366*  
8 *San Pablo Ave., Berkeley, Cal.*, 2015 WL 525711, at \*5 (N.D. Cal. Feb. 6, 2015) (there is “a cogniza-  
9 ble public interest in promoting judicial economy”); *Citibank*, 2017 WL 4511348 at \*3.

10 Although proceedings in this case will be delayed pending appeal, Plaintiffs’ claimed ability  
11 to recover damages will not be prejudiced by the delay resulting from a stay. This is especially true  
12 given that a substantial amount of the damages Plaintiffs seek to recover would be compensation for  
13 purported costs that they have not yet incurred *and are not even allegedly expected to incur for dec-*  
14 *ades*. *See, e.g., San Mateo Compl.* ¶ 7 (sea level rise “*will occur*” (emphasis added)), *id.* ¶ 8  
15 (“[f]looding and storms *will become more frequent*” (emphasis added)). Assuming *arguendo* that  
16 such damages claims are even proper, a delay cannot possibly harm Plaintiffs with respect to dam-  
17 ages that have yet to materialize. Moreover, a delay cannot harm Plaintiffs in their pursuit of equita-  
18 ble relief to “abate” harms, *id.*, Prayer for Relief, which “will occur even in the absence of any future  
19 emissions,” *id.* ¶ 7, and which cannot be measurably exacerbated during a stay. And while “a stay  
20 would not permanently deprive [Plaintiffs] of access to state court,” Defendants “face[] a real chance  
21 that [their] right to meaningful appeal will be permanently destroyed by an intervening state court  
22 judgment.” *See Northrop Grumman*, 2016 WL 3346349, at \*4.

#### 23 **IV. CONCLUSION**

24 For the foregoing reasons, the Court should grant the Motion and stay the remand order pend-  
25 ing appeal. If the Court decides not to grant a stay pending remand, Defendants ask that it grant a  
26 temporary stay to preserve Defendants’ right to seek a stay from the Ninth Circuit.  
27  
28

1 March 26, 2018

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