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15 [*Additional Counsel Listed on Signature Page*]

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  
Related Case: No. 3:18-cv-450-VC  
Related Case: No. 3:18-cv-458-VC  
Related Case: No. 3:18-cv-732-VC

**DEFENDANTS' ADMINISTRATIVE  
MOTION TO CONFIRM STAY OF  
REMAND ORDER OR, IN THE  
ALTERNATIVE, TO DELAY REMAND;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

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

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

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

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

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

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

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

THE COUNTY OF SANTA CRUZ, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-450-VC

Plaintiff,

v.

CHEVRON CORP., et al,

Defendants.

THE CITY OF SANTA CRUZ, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-458-VC

Plaintiff,

v.

CHEVRON CORP., et al.,  
Defendants.

THE CITY OF RICHMOND, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-458-VC

Plaintiff,

v.

CHEVRON CORP., et al.,

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Defendants.

Case No. 3:18-cv-732-VC

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

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

PLEASE TAKE NOTICE THAT, pursuant to Civil Local Rule 7-11, Defendants will and hereby do move this Court to confirm that the stays imposed by its orders staying issuance of the remand orders “pending appeal,” Dkt. 240; *see also* Nos. 18-cv-450+, Dkt. 142, extend to the conclusion of any proceedings in the Supreme Court of the United States. In the alternative, if the Court determines that the current stays do not extend to proceedings before the Supreme Court, and if the Ninth Circuit denies Defendants’ pending motion to stay issuance of the mandate, Defendants request that the Court delay remanding these cases to state court pending disposition of a further motion to stay, which Defendants would file within 7 days of issuance of the mandate. Defendants were unable to obtain a stipulation to this administrative motion. *See* Declaration of Joshua D. Dick ¶ 3.

This Motion is based upon this Notice of Motion and Motion to Confirm 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.

August 10, 2020

Respectfully submitted,

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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.

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By: \*\*/s/ Theodore J. Boutrous

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\*\* Pursuant to Civ. L.R. 5-1(i)(3), the elec-  
tronic signatory has obtained approval from  
all other signatories

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

1  
2 Plaintiffs, California state and municipal entities, filed these actions against more than 30 en-  
3 ergy producers in California Superior Court seeking to hold them liable under state law for harms al-  
4 legedly attributable to global climate change. Defendants removed the cases to this Court on seven  
5 independent grounds. This Court granted Plaintiffs' motions to remand. *See* Dkt. 223. Recognizing  
6 that "there is substantial ground for difference of opinion" regarding the propriety of removal, how-  
7 ever, this Court certified its remand orders for interlocutory appeal under 28 U.S.C. § 1292(b) and  
8 "stay[ed] the remand orders . . . pending appeal." Dkt. 240; *see also* Nos. 18-cv-450+, Dkt. 142.

9 On May 26, 2020, the Ninth Circuit dismissed Defendants' appeal in substantial part. Citing  
10 28 U.S.C. § 1447(d), the Ninth Circuit held that it lacked jurisdiction to review the remand orders ex-  
11 cept insofar as they addressed the federal officer removal statute, which it concluded did not support  
12 removal. *County of San Mateo v. Chevron Corp.*, 960 F.3d 586, 598 (9th Cir. 2020). The Ninth Cir-  
13 cuit acknowledged, however, that there is a circuit conflict on the question whether it has jurisdiction  
14 to review the other grounds for removal. *Id.* at 596. The panel even conceded that, "[w]ere [it] writ-  
15 ing on a clean slate, [it] might conclude that [the other side of the conflict] provides a more persua-  
16 sive interpretation of § 1447(d)." *Id.* at 597. But the Ninth Circuit considered itself "bound" by Cir-  
17 cuit precedent reaching a contrary conclusion "until abrogated by an intervening higher authority."  
18 *Id.* at 598 (citing *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006)). On August 4, 2020, the  
19 Ninth Circuit denied rehearing en banc. Nos. 18-15499+ (9th Cir.), Dkt. 235.

20 Defendants intend to file a petition for writ of certiorari asking the Supreme Court to resolve  
21 the circuit conflict recognized by the Ninth Circuit in its opinion.<sup>2</sup> In the interim, Defendants request  
22 confirmation that this Court's orders "stay[ing] the remand orders . . . pending appeal," Dkt. 240 at 1;  
23 *see also* Nos. 18-cv-450+, Dkt. 142, remain in effect pending the disposition of this forthcoming peti-  
24 tion for certiorari.

25  
26 <sup>1</sup> This motion is submitted subject to and without waiver of any defense, affirmative defense, or  
27 objection, including personal jurisdiction, insufficient process, or insufficient service of process.

28 <sup>2</sup> At least one such petition for certiorari is currently pending before the Supreme Court and will  
likely be acted upon at the beginning of the Court's October Term. *See BP p.l.c. v. Mayor & City  
Council of Baltimore*, No. 19-1189 (distributed for Conference on Sept. 29, 2020).

1 Defendants believe this is the most natural interpretation of the Court’s orders, as the term  
2 “appeal” is generally understood to include not only direct appeals to intermediate appellate courts,  
3 but also discretionary review in the Supreme Court of the United States. *See* Black’s Law Dictionary  
4 (defining “appeal” as “[a] proceeding undertaken to have a decision reconsidered by a higher author-  
5 ity . . . . See CERTIORARI.”); *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1257–58 (Fed. Cir. 2008)  
6 (holding that district court’s “interpreting its order staying the injunction through any pending appeal  
7 to include a petition for certiorari to the Supreme Court” was “worthy of deference”). This interpre-  
8 tation is also most consistent with the concerns underlying this Court’s stay—namely, that the re-  
9 mand orders implicate “controlling questions of law as to which there is substantial ground for differ-  
10 ence of opinion,” the resolution of which “will materially advance the litigation.” Dkt. 240. Given  
11 the Ninth Circuit’s appellate-jurisdiction holding, no appellate court has yet weighed in on these  
12 “controlling questions of law.” Although Defendants thus believe that the terms of the current stay  
13 extend through Supreme Court proceedings, they respectfully request that the Court confirm their un-  
14 derstanding of the status of the current stay out of an abundance of caution.

15 Also out of an abundance of caution, Defendants are seeking a stay of the mandate in the  
16 Ninth Circuit. If the Ninth Circuit denies this motion, and if this Court determines that the current  
17 stay does not extend through proceedings in the Supreme Court, Defendants request that the Court  
18 delay remanding these cases until Defendants have filed, and this Court has ruled upon, a further mo-  
19 tion in this Court to stay proceedings pending the Supreme Court’s disposition of Defendants’ peti-  
20 tion for writ of certiorari. In the interest of facilitating prompt resolution of this issue, Defendants  
21 would file such a motion within 7 days of issuance of the mandate.

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23  
24 August 10, 2020

Respectfully submitted,

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\*\* Pursuant to Civ. L.R. 5-1(i)(3), the elec-  
tronic signatory has obtained approval from  
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16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

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

20 Plaintiff,

21 v.

22 CHEVRON CORP., et al.,

23 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  
Related Case: No. 3:18-cv-450-VC  
Related Case: No. 3:18-cv-458-VC  
Related Case: No. 3:18-cv-732-VC

**DECLARATION OF JOSHUA D. DICK IN  
SUPPORT OF DEFENDANTS'  
ADMINISTRATIVE MOTION TO  
CONFIRM STAY OF REMAND ORDER OR,  
IN THE ALTERNATIVE, TO DELAY  
REMAND**

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

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

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

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

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

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

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

THE COUNTY OF SANTA CRUZ, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-450-VC

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

THE CITY OF SANTA CRUZ, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-458-VC

Plaintiff,

v.

CHEVRON CORP., et al.,

Defendants.

THE CITY OF RICHMOND, a municipal corporation, individually and on behalf of THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. 3:18-cv-458-VC

Plaintiff,

v.

CHEVRON CORP., et al.,

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Defendants.

Case No. 3:18-cv-732-VC

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I, Joshua D. Dick, declare as follows:

1. I am an attorney at law admitted to practice before all of the Courts of the State of California and this Court. I am a Partner at Gibson, Dunn & Crutcher LLP and counsel for Defendant Chevron Corporation and Chevron U.S.A. Inc. in the above-captioned actions. I make this declaration upon personal knowledge and could and would competently testify to the matters below if called to do so.

2. This Declaration is filed pursuant to Local Rule 7-11(a), which requires that a motion for administrative relief “be accompanied by . . . either a stipulation under Civil L.R. 7-12 or by a declaration that explains why a stipulation could not be obtained.”

3. On August 7, 2020, I conferred with counsel for Plaintiffs (Matt Edling, a Partner at Sher Edling LLC) regarding Defendants’ Administrative Motion to Confirm Stay of Remand Order or, in the Alternative, to Delay Remand. Counsel for Plaintiffs stated that they would not stipulate to the motion. Accordingly, a stipulation under Civil Local Rule 7-12 could not be obtained.

August 10, 2020

Respectfully submitted,

By: /s/ Joshua D. Dick  
Joshua D. Dick



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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

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

Plaintiff,

v.

CHEVRON CORP., et al.,

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  
Related Case: No. 3:18-cv-450-VC  
Related Case: No. 3:18-cv-458-VC  
Related Case: No. 3:18-cv-732-VC

**[PROPOSED] ORDER TO CONFIRM STAY  
OF REMAND ORDER OR, IN THE  
ALTERNATIVE, TO DELAY REMAND**

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

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

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

3 Plaintiff,

4 v.

CHEVRON CORP., et al.,

5 Defendants.

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

6 THE COUNTY OF SANTA CRUZ,  
7 individually and on behalf of THE PEOPLE  
OF THE STATE OF CALIFORNIA,

8 Plaintiff,

9 v.

10 CHEVRON CORP., et al,

11 Defendants.

Case No. 3:18-cv-450-VC

13 THE CITY OF SANTA CRUZ, a municipal  
14 corporation, individually and on behalf of THE  
PEOPLE OF THE STATE OF CALIFORNIA,

15 Plaintiff,

16 v.

17 CHEVRON CORP., et al.,

18 Defendants.

Case No. 3:18-cv-458-VC

21 THE CITY OF RICHMOND, a municipal  
22 corporation, individually and on behalf of THE  
PEOPLE OF THE STATE OF CALIFORNIA,

23 Plaintiff,

24 v.

25 CHEVRON CORP., et al.,

26 Defendants.

Case No. 3:18-cv-732-VC

**[PROPOSED] ORDER**

1  
2 Having considered Defendants’ Administrative Motion to Confirm Stay of Remand Order or,  
3 in the Alternative, to Delay Remand, the Court hereby **GRANTS** Defendants’ motion. The Court  
4 confirms that the stays imposed by its orders staying issuance of the remand orders “pending appeal,”  
5 Dkt. 240; *see also* Nos. 18-cv-450+, Dkt. 142, extend through the conclusion of any proceedings in  
6 the Supreme Court of the United States.

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8 **It is so ordered.**

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10 Dated: \_\_\_\_\_

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13 Hon. Vince Chhabria  
14 United States District Judge  
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