UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

STATE OF MINNESOTA, by its Attorney General, Keith Ellison, Plaintiff, v. AMERICAN PETROLEUM INSTITUTE, EXXON MOBIL CORPORATION, EXXONMOBIL OIL CORPORATION, KOCH INDUSTRIES, INC., FLINT HILLS RESOURCES LP, FLINT HILLS PINE BEND, Defendants.	Case No. 20-cv-1636-JRT-HB

PLAINTIFF STATE OF MINNESOTA'S
OPPOSITION TO MOTION TO STAY

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I. INTRODUCTION

Plaintiff the State of Minnesota ("State") opposes Defendants' Motion to Stay Execution of the Remand Order Pending Appeal (Dkt. 88, "Motion"). Nothing has changed since the Court appropriately denied the Koch Defendants' similar motion to stay. *See* Memorandum Opinion and Order Granting Motion to Remand and Denying Motion to Stay (Dkt. 76, "Order") at 34–37; *also available at Minnesota v. Am. Petroleum Inst.*, No. CV 20-1636 (JRT/HB), 2021 WL 1215656 (D. Minn. Mar. 31, 2021), *appeal filed* (8th Cir. Apr. 5, 2021). Before reaching that conclusion, this Court analyzed Defendants' bases for removal and found them to be lacking—going so far as to characterize them as presenting a "bridge too far," "gravely overstate(d)," contrary to Supreme Court precedent, requiring an "exceptional logical leap," "highly speculative," lacking any "cognizable argument," and so on. *See* Order at 11–34. In short, Defendants' grounds for removal are meritless. The Court also considered stay factors such as the respective balance of harms, finding that the State would suffer more greatly should a stay be entered. *Id.* at 36–37. Thus, Defendants' latest attempt at a stay should likewise be denied.[1] Their attempt to resurrect the stay issue still does nothing to satisfy any of the factors this court already considered and rejected. *Compare id. with* Motion (new memorandum of law retreading same ground).

As is explained in more detail below, Defendants cannot seriously contend that they can demonstrate the "likelihood of success" on appeal that is necessary for a stay. The

[1] The State requests that the Court decide Defendants' Motion without oral argument in order to expedite proceedings.

scope of the Eighth Circuit's review will be limited, and although Defendants rely heavily on the recent decision *City of New York v. Chevron Corp.*, __ F.3d __, 2021 WL 1216541 (2d Cir. Apr. 1, 2021), it actually supports remand in this case. Most importantly, the Court has already rejected each argument Defendants proffer here in a detailed analysis on the merits. *See* Order at 11–34. Defendants also cannot demonstrate they will be irreparably injured absent a stay, while a stay would injure the State and would be contrary to the public interest. Finally, federal courts facing similar stay requests in cases around the country have universally denied them. Denial of a stay will simply maintain the status quo, which is to return this case to state court, where it belongs, all while Defendants' appeal proceeds in the Eighth Circuit.

II. BACKGROUND

The State sued Defendants in Minnesota state court in June 2020, asserting state-law claims for (1) violations of the Minnesota Consumer Fraud Act; (2) failure to warn; (3) fraud and misrepresentation; (4) violations of the Minnesota Deceptive Trade Practices Act; and (5) violations of the False Statement in Advertising Act. Complaint ¶¶ 184–242 (Dkt. 1-1, "Compl."). The State's claims rest on Defendants' campaign to deceive and mislead the public and consumers about the devastating impacts of climate change and its link to fossil fuels, which led to disastrous impacts caused by profligate and increased use of Defendants' products. *Id.* ¶¶ 2–6. Defendants improperly removed this state-court action to federal court in July 2020 based on grounds that have been consistently rejected by

federal courts nationwide in substantially similar climate deception cases.[2] *See* Notice of Removal (Dkt. 1, "NOR").

After the motion to remand was argued and submitted, the Koch Defendants requested that the Court stay its decision pending: (1) the U.S. Supreme Court's decision in *Baltimore*, No. 19-1189 (U.S.), which concerns solely the scope of appellate review of remand orders under 28 U.S.C. § 1447(d); and (2) the mere possibility that the Supreme Court may grant the petition for a writ of certiorari in *Oakland*, 969 F.3d 895. *See* Dkt. 58.

On March 31, 2021, this Court issued its Order granting the State's motion to remand. The Court joined a uniform chorus of other district and appellate courts in rejecting Defendants' removal arguments as to: (1) federal common law; (2) jurisdiction under *Grable & Sons Metal Products, Inc. v. Darue Eng. & Mf'g*, 545 U.S. 308 (2005); (3) the federal officer removal statute; (4) the Outer Continental Shelf Lands Act ("OCSLA");

[2] *See Cty. of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934, 937 (N.D. Cal. 2018) ("*San Mateo I*"), *aff'd in part, appeal dismissed in part*, 960 F.3d 586 (9th Cir. 2020), *reh'g en banc denied* (Aug. 4, 2020) ("*San Mateo II*"), *petition for cert. filed*, No. 20-884 (Jan. 4, 2021); *City of Oakland v. BP PLC*, 960 F.3d 570 (9th Cir. 2020), *opinion amended and superseded on denial of reh'g sub nom.*, 969 F.3d 895 (9th Cir. 2020) ("*Oakland*"), *petition for cert. filed*, No. 20-1089 (U.S. Jan. 8, 2021); *Mayor & City Council of Baltimore v. BP P.L.C.*, 388 F. Supp. 3d 538 (D. Md. 2019) ("*Baltimore I*"), *as amended* (June 20, 2019), *aff'd in part, appeal dismissed in part*, 952 F.3d 452 (4th Cir. 2020) ("*Baltimore II*"), *cert. granted*, 141 S. Ct. 222 (2020); *Bd. of Cty. Comm'rs of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 405 F. Supp. 3d 947 (D. Colo. 2019) ("*Boulder I*"), *aff'd in part, appeal dismissed in part*, 965 F.3d 792 (10th Cir. 2020) ("*Boulder II*"), *petition for cert. filed*, No. 20-783 (Dec. 8, 2020); *Rhode Island v. Chevron Corp.*, 393 F. Supp. 3d 142 (D.R.I. 2019) ("*Rhode Island I*"), *aff'd in part, appeal dismissed in part*, 979 F.3d 50 (1st Cir. 2020) ("*Rhode Island II*"), *petition for cert. filed*, No. 20-900 (Jan. 5, 2021); *Massachusetts v. Exxon Mobil Corp.*, 462 F. Supp. 3d 31 (D. Mass. 2020); *City & Cty. of Honolulu v. Sunoco LP*, No. 20-CV-00163-DKW, 2021 WL 531237 (D. Haw. Feb. 12, 2021) ("*Honolulu*"), *appeals filed*, Nos. 21-15313 & 21-15318 (9th Cir. Feb. 23, 2021).

(5) federal enclaves; (6) the Class Action Fairness Act ("CAFA"); and (7) diversity jurisdiction. *See generally* Order. The Court also denied the Koch Defendants' motion to stay, finding that *Baltimore* only addressed a narrow procedural question not at issue here, and that the potential grant of certiorari in *Oakland* was too speculative to warrant a stay. *See* Order at 36–37. In weighing the harms of a potential stay, the Court held "that the State would likely be more prejudiced by a stay than Defendants would be by proceeding" and "cho[se] to try to move the case along as quickly as possible." *Id*.

Denial of a stay remains appropriate, and the Court should deny Defendants' new Motion.

III. LEGAL STANDARD

"A stay is an intrusion into the ordinary processes of administration and judicial review and accordingly is not a matter of right, even if irreparable injury might otherwise result to the [movant]." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quotations and citation omitted). "Because a stay is not a matter of right, but rather an exercise of judicial discretion, the applicant bears the burden of showing that the circumstances justify an exercise of that discretion." *Brady v. Nat'l Football League*, 779 F. Supp. 2d 1043, 1046 (D. Minn. 2011) (quotations and citation omitted). This burden is "a heavy one" that, in most cases, will not be met. *Id*.; *see also Winston–Salem/Forsyth Cty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971) (Burger, C.J., as Circuit Justice) (motion to stay is "extraordinary relief" for which the moving party bears a "heavy burden.").

In deciding whether to grant a stay pending appeal, the Court must consider "four factors: '(1) whether the stay applicant has made a strong showing that he is likely to

succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *see also Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 607 (8th Cir. 2020). When the government is the party opposing the stay, the third and fourth factors merge. *Nken*, 556 U.S. at 435.

No stay may issue without a finding that the threatened harm to the moving party is truly "irreparable" and that such irreparable harm is at least probable. *See Nken*, 556 U.S. at 434–35 ("[S]imply showing some possibility of irreparable injury fails to satisfy the second factor . . . [because] the "possibility" standard is too lenient." (quotations and citation omitted)). "The essence of any stay pending appeal is irreparable harm—and whether the appellant (and stay applicant) would suffer *irreversible injury* if the decision at issue was not stayed pending the outcome of the appeal." *Brady*, 779 F. Supp. 2d at 1047 (citations omitted) (emphasis in original); *see also Planned Parenthood of Minn. v. Rounds*, 530 F.3d 724, 732 n.5 (8th Cir. 2008) (en banc) ("'The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies.'" (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07 (1959))). Eighth Circuit courts have denied stays when defendants could show harms that were only "theoretical," "speculative," or "primarily economic." *S. Dakota Network, LLC v. Twin City Fire Ins. Co.*, No. 4:16-CV-04031-KES, 2017 WL 11575316, at *3 (D.S.D. Dec. 21, 2017) (stay movant failed to show that "harm absent a stay is actual, not theoretical"); *Native Am. Council of Tribes v. Weber*, No. CIV. 09-4182-KES, 2013 WL 3923451, at *2 (D.S.D. July

29, 2013) ("[D]efendants' loss [was] primarily economic and the economic losses, if any, are speculative").[3]

IV. ARGUMENT

A. Defendants Have Not Made a Strong Showing That They Will Succeed on the Merits.

The first *Nken* factor asks "whether the stay applicant has made a strong showing that he is likely to succeed on the merits." *Nken*, 556 U.S. at 426. "It is not enough that the chance of success on the merits be better than negligible. . . . more than a mere possibility of relief is required." *Id.* at 434 (quotations omitted). This is the most important factor, although showing irreparable injury is also required. *See Org. for Black Struggle*, 978 F.3d at 607; *Brady v. Nat'l Football League*, 640 F.3d 785, 789 (8th Cir. 2011) ("*Brady II*"). There is no single, all-encompassing standard to determine whether a movant has shown a substantial case for relief, but "at a minimum, the movant is required to show 'serious questions going to the merits." *Knutson v. AG Processing, Inc.*, 302 F. Supp. 2d 1023, 1035 (N.D. Iowa 2004). Here, Defendants cannot demonstrate a likelihood of success for at least

[3] Defendants cite four district court cases granting stays, Motion at 5–6, all of which are distinguishable. In *Bledsoe v. Janssen Pharmaceutica*, the court granted a stay pending a potential transfer to a multi-district litigation proceeding. No. 05-2330, 2006 WL 335450, *1 (E.D. Mo. Feb. 13, 2006). No such motion is pending here. In the other three cases, the courts found a stay was warranted by either applying a "relaxed standard to the 'likelihood of success' requirement" exclusive to CAFA cases, *see Raskas v. Johnson & Johnson*, No. 4:12 CV 2174 JCH, 2013 WL 1818133, at *2 (E.D. Mo. Apr. 29, 2013), deeming a stay appropriate specifically "in light of the statutory scheme allowing immediate appeal of [CAFA] orders," *see Dalton v. Walgreen Co.*, No. 4:13 CV 603 RWS, 2013 WL 2367837, at *1 (E.D. Mo. May 29, 2013), or both, *see Lafalier v. Cinnabar Serv. Co.*, No. 10-CV-0005-CVETLW, 2010 WL 1816377, at *2 (N.D. Okla. Apr. 30, 2010). These CAFA-specific rationales do not apply here, however, as this case is not a class action lawsuit.

three reasons: first, the scope of review on appeal will likely be limited to federal officer jurisdiction; second, contrary to their assertions, the *City of New York* case in fact supports remand; and third, as this Court has already—and properly—found, Defendants' grounds for removal are meritless.

1. The Scope of Any Appeal Is Limited.

As a preliminary matter, the scope of Defendants' appeal to the Eighth Circuit will be limited to federal officer jurisdiction, and perhaps CAFA if the Circuit chooses to accept Defendants' appeal.

As to federal officer jurisdiction, the Eighth Circuit has held that its review under 28 U.S.C. § 1447(d) is limited to removal under the federal officer statute. *See Jacks v. Meridian Res. Co., LLC*, 701 F.3d 1224, 1229 (8th Cir. 2012). Defendants argue that despite the Eighth Circuit's holding in *Jacks*, "[t]here is good reason to believe" that the Supreme Court will find otherwise in the *Baltimore* appeal, No. 19-1189 (U.S.). *See* Motion at 8. Not so. Eight circuit courts have rejected the *Baltimore* defendants' interpretation of 28 U.S.C. § 1447(d). *See Rhode Island II*, 979 F.3d at 55 ("Though this is not a popularity contest, Rhode Island counts among its friends nearly all of the circuits that have weighed in on the topic and have limited appellate review to federal officer or civil rights removal.") (collecting cases). Given this overwhelming consensus, the Supreme Court is unlikely to overrule the Eighth Circuit's decision.

As to CAFA, Defendants' argument that they have "a right to seek review under CAFA, and Eighth Circuit precedent permits review of other grounds for removal in addition to CAFA," Motion at 8, is incorrect for at least two reasons. First, review of a

district court's order granting a motion to remand a class action—which this is not—is discretionary. *See* 28 U.S.C. § 1453(c)(1) ("a court of appeals *may* accept an appeal") (emphasis added); *Hargett v. RevClaims, LLC*, 854 F.3d 962, 965 (8th Cir. 2017) (holding that exercise of such discretion is left "to the informed discretion of the reviewing court" and accepting appeal only to address "a novel and important CAFA issue"). Second, the Eighth Circuit has explicitly held that the scope of appellate review under Section 1453 is limited to CAFA. *See Saab v. Home Depot U.S.A., Inc.*, 469 F.3d 758, 759 (8th Cir. 2006) ("[W]e must limit § 1453(c)'s review provisions to those class actions brought under CAFA.").

Thus, Defendants' arguments as to federal common law, *Grable* jurisdiction, OCSLA, enclaves, and diversity jurisdiction all depend on a triple inference. First, the Supreme Court would have to overturn the Eighth Circuit's jurisprudence interpreting 28 U.S.C. § 1447(d), or the Eighth Circuit would have to decide to grant Defendants' petition for an appeal under CAFA. Second, the Eighth Circuit would have to exercise its discretion to review issues in the Remand Order beyond federal officer jurisdiction, or overturn its own determination that the scope of review under CAFA is limited. Third, the Eighth Circuit would have to break with every other appellate court to date, adopt Defendants' arguments for removal, and reverse the Order. That is a long-shot at best, not a likelihood. Even if the Eighth Circuit *were* to review each basis for removal, however, Defendants have not made a strong showing that they will succeed on the merits of any of them.

2. The *City of New York* Decision Supports Remand.

Defendants' arguments in support of removal have now been rejected by seven district courts—including this Court—and four circuit courts, giving Defendants "[a] batting average of .000" in opposing remand of materially identical lawsuits. *City & Cty. of Honolulu v. Sunoco LP*, No. 20-CV-00163-DKW, 2021 WL 839439, at *2 n.3 (D. Haw. Mar. 5, 2021) ("*Honolulu* Stay Denial I"); *accord* Nos. 21-15313 & 21-15318, 2021 WL 1017392 (9th Cir. Mar. 13, 2021) ("*Honolulu* Stay Denial II"). To avoid this avalanche of adverse authority, Defendants rely on a recent Second Circuit decision, *City of New York*, in an attempt to inject new life into their arguments. However, even a passing read confirms that *City of New York* offers nothing on the federal jurisdiction analysis. If anything, the decision supports this Court's decision to remand.

In *City of New York*, the Second Circuit held that federal common law preempted New York City's state public nuisance, private nuisance, and trespass claims against fossil fuel companies, and that the displacement of the relevant federal common law by the Clean Air Act did not revive the state law claims. 2021 WL 1216541, at *5–12. In reaching its decision on these causes of action—which explicitly did not rest on defendants' deceptive and misleading marketing and for that reason (and others) differ materially from the State's causes of action here[4]—the Second Circuit panel expressly held that the reasoning of the

[4] *See, e.g.*, Brief for Appellant at 19, *City of New York v. BP P.L.C.*, No. 18-2188, 2018 WL 5905772 (2d Cir. Nov. 8, 2018) ("The particular theory of the claims asserted here assumes that Defendants' business activities have substantial social utility and does not hinge on a finding that those activities themselves were unreasonable or violated any obligation other than the obligation to pay compensation. Instead, the City asserts a

"fleet of cases" granting remand to state court in cases like this one "does not conflict with [its] holding." *Id.* at *8. The court instead distinguished its case from "the plaintiffs [that] brought state-law claims in state court" on the basis that "the City filed suit in federal court in the first instance." *Id*. Thus, *City of New York* answers a different question than the one before this Court, and in its own assessment provides no guidance here.

Indeed, *City of New York* supports this Court's decision to remand. Because that case was initiated in federal court and the decision appealed from was an order granting a motion to dismiss, rather than an order resolving a motion to remand, the court considered "the [defendants]' preemption defense on its own terms, not under the heightened standard unique to the removability inquiry." *See id.* It is axiomatic that ordinary preemption is a federal defense and does not provide a basis for removal. Order at 15–16; *see also infra* Part IV.A.3.i. Thus, the Second Circuit's treatment of federal common law as a matter of ordinary preemption is consistent with the many analogous decisions denying remand, *see supra* n.2. The Second Circuit's decision does not alter the analysis here, where the State filed state-law claims in state court, particularly given the long-standing and significant deference given to state courts to decide preemption issues on their own, lest "removal and dismissal unconstitutionally deprive the plaintiffs of the opportunity to make their case, and deprive [the State] of the right to vindicate its own non-preempted laws." *Lontz v. Tharp*, 413 F.3d 435, 442 (4th Cir. 2005) ("[The state court's] ability to determine its own

narrower theory that would require Defendants to pay for the severe harms resulting from their lawful and profitable commercial activities, rather than allowing them to force the City to bear all costs from those harms.").

jurisdiction is a serious obligation, and not something that federal courts may easily take for themselves."); *see also Grable*, 545 U.S. at 314 ("[A]rising-under jurisdiction to hear a state-law claim always raises the possibility of upsetting the state-federal line drawn (or at least assumed) by Congress."); *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 407 (1981) ("It would do violence to state autonomy were defendants able to remove state claims to federal court merely because the plaintiff *could have* asserted a federal claim based on the same set of facts underlying his state claim."); *Healy v. Ratta*, 292 U.S. 263, 270 (1934) ("Due regard for the rightful independence of state governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which the statute has defined."); *see also* Arthur R. Miller, *Artful Pleading: A Doctrine in Search of Definition*, 76 TEX. L. REV. 1781, 1783 (1998) ("[T]he well-pleaded complaint rule respects the power of the state courts to articulate and develop their own substantive law even when a federal issue may constitute an ingredient of a case.").[5]

3. Defendants Cannot Demonstrate a Likelihood of Success with Arguments this Court Has Already Found to Be Meritless.

In support of their argument that they are likely to succeed on the merits, Defendants largely re-hash the same arguments that they raised in opposition to the State's Motion to Remand—arguments that this Court already rejected. *See generally* Order (rejecting each

[5] The State does not concede that *City of New York* was correctly decided, nor that it will be adopted by any other court. *See, e.g.*, Prof. Dan Farber, "Appeals Court Nixes NYC Climate Lawsuit," LegalPlanet (Apr. 5, 2021), https://legal-planet.org/2021/04/05/appeals-court-nixes-nyc-climate-lawsuit (expressing "doubts about whether other courts will find the Second Circuit's analysis persuasive" in part because "establishing the existence of the federal common law one page only to abolish it on the next page seems awfully contrived.").

purported basis for jurisdiction, including federal common law, *Grable*, federal officer jurisdiction, OCSLA, federal enclaves, CAFA, and diversity). Defendants therefore cannot demonstrate a likelihood of success on appeal, and their Motion should be denied. Below, the State reiterates the reasons why Defendants' arguments fail on the merits.

i. Federal Common Law

Defendants' "federal common law" theory is meritless for reasons district courts and this Court have repeatedly identified.

First, and most fundamentally, the various areas of federal concern Defendants identify simply have nothing to do with the State's Complaint, which rests on traditional state-law product defect and consumer-protection claims. As this Court held, to find that the State's claims here are premised on interstate pollution, navigable waters, or foreign affairs would require the Court to "weave a new claim . . . out of the threads of the Complaint's statement of injuries." Order at 13; *accord Oakland*, 969 F.3d at 906–08; *Honolulu*, 2021 WL 531237, at *2 n.8; *Massachusetts*, 462 F. Supp. 3d at 40 n.6; *San Mateo I*, 294 F. Supp. 3d at 937; *Baltimore I*, 388 F. Supp. 3d at 555; *Boulder I*, 405 F. Supp. 3d at 963; *Rhode Island I*, 393 F. Supp. 3d at 149.

Moreover, "[e]ven if the Court could conjure a separate claim arising from the State's alleged environmental injuries that would fall within an area of federal common law, it still may not confer jurisdiction." Order at 15. The law is clear: well-pleaded state law claims are not federal claims; they arise under federal law for removal purposes only when they satisfy *Grable* or are completely preempted. *Id*. at 15–16; *see also Oakland*, 969 F.3d at 904–06. Despite Defendants' contentions, Motion at 10, the "artful pleading"

doctrine does not provide a free-floating, rudderless basis to declare that a plaintiff's claims simply are federal. As the Supreme Court has held, "[t]he artful pleading doctrine allows removal where federal law completely preempts an asserted state-law claim." *Rivet v. Regions Bank of La.*, 522 U.S. 470, 471 (1998). Thus, "complete preemption is a prerequisite for application of the 'artful pleading' doctrine." *Minnesota ex rel. Hatch v. Worldcom, Inc.*, 125 F. Supp. 2d 365, 373 (D. Minn. 2000).

Defendants' gestures toward interstate pollution, navigable waters, or foreign affairs here are at best attempts to argue ordinary preemption, *see City of New York*, 2021 WL 1216541, at *8, because complete preemption occurs only in the rare circumstance where "the pre-emptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987) (quotations omitted). A "case may not be removed to federal court on the basis of a federal defense, including the defense of [ordinary] pre-emption." *Id*. The Ninth Circuit and seven district courts, including this Court, have rejected Defendants' identical arguments in analogous cases for that reason. *See Oakland*, 969 F.3d at 906; *Baltimore I*, 388 F. Supp. 3d at 555; *Boulder I*, 405 F. Supp. 3d at 963–64; *see also* Order at 15–17; *Honolulu*, 2021 WL 531237 at *2 n.8; *Massachusetts*, 462 F. Supp. 3d at 43–44;

Rhode Island, 393 F. Supp. 3d at 148–49. Defendants have not and cannot demonstrate a likelihood of success on the merits here.[6]

ii. *Grable* Jurisdiction

Every court that has considered *Grable* jurisdiction in analogous cases has rejected it. *See Oakland*, 969 F.3d at 906–07; Order at 17–22; *Honolulu*, 2021 WL 531237, at *2 n.8; *Massachusetts*, 462 F. Supp. 3d at 44–45; *Rhode Island I*, 393 F. Supp. 3d at 150–51; *Boulder I*, 405 F. Supp. 3d at 964–68; *San Mateo I*, 294 F. Supp. 3d at 938; *Baltimore I*, 388 F. Supp. 3d at 558–61. *Grable* extends federal question jurisdiction only to state-law complaints where a federal issue is: "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Martinson v. Mahube-Otwa Cmty. Action P'ship, Inc.*, 371 F. Supp. 3d 568, 571, 574 (D. Minn. 2019). Here, Defendants cannot and will not prevail on any element, but the "necessarily raised" and "substantial" elements are clearly dispositive.

First, a federal issue is "necessarily raised" under *Grable* only when "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S.

[6] Defendants repeatedly refer to the Second Circuit's casual use of the term "artful pleading" as if it were an actual application of the artful pleading doctrine in the context of federal jurisdiction. *See* Motion at 2, 4, 11. It plainly was not. The Second Circuit did not invoke the doctrine, cite to any cases that involve the doctrine, or apply it to the complaint in that case. *City of New York*, 2021 WL 1216541, at *5, *11. Whatever the Second Circuit meant to achieve by its characterization of that complaint, by the court's own admission it was not that the case was removable. *See* Part IV.A.2, *supra*.

1, 28 (1983); *Great Lakes Gas Transmission Ltd. P'ship v. Essar Steel Minn. LLC*, 843 F.3d 325, 331 (8th Cir. 2016) ("Th[e *Grable*] rule applies only to a 'special and small category' of cases that present 'a nearly pure issue of law. . . .'" (quoting *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 699–700 (2006))). That means a removing defendant "should be able to point to the specific elements of [the plaintiff's] state law claims" that require proof under federal law. *Cent. Iowa Power Co-op v. Midwest Indep. Transmission Sys. Operator, Inc.*, 561 F.3d 904, 914 (8th Cir. 2009). Here, Defendants have not and cannot do so because all of the State's claims are pleaded under state law. No element of any claim requires proof of any federal question. As the Court found, "[t]he Complaint only requires a court to determine whether Defendants engaged in a misinformation campaign that ran afoul of Minnesota's consumer protection statutes and common law," and it does not depend on any federal regulations, international climate agreements, navigable waters, or constitutional questions. Order at 18–19.

Defendants' arguments that the State's claims "seek to upset the careful balance the federal government has struck between energy production and environmental protection" are unavailing. *See* Motion at 11 (citing *Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, 559 F.3d 772 (8th Cir. 2009)). In *Pet Quarters*, the plaintiff's claims required the court to determine the validity of the federal government's conduct not just the defendant's conduct. *Id.* at 779. The claim there was properly removed because it "directly implicate[d] actions taken by the [Securities and Exchange] Commission in approving the creation of the [program] and the rules governing it." *Id.* In contrast, here, there is no federal program dictating Defendants' false claims. As the Court found, "determining whether Defendants

engaged in a misinformation campaign in violation of Minnesota law does not require a court to second-guess Congress's priorities regarding energy production and environmental protection." Order at 18–19. Defendants have not, and cannot, demonstrate that a federal issue is "necessarily raised" under *Grable*.

Nor can Defendants show that a substantial federal issue is present here. A question may be "substantial" when it presents "a 'pure issue of law' that directly draws into question 'the constitutional validity of an act of Congress,' or challenges the actions of a federal agency, and a ruling on the issue is 'both dispositive of the case and would be controlling in numerous other cases.'" *Oakland*, 969 F.3d at 905 (citations omitted). "By contrast, a federal issue is not substantial if it is 'fact-bound and situation-specific.'" *Id.* (citations omitted). The State's claims here, like the plaintiffs' claims in *Oakland*, certainly do not turn on a "pure" issue of federal law and are deeply fact-bound and situation-specific. The issues here simply are not "substantial" under *Grable*.

Finally, the balance of state and federal responsibility strongly favors adjudication of these cases in state court, since the State seeks to enforce its own laws in its own courts, and product defect and consumer protection claims are squarely within the State's traditional police authority. As such, "federal court . . . jurisdiction over these areas of traditional state jurisdiction may disrupt the balance between state and federal judicial authority." Order at 22.

iii. Federal Officer Jurisdiction

Defendants' arguments as to federal officer jurisdiction largely "rehash old arguments already considered and rejected by the Court . . . [and] fail to present any new

law or facts demonstrating that the defendants are likely to succeed on their appeal." *Fed. Trade Comm'n v. Neiswonger*, No. 4:96-CV2225-SNLJ, 2008 WL 11434564, at *3 (E.D. Mo. Oct. 16, 2008). No serious legal issue is presented where the movant does not challenge any applicable legal standard and instead offers "essentially no argument as to how the Court's decisions on those questions were in error." *Pavek v. Simon*, No. 19-CV-3000 (SRN/DTS), 2020 WL 4013984, at *4 (D. Minn. July 16, 2020).

This Court properly joined multiple circuit courts and district courts in finding that "there does not appear to be any direction from or connection to the federal government related to the specific claims alleged here" and therefore Defendants did not "satisfy the low threshold of connection to or association with actions directed by the federal government." Order at 24; *see also Rhode Island II*, 979 F.3d at 59–60; *Baltimore II*, 952 F.3d at 466–68; *Honolulu*, 2021 WL 531237, at *6–7; *Boulder I*, 405 F. Supp. 3d at 976–77; *Rhode Island I*, 393 F. Supp. 3d at 152; *San Mateo I*, 294 F. Supp. 3d at 939. Defendants' rehash of arguments already considered and rejected by this Court does not demonstrate a likelihood of success on the merits, and their citation to *City of New York* cannot change the fact that "the relationship between [the State's misrepresentation] claims and any federal authority over a portion of certain Defendants' production and sale of fossil fuel products is too tenuous to support removal under § 1442." *Baltimore II*, 952 F.3d at 468.

iv. OCSLA

As to OCSLA, Defendants again rely on the same arguments that this Court has already rejected. *See* Motion at 15–16. And again, every court that has considered

Defendants' OCSLA jurisdiction arguments has also rejected them. *See Honolulu*, 2021 WL 531237, at *3; *Boulder I*, 405 F. Supp. 3d at 978; *Rhode Island I*, 393 F. Supp. 3d at 151–52; *Baltimore I*, 388 F. Supp. 3d at 566; *San Mateo I*, 294 F. Supp. 3d at 938–39.

The Court has already found that this is a "highly speculative and quite unlikely" basis for removal jurisdiction. *See* Order at 27. Defendants offer no rationale to depart from this holding, nor anything to demonstrate any likelihood of success on the merits.

v. Federal Enclave Jurisdiction

Defendants' federal enclave arguments fail for the same reasons as their OCSLA arguments: they present the same arguments that have already been rejected by this Court, and demonstrate no likelihood of success on the merits, particularly given that no court has agreed with their position. *See* Order at 27–30 *Honolulu*, 2021 WL 531237, at *8; *San Mateo I*, 294 F. Supp. 3d at 939; *Boulder I*, 405 F. Supp. 3d at 974–975; *Rhode Island I*, 393 F. Supp. 3d at 152; *Baltimore I*, 388 F. Supp. 3d at 564–566.

Here, the Court correctly held that Defendants failed to "demonstrate that federal enclaves are the locus in which the claims arose" and that "a more substantive and explicit relationship between the actual claims alleged and a specific federal enclave" is required for jurisdiction to attach. Order at 29–30. Defendants again offer no rationale to depart from this holding, and cannot establish a likelihood of success on the merits.

vi. Class Action Fairness Act

The Court should similarly reject Defendants' claim that removal jurisdiction is proper pursuant to CAFA. Every court to have addressed this issue in an analogous context has concluded that CAFA does not apply to *parens patriae* actions like this one, brought

by a state under the common law or its own consumer-protection laws. *See, e.g.*, *Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 212–20 (2d Cir. 2013); *LG Display Co. v. Madigan*, 665 F.3d 768, 770–72 (7th Cir. 2011); *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848–49 (9th Cir. 2011); *W. Va. ex rel. McGraw v. CVS Pharmacy, Inc.*, 646 F.3d 169, 174–78 (4th Cir. 2011); *Mississippi ex rel. Hood v. AU Optronics Corp.*, 701 F.3d 796, 799 (5th Cir. 2012), *rev'd on other grounds*, 571 U.S. 161 (2014).[7] Consistent with this precedent, the district court rejected an identical argument in *Massachusetts*, instead holding that even a consumer protection statute recognized as somewhat analogous to class actions is not covered by CAFA "unless the state statute contains procedures 'similar' to those under Rule 23." 462 F. Supp. 3d at 49.

This Court made a similar holding, finding that "federal jurisdiction under CAFA is limited to civil actions either filed under Rule 23 or brought under a similar state mechanism that authorizes class actions." Order at 30. The Court should reach the same result now. That the Eighth Circuit has not yet joined every other court in holding that "an action brought in a *parens patriae* capacity is not a 'class action' within the meaning of CAFA," Motion at 18, does not demonstrate that Defendants have a likelihood of success on this claim. *See* Order at 31 & n.8.

[7] Defendants' reliance on *Williams v. Employers Mutual Casualty Co.*, 845 F.3d 891 (8th Cir. 2017), is misplaced, as that case involved a certified class action. In *Williams*, a class representative brought an equitable garnishment action against a mobile home park and its insurers, after obtaining a class action judgment against the mobile home park. *Id.* at 894–95. The court held the garnishment action constituted a class action for the purposes of CAFA removal, as the only basis for allowing the class representative to bring the action on behalf of the class was the previously certified class action. *Id.* at 901. The same does not hold true for this *parens patriae* action.

vii. Diversity of Citizenship

Defendants' final argument that this action is removable under diversity jurisdiction because "the real plaintiffs in interest are the Minnesota consumers on whose behalf the Attorney General sues," Motion at 18–19, is baseless. As the Court held, "'[t]here is no question that a State is not a "citizen" for purposes of the diversity jurisdiction.'" Order at 32 (quoting *Moor v. Alameda Cty.*, 411 U.S. 693, 717 (1973)). There is no likelihood Defendants will succeed on the merits of this claim.

B. Defendants Will Not be Irreparably Injured Absent a Stay.

"In order to demonstrate irreparable harm, a party must show that the harm is *certain and great* and of such *imminence* that there is a clear and present need for equitable relief." *Iowa Utilities Bd. v. F.C.C.*, 109 F.3d 418, 425 (8th Cir. 1996) (emphasis added). "[S]imply showing some possibility of irreparable injury fails to satisfy the second factor." *Nken*, 556 U.S. at 434–35 (quotations and citation omitted).

Here, Defendants have not met their burden of proving that they will be irreparably injured absent a stay. As the *Baltimore* court held, Defendants' appeal would only be rendered moot in the highly unlikely event that a final judgment is reached in state court before resolution of the appeal, and thus Defendants only raise the specter of a "speculative harm." *See Mayor & City Council of Baltimore v. BP P.L.C.*, No. CV ELH-18-2357, 2019 WL 3464667, at *5 (D. Md. July 31, 2019) ("*Baltimore* Stay"). Additionally, here as in *Baltimore*, interim proceedings in state court may well advance the resolution of the case in federal court, and the parties will have to file responsive pleadings or preliminary motions regardless of forum. *Id.* at *6; *Packard Elevator v. I.C.C.*, 782 F.2d 112, 115 (8th

Cir. 1986) (denying stay because alleged irreparable harm was speculative and unsubstantiated by the record).

Defendants argue that proceeding in state court under state procedural rules would injure them. *See* Motion at 21. Plus, it would cost money, and they might have to spend more money if the case returns to federal court. But "as important as it is to make correct decisions about matters of federal jurisdiction and even removal procedure, trial in state court is not a horrible fate," 15A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3914.11 (2d ed.), and "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury," *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974). As this Court recently held, "cost, inefficiency, and inconvenience do not amount to the certain and great harm that must justify a stay." *Pederson v. Trump*, No. CV 19-2735 (JRT/HB), 2020 WL 4288316, at *5 (D. Minn. July 26, 2020) (quotations omitted). Spending money and litigating in state court do not constitute irreparable harm.

Nor would Defendants' appeal of the Remand Order under 28 U.S.C. § 1447(d) become "hollow" without a stay. *See* Motion at 20. Nothing that occurs in state court after remand could moot or even affect Defendants' appeal. The cases on which Defendants primarily rely arose in a materially different context, where the moving parties sought to stay orders to disclose sensitive documents that would be impossible to effectively claw back if released, thereby mooting any meaningful appeal from the trial courts' disclosure orders. *See Providence Journal Co. v. Fed. Bureau of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979) (once surrendered, "confidentiality will be lost for all time"); *Hiken v. Dep't of*

Def., No. C 06-02812 JW, 2012 WL 1030091, at *2 (N.D. Cal. Mar. 27, 2012) (disclosure of information with "important national security implications" would moot appeal). There are no analogous considerations here.

Despite Defendants' ominous invocation of comity and federalism, *see* Motion at 23, the procedure when a case is removed after substantive proceedings in state court is straightforward: "All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court." 28 U.S.C. § 1450. Thus, "once a case has been removed to federal court, it is settled that federal rather than state law governs the future course of proceedings, notwithstanding state court orders issued prior to removal," and "Section 1450 implies as much by recognizing the district court's authority to dissolve or modify injunctions, orders, and all other proceedings had in state court prior to removal." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 437 (1974).

The mere fact that litigation may proceed in the absence of a stay is insufficient to demonstrate irreparable harm. Even if an erroneous remand could present some form of injury, it is neither cognizable nor irreparable. It is certainly not the type of serious injury that warrants the Court's intervention. There are no procedural or substantive rights Defendants might lose if this case is remanded. Defendants have not demonstrated irreparable harm, and that reason alone is sufficient to deny Defendants' Stay Motion. *See Rogers Group, Inc. v. City of Fayetteville, Ark.*, 629 F.3d 784, 789 (8th Cir. 2010); *Org. for Black Struggle*, 978 F.3d at 607; *Brady II*, 640 F.3d at 789.

C. Issuance of a Stay Will Substantially Injure the State and Is Not in the Public Interest.

Defendants argue that a stay would avoid costly and potentially duplicative litigation, but it is their newly pending appeal that more likely will be "a fruitless exercise, costing the parties time and money that could otherwise be spent litigating the merits." *See SFA Grp., LLC v. Certain Underwriters at Lloyd's London*, No. CV 16-4202-GHK(JCX), 2017 WL 7661481, at *2 (C.D. Cal. Jan. 6, 2017). A stay would prevent the State from seeking prompt redress of its claims, to its detriment and the detriment of its residents. While the State's claims are predicated on Defendants' misrepresentations and failure to warn—and they do not implicate the regulation of greenhouse gas emissions or interstate pollution—the State does intend to use the damages recovered in this case to address the harms of climate change. As the State and Minnesotans are acutely aware, the climate change crisis presents an emergency. Temperatures continue to rise, the State's streets continue to flood, counties throughout the State regularly declare flood or drought emergencies, heavy precipitation continues to stress and erode public infrastructure, among other harms. *See, e.g.*, Compl. ¶¶ 139–71.

Defendants' request for a stay only delays resolution of this matter and continues to shift the costs for which Defendants are liable onto the State and Minnesotans—costs that grow as the harms experienced by the State and its residents increase in frequency and intensity. *See, e.g.*, *Baltimore*, 2019 WL 3464667, at *6 (third and fourth factors weighed in favor of denying stay given "the seriousness of the City's allegations and the amount of damages at stake"); *Bd. of Cty. Comm'rs of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*,

423 F. Supp. 3d 1066, 1075 (D. Colo. 2019) ("*Boulder* Stay") (same); *Honolulu* Stay Denial I, 2021 WL 839439, at *3 ("Staying these cases will only add, potentially significantly, to this delay," which is not in the public interest.); Declaration of Leigh Currie ("Currie Decl."), Ex. 1: Minute Order, *Beyond Pesticides v. Exxon Mobil Corp.*, No. CV 20-1815 (TJK) (D.D.C. Apr. 6, 2021) ("[T]he Court still finds that Plaintiff would be harmed at least somewhat by even a brief further delay of its case, and the Court perceives no public interest in granting the stay."). Here, "[p]ublic policy . . . supports denying a stay. The public interest lies with the swift resolution of legal claims and judgments." *Morgan Stanley Smith Barney LLC v. Johnson*, No. CV 17-1101 (PAM/TNL), 2018 WL 5314945, at *2 (D. Minn. Oct. 26, 2018).

D. Multiple Courts Have Denied Defendants' Motions for Stays Pending Appeal in Analogous Cases.

Federal courts around the country have addressed and rejected virtually all of the arguments Defendants make here, ultimately denying motions to stay pending appeal in multiple analogous cases. The Court should do so here as well.[8]

[8] Defendants' citation to a recent administrative order from the D.C. Circuit for the proposition that "courts have often granted stays pending appeal of remand orders," Motion at 5–6, is egregiously misleading. The Circuit specifically stated that "the purpose of this administrative stay is to give the court sufficient opportunity to consider the petition and emergency motion [to stay] and *should not be construed in any way as a ruling on the merits of the petition and motion*." *See* Currie Decl., Ex. 2: Order, *In re Exxon Mobil Corp.* No. 21-8001 (D.C. Cir. Apr. 6, 2021) (emphasis added). In fact, the district court in that case denied Exxon's request for a stay pending appeal twice, finding that "none of [the four stay] factors weigh[ed] in favor of a stay." *See* Currie Decl., Ex. 1: Minute Orders, *Beyond Pesticides v. Exxon Mobil Corp.*, No. CV 20-1815 (TJK) (D.D.C. Mar. 26, 2021 & Apr. 6, 2021).

1. *Baltimore*

In *Baltimore*, following the district court's order remanding the case, the district court, circuit court, and Supreme Court all denied stays pending appeal of the order. *See Baltimore* Stay, 2019 WL 3464667, at *1 (denying motion to stay pending appeal to the Fourth Circuit); Currie Decl., Ex. 3: Order, *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644 (4th Cir. Oct. 1, 2019) (denying motion for stay pending appeal); *BP P.L.C. v. Mayor & City Council of Baltimore*, 140 S. Ct. 449 (2019) ("Application for stay presented to The Chief Justice and by him referred to the Court denied."). The district court weighed each of the four stay factors, finding that none favored a stay. *Baltimore* Stay, 2019 WL 3464667, at *2. As to the first factor, the court found that a stay pending appeal was not warranted because any appellate review would be limited to federal officer removal, and defendants did not demonstrate "a substantial likelihood of success on the merits of th[at] issue" because "[t]hey merely recite[d] the same arguments outlined in their Notice of Removal and opposition to the City's Remand Motion." *Id*. at *4. Even if the remand order were reviewable in its entirety, the court found that a stay still was not warranted because the defendants also failed to show that the remaining three factors supported a stay. *Id*. at *5.

As to the irreparable injury factor, the court rejected defendants' arguments that "an immediate remand would render their appeal meaningless and would undermine the right to a federal forum provided by the federal officer removal statute." *Id*. (citations omitted). The court held that "defendants' appeal would only be rendered moot in the unlikely event that a final judgment is reached in state court before resolution of their appeal"—a

"speculative harm [that] does not constitute an irreparable injury." *Id*. It further found that defendants had not "shown that the cost of proceeding with litigation in state court would cause them to suffer irreparable injury." *Id*.

The court also rejected defendants' arguments that a stay "would avoid costly, potentially wasteful litigation in state court" and that it "would delay proceedings in state court 'only briefly' and, thus, would not prejudice the City." *Id.* at *6. Instead, the court held that denial of the stay was warranted because the case was in "its earliest stages," litigation on the merits of the City's claims should not be delayed, and "the interim proceedings in state court may well advance the resolution of the case in federal court" because "the parties will have to proceed with the filing of responsive pleadings or preliminary motions, regardless of the forum." *Id*. The Fourth Circuit and the Supreme Court also denied stays, without discussion. *See* Order, *Baltimore*, No. 19-1644 (4th Cir. Oct. 1, 2019); *Baltimore*, 140 S. Ct. 449.

2. *Rhode Island*

The district court in *Rhode Island* also denied the defendants' motion to stay, as did the First Circuit and Supreme Court. *See* Currie Decl. Ex. 4, Text Order, *State of Rhode Island v. Shell Oil Prods. Co.*, No. 1:18-cv-395-WES-LDA (D.R.I. Sept. 10, 2019) ("The Court DENIES Defendants' Motion to Stay Remand Order Pending Appeal."); Currie Decl. Ex. 5, Order of Court, *State of Rhode Island v. Shell Oil Prods. Co.*, No. 19-1818 (1st Cir. Oct. 7, 2019) ("Defendants-appellants request a stay pending appeal of the district court's . . . Order remanding the underlying action to Rhode Island state court. The motion

is denied."); *BP p.l.c. v. Rhode Island*, No. 19A391 (U.S. Oct. 22, 2019) ("Application [for a stay pending appeal] denied by Justice Breyer.").

3. *Boulder*

Similarly, the district court in Boulder denied the defendants' motion to stay pending appeal after considering the four stay factors. *Boulder* Stay, 423 F. Supp. 3d at 1072. As to likelihood of success, the court rejected defendants' argument that the case "raise[d] 'complex and novel questions'" regarding federal officer jurisdiction, holding that their attempt to "re-hash" the same arguments as to federal officer did not "demonstrate a likelihood of success on appeal." *Id*. at 1073. The court likewise held that the Defendants had not shown a strong likelihood of success on the merits of their federal common law claim, or their *Grable* arguments. *Id*. The court also rejected Defendants' arguments as to irreparable injury, holding that simultaneously litigating the case in state court and before the circuit court did not constitute irreparable harm, the "argument that discovery could be unduly burdensome in state court [was] speculative," and "state court rulings present[ed] [no] issues of comity," because "[i]t is not unusual for cases to be removed after substantial state litigation." *Id*. at 1074 (quotations and citations omitted). Finally, the court also found that plaintiffs would be injured by further delay on the merits of their claims, and the public interest weighed in favor of denying the stay. *Id*. at 1075.

4. *Honolulu*

Like the *Baltimore* and *Boulder* district courts, the *Honolulu* district court also found each factor weighed in favor of denying a stay. *Honolulu* Stay Denial I, 2021 WL 839439. The court found that defendants had not made a substantial case for relief on the merits

because the Ninth Circuit had already "addressed the sole issue from which Defendants can appeal with certainty," and their other assertions depended on "multiple contingencies," that required "success in the Supreme Court and many further successes in the Ninth Circuit." *Id*. at *2. The court also rejected defendants' arguments as to irreparable harm, holding that defendants "rely on speculation on what may befall them if they have to litigate in State court," and finding that "the purported injury of litigating in State court is simply a natural consequence of Defendants failing to demonstrate that these cases were properly removed." *Id*. The court also found there was no public interest in further delay. *Id*. at *3.

The defendants then applied to the Ninth Circuit for an emergency stay pending appeal, which that court also denied. *Honolulu* Stay Denial II, 2021 WL 1017392. The circuit held that requiring parties to litigate the merits of plaintiff's claims in state court simultaneously with appellate proceedings—even if such requirement leads to increased litigation burdens and possible inefficiencies if the court later finds the cases were properly removed—"do[es] not rise to the level of irreparable harm." *Id*. at *1. The court also held that "the theoretical possibility that the state court could irrevocably adjudicate the parties' claims and defenses while these appeals are pending also falls short of meeting the demanding irreparable harm standard." *Id*. Finally, the court concluded defendants had not made a sufficient showing of success on the merits given the court's previous opinions. *Id*. (citing *San Mateo II* and *Oakland*).

As these analogous cases demonstrate, Defendants cannot meet the legal standard for a stay.

V. CONCLUSION

Defendants' Motion to Stay Execution of the Remand Order Pending Appeal should be denied.

Respectfully Submitted,

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