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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA, et al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,
Federal Defendants.

Case No. 6:15-cv-01517-TC

FEDERAL DEFENDANTS' MOTION TO STAY LITIGATION

Expedited Hearing Requested

INTRODUCTION

In a motion filed earlier today, ECF No. 120, the United States moved this Court to certify its Opinion and Order of November 10, 2016 ("November Order") to the United States Court of Appeals for the Ninth Circuit for interlocutory appeal (hereafter "Motion to Certify"), because the November Order addresses several controlling questions as to which there are substantial grounds for differences of opinion and an immediate appeal may materially advance

the ultimate termination of the litigation. The United States now respectfully moves the Court to stay this litigation pending consideration of the Motion to Certify, and until the earliest of (1) such time as the Court of Appeals declines to accept this matter for interlocutory appeal; or (2) such time as the Court of Appeals has ruled on the certified questions and issued its mandate to this Court.[1] The United States also seeks expedited consideration of this motion and specifically asks for a ruling on this motion by March 14, 2017.

As set forth below, a stay of proceedings pending resolution of the Motion to Certify and possible interlocutory appeal is appropriate because the United States is likely to prevail on appeal, will be irreparably harmed absent a stay, Plaintiffs are not likely to suffer significant injury if a stay is granted, and the public interest would be well-served by a stay. Further, expedited consideration is warranted in this given the significance of the issues raised and the burden on Federal Defendants that discovery is likely to impose.

STANDARD OF REVIEW

District courts have broad discretion to stay proceedings as an incident to its power to control its own docket. *Landis v. North American Co.*, 299 U.S. 248, 254 (1936); *see also CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (district courts possess "inherent power to control the disposition of the causes on its docket in a manner which will promote economy of time and effort for itself, for counsel, and for litigants."); *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972); *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) ("A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of

[1] Pursuant to Local Rule 7-1(a), the parties conferred on this motion and the request for expedition. Plaintiffs oppose this motion and the request for expedited consideration. Intervenor-Defendants do not oppose this motion or the request for expedited consideration.

independent proceedings which bear upon the case."). Section 1292(b) specifically authorizes the district courts to exercise their discretion to stay proceedings over which they have continuing jurisdiction during the pendency of an interlocutory appeal. *See* 28 U.S.C. § 1292(b).

The Supreme Court provides four factors to be considered when exercising that discretion: 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 v. Holder*, 556 U.S. 418, 434 (2009). With regard to the first of these four factors, the moving party can "show either a probability of success on the merits or that serious legal questions are raised, depending on the strength of petitioner's showing on the other stay factors." *Leiva-Perez v. Holder*, 640 F.3d 962, 967 (9th Cir. 2011) (per curiam) (internal quotation marks and citation omitted). Moreover, the "district court should consider the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *CMAX*, 300 F.2d at 268.

ARGUMENT

I. The United States is Likely to Prevail on Appeal.

As noted in the Defendants' Motion to Certify, the Court's rulings on the Due Process Clause and the public trust doctrine present novel issues on which reasonable jurists have a substantial basis to disagree. ECF No. 120-1 at 18-25 ("Brief"); *see Scallon v. Scott Henry's Winery Corp.*, No. 6:14-CV-1990-MC, 2015 WL 5772107, at *1 (D. Or. Sept. 30, 2015) (finding a stay pending disposition of the interlocutory appeal is appropriate "where the question for

appeal is a matter of first impression" and movant "makes strong, non-frivolous, arguments"). That is, the decisions to recognize an entirely new fundamental right under the Due Process Clause of a kind never before recognized, and to expand public trust doctrine by applying it to the federal government, do not find support in existing case law. Brief at 18, 22. And the Court's rulings on standing are in tension with existing Supreme Court precedents that are intended to restrict Article III courts to actual cases and controversies, and prevent them from becoming fora for policy disagreements. *Id.* at 6-17. For these reasons, the United States is likely to succeed on the merits and it has, in all events, unquestionably raised serious legal questions. *See Umatilla Waterquality Protective Ass'n, Inc. v. Smith Frozen Foods, Inc.*, 962 F. Supp. 1312, 1323 (D. Or. 1997) (finding stay is appropriate given the importance of the issues raised to the entire litigation).

II. The United States Will be Irreparably Injured Absent a Stay.

The extraordinary scope of this litigation and the concomitant scope of discovery that Plaintiffs appear to be seeking set this case apart. The anticipated discovery burdens in this case are forecast by Plaintiffs' extraordinarily broad January 24, 2017 litigation hold demand letter. That letter demands preservation of, among other categories of documents over the course of nearly seven decades:

> All Documents related to climate change since the Federal Defendants or the Intervenor Defendants (and their member companies) became aware of the possible existence of climate change;
>
> All Documents related to national energy policies or systems, including fossil fuels and alternative energy sources and transportation;
>
> All Documents related to federal public lands, navigable waters, territorial waters, navigable air space or atmosphere; [and]
>
> All Documents related to greenhouse gas emissions or carbon sequestration as those terms apply to agriculture, forestry, or oceans.

Ex. A at 5-6. Prior to receipt of the January 24 letter, plaintiffs had failed to make clear the potentially enormous scope of their intended discovery.

Consistent with the January 24, 2017 letter, Plaintiffs have made clear that they intend to seek discovery relating to virtually all of the federal government's activities relating to control of CO_2 emissions, fossil fuels production and transportation, alternative energy sources, and public lands, transportation and energy policy that may relate to CO_2 emissions. Compounding the United States' burdens, Plaintiffs have indicated that their intended discovery has a temporal scope of more than sixty years, and will stretch across numerous federal agencies conducting myriad activities that involve their core functions. Absent relief, there will most certainly be depositions of federal government fact witnesses and 30(b)(6) designees that will explore the extraordinarily broad topic of climate change and the federal government's putative knowledge over the past seven decades. This endeavor is virtually limitless in its scope. Even if fact discovery were not exceptionally broad, the expert phase of discovery will most certainly be. Expert discovery will likewise be protracted, complicated and involve a large number of experts synthesizing complex data. In short, given the breadth the claims, their temporal scope, and scientific complexity, the discovery is likely to be time-consuming and resource-intensive and the litigation burdens that would occur as a result are likely to significantly impact Federal Defendants in their efforts to conduct their operations.

A stay of discovery is further appropriate because this action is unmoored to any statute that could limit its scope. Had Plaintiffs brought suit under the APA or agency-specific statutes challenging discrete agency acts or failures to act, judicial review would be on the administrative record. Here, Plaintiffs seek to circumvent that by bringing an equitable action without statutory authority. The fact that Plaintiffs have circumvented that requirement by bringing an equitable

action without statutory authority makes Plaintiffs' intended discovery all the more inappropriate, and further weighs in favor of a stay pending resolution of the Motion to Certify and any related appellate proceedings. *CMAX*, 300 F.2d at 268 (where it would promote "the orderly course of justice," a stay is appropriate).

Given these substantial discovery burdens and the significance of the issues presented by the motion seeking interlocutory appeal, the "fairest course for the parties" is to stay discovery until the motion for interlocutory appeal is decided. *Mediterranean Enterprises*, 708 F.2d at 1465; *H.A.L. v. Foltz*, 2008 WL 591927, *1 (M.D. Fla. 2008) (issuing stay and concluding that "the defendants should not be subjected to the burdens of discovery" until resolution of the defendants' interlocutory appeal of court's order denying qualified immunity).

III. The Injuries to Plaintiffs Due to a Stay Should be Negligible.

A stay of these proceedings during the pendency of an appeal is not likely to appreciably harm Plaintiffs. Because Plaintiffs' claims involve complex scientific knowledge and factual allegations directed at Federal Defendants concerning conduct that took place over several decades, discovery and a trial in this case are likely to be complex and time-consuming. Indeed, Plaintiffs anticipate introducing fifteen to twenty experts in the case. Given the already complex nature of the case, and the time it would take to complete discovery and proceed to trial in this case, the additional time needed for an appeal of the legal issues is relatively modest by comparison. *Scallon*, No. 6:14-CV-1990-MC, 2015 WL 5772107, at *2 (noting that plaintiffs' claims "date back many decades" and that a "comparatively brief delay to resolve this potentially dispositive issue of law cannot be said to cause Plaintiffs substantial injury").

Insofar as Plaintiffs may argue that time is of the essence, Plaintiffs waited until 2015 to file their complaint and elected to pursue novel constitutional and public trust claims rather than

challenge discrete agency actions pursuant to statutory causes of action. Thus, any delay corresponding to the need for interlocutory appellate review is eminently justified; as the party solely responsible for the timing of their civil action, Plaintiffs cannot credibly assert that a delay pending appellate review would be unjust.

IV. The Public Interest in Public Participation in the Political Process Would be Well-Served by a Stay.

The important public interest at stake raised by the Motion to Certify concerns how best to protect the atmosphere and other aspects of the environment while protecting other important values such as employment, reasonably affordable energy, balance of trade, and energy independence. Through this suit, Plaintiffs seek to remove decision-making authority on these critical issues from our publicly-elected representatives, and to have them instead decided by the Court. The proper resolution of this issue raises, among other things, core separation of powers concerns and "the public interest lies with correctly resolving the question of law at issue here. . . ." *Scallon*, No. 6:14-CV-1990-MC, 2015 WL 5772107, at *2. In addition, if a stay is not granted, the Executive Branch (including the Executive Office of the President) would be subject to continued discovery, and would be forced to divert substantial resources away from their essential functions of faithfully executing the law. The public interest accordingly will be served by staying this litigation.[2]

The provision for interlocutory appeal in 28 U. S. C. 1292(b) is intended to materially advance the litigation. Inherent in this purpose is an intention to avoid unnecessary strain on the

[2] Discovery served on the President is especially problematic in light of the absence of controlling statutory authority. *See* Brief at 17; *Mississippi v. Johnson*, 71 U.S. (4 Wall) 475, 501 ("this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties.") And discovery of other components—as officials are only now coming on board—is inefficient and unnecessary at this juncture.

parties and the courts. The requested stay is consistent with that goal and especially advances the public interest where agency functions and limited government resources are at stake.

At a minimum, Federal Defendants are entitled to a stay in such a far-reaching case with the attendant significant discovery burdens because of the recent change in administration. Briefing incoming administration officials with decision-making responsibility concerning the extensive scope of matters involved in this litigation, including the anticipated and immediate discovery burden, will take a significant period of time. These officials will need to become familiar with the subject matter and issues presented, and seek and obtain legal counsel from both their internal agency/departmental attorneys as well as from the Department of Justice attorneys with primary responsibility for this case. The request for a stay here is therefore consistent with requests to stay proceedings to allow time for new administration officials to become familiar with litigated matters under their authority is customary and, in this case necessary, given the scope of discovery sought. *See Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 10 (D.D.C. 2009) (noting that an extension of a preliminary injunction briefing schedule was granted after a change in administration). Accordingly, a stay of proceedings in this case serves judicial and party economy and is well within the Court's discretion. *See Landis*, 299 U.S. at 254 (district court has broad discretion to stay proceedings as an incident to its power to control its own docket).

CONCLUSION

For all of the foregoing reasons, the United States respectfully requests that the Court stay this litigation pending consideration of the Motion to Certify and until the earliest of (1) such time as the Court of Appeals refuses to accept an interlocutory appeal of the Court's

November 10, 2016 order; or (2) such time as the Court of Appeals has ruled on the certified questions and issued its mandate to this Court.

Dated: March 7, 2017

Respectfully submitted,

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Certificate of Service

I hereby certify that on March 7, 2017 I filed the foregoing with the Clerk of Court via the CM/ECF system, which will provide service to all attorneys of record.

/s/ Sean C. Duffy
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Attorney for Federal Defendants

EXHIBIT A

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January 24, 2017

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Re: ***Juliana v. United States of America, Case No. 15-cv-01517-TC***
NOTICE OF LITIGATION HOLD AND REQUEST FOR PRESERVATION

Dear Counsel,

Both the Federal Defendants[1] and the Intervenor Defendants[2] are hereby requested by counsel for Plaintiffs to preserve and retain all documents, records, and tangible things relating to the claims in Plaintiffs' First Amended Complaint, as follows:

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[1] For purposes of this letter, the Federal Defendants are: the United States of America; Donald Trump, in his official capacity as President of the United States; The Office of the President of the United States; Christy Goldfuss and any Successor, in her official capacity as Director of Council on Environmental Quality; Shaun Donovan and any successor, in his official capacity as Director of the Office of Management and Budget; Dr. John Holdren and any successor, in his official capacity as Director of the Office of Science and Technology Policy; The United States Department of Energy; Dr. Ernest Moniz and any successor, in his official capacity as Secretary of Energy; The United States Department of the Interior; Kevin Haugrud, in his official capacity as acting Secretary of Interior; The United States Department of Transportation; Anthony Foxx, in his official capacity as Secretary of Transportation and any successor; The United States Department of Agriculture; Thomas J. Vilsack and any successor, in his official capacity as Secretary of Agriculture; The United States Department of Commerce; Penny Pritzker and any successor, in her official capacity as Secretary of Commerce; The United States Department of Defense; James Mattis, in his official capacity as Secretary of Defense; The United States Department of State; John Kerry and any successor, in his official capacity as Secretary of State; The United States Environmental Protection Agency; Catherine McCabe, in her official capacity as acting Administrator of the EPA, and any successor.

[2] For purposes of this letter, the Intervenor Defendants are: American Petroleum Institute, National Association of Manufacturers, and American Fuel & Petrochemical Manufacturers.

I. Preservation of Documents

During the pendency of this litigation, and until informed otherwise, each of the Federal Defendants, including their predecessors, successors, and employees, and each of the Intervenor Defendants and their members, including any of their predecessors, successors, parents, subsidiaries, divisions, or affiliates, as well as their officers, directors, agents, attorneys, accountants, employees, partners or other persons occupying similar positions or performing similar functions, must retain all responsive and potentially responsive "Documents" (as hereinafter defined) and "Electronically Stored Information" ("ESI"). It is essential that, in addition to preserving hard copy Documents, the Federal Defendants and the Intervenor Defendants also continue to take all steps necessary to prevent the destruction, loss, or alteration of any ESI, and other data or information generated by and/or stored on computers and storage media (*e.g.*, servers, hard drives, flash drives, etc.) in the possession, custody, or control of the Federal Defendants and the Intervenor Defendants.

The term "Documents," which also includes ESI, should be afforded the broadest possible definition. "Documents" refers to originals, copies, drafts, as well as any written, graphic, or otherwise-recorded matter, whether handwritten or machine-generated (such as by a typewriter, computer, facsimile, microfilm, photograph, audio recording, or visual recording, including voice mail messages), and all attachments to Documents.

The terms "Electronically Stored Information" or "ESI" also should be afforded the broadest possible definition, and include, by way of example and not as an exclusive list, potentially relevant information stored electronically, optically, or magnetically as:

- Digital communications, including but not limited to **electronic mail**, voicemail, and instant messaging (e.g., Google chat);
- Word processing documents, whether stored on shared drives, individual custodian's computers, or network drives;
- Spreadsheets and tables (e.g., Excel worksheets);
- Software Applications and Data (e.g., the Energy Information Administration's searchable database software);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP, JIRA);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, Google Calendar, blog tools);

- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint);
- Network Access and Server Activity Logs;
- Data Management Applications;
- Utilities for creating charts, graphs, images, etc.;
- Evernote Files;
- Computer Aided Design/Drawing Files;
- Back Up and Archival Files (e.g., Zip, .GHO); and
- Any data, software applications and programs, websites, web browsers, search tools, or records in the custody of any department, agency, or office of the federal government, including but not limited to the named Federal Defendants, related to climate change, energy policy, fossil fuels, or communications between Federal Defendants and Intervenor Defendants or their members.

II. Suspension of Destruction of Documents and Other Records

Effective immediately and until further notice, any personnel (paid or volunteer) of the Federal Defendants and the Intervenor Defendants (and their member companies) with access to any Documents, including ESI, or other records related to the scope of the claims in Plaintiffs' First Amended Complaint should **cease destruction of any such Documents, including ESI, that might otherwise occur in the normal course of business or due to a change in presidential administration**. Departments, Offices, and all Employees must be clearly and promptly instructed not to dispose of, remove, or destroy any and all types of potentially relevant documents, including (but not limited to) all ESI.

The Federal Defendants and the Intervenor Defendants (and their member companies) are directed to immediately initiate a litigation hold for all potentially relevant Documents, including ESI, or other records, and to act diligently and in good faith to secure and audit compliance with such a litigation hold. The Federal Defendants and the Intervenor Defendants (and their member companies) are further directed to immediately identify and modify or suspend features of their respective information systems and devices that, in routine operation or because of change in presidential administration, cause the loss of potentially relevant ESI. Examples of such features and operations include, but are not limited to: purging the contents of e-mail repositories by age, capacity, or other criteria; electronic data shredding; disk defragmentation; backup tape rotation; and maintenance routines. Moreover, this retention obligation must also be effectively communicated to all of those individuals with hands-on access to any of these systems. Finally, the Federal Defendants and the Intervenor Defendants (and their member companies) are obliged to

take affirmative steps to prevent anyone with access to their respective data, systems, and archives from seeking to modify, destroy, or hide Documents, including ESI, or other records on network or local hard drives (such as deleting or overwriting files, using data shredding and overwriting applications, re-imaging or replacing drives, encryption, compression, steganography, or the like).

This request that all personnel at the Federal Defendants and the Intervenor Defendants (and their member companies) not destroy any potentially relevant Documents, including ESI, or other records should be interpreted as broadly as possible. Each employee of the Federal Defendants and the Intervenor Defendants (and their member companies) should be instructed to consider and take steps to ensure preservation of any and all covered Documents, including ESI, or other records. By way of illustration and without limitation, such Documents, including ESI, or other records may be stored in the following locations:

- At each employee's workstation(s), including in electronic mail;
- At co-workers' workstations, stored for other employees;
- On employee's personal laptop or personal desktop computer;
- Elsewhere in the workplace, such as in a file room or work room;
- In an off-site storage facility, including but not limited to physical storage facilities, archival libraries, and web-based data sites;
- In ESI format, on all electronic media, website host servers, other servers, smart phones or PDAs, land-line phones, cellular phones, hard drives, back-up drives or tapes, shared drives, and/or personal drives.

On January 17, 2017, it was reported that the new presidential administration's Environmental Protection Agency transition team "intends to remove non-regulatory climate data from the agency's website, including references to President Barack Obama's June 2013 Climate Action Plan, the strategies for 2014 and 2015 to cut methane and other data, according to a source familiar with the transition team."[3] Further, several websites of the Federal Defendants with publicly available and accessible information on climate change and national energy systems and emissions have been removed or altered from the federal government's worldwide web domain, limiting Plaintiffs' access to relevant and discoverable Documents, including ESI, and other records in their case. During the November 28, 2016 status conference in the instant litigation, counsel for the Federal Defendants stated to the Court: "If the plaintiffs are willing to streamline their requests in a way that we could have discovery that's not unduly burdensome, we have no intention to delay this. Delay is not what we are trying to do in this case." Transcript at 14. One important method that Plaintiffs have anticipated using to streamline their discovery

3 https://insideepa.com/daily-news/trump-transition-preparing-scrub-some-climate-data-epa-website (last visited, January 23, 2017).

requests is by accessing publicly available Documents, including ESI, and other records available outside of the discovery process. The Federal Defendants have just made that task harder, causing unnecessary delay, by removing such Documents, including ESI, or other records from the worldwide web and forcing Plaintiffs to make formal discovery requests to access those Documents, including ESI, and other records. Plaintiffs hereby request that those Documents, including ESI, and other records be returned to the public domain and the federal government's worldwide web domain.

III. Relevant Categories of Documents and Other Records

If an employee of the Federal Defendants or the Intervenor Defendants (and their member companies) has any question or concern about whether or not any Document, including ESI, or other record should be retained pursuant to this Notice, the employee should be instructed to include Document, including ESI, or other record for later evaluation of relevancy by Plaintiffs' counsel. As described above, "Document" encompasses "ESI" and any form of record, **including, as relevant, metadata associated with any electronic record**.

As used herein, the term "climate change" shall mean any change in the state of the climate lasting for an extended period of time. In other words, the term "climate change" includes changes in surface and ocean temperature, precipitation, or wind patterns, among other effects, that occur over several decades or longer, attributable directly or indirectly to human activity. The term "climate change" also includes ocean acidification, sea level rise, and other impacts resulting from the increased concentration of greenhouse gases and carbon dioxide in the atmosphere and oceans. "Climate change" also has been called climatic changes, global warming, global change, global heating, weather modification, atmospheric pollution by carbon dioxide or other greenhouse gases, and dilution of carbon 14 by fossil carbon.

The following categories of Documents, including ESI, and other records are of particular importance to the instant litigation, but are not a complete list of potentially relevant Documents, including ESI, and other records:

1. All Documents related to climate change since the Federal Defendants or the Intervenor Defendants (and their member companies) became aware of the possible existence of climate change;

2. All Documents related to national energy policies or systems, including fossil fuels and alternative energy sources and transportation;
3. All Documents related to communications between the Federal Defendants

and the Intervenor Defendants (including their member companies) regarding climate change;

4. All Documents related to communications between the Federal Defendants and the Intervenor Defendants (including their member companies) regarding national energy policies or systems, including fossil fuels, alternative energy sources and transportation;

5. All Documents related to federal public lands, navigable waters, territorial waters, navigable air space or atmosphere, or other public trust resources;

6. All Documents related to greenhouse gas emissions or carbon sequestration as those terms apply to agriculture, forestry, or oceans;

7. All documents related to the storage or destruction of ESI by any Federal Defendant, which storage or destruction of ESI occurred at any point during the time frame of November 7, 2016 through the present;

8. All documents related to the storage or destruction of ESI by any Intervenor Defendant, which storage or destruction of ESI occurred at any point during the time frame of November 12, 2015 through the present;

9. All documents related to the storage or destruction of ESI by any member of any Intervenor Defendant, which storage or destruction of ESI occurred at any point during the time frame of November 12, 2015 through the present;

10. All documents related to tracking preservation and legal holds for each of the Federal Defendants, from 2015 through the present;

11. All documents related to tracking preservation and legal holds for each of the Intervenor Defendants, from 2015 through the present;

12. All documents related to tracking preservation and legal holds for each member of the Intervenor Defendants, from 2015 through the present;

13. All documents related to policies and procedures in place at each Federal Defendant from 2015 to the present, which policies and procedures concern or relate to preservation and holds of documents; document retention; e-mail policy; or any policy related to the collection, preservation, or dissemination of documents pursuant to a notice to preserve documents; and

14. All documents related to policies and procedures in place at each Intervenor Defendant from 2015 to the present, which policies and procedures concern or relate to preservation and holds of documents; document retention; e-mail policy; or any policy related to the collection, preservation, or dissemination of documents pursuant to a notice to preserve documents.

Please promptly confirm in writing that you have received this letter and will comply with the requests made herein, including reinstating public access to the relevant Documents, including ESI, or other records that the Federal Defendants have removed from the public domain.

If you have any questions or concerns, please contact counsel for Plaintiffs immediately as we will want to address any issues with the Court at the Discovery Conference on February 7, 2017.

Sincerely,

PHILIP L. GREGORY

cc: Julia Olson
Daniel Galpern