**CITY OF BALTIMORE**

**BERNARD C. "JACK" YOUNG**
**Mayor**

**DEPARTMENT OF LAW**
**DANA P. MOORE, ACTING CITY SOLICITOR**
**100 N. HOLLIDAY STREET**
**SUITE 101, CITY HALL**
**BALTIMORE, MD 21202**

July 13, 2020

**VIA EMAIL**

The Honorable Videtta A. Brown
Courthouse East
111 N. Calvert Street, Room 205
Baltimore, MD 21202
Sameerah.mickey@mdcourts.gov

Re: *Mayor and City Council of Baltimore v. BP P.L.C. et al.*,
Case No.: 24-C-18-004219

Dear Judge Brown,

The Mayor and City Council of Baltimore ("City") write in response to Defendants' letter, dated July 8, 2020 ("Defs' Letter"), concerning the issues raised in Your Honor's Hearing Letter #3, dated July 1, 2020. Defendants' letter requests a total and indefinite stay of proceedings in this case pending resolution of two matters that neither control nor dispose of any issue before the Court, and which lack even a set schedule for disposition. Defendants have made their request without submitting a noticed motion, in violation of the rules of Maryland courts, and without engaging the elements courts must consider in ruling on a stay. The City reiterates its position that further postponing rulings on preliminary motions is unwarranted, and would be highly prejudicial to the just and timely adjudication of this important case.

First, Defendants are simply wrong that "[i]f the Supreme Court grants certiorari and rules in favor of Defendants, this case likely would return to federal court . . . ." Defs' Letter at 1. The question presented in Defendants' certiorari petition does not challenge the merits of U.S. District Judge Hollander's order remanding the case to this Court, but rather asks whether that order is appealable in whole (as Defendants

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First, Defendants are simply wrong that "[i]f the Supreme Court grants certiorari and rules in favor of Defendants, this case likely would return to federal court . . . ." Defs' Letter at 1. The question presented in Defendants' certiorari petition does not challenge the merits of U.S. District Judge Hollander's order remanding the case to this Court, but rather asks whether that order is appealable in whole (as Defendants

argue) or only in part (as the Fourth Circuit held).[1] Even if the Supreme Court grants the petition, and even if it reverses the Fourth Circuit's holding as to the scope of review, it would at most remand to the Fourth Circuit for consideration of alleged bases for federal jurisdiction that Judge Hollander rejected but that the Fourth Circuit determined it lacked jurisdiction to review. *See Mayor & City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452, 461 (4th Cir. 2020) (dismissing appeal for lack of jurisdiction "insofar as it seeks to challenge the district court's determination with respect to the propriety of removal based on" grounds other then the federal officer removal statute, 28 U.S.C. § 1442). Even a total victory for Defendants before the Supreme Court would not "return [this case] to federal court," Defs' Letter at 1, absent further rulings in Defendants' favor by the Fourth Circuit and potentially the District of Maryland. No ruling by the Supreme Court in connection with Defendants' current petition would "void" any decision this Court could issue concerning Defendants' motions to dismiss or motion for a protective order.

Defendants' assertion that removal would render all proceedings before this court "unnecessary and effectively void" misstates clear statutory law; the opposite is true. *See* Defs' Letter at 1. The United States Code states unambiguously that after a case is removed "[a]ll 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. *See also, e.g.*, *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974) (temporary restraining order issued by state court remains in force following remand for duration provided by state law). It is thus well-settled

[1] The Question Presented in the petition is: "Whether 28 U.S.C. 1447(d) permits a court of appeals to review any issue encompassed in a district court's order remanding a removed case to state court where the removing defendant premised removal in part on the federal-officer removal statute, 28 U.S.C. 1442, or the civil-rights removal statute, 28 U.S.C. 1443." *See* Petition for a Writ of Certiorari at I, *B.P. p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (U.S. Mar. 31, 2020).

that "whenever a case is removed, interlocutory state court orders are transformed by operation of 28 U.S.C. § 1450 into orders of the federal district court to which the action is removed." *Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300, 1304 (5th Cir. 1988). Orders entered by Your Honor would be subject to reconsideration by the district court on motion of a party or *sua sponte*, in the same way that reconsideration remedies would be available if the case remains in this Court. Proceedings in this Court would clearly not, however, become "effectively void" upon removal.

Second, Defendants' request that the Court "defer a hearing until the Supreme Court's decision on both the Defendants' petition and the *Ford* cases," Defs' Letter at 2, violates rules (1) concerning motion procedure and practice and (2) enforcement of foreign judgments.

Defendants simply flout the procedures and substantive standards for seeking a stay of this action. They have not filed a motion that addresses the factors this Court must consider before granting their request, as required by Maryland Rules 2-311 and 2-632[2]; they have deprived the City of a chance to respond on the merits of such a motion; and they have circumvented the Court's ability to consider the law and facts that would go into granting such a request.

Equally fundamentally, Defendants' request for a stay violates this Court's obligation to enforce foreign judgments. Defendants sought stays of this case at every level of the federal judiciary—and failed in each attempt. The district court, the circuit court, and the Supreme Court expressly considered and

[2] "An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought." Md. Rule 2-311(a). "On motion of a party the court may stay the operation or enforcement of an interlocutory order on whatever conditions the court considers proper for the security of the adverse party. The motion shall be accompanied by the moving party's written statement of intention to seek review of the order on appeal from the judgment entered in the action." Md. Rule 2-632.

denied Defendants' requests for a stay pending appeal; Defendants have not moved to stay or recall the judgment of the Fourth Circuit pending their certiorari petition; and Defendants have posted no bond. *See Mayor & City Council of Baltimore v. BP p.l.c.*, No. ELH-18-2358, 2019 WL 346467 (D. Md. July 31, 2019) (denying stay of remand pending appeal); No. 19-1644, Dkt. No. 116 (4th Cir. Oct. 1, 2019) (same); *BP p.l.c. v. Mayor & City Council of Baltimore*, 140 S. Ct. 449 (2019) (same).

Meanwhile, the Fourth Circuit's ruling has gone into effect, and is entitled to full faith and credit. Judge Hollander's remand order, and the Fourth Circuit's affirmance of remand, both constitute "foreign judgments" under Md. Code, Cts. & Jud. Proc. § 11-801,[3] and enforcement of a foreign judgment may only be stayed in limited circumstances that do no not apply here. *See* Md. Code, Cts. & Jud. Proc. § 11-804(a); Md. Rule 2-632(g) ("A stay of enforcement of a foreign judgment, as defined in Code, Courts Article, § 11-801, is governed by Code, Courts Article, § 11-804.").

Third, even apart from Section 11-804, Defendants' Letter asks the Court to stay this case in its entirety but fails to address any of the factors courts must review when considering a stay. Because the Court has ordered that the parties shall not propound additional discovery until the pending discovery motion is resolved, delaying consideration of the Defendants' motions will stay all progress in the case. The Court of Appeals has recently emphasized that before granting a stay, "courts should exercise discretion by considering and weighing other factors relevant to the case," which include "(1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings

[3] "In this subtitle, 'foreign judgment' means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this State." Md. Code, Cts. & Jud. Proc. § 11-801.

may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public . . . ." *Moser v. Heffington*, 465 Md. 381, 400 (2019). Consideration of relevant factors is essential to the Court's ruling on a stay, because "[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Id.* at 398 (quoting *Landis v. North American Co.*, 299 U.S. 248, 255 (1936) (Cardozo, J.)).

Finally, nothing about the *Ford Motor Co. v. Montana Eighth Dist. Ct.*, No. 19-368, and *Ford Motor Co. v. Bandemer,* No. 19-369, cases being considered by the Supreme Court warrants a different result. The issue in those cases, as articulated by petitioner Ford Motor Company, is: "whether the 'arise out of or relate to' requirement [for specific jurisdiction] is met when *none* of the defendants' forum contacts caused the plaintiff's claims, such that the plaintiff's claims would be the same even if the defendant had no forum contacts." Pet. for Cert. at i, *Ford Motor Co. v. Montana Eighth Dist. Ct.*, No. 19-368 (Sept. 18, 2019) (emphasis added). Those cases are simply irrelevant to the matter at bar. The plaintiff in *Ford Motor Co. v. Montana Eighth Dist. Ct.*, for example, sued in Montana state court for product defect and negligence claims arising out of a car accident that occurred in Montana. Ford Motor Company did not design, manufacture, or assemble the plaintiff's car in Montana, however, or sell it there; the vehicle later came to be owned by a Montana driver who purchased it used from a prior owner. *Id.* at 4–5. Thus, at least as Ford frames the issue, "none of [its] forum contacts caused" any of the injuries complained of. *All* the tortious conduct that caused the plaintiff's injury occurred in other states.

Here, by contrast, the City has alleged that Defendants' conduct in Maryland *did* contribute to its injuries, in combination with Defendants' identical conduct elsewhere. *See* Mayor & City Council of

Baltimore's Opp. to Defs' Joint Motion for Protective Order at 12–14. The City has expressly alleged that Defendants conducted a "campaign of concealment and misrepresentations, in and directed at Baltimore and its citizens," which was also directed at other jurisdictions and which caused the City's injuries. *Id.* at 21. Whether that alleged conduct *in Maryland* (which caused injury *in Maryland*) is sufficient to confer specific personal jurisdiction over Defendants is categorically different from the question presented in the *Ford Motor Company* cases, where it is undisputed that *none* of Ford's conduct in Montana caused the alleged injury in Montana. The *Ford Motor Company* cases will not resolve the issues before this Court, and regardless the outcome this Court will still be called upon to rule on the merits of Defendants' motion to dismiss and motion for protective order. Delaying consideration of those motions is unwarranted and would prejudice the City's right to prosecute these cases in a timely and efficient manner.

Respectfully Submitted,

Suzanne Sangree
Director of Affirmative Litigation

Cc/Counsel of Record via electronic service