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CITY OF HOBOKEN, Plaintiff, -against- EXXON MOBIL CORP., EXXONMOBIL OIL CORP., ROYAL DUTCH SHELL PLC, SHELL OIL COMPANY, BP P.L.C., BP AMERICA INC., CHEVRON CORP., CHEVRON U.S.A. INC., CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66, PHILLIPS 66 COMPANY, AMERICAN PETROLEUM INSTITUTE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY DOCKET NO. HUD-L-003179-20

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO STAY

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PRELIMINARY STATEMENT

Defendants' motion to stay is their latest attempt to delay the start of litigation in this case, which has already spanned more than two years. Plaintiff filed this case in this Court in September 2020. Yet the litigation here has not even begun because Defendants have engaged in a protracted, but fruitless bid to remove Plaintiff's well-pleaded state law claims to federal court. The U.S. District Court for the District of New Jersey and the Third Circuit Court of Appeals have now rejected Defendants' removal arguments, as well as their motions to stay, and remanded this case back to this Court. Defendants have also lost these same arguments in four other federal appeals courts in analogous climate change cases around the country. Their removal arguments are baseless, and the consensus against them is overwhelming. Their request for a stay while they file a meritless petition for certiorari, which they tellingly have not yet filed, serves no purpose other than prolonging their already significant delay. It is well past time for litigation to begin in this Court, where this case belongs.

The problems with Defendants' motion begin with their failure to apply the correct legal standard. Defendants seek a stay pending the filing and review of a petition for certiorari of the remand order in this case. The New Jersey Supreme Court has set out clear requirements to obtain a stay pending appeal: (1) a showing of irreparable harm to the applicant absent a stay; (2) a showing that the stay applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) a balancing of the relative hardship of the parties. Defendants do not address any of these factors. That is not altogether surprising since they cannot make the required showings in any event.

Defendants cannot show how starting litigation in state court more than two years after this case was filed would cause them irreparable harm. The effort and expense required to litigate in this Court, where the District of New Jersey and Third Circuit have held this case correctly

belongs, is not irreparable harm. Similarly, entirely speculative harms about unspecified, hypothetical, and highly unlikely comity issues or conflicting state court rulings are not sufficient to justify a stay.

There is also zero merit to the removal arguments Defendants are now pressing in the United States Supreme Court. In addition to the Third Circuit in this case, the First, Fourth, Ninth, and Tenth Circuits have all rejected Defendants' argument that a federal preemption defense is grounds for removal. Defendants' claimed Circuit split is a mirage; *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), on which they rely, was originally filed in federal court and does address removal at all. To the contrary, it explicitly held that "th[e] fleet of cases" remanding state law climate change tort claims like this one to state court "does not conflict with our holding." *Id.* at 94.

The Third Circuit has already rejected the same relief Defendants seek here. After affirming the district court's remand order and denying rehearing *en banc*, it denied Defendants' motion to stay the remand order pending their certiorari petition and issued the mandate for the case to return to this Court. In denying the stay, the Third Circuit was unmoved by the Supreme Court's request for a brief from the Solicitor General's Office in the *Boulder* case. Contrary to Defendants' assertions, such a request does not make certiorari likely, especially in the absence of a Circuit split.

The balance of the equities also favors Plaintiff. The City of Hoboken has already endured two years of delay on account of Defendants' fruitless and dilatory strategy. In that time, Hoboken has suffered one devastating severe weather event after another. Hoboken seeks relief to address these harms caused by Defendants' climate deceptions. Weighing these real, imminent harms—and the clear public interest in the timely and efficient resolution of this case—with the

abstract and speculative harms Defendants *might* face in the unlikely event they prevail in the Supreme Court, counsels strongly against a stay.

Even if Defendants' purported legal standard was correct, they cannot meet it. Defendants get the judicial economy analysis backwards. They wrongly claim that any litigation in state court will be "for naught" if the case is removed to federal court, when 28 U.S.C § 1450 clearly contemplates that federal courts will adopt all state court orders prior to removal and pick up the case where it left off. In the wildly unlikely event that the Supreme Court were to grant certiorari and then reverse every circuit court of appeals to address the remand issue, a process that would likely take between one and two years, judicial economy will have been served by litigating the sufficiency of Plaintiff's Complaint and conducting discovery while that process unfolds. And after more than two years of delaying the start of this litigation, considerations of delay at the heart of the judicial economy analysis counsel strongly against a stay, not in favor.

Plaintiff will be prejudiced by a stay. The climate-induced calamities it has already suffered are likely to increase in number and severity while the Defendants pursue their transparent strategy of endless delay. This Court should deny Defendants' motion for a stay.

FACTUAL AND PROCEDURAL BACKGROUND

On September 2, 2020, Plaintiff City of Hoboken filed this action for public and private nuisance, trespass, negligence, and violation of the New Jersey Consumer Fraud Act in this Court. Hoboken seeks damages for climate changed-related harms caused by Defendants' half-century campaign of deceiving the public about fossil fuels' impact on the climate, which enabled Defendants' rapidly expanding production, marketing, and sale of those fuels.

On October 9, 2022, Defendants removed the action to the U.S. District Court for the District of New Jersey, filing a 163-page notice of removal asserting seven separate grounds for

removal. Plaintiff filed a motion to remand shortly thereafter. On September 8, 2021, the district court granted Plaintiff's motion to remand, rejecting all seven grounds for removal.

Defendants then appealed the Remand Order to the Third Circuit. On August 17, 2022, the Third Circuit issued a Precedential Opinion affirming the district court's Order remanding the case to state court. On September 30, 2022, the Third Circuit denied Defendants' Petition for Rehearing *en banc*. And, on October 12, 2022, the Third Circuit denied Defendants' motion to stay the Remand Order and issued a Mandate to remand the case to this Court. To date, although 70 of their allotted 90 days have passed, Defendants have not filed a certiorari petition in this case.

Now, more than two years after Plaintiff filed this case, Defendants seek a stay of this action pending "the forthcoming petition for a writ of certiorari seeking review of the Third Circuit's decision in this action," as well as pending certiorari petitions challenging the Fourth and Tenth Circuit's remands of two analogous state law climate cases in Baltimore, Maryland and Boulder, Colorado. Defs. Br. at 1.

APPLICABLE LEGAL STANDARD

"A stay of a proceeding, like many forms of preliminary injunction, is to be sparingly granted. It is an extraordinary remedy for which the moving party must demonstrate a clear entitlement." *Chalom v. Benesh*, 560 A.2d 746, 749 (N.J. Super. Ct. 1989). "To be entitled to a stay, [a stay applicant] must present clear and convincing evidence of each of the following factors: (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were." *N.J. Election Law Enf't Comm'n v. DiVincenzo*, 136 A.3d 963, 968 (App. Div. 2016) (citation and quotation marks omitted).

The New Jersey Supreme Court established this three-factor test in *Crowe v. De Gioia*, 90 N.J. 126 (1982). Since then, "New Jersey courts have consistently and repeatedly noted that the *Crowe* standard governs stay applications." *Garden State Equality v. Dow*, 79 A.3d 479, 483 (App. Div. 2013), *aff'd* 216 N.J. 314 (2013); *see also Avila v. Retailers & Mfrs. Distrib.*, 810 A.2d 585, 587 (App. Div. 2002) ("The traditional standard for the granting of a stay by a trial court is discretionary and dependent upon the equities of a given case. We measure the equities by the standard utilized in the granting of a preliminary injunction."); *HSBC Bank USA, Nat'l Ass'n v. Agarwal*, No. A-1586-13T3, 2015 WL 1540786, at *4 (N.J. Super. Ct. App. Div. Apr. 8, 2015) (where "a stay [is] sought [in the] form of interim relief pending resolution of a substantive challenge to the underlying judgment . . . , the party requesting the stay must satisfy the standard in *Crowe*").

Defendants ignore this well-established legal standard. They instead rely on factors that courts consider in a series of inapposite cases where there are *two simultaneous, separately filed* litigations concerning the same course of events, and those "simultaneous proceedings entail litigious vexation and harassment." *In re Dist. Inheritance Tax Supervisors*, 60 N.J. 372, 374 (1972) (per curiam) (separate challenges to same New Jersey Civil Service Commission determination in two different courts).[1] Those are not the circumstances here, where Defendants seek a stay of the remand order pending the outcome of their petition for certiorari *in this*

[1] *See also Devlin v. Nat'l Broad. Co.*, 219 A.2d 523, 525-26 (1966) (staying New Jersey defamation action to permit California defamation action to proceed where the two actions were filed by same plaintiff, concerned "substantially the same matters," and the California action "was first in time, is pending within the state where the predominant contacts and consequences occurred, and will presumably be tried there in regular course"); *Kaselaan & D'Angelo Assocs., Inc. v. Soffian*, 290 N.J. Super. 293, 300 (App. Div. 1996) (suggesting possibility of staying one action when "a related case is pending in a federal court or the court of another state"); *In re Estate of Calcaterra*, No. BER-P-37-04, 2005 WL 1384311, at *4 (N.J. Super Ct. June 10, 2005) (party seeking "order staying the proceedings in this matter pending resolution of an ancillary action").

litigation, and there is no risk of simultaneous litigation of the merits in state and federal court. Defendants must therefore satisfy the *Crowe* factors to obtain a stay. They cannot.

ARGUMENT

I. DEFENDANTS ARE NOT ENTITLED TO A STAY PENDING APPEAL TO THE SUPREME COURT

A. Defendants Will Not Be Irreparably Harmed Absent a Stay

Defendants' motion must be denied because they fail to address the question of whether they will suffer irreparable harm absent a stay, let alone establish it by clear and convincing evidence. *DiVincenzo*, 136 A.3d at 968. Under *Crowe*, the party seeking relief must show that irreparable harm is "substantial and imminent." *See Brown v. City of Paterson*, 36 A.3d 1075, 1079 (App. Div. 2012). Defendants have not attempted to make—and cannot make—this showing.

Defendants do not argue they will suffer *any* cognizable harm at all absent a stay, let alone irreparable harm. They say, at most, that they will expend considerable resources briefing motions to dismiss in this Court, where both the federal district court and the Third Circuit have held this case rightfully belongs. It is settled law that litigation expenses do not constitute irreparable harm. *DiVincenzo*, 136 A.3d at 973 (holding that being subject to "further litigation" and "legal challenges" are not "immediate and irreparable harm"); *see also Renegotiation Bd. v. Bannercraft Clothing Co., Inc.*, 415 U.S. 1, 24 (1974) ("Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."); *Bordeaux v. LTD Fin. Servs., L.P.*, No. 16 Civ. 243, 2018 WL 1251633, at *2 (D.N.J. Mar. 9, 2018) ("Litigation costs will generally not rise to the level of irreparable harm."). And, even if the cost of litigation actually counted for purposes of a stay, it would not count here because Defendants will bear the costs of litigating this action irrespective of the outcome of their stay motion.

Defendants' alarm about "conflicting decisions" and comity issues, in the event this Court issues orders and later Defendants prevail in the Supreme Court, *see* Defs' Br. at 8-9, is entirely speculative, because these could occur *only* in the unlikely event that after this Court issues some decisions, the Supreme Court grants certiorari and then disagrees with every circuit court to consider Defendants' jurisdictional claims. Even then, Defendants fail to elaborate on how such comity harms and conflicting decisions from their anticipated motions to dismiss could possibly occur in a case premised entirely on state substantive law (regardless of whether it is in state or federal court), and where state procedural rules surrounding motion practice and discovery are similar to their federal analogues. *Compare, e.g.*, Fed. R. Civ. P. 12(b), *with* N.J. R. 4:6-2; Fed. R. Civ. P. 26, *with* N.J. R. 4:10. Defendants' hollow, speculative harms do not satisfy the *Crowe* test. *See Coopersmith Bros. Inc. v. Twp. of Kingwood*, No. HNT-L-254-05, 2005 WL 1421320, at *3 (N.J. Super. Ct. App. Div. June 14, 2005) (rejecting a purported irreparable harm that was "pure speculation"); *Sarmanoukian v. Chemtek at Alpine, LLC*, No. BER-C-367-05, 2005 WL 3005777, at *3 (N.J. Super. Ct. Ch. Div. Nov. 4, 2005) (holding that "speculative damage" does not satisfy a party's burden under *Crowe*).

Removing a case to federal court after some litigation has taken place in the state system is not a novel occurrence, and there is no reason to believe Defendants will be irreparably harmed if it occurs. Beyond the expense of litigating motions to dismiss—an expense that is inevitable under any circumstance—none of Defendants' arguments identify actual or imminent injury, nor any outcome from proceeding with litigation in this Court which is irreparable and cannot be remedied in the absence of a stay. If the case is later transferred to federal court, any conflicting state court decisions—speculative as they are at this point— would be *reparable* upon removal back to federal court. Federal law provides the district court with the "authority to

dissolve or modify injunctions, orders, and all other proceedings had in state court prior to removal," the same way a district court may reconsider any other interlocutory order. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 437 (1974).

Finally, being subject to litigation in state court is not itself an irreparable harm. Defendants do not claim this Court is not competent to adjudicate Plaintiff's claims, which rest entirely on New Jersey state law. As another court in a climate case held while denying a stay application, "the purported *injury* of litigati[on] in State court is simply a natural consequence of Defendants failing to demonstrate that these cases were properly removed, . . . [s]omething which hardly seems like a reason to find an irreparable injury, let alone a probable one." *City & Cnty. of Honolulu v. Sunoco LP*, Nos. 20 Civ. 00163, 20 Civ. 00470, 2021 WL 839439, at *2 (D. Haw. Mar. 5, 2021) (emphasis in original) (citation omitted); *see also City & Cnty. of Honolulu v. Sunoco LP*, Nos. 21-15313, 21-15318, 2021 WL 1017392, at *1 (9th Cir. Mar. 13, 2021) ("[T]he theoretical possibility that the state court could irrevocably adjudicate the parties' claims and defenses while these appeals are pending [] falls short of meeting the demanding irreparable harm standard"); 15A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3914.11 (2d ed. 2021) ("[A]s 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.").

Because Defendants have not demonstrated that they will face any irreparable harm, they are not entitled to a stay. *See, e,g.*, *DiVincenzo*, 445 N.J. Super. at 206.

B. Defendants' Certiorari Petition Is Highly Unlikely to Succeed

Even if Defendants could show any likely irreparable harm, they do not establish by clear and convincing evidence that their "claim rests on settled law and has a reasonable probability of succeeding on the merits." *DiVincenzo*, 136 A.3d at 968. This is a heavy burden: "the *Crowe*

standard requires the moving party . . . to show 'that *its* legal right is settled.'" *Garden State Equality*, 79 A.3d at 1042 (quoting *Crowe*, 90 N.J. at 133) (emphasis in original). Defendants have no settled legal right to litigate this case in federal court; in fact, the law is settled against the arguments they seek to make to the Supreme Court. There is no circuit split on any of the removal grounds the Third Circuit considered, and the unanimous decisions of the circuits are entirely consistent with Supreme Court precedent.

Defendants claim that "there is currently a split between the federal courts of appeals on the threshold question of whether federal common law applies to claims, like those asserted here, that seek redress from injuries allegedly caused by global climate change." Defs. Br. at 2. This is false. The Third Circuit's opinion in this case noted that, in 2022 alone, "four other circuits have refused to allow the oil companies to remove similar state tort suits to federal court," and "agree[d] with [its] sister circuits" that Hoboken's lawsuit is not "inherently federal" and does not arise under federal law for purposes of 28 U.S.C. §§ 1331, 1441. *City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 707 (3d Cir. 2022); *see Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44, 53–56 (1st Cir. 2022); *Mayor & City Council of Balt. v. BP P.L.C.*, 31 F.4th 178, 199-208, 238 (4th Cir. 2022); *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101, 1106–13 (9th Cir. 2022); *Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733, 746–48 (9th Cir. 2022); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1257–61 (10th Cir. 2022). All circuits that have considered the question are in accord.

The essence of Defendants' argument is that the Third Circuit's opinion—and the consistent decisions of the First, Fourth, Ninth, and Tenth Circuits—conflicts with the Second Circuit's opinion in *City of New York*. Defs. Br. at 2-3, 9-10. But the Third Circuit's opinion here and the Second Circuit's opinion in *City of New York* both confirm the opposite. The Third

Circuit held that there is no conflict because *City of New York* "involved another ordinary-preemption defense to a case first filed in federal court" and did not consider federal subject-matter jurisdiction at all, let alone jurisdiction over removed state law claims. *City of Hoboken*, 45 F.4th at 708. Similarly, the Second Circuit itself stated that the "fleet of cases [holding] that federal preemption does not give rise to a federal question for the purposes of removal . . . does not conflict with our holding." *City of New York*, 993 F.3d at 94; *see also, e.g.*, *Mayor of Balt.*, 31 F.4th at 203 ("*City of New York* was in a completely different procedural posture" and "never addressed its own subject-matter jurisdiction"). None of the relevant decisions conflict with *City of New York*, and Appellants' assertion to the contrary is in direct tension with the plain language of *City of New York*.[2]

Finally, the Supreme Court's request for a brief from the Solicitor General does not alter the analysis. *See Conkright v. Frommert*, 556 U.S. 1401, 1403 (2009) (Ginsburg, J., in chambers) (Supreme Court's request for the Solicitor General's views "is hardly dispositive of an application to block implementation of a Court of Appeals' judgment"). Defendants' position to the contrary assumes that the Solicitor General will recommend that certiorari be granted, the Supreme Court will adopt that recommendation, and that it will reverse the unanimous courts of appeals who have rejected Defendants' removal arguments. That is too many logical leaps to satisfy New Jersey's high standard for a stay. Even according to the outdated empirical analyses on which Defendants rely, the Supreme Court grants certiorari petitions in only about one third

[2] Defendants fleetingly cite *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410 (2011) (*"AEP"*), *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630 (1981), and *City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304 (1981), but none of those cases support their position that ordinary federal preemption is grounds for removal. *See, e.g.*, *Hoboken*, 45 F.4th at 707-08 (Defendants' argument based on *Tex. Indus.* "has a fatal flaw" because it concerns "garden-variety preemption," not the "complete preemption they need" to justify removal); *Baltimore*, 31 F.4th at 206-16 (explaining that *Milwaukee* and *AEP* address federal statutory preemption of claims for interstate air and water pollution, but only establish "ordinary preemption [that] can never serve as a valid basis for removal," not "complete preemption").

of the cases in which it seeks the views of the Solicitor General.[3] And those analyses say nothing about the likelihood of the Supreme Court granting a petition—much less reversing the circuit court—where, as here, the circuits are in unison on the merits. Defendants' anticipated appeal to the Supreme Court does not "rest[] on settled law" or have a "reasonable probability of succe[eding] on the merits." *DiVincenzo*, 136 A.3d at 968. They are not entitled to a stay.

C. The Balance of the Equities Favors Plaintiff

Defendants' arguments also do not show by clear and convincing evidence that the balance of equities favor a stay. *Garden State Equality*, 79 A.3d at 1039 (the moving party must show that "balancing the relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were") (internal citations and quotation marks omitted). Defendants are unlikely to suffer any hardships *at all* from proceeding with this litigation in state court. Their petition for certiorari is highly unlikely to succeed on the merits, according to every circuit court to consider the question. And even in the improbable event that Defendants succeed in removing this case to federal court one to two years from now, they face no identifiable harm by litigating in this Court until then. Defendants plan to move to dismiss Plaintiff's state law claims on the same grounds regardless of whether they are in state or federal court. *See* Defs. Br. at 8. The district court would retain the power to adopt or modify this Court's rulings on those issues—should this Court reach any by then—lessening any duplicative litigation efforts or extra litigation costs (which do not constitute irreparable harm in any case).

On the other hand, the harm to Plaintiff from a stay is significant. Plaintiff, a municipality wielding limited public resources, has waited more than two years while litigating (and

[3] *See* David C. Thompson & Melanie F. Wachtell, *An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General*, 16 Geo. Mason L. Rev. 237, 295 (2009) (data from 1998 to 2004).

prevailing against) Defendants' meritless attempts to at removal, to reach this stage. "A plaintiff suffers prejudice from delay" and this prejudice "cannot be ignored." *HSBC Bank USA*, 2015 WL 1540786, at *3, *5 (denying a stay where the defendant failed to establish a likelihood of success on the merits and plaintiff would be faced with delay) (internal citations omitted).

In addition, this case concerns the devastating impact of Defendants' climate deceptions on the City of Hoboken, an issue of significant public importance. Defendants concede as much. *See* Defs. Br. at 10 (explaining that the Supreme Court's decision to seek the Solicitor General's views confirms that the case is of "of sufficient public concern"). In such cases, the Court must consider both the equities with respect to the Plaintiff and the public interest. *Garden State Equality*, 216 N.J. at 329. Further delay in resolving the merits of this case—regardless of the victor—is not in the wider public interest. *City & Cnty. of Honolulu*, 2021 WL 839439, at *3 ("Staying these cases will only add, potentially significantly, to this delay," and "the Court cannot discern any public interest in such delay"); *DiVincenzo*, 136 A.3d at 974 (noting that, in a case of public importance, the public and parties have an interest in seeing the dispute "resolved in a reasonable, and not unlimited, period of time").

Because the harm to Plaintiff and the public interest is significant and real, in contrast to Defendants' purported harms, which are merely "abstract or speculative," this Court should deny Defendants' motion to stay. *Garden State Equality*, 216 N.J. at 320.

II. A STAY UNDER ANY STANDARD IS INAPPROPRIATE

Plaintiff has been unable to litigate this case in this Court for two years because of Defendants' baseless removal gambit. Even under Defendants' cases, "[a] stay of a proceeding, like many forms of preliminary injunction, is to be sparingly granted." *In re Estate of Calcaterra*, 2005 WL 1384311, at * 8 (quoting *Chalom*, 560 A.2d at 749). Defendants' delay tactics come nowhere close to justifying such extraordinary relief. Even under the incorrect test they propose,

they are not entitled to a stay because a stay would undermine judicial economy and cause Plaintiff significant prejudice.

A. A Stay Does Not Advance Judicial Economy

New Jersey courts define "judicial economy and efficiency" as "the avoidance of waste and delay." *Cogdell by Cogdell v. Hosp. Ctr. at Orange*, 116 N.J. 7, 23 (1989); *accord Mitchell v. Charles P. Procini*, 752 A.2d 349, 352 (App. Div. 2020) (same). A stay would *cause* undue delay and waste, not the other way around. Plaintiff has already waited more than twenty-seven months to begin litigating this case in state court. Defendants' long-shot certiorari petitions pressing claims unanimously rejected by five circuit courts cannot justify delaying the start of this case even longer, especially because that process could take years. *See, e.g.*, *Laurore v. Spencer*, 396 F. Supp. 2d 59, 64 (D. Mass. 2005) ("In terms of judicial economy, a stay would only serve to further delay decision on a petition that already has been on this Court's docket for almost three years."); *Chiaravallo v. Middletown Transit Dist.*, No. 18 Civ. 1360, 2022 WL 3369722, at *2 (D. Conn. Aug. 16, 2022) (judicial economy hindered where defendant's conduct "would delay a matter that has now been pending for nearly four years").

Defendants' desire not to litigate the merits does not equate to advancing judicial economy. Their leading case expresses concern about the parties' "burden of having to simultaneously litigate" the removal appeal and the merits in state court. *See Northrop Grumman Tech. Servs., Inc. v. Dyncorp Int'l LLC*, No. 16 Civ. 534, 2016 WL 3346349, at *4 (E.D. Va. June 16, 2016). As a threshold matter, *Northrop Grumman* addresses a stay pending appeal to the Fourth Circuit—an appeal taken as of right, not a certiorari petition that the Supreme Court will almost certainly deny. But more fundamentally, Defendants are some of the largest and most profitable companies in the world. Over thirty lawyers have appeared for them in this case in

federal court. It is no meaningful burden on them to litigate their certiorari petitions while also litigating this case in state court.[4]

At bottom, Defendants' argument that judicial economy favors a stay relies on the faulty premise that, if the Supreme Court reverses the unanimous courts of appeals holding that cases like this one belong in state court, "any ruling by this Court. . . would then be void for lack of jurisdiction." Defs. Br. at 8. The opposite is true. Federal law establishes that "[w]henever any action is removed from a State court to a district court of the United States . . . [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. Applying this rule, the federal district court in New Jersey has repeatedly held that, "[a]fter removal, the district court 'takes the case up where the State Court left it off.'" *Curto v. A Country Place Condominium Assoc., Inc.*, No. 16 Civ. 5928, 2016 WL 6434103, at *1 (D.N.J. Oct. 28, 2016) (quoting *Granny Goose Foods*, 415 U.S. at 436); *accord Alexander v. United States*, No. 16 Civ. 1864, 2016 WL 6023105, at *1 (D.N.J. Oct. 13, 2016) (after removal, "[t]he District Court is then free to treat any such order as if said order was entered by the District Court").[5]

Thus, in the unlikely event that the Supreme Court were to grant certiorari *and* also reverse the remand order, this litigation would pick up in federal court at whatever stage it has reached in this Court. *See Stewart v. Emmons*, No. 12 Civ. 1509, 2014 WL 4473649, at *3 (E.D.

[4] Defendants' reliance on *City of Annapolis v. B.P. P.L.C.*, No 21 Civ. 772, 2021 WL 2000469 (D. Md. May 19, 2021), is improper. That case involved a motion for a discretionary stay—and a different legal standard—because Defendants sought a stay while a *different* case was on appeal. As Defendants acknowledge, that case stayed the remand order pending appeal to the Fourth Circuit, not the Supreme Court. In contrast, the Third Circuit here has already rejected Defendants' appeal and denied their motion to stay the remand order pending their certiorari petition.

[5] Defendants' citation to an 1851 decision regarding the jurisdiction of the New Jersey Orphan's Court has nothing to do with the rule in 28 U.S.C. § 1450 that federal courts adopt the state courts' rulings after removal. *See Hess v. Cole*, 23 N.J.L. 116 (1851).

Pa. Sept. 10, 2014) (litigation in state court "would serve the interests of judicial economy" where "motions practice would be required regarding the state law claims"). Any rulings on Defendants' motions to dismiss and discovery exchanged by the parties or rulings on discovery would apply to the continued proceedings in federal court. There would be nothing like the do-over Defendants suggest.

B. A Stay Prejudices Plaintiff

Plaintiff faces prejudice from further delay. Defendants have spent two years and filed thousands of pages in the federal courts on a preliminary procedural point they have lost countless times. Defendants could have conserved everyone's resources by litigating this case in state court. They cannot now seriously argue that a stay would "in fact benefit" Plaintiff "by avoiding costly and potentially wasteful state court litigation," Defs. Br. at 11, even though state court is where Plaintiff—and multiple federal Circuits—have agreed this case rightfully belongs.

Defendants' argument that "a stay would—at the very most—modestly delay Plaintiff's ultimate recovery, if any," *id.*, ignores the significant and existential stakes Plaintiff has in the timely resolution of this case. It is grotesque for Defendants to, on the one hand, speak in the language of "greenwashing," Compl. ¶¶ 172-93, trumpeting their recognition of the effects of climate change, *id.* ¶¶ 194-207, while on the other hand saying that delay "cannot constitute any real prejudice to Plaintiff because monetary damages can, of course, be awarded at any time," Defs. Br. at 11. Hoboken seeks damages and other relief so that it can remediate its physical and human infrastructure to deal with this harm, *id.* ¶¶ 269-86, and time is running out, *see, e.g.*, *City & Cnty. of Honolulu*, 2021 WL 839439, at, at *3 ("Staying these cases will only add, potentially significantly, to this delay," which is not in the public interest).

CONCLUSION

This Court should reject Defendants' latest gambit to delay this case and deny Defendants' motion to stay.

Dated: January 24, 2023

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