

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-01672-MEH

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY;  
BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY; and  
CITY OF BOULDER,

Plaintiffs,

v.

SUNCOR ENERGY (U.S.A.) INC.;  
SUNCOR ENERGY SALES INC.;  
SUNCOR ENERGY INC.; and  
EXXON MOBIL CORPORATION,

Defendants.

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**JOINT MOTION TO SET BRIEFING SCHEDULE FOR REMAND MOTION AND TO  
STAY DISCOVERY UNTIL PLAINTIFFS REMAND MOTION IS DECIDED**

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Pursuant to Local Rules 6.1(a) and 7.1(d), Plaintiffs the Board of County Commissioners of Boulder County, the Board of County Commissioners of San Miguel County, and the City of Boulder (collectively “Plaintiffs”), and Defendants Suncor Energy (U.S.A.) Inc., Suncor Energy Sales Inc., Suncor Energy Inc., and Exxon Mobil Corporation (collectively “Defendants”) (together, the “Parties”), move for an order setting a sequenced briefing schedule on Plaintiffs’ anticipated motion to remand and staying discovery until after the Court rules on that motion.

**BACKGROUND**

Plaintiffs filed their complaint on in the Boulder County District Court on April 17, 2018. They amended their complaint on June 11, 2018. Within 30 days of service of the amended complaint, Defendants Suncor Energy (U.S.A.) Inc. and Suncor Energy Sales Inc., with the

consent of all Defendants, removed this case to the United States District Court for the District of Colorado (the “Court”) on June 29, 2018 (ECF No. 1.) Plaintiffs intend to file a consolidated motion to remand the action back to Boulder County District Court (“Motion to Remand”). Defendants intend to oppose the Motion to Remand.

### **JOINT MOTION**

The Court has broad discretion to manage its cases to ensure their just and efficient adjudication. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Coors*, 357 F. Supp. 2d 1277, 1277, 1281 (D. Colo. 2004) (staying discovery, vacating scheduling conference, and deferring Rule 16 scheduling process until a determination on the dispute’s arbitrability). This Court has exercised its discretion to sequence cases and set briefing deadlines in a manner that resolves threshold issues prior to the opening of discovery, for the purpose of promoting judicial economy and minimizing the burdens on the Court and the parties. *See, e.g., id.; Gen. Steel Domestic v. Steelwise, LLC*, No. 07-cv-01145-DME-KMT, 2008 WL 410425, at \*1 (D. Colo. Feb. 11, 2008) (“A motion to stay discovery pending determination of a significant issue in a case is an appropriate exercise of this court’s discretion.”); *Make a Difference Foundation, Inc. v. Hopkins*, No. 10-cv-00408–WYD–MJW, 2010 WL 2197354, at \*1 (D. Colo. May 28, 2010) (staying discovery pending a motion to dismiss because “Defendants’ rule 23.1 challenge raises a threshold procedural issue”).

The Parties request that the Court enter an order setting the following briefing schedule and other deadlines related to Plaintiffs’ anticipated Motion to Remand, and directing the Parties as follows:

- **August 31, 2018** – deadline for Plaintiffs to file their Motion to Remand, along with any supporting briefs and other materials. Plaintiffs shall file a consolidated motion of not more than 40 pages in order to avoid multiple briefs being filed.
- **October 12, 2018** – deadline for Defendants to file their response to Plaintiffs’ Motion to Remand. Defendants shall file a consolidated response of not more than 40 pages.<sup>1</sup>
- **November 12, 2018** – deadline for Plaintiffs to file their reply, if any, to Defendants’ response in opposition to the Motion to Remand. Plaintiffs shall file a consolidated reply of no more than 20 pages.
- **30 days following the Court’s ruling on Plaintiffs’ Motion to Remand** – The Parties will submit a proposed briefing schedule if the case is not remanded to State Court.
- **45 days following the Court’s ruling on Plaintiffs’ Motion to Remand**– Defendants’ deadline to respond to the amended complaint, unless the Court orders a different deadline pursuant to the Parties’ proposed briefing schedule.

The parties agree that discovery, and initial disclosures under Federal Rule of Civil Procedure 26(a)(1), are stayed until 45 days after the Court’s determination of Plaintiffs’ Motion

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<sup>1</sup> This joint motion does not operate as an admission of any factual allegations or legal conclusions. Defendants do not waive, and Plaintiffs agree that they will not assert, in either state or federal court, that Defendants have waived any (i) right, (ii) defense, (iii) affirmative defense, (iv) claim, or (v) objection, including lack of personal jurisdiction, lack of subject matter jurisdiction, insufficient process, or insufficient service of process because of the Parties’ agreement to have the Court consider and adjudicate the Motion to Remand.

to Remand, during which time the parties' will address any further stay in their proposed briefing schedule.

**CONCLUSION**

For these reasons, the Parties request that the Court grant this joint motion and enter an order setting the briefing and other deadlines set forth above.<sup>2</sup>

Dated: July 20, 2018

Respectfully submitted,

*Below-signed counsel certifies that he is a member in good standing of the bar of this Court.*

*s/ Evan Bennett Stephenson*

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<sup>2</sup> Under Local Rule 5.1(d), the Notice of Electronic Filing "generated by CM/ECF constitutes a certificate of service." For that reason, no separate certificate of service is attached here.

*s/ Daniel J. Toal.*

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