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18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA
 20 WESTERN DIVISION

21 **CARLY E. SIMON,**
 22 Plaintiff,
 23 v.
 24 **STARBUCKS CORPORATION,**
 25 Defendant.

CASE NO. CV09-09074 GW (PLAx)
**DEFENDANT STARBUCKS
 CORPORATION'S NOTICE OF
 MOTION AND MOTION TO STAY
 PENDING DECISION BY THE
 UNITED STATES SUPREME COURT
 ON A CONTROLLING ISSUE OF
 LAW; MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT**

[Request for Judicial Notice Filed
 Concurrently]

Date: January 7, 2010
 Time: 8:30 a.m.
 Place: Courtroom 10
 Judge: Hon. George H. Wu

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFF AND
2 HER COUNSEL OF RECORD:

3 **PLEASE TAKE NOTICE** that on January 7, 2010, at 8:30 a.m., or as soon
4 thereafter as the matter may be heard before the Honorable George H. Wu, United
5 States District Judge, in Courtroom 10 of the United States District Court, Central
6 District of California, Western Division, Defendant Starbucks Corporation
7 (“Starbucks”) will move this Court for an Order staying further proceedings in this
8 case.

9 By this Motion, Starbucks seeks the following relief: an Order temporarily
10 staying further proceedings pending controlling guidance from the United States
11 Supreme Court as to this Court’s jurisdiction over this action under 28 U.S.C. §§ 1332
12 and 1441.

13 This Motion is based upon this Notice of Motion and Motion, the Memorandum
14 of Points and Authorities, the papers on file in this case, all facts of which judicial
15 notice may be taken, any oral argument that may be heard by the Court, and any other
16 matters that the Court deems appropriate.

17 This Motion is made following the conference of counsel pursuant to L.R. 7-3,
18 which took place on November 23, 2009.

19 DATED: December 14, 2009

20 Theane Evangelis Kapur
21 GIBSON, DUNN & CRUTCHER LLP

22
23 By: _____
24 Theane Evangelis Kapur
25 Attorneys for Defendant Starbucks Corporation
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 By this Motion, Defendant Starbucks seeks a temporary stay of all proceedings
3 in this case pending controlling guidance from the United States Supreme Court as to
4 this Court’s proper exercise of jurisdiction over this action under 28 U.S.C. §§ 1332
5 and 1441.

6 **I. INTRODUCTION**

7 On October 9, 2009, Plaintiff Carly E. Simon (“Simon” or “Plaintiff”), a citizen
8 of Massachusetts (Cmplt. at ¶ 2), filed this action against Defendant Starbucks in Los
9 Angeles Superior Court. On December 10, 2009, Starbucks, a corporation both
10 incorporated and headquartered in the State of Washington, timely removed this action
11 on the basis of diversity pursuant to 28 U.S.C. §§ 1332 and 1441.

12 Currently pending before the United States Supreme Court is *Hertz Corporation*
13 *v. Friend*, 08-1107 (U.S. cert. granted June 8, 2009) (“*Hertz*”), which is expected to
14 clarify the proper test for determining a corporation’s “principal place of business,”
15 and thus its citizenship, for purposes of federal diversity jurisdiction under 28 U.S.C. §
16 1332. The outcome of *Hertz* likely will have a direct and potentially dispositive
17 impact on this Court’s jurisdiction over this action under 28 U.S.C. §§ 1332 and 1441.
18 Considerations of fairness, efficiency, and sound judicial administration therefore
19 militate strongly in favor of staying these proceedings until the Supreme Court renders
20 a decision in *Hertz*.

21 **II. ARGUMENT**

22 This Court has jurisdiction over this action because Starbucks is incorporated in
23 the State of Washington and its “principal place of business” is also in the State of
24 Washington. 28 U.S.C. § 1332(c). Under the Ninth Circuit’s test for determining a
25 corporation’s principal place of business, however, federal district courts in California
26 have reached conflicting decisions regarding Starbucks’ citizenship. The Supreme
27 Court currently is considering the proper interpretation of “principal place of business”
28

1 in *Hertz*, and it is expected to adopt a test that is different from the operative test in the
 2 Ninth Circuit. As a result, this Court should stay this case pending *Hertz* because that
 3 decision will directly impact this Court’s jurisdiction.

4 **A. The Ninth Circuit’s Test For Determining A Corporation’s Principal Place**
 5 **of Business Is An Outlier Among The Courts Of Appeals**

6 As a general rule, “any civil action brought in a State court of which the district
 7 courts of the United States have original jurisdiction, may be removed by the
 8 defendant [],” to federal district court. 28 U.S.C. § 1441(a). Pursuant to 28 U.S.C. §
 9 1332(a), federal district courts have original jurisdiction over civil actions “where the
 10 matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and
 11 costs,” and there is diversity of citizenship. Thus, such actions are removable by a
 12 defendant if filed in state court, provided that “none of the parties in interest properly
 13 joined and served as defendants is a citizen of the State in which such action is
 14 brought.” 28 U.S.C. § 1441(b). A corporation, for purposes of federal diversity
 15 jurisdiction, is deemed a citizen of (1) the state under whose laws it is organized or
 16 incorporated; and (2) the state of its “principal place of business.” 28 U.S.C. §
 17 1332(c).

18 In the Ninth Circuit, “two tests” are used to determine a corporation’s “principal
 19 place of business.” *Davis v. HSBC Bank*, 557 F.3d 1026, 1028 (9th Cir. 2009).

20 First, we apply the “place of operations” test. Under that test, a
 21 corporation’s principal place of business is the state containing a
 22 “substantial predominance of corporate operations.” If no state contains
 23 a “substantial predominance” of corporate operations, we apply the “nerve
 center” test, which locates the corporation’s principal place of business in
 the state where “the majority of its executive and administrative functions
 are performed.”

24 *Id.* (quoting *Tosco Corp. v. Cmtys. for a Better Env’t*, 236 F.3d 495, 500 (9th Cir.
 25 2001)).

26 The primary test currently applied by the Ninth Circuit in this context—the
 27 “substantial predominance” or “place of operations” test—“requires a comparison of
 28

1 [the] corporation’s business activity in the state at issue to its business activity in other
 2 individual states.” *Davis*, 557 F.3d at 1028–29. Under this test, courts “employ a
 3 number of factors to determine if a given state contains a substantial predominance of
 4 corporate activity,” including “the location of employees, tangible property, production
 5 activities, sources of income, and where sales take place.” *Id.* The location of the
 6 corporation’s executive headquarters, or “nerve center,” however, is taken into account
 7 only if the “place of operations” test proves inconclusive.

8 The Courts of Appeals are in conflict on the appropriate test for determining a
 9 corporation’s “principal place of business.” No other circuit follows the Ninth
 10 Circuit’s “two tests” approach, and the majority of circuits give weight, at the outset, to
 11 the location of a corporation’s headquarters.¹ For example, the Seventh Circuit looks
 12 exclusively to the location of a corporation’s headquarters when determining its
 13 principle place of business for purposes of federal diversity jurisdiction. *See Metro.*
 14 *Life Ins. Co. v. Estate of Cammon*, 929 F.2d 1220, 1223 (7th Cir. 1991) (“a corporation
 15 has a single principal place of business where its executive headquarters are located”).

16 **B. The Supreme Court’s Decision In *Hertz* Will Directly Impact This Court’s**
 17 **Jurisdiction Over This Case**

18 The validity of the Ninth Circuit’s complicated and somewhat counterintuitive
 19 approach to determining a corporation’s “principal place of business” is currently
 20 under review by the Supreme Court. In *Friend v. Hertz Corp.*, 297 Fed. Appx. 690,
 21

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 23 ¹ *See, e.g., MacGinnitie v. Hobbs Group, LLC*, 420 F.3d 1234, 1239 (11th Cir. 2005);
 24 *Capitol Indem. Corp. v. Russellville Steel Co.*, 367 F.3d 831, 836 (8th Cir. 2004);
 25 *Gadlin v. Sybron Int’l Corp.*, 222 F.3d 797, 799–800 (10th Cir. 2000); *J.A. Olson*
 26 *Co. v. Winona*, 818 F.2d 401, 409–10 (5th Cir. 1987) (“the principal place of
 27 business of a far-flung corporation will generally be its nerve center”); *Gafford v.*
 28 *General Elec. Co.*, 997 F.2d 150, 162 (6th Cir. 1993) (“Where the “bulk” of a
 corporation’s business is dispersed over several states, ‘the corporation’s
 headquarters assumes more significance as the compelling factor in the principal
 place of business test.’”); *Kelly v. United States Steel Corp.*, 284 F.2d 850, 854 (3d
 Cir. 1960).

1 691 (9th Cir. 2008), the Ninth Circuit, applying the “place of operations” test, affirmed
2 a district court’s determination that, for purposes of federal diversity jurisdiction, Hertz
3 Corporation (“Hertz”) is a citizen of the State of California. Although Hertz is
4 incorporated in Delaware and maintains its corporate headquarters in New Jersey, the
5 Ninth Circuit held that the district court had “correctly applied the ‘place of operations’
6 test to determine Hertz’s principal place of business,” and properly concluded that
7 because “Hertz’s relevant business activities are ‘significantly larger’ in California
8 than in the next largest state, Florida,” California “contains a substantial predominance
9 of Hertz’s operations,” and is thus Hertz’s principal place of business. *Id.* at 691
10 (quoting *Tosco Corp.*, 236 F.3d at 500).

11 Hertz filed a petition for writ of certiorari in the Supreme Court presenting the
12 question: “Whether, for purposes of determining principal place of business for
13 diversity jurisdiction citizenship under 28 U.S.C. § 1332, a court can disregard the
14 location of a nationwide corporation’s headquarters.” The Court granted review on
15 June 8, 2009 (*Hertz Corp. v. Friend*, 129 S. Ct. 2766; 174 L. Ed. 2d 269 (2009)), and
16 heard oral argument on November 10, 2009.

17 Plaintiff’s suit against Starbucks presents the identical question currently being
18 considered by the Supreme Court in *Hertz*: whether the location of Starbucks’
19 corporate headquarters, or “nerve center”—Washington—must be taken into account
20 in determining Starbucks’ citizenship under 28 U.S.C. § 1332. *Hertz* necessarily will
21 have a direct impact on this case because the district courts in the Ninth Circuit have
22 rendered conflicting decisions regarding Starbucks’ “principal place of business” under
23 28 U.S.C. § 1332(c). At least one federal district court in California has determined
24 that Starbucks is a citizen of Washington. *See Beck v. Starbucks Corporation*, C-08-
25 2930 MMC, 2008 U.S. Dist. LEXIS 111053, at *1 (N.D. Cal. Sept. 19, 2008) (noting
26 that in “its Notice [of Removal], Starbucks alleges sufficient facts to support a finding
27 that Starbucks is a citizen of Washington” for diversity purposes). (Request for
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1 Judicial Notice (“RJN”), Ex. A.) However, one district court in California has ruled
2 that, under the Ninth Circuit’s current “place of operations” test, Starbucks’ “principal
3 place of business” is in California—a ruling that directly conflicts with *Beck*. Despite
4 the fact that Starbucks, like Hertz, is neither incorporated in nor headquartered in
5 California, the district court in *Mbalati v. Starbucks Corporation*, CV 07-3267 RGK
6 (FFMx) (C.D. Cal. June 12, 2007), concluded that Starbucks is a citizen of California
7 because “the overall predominance of [Starbucks’] business activity occurs in
8 California.” (RJN, Ex. B.)

9 Because Starbucks is incorporated and headquartered in Washington, this Court
10 has jurisdiction over this case. However, the Supreme Court’s decision in *Hertz* will,
11 at the very least, provide this Court with substantial guidance as to the proper test for
12 diversity jurisdiction in this case and likely will resolve the conflict among the federal
13 district courts in California on this issue. Indeed, the Justices appeared to acknowledge
14 as much during oral argument in *Hertz* on November 10, 2009:

15 CHIEF JUSTICE ROBERTS: Where is —under the Ninth Circuit test,
16 where is—what is the principal place of business of Starbucks?

17 [COUNSEL] MR. SCHNEIDER: Under the Ninth Circuit test, the
18 principal place of Starbucks, there is a case that says Starbucks is in
19 California. Let me give you, Mr. Chief Justice—

20 JUSTICE SCALIA: That’s a surprise.

(Laughter).

21 (RJN, Ex. C at 44:15–22; *id.* at 44:15–46:4.) And it is widely believed in the legal
22 trade press that the Supreme Court will reject the Ninth Circuit’s amorphous test in
23 favor of a test that weighs a corporation’s headquarters heavily in determining its
24 principal place of business. (*See* RJN, Ex. D (Tony Mauro, “Justices Sympathetic to
25 Applying Headquarters Standard to Corporate Jurisdiction,” LAW.COM (Nov. 11,
26 2009).)

1 **C. This Court Should Exercise Its Inherent Authority To Stay These**
 2 **Proceedings Pending A Decision In *Hertz***

3 Courts have inherent authority to stay proceedings before them. *Landis v. N.*
 4 *Am. Co.*, 299 U.S. 248, 254; 57 S. Ct. 163, 166; 81 L. Ed. 153, 158 (1936) (“[T]he
 5 power to stay proceedings is incidental to the power inherent in every court to control
 6 the disposition of the causes on its docket with economy of time and effort for itself,
 7 for counsel, and for litigants.”).² Pursuant to that authority, “[a] trial court may, with
 8 propriety, find it is efficient for its own docket and the fairest course for the parties to
 9 enter a stay of an action before it, pending resolution of independent proceedings
 10 which bear upon the case.”³ *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857,
 11 863–64 (9th Cir. 1979); *see also Demshki v. Monteith*, 255 F.3d 986, 988 (9th Cir.
 12 2001); *San Diego Padres Baseball P’ship v. United States*, 2000 U.S. Dist. LEXIS
 13 10987, at *1 (S.D. Cal. July 12, 2000) (staying proceedings before it pending
 14 “resolution of another matter [that] will have a direct impact on the issues” before the
 15 court).

16 In *Lockyer v. Mirant Corp.*, the Ninth Circuit explained that “the competing
 17 interests which will be affected by the granting or refusal to grant a stay must be
 18 weighed” in evaluating the propriety of stay. 398 F.3d 1098, 1110 (9th Cir. 2005)
 19 (internal citation omitted). Those “competing interests” include: (1) “the hardship or
 20 inequity which a party may suffer in being required to go forward,” and (2) “the
 21 _____

22 ² Of course, this Court has jurisdiction over this matter to determine whether it has
 23 jurisdiction. *See* 28 U.S.C. § 1446(d); *see also Pratt Cent. Park Ltd. Partnership v.*
 24 *Dames & Moore*, 60 F.3d 350 (7th Cir. 1995) (noting that a judge “may take
 evidence and resolve conflicts to decide the citizenship of the parties” when
 determining whether there is a sound basis for federal diversity jurisdiction).

25 ³ A court’s determination regarding whether or not a stay in a given case is
 26 appropriate pending resolution of independent proceedings is not dependant on the
 27 parties involved. *See Landis*, 299 U.S. at 256 (rejecting as “too mechanical and
 narrow” the view that a court may not stay proceedings pending the outcome of a
 controversy to which the litigants before it are strangers).

1 orderly course of justice measured in terms of the simplifying or complicating of
2 issues, proof, and questions of law which could be expected to result from a stay.” *Id.*

3 District courts frequently find that these considerations weigh in favor of a stay
4 of proceedings when, as is the case here, an action pending before an appellate court is
5 expected to provide controlling authority or significant guidance on a key issue of law
6 in the case pending before the district court. For example, in *Pena v. Cid*, the district
7 court stayed proceedings before it pending an *en banc* decision by the Ninth Circuit
8 that was expected to address issues “broad in scope and material to the case brought by
9 plaintiffs.” 2009 U.S. Dist. LEXIS 92605, *3-6 (E.D. Cal. Oct. 2, 2009). The district
10 court concluded that *Pena*, which arose out of the plaintiffs’ Second Amendment
11 challenge to the constitutionality of California’s “Handgun Roster Scheme” should be
12 stayed pending the Ninth Circuit’s *en banc* review of its decision in *Nordyke v. King*,
13 563 F.3d 439 (9th Cir. 2009), which held that the Due Process Clause of the
14 Fourteenth Amendment incorporates the Second Amendment. The district court in
15 *Pena* noted that “a foundational issue in both *Nordyke* and in this case is whether the
16 Second Amendment is incorporated and thus, applicable to state and local
17 governments. . . . Further, the *en banc* decision in *Nordyke* will . . . almost certainly
18 provide crucial direction to the court in its analysis of the firearms regulation in this
19 case.” *Id.* at *6. *See also Espinoza v. County of Fresno*, 2009 U.S. Dist. LEXIS
20 58025, *2-4 (E.D. Cal. June 18, 2009) (staying proceedings pending decisions by the
21 Ninth Circuit in two cases presenting issues “indispensable to a well-reasoned analysis
22 of the present litigation,” because “a short delay would promote judicial economy,
23 provide guidance to the district courts, and avoid unnecessary costs and fees”).

24 In sum, where, as here, another court’s resolution of a legal issue “will have a
25 significant impact on the course of [the] litigation, a stay will serve the interests of the
26 parties and ‘the orderly course of justice measured in terms of the simplifying . . . of
27 issues, proof, and questions of law which could be expected to result from a stay.’”

1 *Ortega v. J.B. Hunt Transp., Inc.*, 258 F.R.D. 361, 371 (C.D. Cal. 2009) (staying
 2 proceedings pending decision by the California Supreme Court on interpretation of
 3 state law at issue).

4 *Hertz* almost certainly will result in controlling precedent regarding this Court’s
 5 jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1441. Moreover, the
 6 prejudice to Starbucks is great if this case is remanded to state court under an
 7 erroneous interpretation of the controlling statutes, thereby depriving Starbucks of its
 8 right to a federal forum,⁴ with no ability to appeal. 28 U.S.C. § 1447(d). In addition,
 9 because a decision in *Hertz* is likely to be reached in a reasonable period of time, a stay
 10 of these proceedings pending that ruling likely will be brief, and Plaintiff will not
 11 suffer any hardship as a result of delay. *See Leyva*, 593 F.2d at 864 (a stay is
 12 appropriate where it is “likely” the “other proceedings will be concluded within a
 13 reasonable time in relation to the urgency of the claims presented in this court”). This
 14 is especially true given that Plaintiff’s Complaint seeks only money damages—not
 15 injunctive relief. *See CMAX, Inc. v. Hall*, 300 F.2d 265, 268-69 (9th Cir. 1962) (noting
 16 that a delay in trial would only delay recovery in money damages and, therefore, the
 17 party opposing the stay had not made a strong showing that it would suffer harm as a
 18 result of a stay). On balance, these factors weigh heavily in favor of staying these
 19 proceedings pending a decision in *Hertz*.

20 III. CONCLUSION

21 Whether this Court has jurisdiction over this action pursuant to 28 U.S.C.
 22 §§ 1332 and 1441 is a fundamental issue that must be addressed by this Court, and the
 23 Supreme Court’s decision in *Hertz* will create controlling precedent regarding that
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25
 26 ⁴ *See Dresser Indus. v. Underwriters at Lloyd’s of London*, 106 F.3d 494, 499 (3d
 27 Cir. 1997) (“the generally accepted view [is] that diversity jurisdiction was
 established to provide access to a competent and impartial tribunal, free from local
 prejudice or influence”).

1 precise issue. Therefore, this Court should exercise its broad discretion to temporarily
2 stay further proceedings in this case pending resolution of *Hertz* to ensure that its
3 decision regarding jurisdiction in this case will be consistent with controlling
4 precedent, fair to the parties involved, and in the interest of the sound administration of
5 justice.

6 DATED: December 14, 2009

7 Theane Evangelis Kapur
8 GIBSON, DUNN & CRUTCHER LLP

9
10 By: _____
11 Theane Evangelis Kapur
12 Attorneys for Defendant Starbucks Corporation
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