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PACIFIC MERCHANT SHIPPING ASSOCIATION,
12 a California Mutual Benefit Corporation

13 UNITED STATES DISTRICT COURT

14 EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO

16 PACIFIC MERCHANT SHIPPING)
ASSOCIATION ("PMSA"), a California)
17 Mutual Benefit Corporation,)
18 Plaintiff,)

19 vs.)

20 JAMES GOLDSTENE, in his official)
21 capacity as Executive Officer of the)
California Air Resources Board,)
22)
23 Defendant,)

24 NATURAL RESOURCES DEFENSE)
COUNCIL, INC., COALITION FOR)
25 CLEAN AIR, INC., and SOUTH COAST)
26 AIR QUALITY MANAGEMENT)
DISTRICT,)

27 Defendants-Intervenors.)
28 _____)

Case No.: 2:09-CV-01151-MCE-EFB

**JOINT STIPULATION TO STAY
DISTRICT COURT ACTION PENDING
APPEAL AND TO VACATE DATES SET
BY SCHEDULING ORDER ; ORDER**

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TO THE COURT AND ALL RESPECTIVE PARTIES:

IT IS HEREBY STIPULATED, AGREED AND REQUESTED, by and among Plaintiff Pacific Merchant Shipping Association (“PMSA”), Defendant James Goldstene, and Defendant-Intervenors Natural Resources Defense Council, Inc., Coalition for Clean Air, Inc., and South Coast Air Quality Management District, through their counsel of record, that:

1. Pursuant to the Court’s authority to control proceedings pending before it as provided by Rule 16(b)(4) of the Federal Rules of Civil Procedure and 28 U.S.C. §1292(b), the Court enter an order staying further proceedings in the district court case pending conclusion of Plaintiff’s interlocutory appeal of the Court’s denial of Plaintiff’s Motion for Summary Judgment to the Court of Appeals for the Ninth Circuit; and

2. All dates and deadlines pertaining to discovery, motions, pretrial, and trial of the matter as scheduled by the Court’s Pretrial Scheduling Order of August 19, 2009, shall be vacated, subject to further Order of the Court.

This Stipulation and Request for Order Staying Action is not interposed for purposes of delay but rather because:

A. On December 11, 2009, the Court of Appeals for the Ninth Circuit, pursuant to 28 U.S.C. §1292(b), granted PMSA’s petition for permission to appeal the District Court’s Amended Memorandum and Order of August 28, 2009, denying PMSA’s Motion for Summary Judgment. [Court of Appeals Docket No. 09-80145.];

B. This Court has determined and the appellate court’s grant of the petition for permission to appeal reflects its finding that the immediate appeal will likely advance the ultimate determination of the litigation;

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///

1 C. The briefing schedule established by the Court of Appeals requires the briefing to be
2 concluded no later than May 11, 2010, fourteen days after the last day for service of the
3 Appellees' Briefs; and

4 D. The parties agree that the stay requested will allow the parties to focus their efforts and
5 resources on the pending appeal, and potentially avoid expensive and time-consuming
6 pretrial and trial proceedings in the case, thereby serving the interests of the Court and
7 the parties in the efficient and economic resolution of the litigation.
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9
10 **IT IS SO STIPULATED AND AGREED.**

11
12 FLYNN, DELICH & WISE, LLP

13 Dated: January 7, 2010

/s/ Erich P. Wise

Erich P. Wise

Nicholas S. Politis

Aleksandrs E. Drumalds

Attorneys for Plaintiff

PACIFIC MERCHANT SHIPPING ASSOCIATION,
a California Mutual Benefit Corporation

Edmund G. Brown, Jr. Attorney General of the State of
California

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19 Dated: January 7, 2010

/s/ Nicholas Stern (as authorized on 1-6-2010)

Nicholas Stern

Deputy Attorneys General

Attorneys for Defendant

JAMES GOLDSTENE, in his official capacity as Executive
Officer of the California Air Resources Board

NATURAL RESOURCES DEFENSE COUNCIL, INC.

20
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23
24 Dated: January 7, 2010

/s/ Melissa C. Lin Perrella (as authorized on 1-6-2010)

David R. Pettit

Melissa C. Lin Perrella

Attorneys for Defendants-Intervenors

NATURAL RESOURCES DEFENSE COUNCIL, INC. and
COALITION FOR CLEAN AIR, INC.

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SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Dated: January 7, 2010

/s/ Barbara Baird (as authorized on 1-6-2010)

Barbara Baird
Attorneys for Defendant-Intervenor
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

ORDER

Based on the foregoing Stipulation, **IT IS HEREBY ORDERED** that:

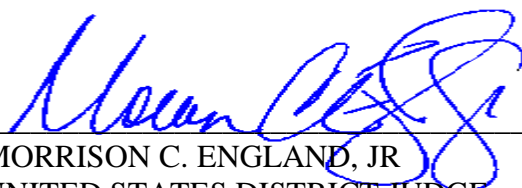
Pursuant to this Court's authority to control proceedings pending before it as provided by Rule 16(b)(4) of the Federal Rules of Civil Procedure and 28 U.S.C. §1292(b), the Court orders that proceedings in the district court in this action be stayed in their entirety pending conclusion of Plaintiff's interlocutory appeal to the Court of Appeals for the Ninth Circuit of this Court's denial of Plaintiff's Motion for Summary Judgment.

All dates and deadlines pertaining to discovery, motions, pretrial, and trial of the matter as scheduled by the Court's Pretrial Scheduling Order of August 19, 2009, are vacated, subject to further Order of this Court.

Not later than June 1, 2010 the parties shall file a Joint Status report to provide the District Court with the latest information on the case, including any information re the proceedings in the Ninth Circuit.

IT IS SO ORDERED.

Dated: January 11, 2010


MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE