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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10  
11 LAURA TEMPLE,

12 Plaintiff,

13 v.

14 ACTION WATER SPORTS OF INCLINE  
15 VILLAGE, LLC, et al.,

16 Defendants.

No. 2:23-cv-00759-DAD-CKD

ORDER GRANTING DEFENDANTS'  
MOTION TO STAY THIS ACTION

(Doc. No. 23)

17 This matter is before the court on defendants' motion to stay this action pending final  
18 resolution of plaintiff's state court proceedings. (Doc. No. 23.) On January 5, 2024, the pending  
19 motion was taken under submission to be decided on the papers pursuant to Local Rule 230(g).  
20 (Doc. No. 26.) For the reasons explained below, the court will grant defendants' motion to stay  
21 this action.

22 **BACKGROUND**

23 This personal injury tort action arises from a motorboating accident that allegedly  
24 occurred on August 4, 2020 when plaintiff Laura Temple was swimming in Lake Tahoe and was  
25 ran over by a boat that she and her colleagues had rented. (Doc. No. 1.)

26 On January 27, 2022, plaintiff filed a complaint in the Los Angeles County Superior Court  
27 against the following eight named defendants: Action Water Sports of Incline Village, LLC  
28 ("AWS") (the boat rental company); Gary Scott (a manager of AWS); David Ceruti (a manager of

1 AWS); E.B. (an employee of AWS); Michael Goodwin (a colleague of plaintiff); Shawn Willette  
2 (a colleague of plaintiff); Zakaria Stour (a colleague of plaintiff); and Brenda Poot (a colleague of  
3 plaintiff). (Doc. No. 23-4.)<sup>1</sup> In that complaint, plaintiff brought three claims: (1) a negligence  
4 claim brought against defendants AWS, Scott, Ceruti, and E.B., (“the AWS defendants”); (2) a  
5 claim brought against the AWS defendants for violating Nevada Revised Statute § 488.730,  
6 which imposes duties on persons engaged in the business of renting motorboats; and (3) a  
7 negligence claim against defendants Goodwin, Willette, Stour, and Poot. (*Id.*) Plaintiff seeks  
8 damages in her prayer for relief in that complaint. (Doc. No. 23-4 at 16.)

9 On October 28, 2022, defendant AWS filed a motion to transfer venue of plaintiff’s state  
10 court action to either Placer County or El Dorado County on the grounds that Los Angeles  
11 County was an inappropriate forum due the fact that the incident occurred on Lake Tahoe and  
12 many witnesses reside in the Lake Tahoe area. (Doc. No. 23-5.) Plaintiff vigorously opposed  
13 that motion in a lengthy opposition brief, with over one hundred pages of declarations and  
14 exhibits. (Doc. No. 23-9.) Plaintiff also requested to be heard by that court, which thereafter held  
15 a hearing on March 23, 2023. (*See* Doc. No. 23-6 at 5.) After oral argument, that court granted  
16 defendant AWS’s motion to transfer venue and directed the parties to meet and confer regarding  
17 which county—Placer or El Dorado—was preferable. (*Id.* at 9.) On April 27, 2023, the parties  
18 filed a stipulation informing the court that Placer County Superior Court was preferred. (Doc.  
19 No. 23-7.) Plaintiff’s state court action was then transferred to Placer County Superior Court on  
20 May 24, 2023 (hereinafter, “the State Court Action”). (Doc. No. 23-8 at 2.)

21 Shortly after the Los Angeles Superior Court ruled in favor of defendant AWS on its  
22 motion to transfer venue, but before that action was transferred and received by the Placer County

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23 <sup>1</sup> In connection with the pending motion, defendants filed an unopposed request that the court  
24 take judicial notice of six court records from plaintiff’s state court proceedings. (Doc. No. 23-3.)  
25 A federal court may take judicial notice of documents filed in related state court actions. *See*  
26 *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir.  
27 1998) (taking judicial notice of court filings in a state court case where the same plaintiff asserted  
28 similar and related claims); *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971  
F.2d 244, 248 (9th Cir. 1992) (taking judicial notice of proceedings in other courts where those  
proceedings have a “direct relation to matters at issue”). Thus, the court will grant defendants’  
request for judicial notice of these state court records.

1 Superior Court, plaintiff filed an identical complaint initiating this federal action. Specifically, on  
2 April 21, 2023, nearly a month after the Los Angeles Superior Court’s adverse ruling granting the  
3 transfer of venue, plaintiff filed her complaint in this federal court. (Doc. No. 1.) As with the  
4 State Court Action, in this federal action, plaintiff brings the same exact three claims against the  
5 same defendants based on the same allegations and seeks the same relief. (*Compare* Doc. No. 2-4  
6 *with* Doc. No. 1.)

7 On December 22, 2023, defendant AWS, Scott, and Ceruti (hereinafter, “defendants”)  
8 filed the pending motion to stay this action, pursuant to the *Colorado River*<sup>2</sup> doctrine, pending  
9 final resolution of plaintiff’s parallel state court proceedings. (Doc. No. 23.) On January 26,  
10 2024, plaintiff filed an opposition to the pending motion, and on February 5, 2024, defendants  
11 filed their reply thereto. (Doc. Nos. 27, 28.)

## 12 LEGAL STANDARD

13 Although federal courts have a “virtually unflagging obligation . . . to exercise the  
14 jurisdiction given them,” the Supreme Court has recognized that federal courts may dismiss or  
15 stay a case “in situations involving the contemporaneous exercise of concurrent jurisdictions . . .  
16 by state and federal courts.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S.  
17 800, 817(1976). This power stems from the court’s “considerations of ‘wise judicial  
18 administration, giving regard to conservation of judicial resources and comprehensive disposition  
19 of litigation.’” *Id.* (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183  
20 (1952)). The court’s power to stay or dismiss a case under *Colorado River*, however, is  
21 “considerably . . . limited” and only applies in “exceptional” circumstances. *Id.* at 818.

22 In the Ninth Circuit, eight factors are to be considered in determining the appropriateness  
23 of a stay under *Colorado River*:

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28 <sup>2</sup> *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

1 (1) which court first assumed jurisdiction over any property at  
2 stake; (2) the inconvenience of the federal forum; (3) the desire to  
3 avoid piecemeal litigation; (4) the order in which the forums  
4 obtained jurisdiction; (5) whether federal law or state law provides  
5 the rule of decision on the merits; (6) whether the state court  
6 proceedings can adequately protect the rights of the federal  
7 litigants; (7) the desire to avoid forum shopping; and (8) whether  
8 the state court proceedings will resolve all issues before the federal  
9 court.

6 *R.R. Street & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 978–79 (9th Cir. 2011) (citing *Holder v.*  
7 *Holder*, 305 F.3d 854, 870 (9th Cir. 2002)). “These factors are to be applied in a pragmatic and  
8 flexible way, as part of a balancing process rather than as a ‘mechanical checklist.’” *Am. Int’l*  
9 *Underwriters (Philippines), Inc. v. Cont’l Ins. Co.*, 843 F.2d 1253, 1257 (9th Cir. 1988). “The  
10 weight to be given to any one factor may vary greatly from case to case, depending on the  
11 particular setting of the case. Some factors may not apply in some cases, and, in some cases, a  
12 single factor may decide whether a stay is permissible.” *United States v. State Water Res.*  
13 *Control Bd.*, 988 F.3d 1194, 1203 (9th Cir. 2021) (internal quotations and citations omitted).

14 In the Ninth Circuit, particular attention is paid to the eighth factor: “In this Circuit, the  
15 narrow *Colorado River* doctrine requires that the pending state court proceeding resolve all issues  
16 in the federal suit.” *Holder*, 305 F.3d at 859. Indeed, if “there exists a substantial doubt as to  
17 whether the state court proceeding will resolve all of the disputed issues in [the federal] case, it is  
18 unnecessary for [the court] to weigh the other factors included in the *Colorado River* analysis.”  
19 *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 n.7 (9th Cir. 1993). “When a  
20 district court decides to dismiss or stay under *Colorado River*, it presumably concludes that the  
21 parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution  
22 of the issues between the parties.” *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*,  
23 460 U.S. 1, 28 (1983). In addition, courts should be “particularly reluctant to find that the actions  
24 are not parallel when the federal action is but a ‘spin-off’ of more comprehensive state litigation.”  
25 *Nakash v. Marciano*, 882 F.2d 1411, 1417 (9th Cir. 1989).

26 “Within the Ninth Circuit, district courts must stay, rather than dismiss, an action when  
27 they determine that they should defer to the state court proceedings under *Colorado River*.”  
28 *Coopers & Lybrand v. Sun-Diamond Growers of CA*, 912 F.2d 1135, 1138 (9th Cir. 1990).

1 ANALYSIS

2 In the pending motion, defendants argue that based on consideration of the *Colorado*  
3 *River* factors, the court should stay this action and defer to the State Court Action, which has been  
4 pending since January 27, 2022. (Doc. No. 23.) Indeed, defendants’ motion provides analysis as  
5 to each of those factors. (Doc. No. 23-1 at 5–9.)

6 Plaintiff, on the other hand, does not address any of the *Colorado River* factors  
7 whatsoever in her opposition to defendants’ motion. Rather, plaintiff advances several irrelevant  
8 arguments, devoting more than half of the argument section of her opposition brief to discussing  
9 various other abstention doctrines that have not been raised by defendants in the pending motion.  
10 (Doc. No. 27 at 13.) Plaintiff also appears to argue that because she has invoked this court’s  
11 admiralty jurisdiction over this tort case, “the exclusive applicable law in this matter is federal  
12 maritime law,” perhaps suggesting that only a federal court would be able to exercise jurisdiction  
13 over this case. (*Id.* at 11, 13.) While it is not entirely clear that plaintiff is advancing this  
14 argument, it is clear that any such an argument plainly fails because “[f]ederal maritime  
15 jurisdiction is not, and has never been, entirely exclusive.” *Aqua-Marine Constructors, Inc. v.*  
16 *Banks*, 110 F.3d 663, 668 (9th Cir. 1997).<sup>3</sup> In short, plaintiff’s opposition is largely unhelpful and  
17 fails to meaningfully address, let alone rebut, the arguments that defendants make in their motion.

18 Nonetheless, the court will proceed to consider the *Colorado River* factors in turn.

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22 <sup>3</sup> Plaintiff’s argument that the “savings-to-suitors” clause of 28 U.S.C. § 1333 requires this court  
23 to exercise jurisdiction over this action likewise fails. That clause essentially provides that “a  
24 plaintiff with *in personam* maritime claims has three choices: He may file suit in federal court  
25 under the federal court’s admiralty jurisdiction, in federal court under diversity jurisdiction if the  
26 parties are diverse and the amount in controversy is satisfied, or in state court.” *Ghotra by*  
27 *Ghotra v. Bandila Shipping, Inc.*, 113 F.3d 1050, 1054 (9th Cir. 1997) (explaining that the  
28 savings-to-suitors clause “leave[s] state courts ‘competent’ to adjudicate maritime causes of  
action in proceedings ‘in personam,’ that is, where the defendant is a person, not a ship or some  
other instrument of navigation”) (quoting *Madruza v. Superior Ct. of San Diego Cnty.*, 346 U.S.  
556, 560 (1954)). Nothing in the savings-to-suitors clause permits a plaintiff to first file in state  
court, and then later change their mind as to which forum they prefer and file a duplicative action  
in federal court.

1 **A. Which Court First Assumed Jurisdiction Over Any Property at Stake**

2 The first factor of which court first assumed jurisdiction over any property at stake is not  
3 relevant here because there is no property in dispute. As defendants note in their motion, in both  
4 this action and in the State Court Action, plaintiff seeks damages, not recovery of possession of  
5 any property, as relief on her claims of negligence and violations of a Nevada public safety  
6 statute. (Doc. No. 23-1 at 6.) Consequently, this factor does not apply in this case.

7 **B. The Inconvenience of the Federal Forum**

8 As for the second factor of inconvenience of the federal forum, defendants acknowledge  
9 that this federal court, specifically the Sacramento courthouse of the Eastern District of  
10 California, is “admittedly not geographically far from the state courthouse location in Placer  
11 County.” (Doc. No. 23-1 at 6.) Nevertheless, defendants contend that this federal forum is less  
12 convenient to some degree because Sacramento is further away from the incident location and the  
13 residence of non-party witness than the state courthouse in Placer County. (*Id.*) The court is not  
14 persuaded that the distance from the Placer County courthouse to this federal courthouse rises to  
15 the level of inconvenience contemplated by this factor. *See, e.g., Travelers Indem. Co. v.*  
16 *Madonna*, 914 F.2d 1364, 1368 (9th Cir. 1990) (“Although 200 miles is a fair distance, it is not  
17 sufficiently great that this factor points toward abstention. The district court did not err in finding  
18 this factor ‘unhelpful.’”).

19 Accordingly, this factor is neutral and does not weigh in favor or against the granting of a  
20 stay of this action.

21 **C. The Desire to Avoid Piecemeal Litigation**

22 The third factor the court considers is the desire to avoid piecemeal litigation, which  
23 “occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly  
24 reaching different results.” *Am. Int’l Underwriters*, 843 F.2d at 1258. As defendants correctly  
25 note in their motion, here, plaintiff filed the State Court Action and this action in two different  
26 jurisdictions (state court and federal court, respectively), yet in both actions, plaintiff alleges  
27 identical claims against the same defendants and seeks the same relief. (Doc. No. 23-1 at 6.) The

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1 court agrees with defendants’ point that if this federal action proceeds, it will necessarily require  
2 duplicative effort and pose a substantial risk of inconsistent judgments.

3 Thus, consideration of this factor weighs heavily in favor of the granting of a stay of this  
4 action.

5 **D. The Order in Which the Forums Obtained Jurisdiction**

6 The fourth *Colorado River* factor concerns the order in which the forums obtained  
7 jurisdiction. Under this factor, “priority should not be measured exclusively by which complaint  
8 was filed first, but rather in terms of how much progress has been made in the two actions.”  
9 *Moses H. Cone*, 460 U.S. at 22. Here, it is undisputed that plaintiff filed the State Court Action  
10 first, on January 27, 2022, and it was not until April 21, 2023—fifteen months later—that plaintiff  
11 filed this federal action. Plaintiff asserts in her opposition that “[n]othing of substance has taken  
12 place in the Placer County Superior Court,” and “[n]o depositions have been taken, no motions  
13 have been filed,” though plaintiff acknowledges that the Placer County Superior Court conducted  
14 a case management conference on January 8, 2024 and that defendant AWS propounded written  
15 discovery in the State Court Action on January 25, 2024. (Doc. No. 27 at 8.) While there may  
16 have been minimal progress thus far in the State Court Action, there has not been substantial  
17 progress made in this federal action either. This court issued a scheduling order in November  
18 2023, and a month later, defendants filed the pending motion to stay this case. (*See* Doc. Nos. 19,  
19 23.) Moreover, plaintiff does not dispute that this federal action is duplicative of the State Court  
20 Action. Thus, this federal action is a “repetitive” lawsuit, and this fact, when coupled with “the  
21 fact that state court jurisdiction was invoked first[,] weighs heavily towards justifying a stay [] of  
22 the parallel federal action.” *Ryder Truck Rental, Inc. v. Acton Foodservices Corp.*, 554 F. Supp.  
23 277, 280–81 (C.D. Cal. 1983).

24 Accordingly, consideration of this factor weighs heavily in favor of the granting of a stay  
25 of this action.

26 **E. Whether Federal or State Law Provides the Rule of Decision on the Merits**

27 Fifth, the court examines whether federal law or state law provides the rule of decision on  
28 the merits. Evaluating the merits of plaintiff’s second cause of action alleging violations of

1 Nevada Revised Statute § 488.730 which, according to plaintiff, imposes duties on persons  
2 engaged in the business of renting or leasing motorboats, will undoubtedly rely on the application  
3 of Nevada state law, not federal maritime law. As for plaintiff’s first and third causes of action  
4 for negligence, plaintiff’s complaint does not specify whether these claims are brought under  
5 federal maritime law or state law (whether that be Nevada or California).

6 While plaintiff does not explicitly clarify in her opposition brief that her negligence claims  
7 are brought under federal maritime law, the court infers this to be the case based on her  
8 statements that “California law is inapplicable to this case” and the “exclusive applicable law in  
9 this matter is the federal maritime law of the United States.” (Doc. No. 27 at 12.) In addition,  
10 plaintiff states in her opposition that she has sufficiently alleged federal admiralty jurisdiction  
11 over this tort case because she alleged that the incident occurred in navigable waters (i.e., Lake  
12 Tahoe) and the incident involved traditional maritime activity (i.e., boating). (*Id.* at 12–13.)  
13 Nevertheless, plaintiff does not address defendants’ argument that even if maritime law governs  
14 her negligence claims, that does not automatically displace state law. (Doc. No. 23-1 at 8) (citing  
15 *Garcia v. Vitus Energy, LLC*, 605 F. Supp. 3d 1188, 1200 (D. Alaska 2022)).

16 Federal maritime law is “an amalgam of traditional common-law  
17 rules, modifications of those rules, and newly created rules.” . . .  
18 [A] fundamental feature of maritime law is that “federal admiralty  
19 courts sometimes do apply state law” and “state law may be used to  
supplement federal maritime law so long as state law is ‘compatible  
with substantive maritime policies.’”

20 *Garcia*, 605 F. Supp. 3d at 1200 (citations omitted); *see also In re DeMore’s Mont. LLC*, No. 21-  
21 cv-00730-PHX-DJH, 2023 WL 5754103, at \*4 (D. Ariz. Sept. 6, 2023) (finding that “Arizona  
22 law may supplant, but does not displace” federal inland navigation rules).

23 Thus, federal and state courts would have concurrent jurisdiction over plaintiff’s claims.  
24 Indeed, plaintiff first filed a lawsuit against defendants asserting these same claims in state court.  
25 As a result, consideration of this factor is less significant. *See Nakash*, 882 F.2d at 1416 (noting  
26 that “[i]f the state and federal court[] have concurrent jurisdiction over a claim, this [fifth] factor  
27 becomes less significant”).

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1 The court therefore finds that consideration of this factor is neutral and does not weigh in  
2 favor or against the granting of a stay of this action.

3 **F. Whether the State Court Proceedings Can Adequately Protect the Rights of the**  
4 **Federal Litigants**

5 Relevant to the sixth factor, “[a] district court may not stay or dismiss the federal  
6 proceeding if the state proceeding cannot adequately protect the rights of the federal litigants.”  
7 *R.R. St. & Co.*, 656 F.3d at 981. Thus, “if there is a possibility that the parties will not be able to  
8 raise their claims in the state proceeding, a stay or dismissal is inappropriate.” *Id.*

9 Here, the state superior court has the authority to address the rights and claims that are at  
10 issue in both actions; indeed, the exact same claims are brought against the exact same defendants  
11 in both cases. Consequently, it appears clear that plaintiff can adequately enforce any federal  
12 rights she asserts in the state court proceedings. Notably again, plaintiff originally elected to  
13 vindicate her rights by filing her lawsuit in state court.

14 Thus, consideration of this factor weighs in favor of the granting of a stay of this action.

15 **G. The Desire to Avoid Forum Shopping**

16 The seventh factor considers “whether either party improperly . . . pursued suit in a new  
17 forum after facing setbacks in the original proceeding.” *Seneca Ins. Co., Inc. v. Strange Lan, Inc.*,  
18 862 F.3d 835, 846 (9th Cir. 2017). “In the *Colorado River* context, this Circuit has held that  
19 forum shopping weighs in favor of a stay when the party opposing the stay seeks to avoid adverse  
20 rulings made by the state court or to gain a tactical advantage from the application of federal court  
21 rules.” *Travelers Indem. Co.*, 914 F.2d at 1371.

22 As defendants emphasize in their motion, “[o]nly after failing to defeat [defendant] AWS’  
23 motion to transfer venue and more than a year after filing suit in state court, did plaintiff decide to  
24 bring her claims in this federal court.” (Doc. No. 23-1 at 5.) In her opposition, plaintiff does not  
25 offer any counterargument to rebut defendants’ assertion in their motion that plaintiff’s filing of  
26 this federal action is a “brazen display of forum shopping.” (Doc. No. 23-1 at 5.) Rather,  
27 plaintiff’s opposition effectively concedes that she has engaged in forum shopping by admitting  
28 that she filed this federal action because the Los Angeles County Superior Court (her preferred

1 forum and where she had elected to litigate her claims) granted defendants’ motion to transfer  
2 venue of the State Court Action to Placer County Superior Court (a forum that she did not prefer,  
3 and the transfer of which she had vigorously opposed). (See Doc. No. 27 at 6–8.)

4 Accordingly, consideration of this factor weighs heavily in favor of the granting of a stay  
5 of this action.

#### 6 **H. Whether the State Court Proceedings will Resolve all Issues Before the Federal** 7 **Court**

8 The eighth and final factor concerns whether the state court proceedings will resolve all  
9 issues before the court. As noted above, “[w]hen a district court decides to dismiss or stay under  
10 *Colorado River*, it presumably concludes that the parallel state-court litigation will be an adequate  
11 vehicle for the complete and prompt resolution of the issues between the parties.” *Moses H.*  
12 *Cone*, 460 U.S. at 28. “[A] district court may enter a *Colorado River* stay order only if it has ‘full  
13 confidence’ that the parallel state proceeding will end the litigation.” *Intel Corp. v. Advanced*  
14 *Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993) (quoting *Gulfstream Aerospace Corp. v.*  
15 *Mayacamas Corp.*, 485 U.S. 271, 277 (1988)). Moreover, courts “should be particularly reluctant  
16 to find that actions are not parallel when the federal action is but a ‘spin-off’ of more  
17 comprehensive state litigation.” *Nakash*, 882 F.2d at 1417. Exact parallelism between the state  
18 and federal suits is not required, but “substantial similarity of claims is necessary before  
19 abstention is available.” *Seneca Ins.*, 862 F.3d at 845 (citing *Nakash*, 882 F.2d at 1416).

20 Here, plaintiff’s federal suit is not merely a “spin-off” of his state suit—it is identical.  
21 This court therefore has full confidence that the State Court Action will completely and promptly  
22 resolve the issues between the parties.

23 Accordingly, consideration of this factor weighs heavily in favor of the granting a stay of  
24 this action.

#### 25 **I. Balancing the *Colorado River* Factors**

26 As discussed above, five of the seven relevant factors weigh in favor of the granting of a  
27 stay of this action, and the remaining two factors are neutral. None of the factors weigh against  
28 the granting of a stay. Because almost every *Colorado River* factor weighs in favor of this court

1 staying this action, the court finds that this case presents exceptional circumstances making it  
2 appropriate to defer to plaintiff's proceedings in the State Court Action.

3 For these reasons, the court will grant defendants' motion to stay this action under the  
4 *Colorado River* doctrine.

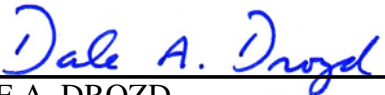
5 **CONCLUSION**

6 For the reasons explained above,

- 7 1. Defendants' motion to stay this action (Doc. No. 23) is granted;
- 8 2. This action is hereby stayed pending resolution of plaintiff's state court  
9 proceedings;
- 10 3. The parties shall file a joint status report within 120 days from the date of entry of  
11 this order, and every 120 days thereafter, to inform this court as to the status of  
12 plaintiff's state court proceedings; and
- 13 4. In addition, the parties shall file a notice informing this court that a final judgment  
14 has reached in plaintiff's state court proceedings, within fourteen (14) days of  
15 entry of that judgment by the state court.

16 IT IS SO ORDERED.

17 Dated: May 7, 2024

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20 DALE A. DROZD  
21 UNITED STATES DISTRICT JUDGE  
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