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**United States District Court**  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|                                    |   |                          |
|------------------------------------|---|--------------------------|
| RAYMOND REUDY AND KEVIN HICKS,     | ) |                          |
| individually and doing business as | ) |                          |
| ADVERTISING DISPLAY SYSTEMS,       | ) | No. 02-5438 SC           |
|                                    | ) |                          |
| Plaintiffs,                        | ) |                          |
|                                    | ) | ORDER DENYING            |
| v.                                 | ) | PLAINTIFFS' MOTION TO    |
|                                    | ) | REMAND, AND              |
| CLEAR CHANNEL OUTDOOR, Inc., a     | ) | <u>DISMISSING ACTION</u> |
| Delaware corporation               | ) |                          |
|                                    | ) |                          |
| Defendant.                         | ) |                          |
|                                    | ) |                          |
| _____                              | ) |                          |

**I.     INTRODUCTION**

Before this Court is a motion to remand, brought by Plaintiffs Raymond Reudy, Kevin Hicks, and Advertising Display Systems (collectively "ADS" or "Plaintiffs"), in their Case Management Statement. Docket No. 294. Also before the Court is a request by Defendant Clear Channel Outdoor, Inc. ("Clear Channel" or "Defendant") to dismiss the suit, which it raised in its Case Management Statement. Docket No. 293. The Court requested additional briefing on the issue of remand, Docket No. 296, and the Defendant thereafter submitted a memorandum in opposition, Docket No. 298. Plaintiffs filed a reply to the Opposition,

1 Docket No. 304 and Defendant filed a sur-reply, Docket No. 310.<sup>1</sup>  
2 Having considered all of the papers submitted by both parties, the  
3 Court DENIES Plaintiffs' motion to remand, and DISMISSES the  
4 action.

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6 **II. FACTUAL BACKGROUND**

7 Plaintiffs and Defendant are engaged in the business of  
8 leasing outdoor advertising signs and billboards in the San  
9 Francisco Bay Area. See Report And Recommendation By Special  
10 Master ("Report and Recommendation") at 3. Docket No. 278. Both  
11 lease sign locations from property owners and rent that space to  
12 advertisers. Id. Although Plaintiffs operate only a small number  
13 of signs throughout the area, Defendant operates nearly half of  
14 the billboards throughout the San Francisco Bay Area. Id. at 6,  
15 53. These signs are regulated under the Planning and Building  
16 Codes of the City and County of San Francisco (the "City"). Id.  
17 at 3-5.

18 In January of 2002, Plaintiffs filed a complaint in  
19 California state court, alleging that Defendant operates signs and  
20 billboards throughout the City in violation of San Francisco  
21 Planning and Building Codes. Id. at 5-6. Plaintiffs contend that  
22 these signs diminish the value of Plaintiffs' legally maintained  
23 signs and constitute an unfair business practice under California  
24

25  
26 <sup>1</sup> After Plaintiffs submitted their reply, Clear Channel moved  
27 to submit the sur-reply. The Court GRANTS Clear Channel's motion  
28 to submit supplemental material, and has considered the additional  
briefs submitted by both parties.

1 Business and Professional Code §§ 17200-17210.<sup>2</sup> Id. at 6.

2 Plaintiffs seek injunctive relief, such that Defendant would be  
3 required to stop using or take down its noncomplying signs. Id.  
4 at 12-13.

5 This case was removed on diversity grounds from California  
6 state court to this Court on November 15, 2002. Notice of  
7 Removal, Docket No. 1. On April 11, 2003, this Court granted  
8 Defendant's request to stay this action ("First Stay Order").  
9 Docket No. 81. This stay was based upon the doctrine of primary  
10 jurisdiction, as the Court would "not risk displacing [] local  
11 agencies without first giving them the opportunity to address  
12 Plaintiffs' contentions." Id. at 5. This stay was partially  
13 lifted on June 3, 2004, to allow discovery to commence with regard  
14 to twenty-five of the signs at issue. Docket No. 117. On  
15 November 19, 2004, the case was referred to a Special Master, who  
16 later issued findings of fact regarding the twenty-five signs.  
17 Docket No. 233.

18 In November of 2006, Defendant submitted alternative motions

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20 <sup>2</sup> The Court notes that in the amended complaint submitted on  
21 November 25, 2002, Plaintiffs also took issue with a handful of  
22 signs in Alameda and San Mateo Counties. Docket No. 5. Plaintiffs  
23 alleged that these signs were illegal, and that Defendant forced  
24 customers to rent these illegal signs before they could rent prime  
25 locations in the San Francisco market. Id. at 11-14. The Court  
26 further notes that Plaintiffs have since attempted to amend their  
27 complaint twice, Docket Nos. 176 & 188, and both times, all  
28 reference to signs outside of San Francisco was deleted "per the  
parties' agreement." Murphy Decl. at 2 n.1. Docket No. 176, Ex.  
2. Although Plaintiffs' motion for leave to file the Third Amended  
Complaint was granted in part, Docket Nos. 196, 197, it was  
apparently never filed. The Court can find no record or mention of  
alleged violations outside of the City since the initial complaint.  
The Court determines that signs outside of the City are no longer  
at issue.

1 to dismiss, for judgement on the pleadings, and for summary  
2 judgment. Docket Nos. 263, 266, 267. The Special Master found  
3 that the thrust of Clear Channel's argument was that the Court  
4 should abstain from considering, and thereby dismiss, Plaintiffs'  
5 complaint because of recently enacted legislation by the City,  
6 which addressed how the City would enforce its regulations against  
7 noncomplying signs. Report and Recommendation at 10. Although  
8 the Special Master "acknowledged that Clear Channel had made a  
9 plausible argument regarding abstention," he recommended that the  
10 Court continue to stay the action, rather than dismiss it, so that  
11 "Plaintiffs [could] be afforded the opportunity to periodically  
12 check in with the Court or the Special Master to determine if  
13 progress is in fact being made toward enforcing the sign  
14 regulations . . . ." Id. at 14-16. This Court adopted the  
15 Special Master's recommendations, and the case was stayed ("Second  
16 Stay Order"). Docket No. 284.

17 The parties have participated in status conferences on  
18 February 22, 2008 and January 9, 2009. Docket Nos. 287, 296. In  
19 its most recent status report, Defendant again requested that the  
20 case be dismissed under the doctrine of primary jurisdiction.  
21 Def.'s Case Management Statement at 9. Plaintiffs requested that  
22 the case be permitted to go forward, or alternatively, that the  
23 case be remanded to state court. Pls.' Case Management Statement  
24 at 7-8, Docket No. 294.

25  
26 **III. Legal Standard**

27 There are two relevant doctrines that allow a court to  
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1 decline to exercise jurisdiction over a case that is properly  
2 before it, where the case involves local issues that arise out of  
3 a state regulatory regime. The first is the doctrine of Burford  
4 abstention, set out by the Supreme Court in Burford v. Sun Oil  
5 Co., 319 U.S. 315 (1943), under which a court may remand in favor  
6 of an administrative or judicial process at the state level. In  
7 the Ninth Circuit, remand under the Burford doctrine requires:

8 first that the state has chosen to concentrate suits  
9 challenging the actions of the agency involved in a  
10 particular court; second, that federal issues could not  
11 be separated easily from complex state law issues with  
12 respect to which state courts might have special  
13 competence; and third, that federal review might  
14 disrupt state efforts to establish a coherent policy.

12 United States v. Morros, 268 F.3d 695, 705 (9th Cir. 2001)  
13 (quoting Knudsen Corp. v. Nev. State Dairy Com., 676 F.2d 374 (9th  
14 Cir. 1982)).

15 The second relevant doctrine is the doctrine of primary  
16 jurisdiction, "a prudential doctrine under which courts may, under  
17 appropriate circumstances, determine that the initial  
18 decisionmaking responsibility should be performed by the relevant  
19 agency rather than the courts." Syntek Semiconductor Co. v.  
20 Microchip Tech., 307 F.3d 775, 780 (9th Cir. 2002). Under  
21 California law, a court may stay or dismiss an action when the  
22 integrity of an administrative process will be compromised if the  
23 matter is not first heard in an administrative forum.<sup>3</sup> See

24 <sup>3</sup> The primary jurisdiction of administrative agencies is a  
25 function of state law, and the Court therefore draws its primary  
26 jurisdiction analysis from state precedent. See MCI Telecomm.  
27 Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1109-11 (3rd Cir. 1995);  
28 Mills v. Davis Oil Co., 11 F.3d 1298, 1303-04 (5th Cir. 1994).  
This Court applies the California approach, which generally draws  
heavily on federal precedent, see Farmers Ins. Exch. v. Super. Ct.,

1 Farmers Ins. Exch., 2 Cal. 4th 377, 386-92 (1992). The doctrine  
2 is not based upon any "rigid formula" but rather on the Court's  
3 judgment of the extent to which local policies are implicated.  
4 Id. at 391-92; see also Chabner v. United of Omaha Life Ins. Co.,  
5 225 F.3d 1042, 1051 (9th Cir. 2000).

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7 **IV. DISCUSSION**

8 A. Plaintiffs' Motion to Remand to State Court

9 Plaintiffs do not specify any standard or authority under  
10 which this Court may remand the action. Plaintiffs do not rest  
11 their argument on a procedural defect in the removal of the action  
12 to this Court. Reply at 10. Nor do they argue that this Court  
13 lacks subject matter jurisdiction. Rather, Plaintiffs base their  
14 motion upon the inherent power of the Court to refrain from  
15 hearing cases that implicate the independence of state and local  
16 government. Id.

17 To support its contention that the case should be remanded to  
18 state court, Plaintiffs cite Quackenbush v. Allstate Ins. Co., 517  
19 U.S. 706 (1996), which discussed the applicability of the Burford  
20 doctrine. Instead of arguing directly for abstention under  
21 Burford, Plaintiffs cite Pennzoil Co. v. Texaco, Inc., which  
22 states that "[t]he various types of abstention are not rigid  
23 pigeonholes into which federal court must try to fit cases.  
24 Rather they reflect a complex of considerations designed to soften  
25 the tensions inherent in a system that contemplates parallel

26 \_\_\_\_\_  
27 2 Cal. 4th 377, 386-91 (1992). The Court's discussion of the  
28 doctrine also includes references to federal precedent.

1 judicial processes." 481 U.S. 1, 11 n.9 (1987). Plaintiffs urge  
2 the Court to resist fitting the case into the "rigid pigeonhole"  
3 of Burford, and to remand the case even though it may not meet the  
4 typical criteria for remand under this doctrine. Reply at 10.  
5 However, the Court finds the three criteria for Burford abstention  
6 that the Ninth Circuit outlined in Morros, 268 F.3d at 705, to be  
7 controlling.

8 Morros first requires that "the state has chosen to  
9 concentrate suits challenging the actions of the agency involved  
10 in a particular court . . . ." Id. Where there is no particular  
11 state court that reviews the regulatory scheme in question, remand  
12 is inappropriate. See City of Tucson v. U.S.W. Communs., 284 F.3d  
13 1128, 1133-34 (9th Cir. 2002). Billboard regulations are a  
14 patchwork of codes enacted at the local level, rather than a  
15 state-wide regime. Although the City has created a process for  
16 review and enforcement under its own billboard regulations, see  
17 Report & Recommendation at 3-5, remand would submit this dispute  
18 to state court, rather than to the City's administrative process.  
19 That court would not necessarily be better situated to resolve  
20 this dispute than this Court. See Farris v. Advantage Capital  
21 Corp. No. 06-1238, 2006 U.S. Dist. LEXIS 81171, at \*8 (D. Ariz.  
22 Nov. 6, 2006).

23 The second Morros factor examines whether federal issues can  
24 be easily separated from complex state law issues in which state  
25 courts might have "special competence." 268 F.3d at 705. There  
26 are no federal issues involved in this suit. However, any  
27 "special competence" relevant to this case is vested in the City's  
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1 administrators rather than in the state court to which this suit  
2 would be remanded. Consequently, the second factor mentioned in  
3 Morros does not warrant remand.

4 The third factor outlined in Morros focuses on whether  
5 adjudication by this Court would frustrate a legislative effort to  
6 create a coherent regulatory policy. Id. Adjudication by a state  
7 court would present just as much risk of frustrating the City's  
8 administrative policies, or of creating duplicitous or  
9 inconsistent judgments, as would adjudication before this Court.  
10 Remand on the basis of the Burford doctrine is inappropriate. The  
11 Court DENIES Plaintiffs' motion to remand.

12 B. Defendant's Request for Dismissal

13 Plaintiffs allege that Clear Channel's use of approximately  
14 385 signs and billboards around the City violate City regulations.  
15 Report & Recommendation at 6. As the Court stated when it first  
16 stayed this action in April of 2003:

17 Assessing the legality of each and every one of these  
18 signs will be an enormous task requiring extensive  
19 factual review and detailed knowledge of numerous  
20 local sign regulations. . . . The entities best  
21 suited to perform such review are the local  
22 governments that draft and enforce the relevant  
23 regulations. The Court, by contrast, is ill-suited  
24 for the task of effectively becoming the primary  
25 agency in charge of regulating outdoor advertising in  
26 the San Francisco Bay Area . . . .

27 First Stay Order at 4-5.

28 In April of 2007, the Court again stayed the action on  
primary jurisdiction grounds, in order to give Plaintiffs an  
opportunity to "determine if progress is in fact being made toward  
enforcing the sign regulations." Report and Recommendation at 16.



1 The doctrine of primary jurisdiction is intended to advance "two  
2 related policies: It enhances court decisionmaking and efficiency  
3 by allowing courts to take advantage of administrative expertise,  
4 and it helps assure uniform application of regulatory laws."  
5 Farmers Ins. Exch., 2 Cal. 4th at 391. "'Where [an unfair  
6 competition law] action would drag a court of equity into an area  
7 of complex economic [or similar] policy, equitable abstention is  
8 appropriate. In such cases, it is primarily a legislative and not  
9 a judicial function to determine the best economic policy.'" Shamsian v. Dept. of Conservation, Cal. App. 4th 621, 641-642 (Ct.  
10 App. 2006) (quoting Desert Healthcare Dist. v. PacifiCare, FHP,  
11 Inc., 94 Cal. App. 4th 781, 795-96 (Ct. App. 2001)) (alteration in  
12 original).

13  
14 The only relief Plaintiffs are now requesting is injunctive  
15 relief. Reply at 10. Plaintiffs' sole request is that this Court  
16 police more than a quarter of the City's billboards by issuing and  
17 enforcing an injunction that requires Clear Channel to modify or  
18 remove nearly 400 signs. This Court, sitting in equity, has  
19 discretion to decline the use of its equitable powers,  
20 particularly out of respect for the proper functions of local  
21 government. See Quackenbush, 517 U.S. at 717 (discussing general  
22 discretion of courts sitting in equity to abstain).

23 During the time that the case has been stayed, the City has  
24 made significant progress towards enforcement of its sign  
25 regulations, under the purview of the City's General Advertising  
26 Sign Program ("GASP"). GASP was created in mid-2006 and staffed  
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1 in early 2007. Daire Decl., Ex. G ("GASP Report") at 1.<sup>4</sup> Over  
2 the course of 2007, it created an inventory of the City's signs,  
3 which number over 1500. Id. at 1, 4. GASP then began  
4 "processing" the signs and enforcing City regulations. Id. at 1.  
5 As of January 10, 2008, GASP had removed 10 signs throughout the  
6 City. Def.'s Case Management Statement, Ex. A at 1. By the time  
7 it released its last annual report on November 20, 2008, GASP had  
8 processed 38% of the City's total sign inventory (580 signs), and  
9 of these, it found that 261 signs "do not, and cannot, comply with  
10 the Planning Code." Gasp Report at 4. By November 1, 2008, it  
11 had already overseen the removal of 141 of these signs. Id. Less  
12 than 10 of these signs were removed voluntarily; the rest were  
13 removed pursuant to an established enforcement process.<sup>5</sup> Id. at 4  
14 n.2. Although 120 noncomplying signs still required removal at  
15 that time, id. at 5, the City's mechanisms are clearly not  
16 toothless and are progressing towards a comprehensive regulation  
17 of the City's general advertising signs.<sup>6</sup>

18 This Court therefore finds that the sole relief that  
19 Plaintiffs are requesting (i.e., enforcement of the City's sign

20 <sup>4</sup> James A. Daire, counsel for Clear Channel, filed a  
21 declaration in support of the Opposition. Docket No. 299.

22 <sup>5</sup> Procedures for enforcing regulations are outlined in San  
23 Francisco, California, Planning Code article 6, § 610 (2008). They  
24 involve a Notice of Violation that is sent to the violator, and  
25 permits the violator to request reconsideration or to bring the  
26 sign up to code. Id. Penalties begin accruing after forty-five  
27 days, and the City Attorney or Tax Collector may take action to  
28 collect these fines. Id. Alleged violators may also appeal to an  
administrative law judge ("ALJ"). Id.

<sup>6</sup> GASP also appears to be actively reviewing requests for  
"in-lieu permits," which sign holders may apply for if they cannot  
locate a permit for a particular sign but can otherwise show that  
the sign is likely to be legal. GASP Report at 3. GASP had  
reviewed 50 of the 290 requests as of November 20, 2008. Id. at 5.

1 regulations) is already being carried out by a City agency that  
2 exists for this specific purpose. Declining jurisdiction will  
3 therefore have the favorable consequence of avoiding inconsistent  
4 or redundant judgments with respect to Clear Channel's signs. It  
5 will allow the City Planning Commission to update and amend the  
6 directives of GASP in light of local objectives and policies, as  
7 it continues to do from time to time. See, e.g., San Francisco,  
8 Cal., Planning Commission Resolution No. 17674 (Aug. 8, 2008). It  
9 will allow City authorities to exercise their expertise in this  
10 area, including by issuing the permits necessary to remove or  
11 modify noncomplying signs. See Planning Code art. 6, § 610(c).

12 ADS argues that the City's process is "painstakingly slow"  
13 and that offenders who receive Notices of Violation can cause the  
14 City to incur large expenses, by challenging the violations before  
15 an ALJ, and thereafter challenging the ALJ's determinations by  
16 seeking a writ from California Superior Court. Pls.' Case  
17 Management Statement at 1-2. Plaintiffs allege that the City has  
18 failed to effectively enforce its ordinances against Clear  
19 Channel, and cite specific signs that have allegedly been out of  
20 compliance for long periods of time. Id. at 3-6. However, as the  
21 Special Master noted, Plaintiffs' dissatisfaction with the City's  
22 process "is insufficient to prevent a Court from deferring to the  
23 City's expertise." Report & Recommendation at 15; see also C.  
24 Sterling Wolfe v. State Farm Fire & Casualty Ins., 46 Cal. App.  
25 4th 554, 568 (Ct. App. 1996) ("It is enough that the Legislature  
26 has tried and will try again to address the problem."). Because  
27 the City has a comprehensive mechanism for the enforcement of its

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sign regulations, dismissal of this action under the doctrine of primary jurisdiction is appropriate.

**V. CONCLUSION**

For the reasons stated above, the motion to remand is hereby DENIED. Because this case involves only the implementation of local ordinances, which are already being enforced by a specialized City agency, the action is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

April 24, 2009

  
UNITED STATES DISTRICT JUDGE