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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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6 BRADLEY BRINKMAN and
VICTORIA BRINKMAN,

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Plaintiffs,

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v.

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13 SCHWEIZER AIRCRAFT
CORPORATION, et al.,

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Defendants.

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NO. C10-4601 TEH

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ORDER GRANTING
PLAINTIFFS' MOTION TO
CONTINUE BRIEFING AND
HEARING SCHEDULES ON
DEFENDANTS' VENUE
MOTIONS

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25 The Court has carefully considered the parties' arguments concerning whether
26 Defendants' pending venue motions should be decided prior to considering whether this
27 action should be remanded for lack of subject matter jurisdiction.

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29 Defendants correctly observe that a court "may dispose of an action by a *forum non*
30 *conveniens* dismissal, bypassing questions of subject-matter and personal jurisdiction, when
31 considerations of convenience, fairness, and judicial economy so warrant." *Sinochem Int'l*
32 *Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422 (2007). Other courts have held that "the
33 Court's conclusion in *Sinochem* applies equally within the context of a motion to transfer
34 pursuant to 28 U.S.C. § 1404(a)." *San Francisco Tech., Inc. v. Glad Prods. Co.*, Case No.
35 C10-0966 JF (PVT), 2010 WL 2943537, at *6 n.8 (N.D. Cal. July 26, 2010); *see also, e.g., In*
36 *re LimitNone, LLC*, 551 F.3d 572, 576-78 (7th Cir. 2008); *Aftab v. Gonzalez*, 597 F. Supp. 2d
37 76, 79 (D.D.C. 2009).

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39 However, while *Sinochem* allows a court to consider venue issues before deciding
40 complex jurisdictional questions, it does not appear to require it. Nor do the parties' papers
41 establish that the jurisdictional questions in this case are so complex as to warrant deferring a
42 jurisdictional decision in favor of a less complex venue decision. Moreover, the Ninth

1 Circuit has called into question, albeit in dicta, whether the analysis in *Sinochem* applies to
2 cases – like this one – that have been removed, as opposed to cases filed originally in federal
3 court:


4 For a case originally filed in federal court, the result would be the
5 same, whether dismissed on jurisdictional or *forum non*
6 *conveniens* grounds – dismissal would be inevitable and
7 conclusive. For a case originating in state court, however, the
8 difference could be significant. If the federal court dismisses on
forum non conveniens grounds, the case is dismissed. But if
removal is improper, the case is remanded to the state court.
Thus, in a removal scenario, the sequencing of the decision may
have practical consequences.

9 *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1088 (9th Cir. 2009).

10 In light of the above, the Court finds good cause to GRANT Plaintiffs' motion to
11 continue proceedings on Defendants' venue motions until after Plaintiffs' anticipated motion
12 to remand can be decided. Plaintiffs state that they will file their remand motion on or before
13 November 12, 2010. If Plaintiffs fail to do so, then the briefing and hearing schedule on
14 Defendants' two venue motions shall remain unchanged. However, if Plaintiffs file a remand
15 motion by November 12, 2010, then the venue motions shall be stayed until after the Court
16 decides whether this case should be remanded. To promote efficiency, the parties shall meet
17 and confer after Plaintiffs have filed their motion to determine whether jurisdictional
18 discovery is necessary. If so, the parties shall attempt to reach a stipulation on discovery
19 deadlines and a briefing and hearing schedule on Plaintiffs' motion.

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21 **IT IS SO ORDERED.**

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23 Dated: 11/10/10

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26 THELTON E. HENDERSON, JUDGE
27 UNITED STATES DISTRICT COURT
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