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9 *Attorneys for Plaintiffs Kim Stevenson and Howard Tarlow*

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 KIM STEVENSON, et al.,
 13
 Plaintiff,
 14
 v.
 15
 16 GREGORY W. BECKER, et al.,
 Defendants.
 17

Case No. 23-cv-02277-HSG

**STIPULATION AND ORDER
 REGARDING CERTIFICATION OF
 ORDER DENYING MOTIONS FOR
 REMAND FOR APPEAL AND
 CORRESPONDING STAY OF
 PROCEEDINGS**

Date: April 16, 2024
 Time: 2:00 p.m.
 Judge: Haywood S. Gilliam, Jr.

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 19
 20 STEPHEN ROSSI, et al.,
 21
 Plaintiffs,
 22
 v.
 23
 24 GREGORY W. BECKER, et al.,
 Defendants.
 25
 26

Case No. 23-cv-02335-HSG

27 [additional caption on following page]

1 STEPHEN ROSSI, et al.,

Case No. 24-cv-01674-HSG

2
3 Plaintiffs,

4 v.

5 ANTHONY DECHELLIS, et al.,

6 Defendants.

7
8 Pursuant to Civil Local Rule 7-12 and the Court’s March 28, 2024 Order Denying Motions to
9 Remand, (*Stevenson* Dkt. No. 87; *Rossi I* Dkt. No. 60) (“March 28 Order”), Plaintiffs Kim Stevenson,
10 Howard Tarlow, and Stephen Rossi (“Plaintiffs”) and Defendants Gregory W. Becker, Daniel J. Beck,
11 Eric A. Benhamou, John S. Clendening, Richard D. Daniels, Alison Davis, Roger F. Dunbar, Joel P.
12 Friedman, Karen Hon, Jeffrey N. Maggioncalda, Beverly Kay Matthews, Mary J. Miller, Kate D.
13 Mitchell, John F. Robinson, Garen K. Staglin, KPMG LLP, Benhamou Global Ventures, LLC, Fifth Era,
14 LLC, Scale Venture Partners, Anthony DeChellis, Christopher Cooper, and Morgan Stanley & Co. LLC
15 (collectively, “Defendants” and, together with Plaintiffs, the “Parties” and each, a “Party”), by and
16 through their undersigned counsel, hereby stipulate as follows:

17 WHEREAS, on April 10, 2023, Plaintiffs Kim Stevenson and Howard Tarlow filed a putative
18 securities class action against certain Defendants in the Superior Court of California, County of Santa
19 Clara, captioned *Stevenson, et al. v. Becker, et al.*, No. 23CV413949 (the “*Stevenson* Action”);

20 WHEREAS, on April 14, 2023, Plaintiff Stephen Rossi filed a putative securities class action in
21 the Superior Court of California, County of Santa Clara alleging substantially similar claims against the
22 same Defendants named in the *Stevenson* Action, and also naming as Defendants Benhamou Global
23 Ventures, LLC, Fifth Era, LLC, and Scale Venture Partners, captioned *Rossi v. Becker, et al.*, No.
24 23CV414120 (the “*Rossi I* Action”);

25 WHEREAS, on February 15, 2024, Plaintiff Stephen Rossi filed a putative securities class action
26 in the Superior Court of California, County of Santa Clara alleging substantially similar claims against
27 Defendants Anthony DeChellis, Christopher Cooper, and Morgan Stanley & Co. LLC, captioned *Rossi*

1 *v. DeChellis, et al.*, No. 24CV431200 (the “*Rossi II* Action”) (together with the *Stevenson* and *Rossi I*
2 Actions, the “State Actions”);

3 WHEREAS, certain Defendants removed the State Actions to the District Court for the Northern
4 District of California;

5 WHEREAS, Plaintiffs filed motions to remand the *Stevenson* and *Rossi I* Actions back to state
6 court (the “Remand Motions”), and the Parties to the *Stevenson* and *Rossi I* Actions briefed and argued
7 those motions to remand before the Honorable Haywood S. Gilliam, Jr. (*Stevenson*, Dkt. Nos. 56, 66,
8 70, 77; *Rossi I*, Dkt. Nos. 39, 49, 50, 57);

9 WHEREAS, on March 27, 2024, pursuant to a stipulation of all parties, Plaintiffs submitted an
10 administrative motion to relate the *Rossi II* Action to the *Stevenson* and *Rossi I* Actions (*Stevenson* Dkt.
11 No. 86), and, as of the date of this filing, the Court has not yet ruled on relatedness;

12 WHEREAS, on March 28, 2024, this Court issued the March 28 Order, which denied Plaintiffs’
13 motions to remand the *Stevenson* and *Rossi I* Actions, and further held that “the interests of clarity
14 would be best served by definitive guidance from the Ninth Circuit as to the recurring legal question of
15 whether Section 22(a) of the 1933 Securities Act [(“1933 Act”)] bars removal of even actions ‘related
16 to’ a bankruptcy action pursuant to Section 1452(a),” and thus directed the Parties to the *Stevenson* and
17 *Rossi I* Actions to submit a stipulation and proposed order certifying an interlocutory appeal of the
18 March 28 Order to the U.S. Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. § 1292(b) (the
19 “Interlocutory Appeal”);

20 WHEREAS, the Parties agree that staying the proceedings in district court in *Stevenson* and
21 *Rossi I* pending the resolution of the forthcoming Interlocutory Appeal will best serve the interests of
22 judicial economy, conservation of time and resources, and orderly management of *Stevenson* and *Rossi*
23 *I*;

24 WHEREAS, Plaintiff Rossi believes remand of the *Rossi II* Action to state court is appropriate
25 on the same bases set forth in the Remand Motions in the *Stevenson* and *Rossi I* Actions, and Defendants
26 in the *Rossi II* Action oppose remand;

1 WHEREAS, Plaintiff Rossi and Defendants in the *Rossi II* Action agree that the March 28 Order
2 shall be determinative of whether the *Rossi II* Action is remanded to state court unless the March 28
3 Order is reversed, vacated, or modified by the Interlocutory Appeal, in which case the determination of
4 the remand issue by the U.S. Court of Appeals for the Ninth Circuit in the Interlocutory Appeal shall be
5 determinative of whether the *Rossi II* Action is remanded to state court;

6 WHEREAS, upon a ruling relating the *Rossi II* Action to the *Stevenson* and *Rossi I* Actions,
7 Plaintiff Rossi and Defendants in the *Rossi II* Action anticipate submitting a stipulation, subject to Court
8 approval, staying the proceedings in district court in the *Rossi II* Action pending determination of the
9 Interlocutory Appeal; and

10 WHEREAS, the Parties have met and conferred as directed by the Court in the March 28 Order
11 and submit this stipulation and proposed order accordingly.

12 NOW THEREFORE, the Parties hereby stipulate and agree as follows:

13 1. The Parties agree that the March 28 Order involves (i) a controlling question of law, (ii)
14 as to which there are substantial grounds for difference of opinion, and (iii) that an immediate appeal
15 may materially advance the litigation’s ultimate termination. 28 U.S.C. § 1292(b); *In re Cement*
16 *Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1982). First, whether this Court has removal jurisdiction
17 is a controlling question of law. *United States v. Woodbury*, 263 F.2d 784, 787 (9th Cir. 1959)
18 (describing as “fundamental” to a § 1292(b) analysis the question “whether a court to which a cause has
19 been transferred has jurisdiction”). Second, this Court’s observations that “[c]ourts are divided on
20 whether the removal bar of Section 22(a) trumps Section 1452(a)’s bankruptcy removal provision” and
21 that “[t]he Ninth Circuit has yet to consider the issue,”¹ evidences that there are substantial grounds for
22 difference of opinion that the Ninth Circuit has not resolved. Finally, an immediate appeal of the March
23 28 Order “may materially advance the ultimate termination of the litigation” because the controlling
24 issue is jurisdictional. *See* 28 U.S.C. § 1292(b); *Cement Antitrust*, 673 F.2d at 1026; *Robbins Co. v.*
25 *Lawrence Mfg. Co.*, 482 F.2d 426 (9th Cir. 1973). If the Ninth Circuit agrees with Plaintiffs that the

26 _____
27 ¹ March 28 Order at 4 (citing *Cobalt Partners, LP v. Sunedison, Inc.*, No. C 16-02263-WHA, 2016 WL
28 4488181, at *5 (N.D. Cal. Aug. 26, 2016)).

1 removal provisions of 28 U.S.C. §§ 1334(b) and 1452(a) do not override the removal bar in Section
2 22(a) of the Securities Act, 15 U.S.C. § 77v(a), its decision would terminate further litigation before the
3 district court and all three State Actions would be remanded back to state court. *See Cobalt Partners,*
4 *LP v. Sunedison, Inc.*, 2016 WL 4488181, at *8 (N.D. Cal. 2016) (certifying “for interlocutory review
5 under Section 1292(b): whether Section 22(a) of the 1933 Securities Act bars removal of actions ‘related
6 to’ a bankruptcy action pursuant to Section 1452(a),” holding that the issue “involves a controlling
7 question of law as to which there is substantial ground for difference of opinion and that an immediate
8 appeal from the order may materially advance the ultimate termination of the litigation”).

9 2. The proceedings in district court in the *Stevenson* and *Rossi I* Actions will be stayed
10 pending the resolution of the forthcoming Interlocutory Appeal, and no Defendant in the *Stevenson* or
11 *Rossi I* Actions shall have any obligation to answer or otherwise respond to the complaints in the
12 *Stevenson* or *Rossi I* Actions prior to resolution of the forthcoming Interlocutory Appeal and a schedule
13 is thereafter set for Defendants to respond.

14 3. Upon a ruling relating the *Rossi II* Action to the *Stevenson* and *Rossi I* Actions, Plaintiff
15 Rossi and Defendants in the *Rossi II* Action shall submit a stipulation, subject to Court approval, staying
16 the proceedings in district court in the *Rossi II* Action pending determination of the Interlocutory
17 Appeal.

18 4. In addition to being binding on all parties to the *Stevenson* and *Rossi I* Actions, the March
19 28 Order shall be binding on the parties to the *Rossi II* Action with respect to, and determinative of,
20 Plaintiff’s expected motion to remand the *Rossi II* Action to state court, unless the March 28 Order is
21 reversed, vacated, or modified by the Interlocutory Appeal, in which case the determination of the
22 remand issue by the U.S. Court of Appeals for the Ninth Circuit in the Interlocutory Appeal shall be
23 determinative of whether the above-captioned actions, as well as the *Rossi II* Action, are remanded to
24 the state court.

25 5. This Stipulation is entered into without prejudice to any Party seeking any interim relief.
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1 6. Nothing in this Stipulation shall be construed as a waiver of any of Defendants’ rights or
2 positions in law or equity, or as a waiver of any defenses, except as to sufficiency of service of process,
3 that Defendants would otherwise have, including, without limitation, jurisdictional defenses.
4

5 Dated: April 11, 2024

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Attorneys for Defendant Morgan Stanley & Co. LLC

1 **ORDER**

2 Pursuant to stipulation, and having concluded for the reasons stated in the stipulation that the
3 March 28 Order involves a controlling question of law as to which there is substantial ground for
4 difference of opinion and that an immediate appeal from the order may materially advance the ultimate
5 termination of the litigation, **IT IS SO ORDERED.**

6
7 Dated: 4/11/2024

8 
9 HAYWOOD S. GILLIAM, JR.
United States District Judge