

1 XAVIER BECERRA
Attorney General of California
2 DAVID A. ZONANA
Supervising Deputy Attorney General
3 GEORGE TORGUN, State Bar No. 222085
MARY S. THARIN, State Bar No. 293335
4 Deputy Attorneys General
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-1002
Fax: (510) 622-2270
7 Email: George.Torgun@doj.ca.gov

8 *Attorneys for the State of California*

HECTOR BALDERAS
Attorney General of New Mexico
ARI BIERNOFF, State Bar No. 231818
BILL GRANTHAM (*pro hac vice pending*)
Assistant Attorneys General
201 Third St. NW, Suite 300
Albuquerque, NM 87102
Telephone: (505) 717-3520
Email: wgrantham@nmag.gov

Attorneys for the State of New Mexico

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

13 **STATE OF CALIFORNIA, by and through**
14 **XAVIER BECERRA, ATTORNEY**
15 **GENERAL; and STATE OF NEW**
16 **MEXICO, by and through HECTOR**
BALDERAS, ATTORNEY GENERAL,

17 Plaintiffs,

18 v.

19 **UNITED STATES BUREAU OF LAND**
MANAGEMENT; KATHARINE S.
20 **MACGREGOR, Acting Assistant Secretary**
for Land and Minerals Management, United
21 States Department of the Interior; and **RYAN**
ZINKE, Secretary of the Interior,

22 Defendants.
23

Case No. 3:17-cv-03804-EDL

Consolidated with:

Case No. 3:17-cv-03885-EDL

PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
TRANSFER

Date: September 19, 2017

Time: 9:00 a.m.

Courtroom: Courtroom E, 15th Floor

Judge: Hon. Elizabeth D. Laporte

INTRODUCTION

1
2 In these consolidated cases, the States of California and New Mexico (“Plaintiffs”) challenge an action by the U.S. Bureau of Land Management, *et al.* (the “Bureau” or “Defendants”) to “postpone” certain compliance dates of the Waste Prevention, Production Subject to Royalties and Resource Conservation rule (“Waste Prevention Rule” or “Rule”). 82 Fed. Reg. 27,430 (June 15, 2017) (“Postponement Notice”). Plaintiffs contend that the Bureau’s reliance on Section 705 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 705, to issue the Postponement Notice almost five months *after* the Rule’s effective date was unlawful and violated several requirements of the APA.

3
4
5
6
7
8
9
10 Defendants now seek to transfer these cases to the District of Wyoming, where two separate lawsuits challenging the validity of the Waste Prevention Rule itself are already pending. *See* Defendants’ Motion to Transfer these Actions to the U.S. District Court for the District of Wyoming (“Motion”), Dkt. No. 14. However, the factors considered by this Court in deciding a motion to transfer pursuant to 28 U.S.C. § 1404(a) weigh strongly in favor of keeping venue in this District. The State of California’s choice of venue in its home forum is entitled to substantial deference, and the remaining factors either weigh against transfer or are neutral. Defendants’ primary contention—that the interest of justice favors transfer because the District of Wyoming is already familiar with the Waste Prevention Rule—is unavailing, given that Plaintiffs’ claims in this case are based on a separate agency action and statutory provisions of the APA that are not before the Wyoming court. Therefore, this Court should deny Defendants’ Motion.

STANDARD OF REVIEW

11
12
13
14
15
16
17
18
19
20
21 Pursuant to Section 1404(a), “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). Determining whether an action should be transferred under this statute is a two-step process. *Ctr. for Biological Diversity v. Lubchenco*, 2009 WL 4545169, *2 (N.D. Cal. Nov. 30, 2009). First, the reviewing court must determine whether the action “might have been brought” in the transferee court, *i.e.*, whether the proposed transferee court is a proper venue for

1 the action. *Id.* Second, “the plain language of the statute requires the Court to consider at least
 2 three factors in deciding whether to transfer a claim to another court: (1) convenience of parties;
 3 (2) convenience of witnesses; and (3) in the interest of justice.” *Natural Wellness Ctrs. of Am.,*
 4 *Inc. v. J.R. Andorin Inc.*, 2012 WL 216578, *9 (N.D. Cal. Jan. 24, 2012). In addition, “Ninth
 5 Circuit precedent requires that courts also weigh the plaintiff’s choice of forum.” *Id.* (citing *Sec.*
 6 *Investor Prot. Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir. 1985)).

7 In conducting this analysis, courts in this district generally consider the following eight
 8 factors:

9 (1) the plaintiff’s choice of forum; (2) the convenience of the parties; (3) the
 10 convenience of the witnesses; (4) ease of access to evidence; (5) familiarity of each
 11 forum with applicable law; (6) feasibility of consolidation of other claims; (7) any
 local interest in the controversy; and (8) the relative court congestion and time [to]
 trial in each forum.

12 *Doe v. Uber Techs., Inc.*, 2017 WL 2352032, *3 (N.D. Cal. May 31, 2017); *see Natural Wellness*
 13 *Ctrs.*, 2012 WL 216578, at *9; *Jones v. GNC Franchising*, 211 F.3d 495, 498-99 (9th Cir. 2000)).

14 “The party moving to transfer venue under Section 1404(a) bears the burden of establishing
 15 the factors in favor of transfer.” *Earth Island Inst. v. Quinn*, 56 F. Supp. 3d 1110, 1115 (N.D. Cal.
 16 2014) (citing *Commodity Futures Trading Comm’n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979)).

17 ARGUMENT

18 I. WYOMING IS A PROPER VENUE ONLY BECAUSE THE BUREAU RESIDES THERE— 19 JUST AS IT RESIDES IN CALIFORNIA AND MANY OTHER STATES.

20 The State of California does not dispute that this action “might have been brought” in the
 21 District of Wyoming, but disagrees with the rationale provided by Defendants on this issue. *See*
 22 Motion at 5-7. Pursuant to the federal venue statute, a civil action against an agency or officer of
 23 the United States may be brought in any judicial district “in which (A) a defendant in the action
 24 resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a
 25 substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if
 no real property is involved in the action.” 28 U.S.C. § 1391(e)(1).

26 Here, the Bureau “can properly be considered a resident of both Wyoming and California”
 27 because it maintains an office and manages land in both states (Motion at 6 n.2), allowing for
 28

1 venue in either district. However, that is the *only* basis for venue in Wyoming under 28 U.S.C. §
2 1391(e)(1). Plaintiffs disagree that “the events underlying Plaintiffs’ claims” occurred in
3 Wyoming. Motion at 6. This case challenges Defendants’ issuance of the Postponement Notice,
4 which delayed the compliance dates for certain provisions of the Waste Prevention Rule that were
5 operative in many states, including California. *See* 82 Fed. Reg. at 27,430-31; Motion at 1 (“The
6 Rule applies to the development of federal and Indian minerals nationwide”). The Postponement
7 Notice was signed by Defendant Katharine S. MacGregor, a Bureau official based in Washington,
8 D.C., and directed interested parties to contact officials at the Bureau’s Washington, D.C. office
9 for further information. 82 Fed. Reg. at 27,430-31.

10 Moreover, Plaintiffs dispute that “a substantial part of the property potentially affected by
11 these actions is in Wyoming.” Motion at 6-7. First, the Waste Prevention Rule impacts oil and
12 gas leases on public lands across the nation, including millions of acres in California.¹ Further,
13 the location of potentially impacted property is not a relevant consideration in this case. As this
14 court recently found, “by using the legal term ‘real property’ rather than allowing venue
15 whenever ‘the action relates [to] a particular area of land,’ Congress seems to have indicated that
16 it intended mainly to cover disputes over legal interests in real property.” *Earth Island Inst.*, 56 F.
17 Supp. 3d at 1115-16; *see also Natural Res. Def. Council, Inc. v. Tenn. Valley Auth.*, 340 F. Supp.
18 400, 406 (S.D.N.Y. 1971) (finding that the issue “cannot sensibly be whether real property is
19 marginally affected by the case at issue. Rather, the action must center directly on the real
20 property, as with actions concerning the right, title or interest in real property”), *rev’d on other*
21 *grounds*, 459 F.2d 255 (2d Cir. 1972). This is not a case that involves a challenge to a right, title,
22 or interest in “real property,” but rather challenges the Bureau’s adherence to statutory and
23 procedural requirements surrounding agency rule making under the APA. Consequently,
24

25 _____
26 ¹ California has more acres of federal mineral estate administered by the Bureau than Wyoming.
27 *Cf.* Motion at 6 (“Wyoming contains 40.7 million acres of federal mineral estate”) *with*
28 Complaint, ¶ 12 (“In California, the Bureau administers 15.2 million acres of public lands, nearly
15 percent of the State’s land area, as well as 47 million acres of subsurface mineral estate and
592,000 acres of Native American tribal land”).

1 Plaintiffs' choice of venue was proper under 28 U.S.C. § 1391(e)(1)(C) because the State of
2 California resides in this District.

3 In sum, while the District of Wyoming may be a proper venue based on the fact that the
4 Bureau has an office and manages land in that state, this District is a more appropriate venue for
5 the action under Section 1391(e)(1).

6 **II. PLAINTIFFS' CHOICE OF FORUM, THE CONVENIENCE FACTORS, AND THE INTEREST**
7 **OF JUSTICE FAVOR VENUE IN THIS DISTRICT.**

8 **A. Plaintiffs' Choice of Forum is Entitled to Substantial Deference.**

9 Defendants' Motion fails to address the substantial deference afforded to the State of
10 California's choice of forum in this District. "Ordinarily, a plaintiff's choice of forum receives
11 substantial deference, especially when the forum is within the plaintiff's home district or state."
12 *Ctr. for Biological Diversity v. McCarthy*, 2015 WL 1535594, *3 (N.D. Cal. Apr. 6, 2015) (citing
13 *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987)); *see Piper Aircraft Co. v. Reyno*, 454 U.S.
14 235, 255-56 (1981) (recognizing the "strong presumption in favor of the plaintiff's choice of
15 forum," and that "plaintiff's choice of forum is entitled to greater deference when the plaintiff has
16 chosen the home forum"); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947) ("unless the
17 balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be
18 disturbed"). In the context of standing, the U.S. Supreme Court has also held that states are
19 entitled to "special solicitude" based on their "well-founded desire to preserve [their] sovereign
20 territory." *Mass. v. EPA*, 549 U.S. 497, 518-19 (2007).

21 While there are situations where a plaintiff's choice of forum is entitled to less deference,
22 this case is not one of them. *See, e.g., Fabus Corp. v. Asiana Express Corp.*, 2001 WL 253185,
23 *1 (N.D. Cal. Mar. 5, 2001) ("[t]he degree to which courts defer to the plaintiff's chosen venue is
24 substantially reduced where the plaintiff does not reside in the venue or where the forum lacks a
25 significant connection to the activities alleged in the complaint."). Here, the State of California
26 has chosen to file this action in a home venue, where significant oil and gas activities are affected
27 by the Postponement Notice. *See* Complaint, ¶¶ 12, 14; Affidavit of James Ticehonor, Dkt. No.
28 14-1, ¶ 4(b); U.S. Bureau of Land Management, "BLM Releases Draft Plan for Oil and Gas

1 Leasing in Central California” (Jan. 5, 2017), *available at*: [https://www.blm.gov/press-](https://www.blm.gov/press-release/blm-releases-draft-plan-oil-and-gas-leasing-central-california)
2 [release/blm-releases-draft-plan-oil-and-gas-leasing-central-california](https://www.blm.gov/press-release/blm-releases-draft-plan-oil-and-gas-leasing-central-california).

3 “Unless the balance of the Section 1404(a) factors weighs heavily in favor of the defendants,
4 ‘the plaintiff’s choice of forum should rarely be disturbed.’” *Lubchenco*, 2009 WL 4545169, at
5 *4 (quoting *Sec. Investor Prot. Corp.*, 764 F.2d at 1317); *see Decker Coal Co. v. Commonwealth*
6 *Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (“The defendant must make a strong showing of
7 inconvenience to warrant upsetting the plaintiff’s choice of forum.”). Defendants have failed to
8 make such a showing. In fact, as discussed below, the remaining factors regarding convenience
9 and the interest of justice strongly favor keeping the action in this District.

10 **B. The Convenience of the Parties Weighs Strongly Against Transfer.**

11 The convenience of the parties factor weighs strongly in favor of keeping the action in this
12 District. Defendants’ assertion that “the District of Wyoming is a more convenient forum”
13 because the State of California and other parties are already involved in litigation there is
14 misplaced. *See* Motion at 10. The fact that Plaintiffs chose to get involved in existing litigation
15 in Wyoming as defendant-intervenors to protect their States’ interests in the Waste Prevention
16 Rule does not somehow transform Wyoming into a preferred forum that is as convenient as this
17 District or more so.² In reality, there are significant hurdles involved with Plaintiffs’ participation
18 in litigation in the District of Wyoming, including travel costs, the need for *pro hac vice*
19 admission,³ securing local counsel to participate in all phases of the proceedings,⁴ and additional
20 paperwork associated with out-of-state travel.⁵ *See McCarthy*, 2015 WL 1535594, at *4 (finding
21 that transfer would “materially inconvenience plaintiffs” due to “increased travel costs and
22 procedural hurdles, such as paying for costs of admission *Pro Hac Vice* and the retention of local
23 counsel”). However, the same is not true for Defendants, who are primarily based in Washington,

24 ² It is worth noting that while the District of Wyoming is far less convenient than this forum,
25 Plaintiffs respected the forum choice of the State of Wyoming and other Petitioners and did not
26 seek to transfer venue to California or New Mexico.

26 ³ U.S. District Court for the District of Wyoming, Civil Local Rules (Mar. 4, 2014), Local Rule
27 84.2(b).

27 ⁴ *Id.*

28 ⁵ *See* Cal. Gov’t Code §§ 11032-33 (requiring special approval for travel or conducting state
business outside of the state).

1 D.C., and are exempt from the District of Wyoming’s *pro hac vice* and local counsel
2 requirements.⁶ In addition, Defendants’ counsel appear to be primarily based in Washington, D.C.
3 and Denver, Colorado.

4 Finally, Defendants’ assertion that this District is “significantly less convenient” for them
5 because of the existing litigation in the District of Wyoming (*see* Motion at 10) mischaracterizes
6 the relationship between this action and the challenges to the Waste Prevention Rule in Wyoming.
7 *See infra* at Part II.C. In any event, a motion to transfer should be denied where it would “merely
8 shift rather than eliminate the inconvenience.” *Decker Coal*, 805 F.2d at 843; *see STX, Inc. v.*
9 *Trik Stik, Inc.*, 708 F. Supp. 1551, 1556 (N.D. Cal. 1988) (“If the gain to convenience to one party
10 is offset by the added inconvenience to the other, the courts have denied transfer of the action.”).
11 Thus, the convenience of the parties factor supports venue in this District.

12 **C. The Litigation Challenging the Waste Prevention Rule and the**
13 **Unlikelihood of Consolidation Do Not Favor Transfer.**

14 The primary contention made by Defendants is that the “interest of justice” favors transfer
15 “[b]ecause the District of Wyoming is intimately familiar with the Waste Prevention Rule,” and
16 that court could “consolidate these cases with the litigation already pending in that court.”
17 Motion at 7-10. However, this argument misrepresents the relationship between the present
18 action and the litigation in Wyoming. In reality, there are no common questions of law or fact
19 between these two actions that warrant consolidation or transfer to the District of Wyoming.

20 In this action, Plaintiffs challenge the June 15, 2017 decision by Defendants to “postpone”
21 certain compliance dates of the Waste Prevention Rule pursuant to Section 705 of the APA, 5
22 U.S.C. § 705. *See* Complaint, Dkt. No. 1. In particular, Plaintiffs allege that (1) by its plain
23 language, Section 705 does not provide Defendants with authority to postpone a rule that has
24 already gone into effect; (2) Defendants’ attempt to postpone certain compliance dates in the Rule
25 after it became effective constitutes an improper end-run around the APA’s notice-and-comment
26 requirements; (3) Defendants ignored the four-part preliminary injunction test required to

27 ⁶ U.S. District Court for the District of Wyoming, Civil Local Rules (Mar. 4, 2014), Local Rule
28 84.2(d). Defendants are also exempt from the *pro hac vice* and local counsel requirements in this
District. *See* Local Rule 11-2.

1 postpone a rule pursuant to Section 705; (4) Defendants are not authorized to postpone a Rule
2 under Section 705 in order to administratively reconsider it; and (5) Defendants' issuance of the
3 Postponement Notice was arbitrary and capricious because they failed to consider the
4 environmental or public health and safety benefits of the Rule, or royalty revenues to the States.
5 *See id.* ¶¶ 38-60. The parties are already briefing a motion for summary judgment, which is set
6 for hearing on September 25, 2017. *See* Plaintiffs' Motion for Summary Judgment, Dkt. No. 11.

7 In the Wyoming litigation, two industry groups and the States of Wyoming and Montana
8 (later joined by North Dakota and Texas) (collectively, "Petitioners") challenged the Waste
9 Prevention Rule, promulgated on November 18, 2016, on the alleged basis that Defendants did
10 not have statutory authority to regulate air pollution and that the Rule was arbitrary and capricious.
11 *See* Motion at 2-3; *Wyoming v. U.S. Dept. of the Interior*, 2017 WL 161428 (D. Wyo. Jan. 16,
12 2017). Specifically, the Petitioners alleged that the Rule exceeds the Bureau's statutory authority
13 by comprehensively regulating air quality, and was arbitrary and capricious because the Bureau
14 improperly considered the "social cost of methane" and emissions reductions and otherwise
15 imposed significant costs to achieve *de minimus* benefits. *See Wyoming*, 2017 WL 161428, at
16 **5-10.⁷ The administrative record for that case has already been completed, and briefing on the
17 merits is currently set for October and November 2017, with no date set for a hearing. *See* Dkt.
18 No. 11-1, Exhibit E (Order Granting Motion to Extend Briefing Deadlines).

19 Defendants' assertion that transfer of this action to Wyoming will "avoid multiple
20 litigations based on a single transaction," or "conserve[] judicial resources and avoid[] duplicative
21 litigation and potentially inconsistent results" is incorrect. *See* Motion at 7 (quoting *Wireless*
22 *Consumers Alliance, Inc. v. T-Mobile USA, Inc.*, 2003 WL 22387598, **4-5 (N.D. Cal. Oct. 14,
23 2003)). In fact, the *Wireless Consumers* case cited by Defendants is nothing like the situation
24 here. In that litigation, the court found that the two cases at issue were "intimately related, if not
25 identical," and "nearly all of the claims [in the later-filed action] were copied verbatim from [the
26 first-filed action]." *Wireless Consumers*, 2003 WL 22387598, at *5. By contrast, the cases here

27 _____
28 ⁷ As defendant-intervenors in that action, Plaintiffs contest all of these allegations.

1 challenge two separate agency actions, and are not based on a “single transaction.” *See id.* None
2 of the claims in Plaintiffs’ challenge to the Postponement Notice are at issue in the District of
3 Wyoming. The administrative record in the District of Wyoming does not include the
4 Postponement Notice or any documents post-dating the issuance of the Waste Prevention Rule in
5 November 2016. Consequently, there is no threat of duplicative litigation or inconsistent results
6 if this Court reviews Plaintiffs’ Section 705 challenge to the Postponement Notice, while the
7 District of Wyoming continues to address Petitioners’ challenges to the Waste Prevention Rule.⁸

8 While it is true that the District of Wyoming has some familiarity with the Waste
9 Prevention Rule, this does not provide the substantial savings in judicial economy that
10 Defendants suggest, for several reasons. *See* Motion at 7-9. First, the issues surrounding
11 Defendants’ issuance of the Postponement Notice and compliance with Section 705 are not before
12 that court. Second, as demonstrated in Plaintiffs’ Motion for Summary Judgment (Dkt. No. 11),
13 this Court does not need to evaluate the merits of the Waste Prevention Rule (Motion at 8) in
14 order to determine whether the Bureau violated Section 705 when it issued the Postponement
15 Notice. Third, resolving the issue of whether Defendants considered the four-part preliminary
16 injunction test in the Postponement Notice (*see* Dkt. No. 11 at 12-13) does not require this Court
17 to evaluate the preliminary injunction motions filed by the Petitioners in the Wyoming litigation
18 (which the District of Wyoming court has already denied) or even weigh the preliminary
19 injunction factors at all. *See* Motion at 9.⁹ Rather, the Court need only determine whether or not
20 the Bureau examined these factors in its issuance of the Postponement Notice.

21 In sum, the significant differences between the District of Wyoming matter and this action
22 render this factor neutral. Even assuming a minor benefit to judicial economy, that does not
23

24 _____
25 ⁸ To the contrary, this Court is already considering another APA Section 705 challenge involving
26 a Department of the Interior rule. *See People of the State of California, et al. v. U.S. Dept. of the*
27 *Interior*, Case No. 3:17-cv-02376 EDL (N.D. Cal. complaint filed Apr. 26, 2017). Thus, judicial
28 economy and the potential for inconsistent results actually warrant maintaining the action in this
District.

⁹ Moreover, Defendants do not even agree that the preliminary injunction test “is relevant to an
agency’s postponement of future compliance dates under Section 705.” Motion at 9.

1 outweigh the other convenience or justice factors, let alone the substantial deference afforded to
2 Plaintiffs' choice of forum.

3 **D. The Court Congestion Factor Weighs Against Transfer.**

4 Considerations of court congestion also favor keeping the action in this District. "Courts
5 may use the average time between filing and disposition or trial as a measure for court
6 congestion." *McCarthy*, 2015 WL 1535594, at *5; *see Am. Civil Liberties Union of N. Calif. v.*
7 *Burwell*, 2017 WL 1540606, *6 (N.D. Cal. Apr. 28, 2017). According to the latest data, the
8 average time between filing and disposition in this District is 7.4 months, compared to 9.6 months
9 in the District of Wyoming. *See United States District Courts—National Judicial Caseload*
10 *Profile* (Mar. 31, 2017), *available at*:
11 http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0331.2017.pdf. This
12 two-month difference is significant given the January 2018 compliance dates at issue, and weighs
13 against transfer of this action. *See Lubchenco*, 2009 WL 4545169, at *4 (finding "a modest
14 difference in the congestion of the courts' calendars that weighs slightly against transfer").

15 **E. The Remaining Factors Are Neutral.**

16 Plaintiffs agree that the remaining factors regarding convenience and the interest of justice
17 are neutral. *See Motion at 11*. With regard to the convenience of the witnesses factor, there are
18 no witnesses to consider because this action does not involve disputed material facts and should
19 be decided on motions for summary judgment. *See Lubchenco*, 2009 WL 4545169, at *3.
20 Similarly, the ease of access to evidence factor is neutral in this APA action. *See id.*
21 ("documentary evidence is easily transported to any venue, in this era of electronic
22 communication"). Finally, the familiarity of each forum with applicable law factor is neutral, as
23 the relevant courts in both California and Wyoming are familiar with the APA. *See id.* ("Both
24 California and Alaska courts are equally familiar with the environmental laws at issue.").

25 Defendants initially characterize the local interest in the controversy factor as one favoring
26 transfer, *see Motion at 10-11*, but their actual description of this factor appears to be neutral. *Id.*
27 at 11 (stating that "Wyoming has ties to and an interest in these cases that is at least equal to that
28 of California," and "California has no more of an interest in [the issue of climate change] than

1 Wyoming”). Both states have a significant amount of federal fossil fuel development impacted
2 by the Rule, and California has more federal mineral estate lands. *See supra* at Part I. Moreover,
3 given that the Waste Prevention Rule “applies to the development of federal oil and Indian
4 minerals nationwide,” Motion at 1, Plaintiffs believe that this action does not constitute a
5 localized controversy that favors any particular venue under this factor.

6 **CONCLUSION**

7 For the reasons stated above, Defendants have failed to demonstrate that the convenience
8 and interest of justice factors warrant disturbing Plaintiffs’ choice of forum. Consequently,
9 Defendants’ motion to transfer should be denied.

10
11 Dated: August 9, 2017

Respectfully Submitted,

12 XAVIER BECERRA
13 Attorney General of California
14 DAVID A. ZONANA
Supervising Deputy Attorney General

15 /s/ George Torgun
16 GEORGE TORGUN
MARY S. THARIN
Deputy Attorneys General

17 *Attorneys for the State of California*

18
19 HECTOR BALDERAS
Attorney General of New Mexico

20 /s/ Ari Biernoff
21 ARI BIERNOFF
22 BILL GRANTHAM (*pro hac vice pending*)
Assistant Attorneys General

23 *Attorneys for the State of New Mexico*

24
25
26
27
28