Aaron M. May (SBN 207751)
aaron.may@halpernmay.com
Grant B. Gelberg (SBN 229454)
grant.gelberg@halpernmay.com
Gwendolyn M. Toczko (SBN 255984)
gwendolyn.toczko@halpernmay.com
Thomas Rubinsky (SBN 302002)
thomas.rubinsky@halpernmay.com
HALPERN MAY YBARRA GELBERG LLP
550 South Hope Street, Suite 2330
Los Angeles, California 90071-2604
Telephone: (213) 402-1900
Facsimile: (213) 402-1901

Attorneys for Defendants
Kaiser Foundation Health Plan, Inc.; Kaiser Foundation Hospitals; The Permanente Medical Group, Inc.; Southern California Permanente Medical Group; and Colorado Permanente Medical Group, P.C.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA et al. ex rel. JEFFREY MAZIK,

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN INC., et al.,

Defendants.

Case No. 2:19-cv-0559-DAD-JDP

Judge: Hon. Dale A. Drozd

Courtroom 4, 15th Floor

DEFENDANTS' OPPOSITION TO RELATOR'S MODIFIED MOTION FOR A STAY PENDING RESOLUTION OF APPEAL

Date: June 1, 2026
Time: 1:30 PM

I. INTRODUCTION

Relator's "modified motion" asks the Court to stay this action in its entirety based on a pending appeal in a different case, but neither the procedural posture nor the governing law supports such relief. Since filing his original motion, Relator has completed fact discovery and the district court in the *Osinek* matter has denied his request for a share of settlement proceeds, prompting him to appeal that determination to the Ninth Circuit. Relator now seeks to convert what began as a limited case-management request into an effort to halt this case altogether based on that appeal. Nothing about these developments—or Relator's subsequent filings—supports that expansion. To the contrary, those filings underscore the speculative and shifting nature of the requested relief.

The modified motion thus abandons any meaningful case-management rationale and instead rests on a speculative merits premise: that the Ninth Circuit will "necessarily" resolve issues of preclusion, offset, or mootness in this action. But the appeal concerns only Relator's entitlement to a share of settlement proceeds in a different case. It does not adjudicate liability here, and it will not decide the fact-specific issues this Court must resolve regarding the scope of Relator's claims, the applicability of any preclusion defense, or the effect of any prior settlement. At most, the appeal may provide guidance. That possibility does not justify halting this case.

The posture of this action further underscores why a stay is unwarranted. This case has been pending since 2019, and fact discovery is now finally complete. The parties have exchanged written discovery, produced documents, and taken depositions, and the case is ready to proceed to dispositive motion practice. Relator identifies no ongoing discovery, no duplicative effort, and no concrete burden that would be avoided by a stay. Instead, he seeks to pause a mature case pending the possibility that a future appellate decision *might* affect certain issues here. Courts routinely decline to stay cases under these circumstances.

Nor has Relator shown hardship. The remaining steps in this case—dispositive motions and pretrial preparation—are ordinary features of litigation, not inequities warranting a stay. And further delay in a seven-year-old case imposes real prejudice on Defendants by prolonging

uncertainty and increasing the risk that witnesses become unavailable and evidence will become stale.

In short, the modified motion does not cure the deficiencies in Relator's request; it highlights them. The Ninth Circuit appeal will not control this case, the asserted hardship is speculative, and the late-stage posture of the litigation weighs strongly against a stay. For these reasons, and those set forth below and in Defendants' prior opposition (ECF No. 138), the modified motion should be denied.

II. RELATOR'S SERIAL FILINGS IMPROPERLY EXPAND THE ISSUES PRESENTED

As an initial matter, Relator's modified motion and subsequent reply improperly expand—and obscure—the issues presented without leave of Court. After Defendants filed their opposition, Relator did not simply respond through the ordinary reply process. Instead, he filed a "modified motion" that broadened the scope of the requested relief and introduced additional arguments, then submitted a reply to the original motion relying on new facts and arguments. *See* ECF Nos. 139, 141.

This approach leaves it unclear what relief Relator is now seeking and what arguments are properly before the Court. Relator's original motion sought, among other things, a temporary stay of discovery, a six-month continuance of the scheduling order, and referral to a magistrate judge for settlement purposes. ECF No. 137 at 1–2. The motion also tied that requested relief to anticipated amendment efforts, additional discovery on purportedly "remaining" state-law claims, and future motion practice regarding the effect of the *Osinek* settlement on Relator's federal qui tam claims. ECF No. 137 at 2, 10–13, 17–18. The modified motion, by contrast, reframes the request as one to stay the action in its entirety based on the pending Ninth Circuit appeal and advances broader theories that the appeal will "necessarily" resolve issues such as waiver, preclusion, offset, and mootness. ECF No. 139 at 2–3, 6–10. To complicate things further, Relator's reply to the original motion echoes arguments in his "modified motion", suggesting that the Court may wish to "stay the entire case," while also listing purported

additional discovery needs through a supplemental declaration. ECF No. 141 at 5–7; Supplemental Friedman Decl., ECF No. 142.

The Federal Rules and Local Rule 230 contemplate a defined motion–opposition–reply sequence and do not permit a party to revise or supplement a motion in this manner without leave of Court. *See also* Local Rule 230(m); Local Rule 110. Relator did not seek such leave. Nor do the rules permit a party to effectively expand the scope and substance of a motion through serial filings after the opposition has been filed. Moreover, a party may not use a reply to introduce new evidence or arguments to which the opposing party has no opportunity to respond. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007); *see also Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 2003) (district court "need not consider arguments raised for the first time in" reply).

At a minimum, the Court should disregard the new arguments and factual assertions raised for the first time in the reply to the original motion and evaluate the motion as originally presented.

III. DEFENDANTS INCORPORATE THEIR PRIOR OPPOSITION

Defendants incorporate by reference their prior opposition, ECF No. 138, which remains fully applicable to Relator's modified motion. Although Relator has expanded the scope of the requested relief, the modified motion continues to rely on the same flawed premise addressed in Defendants' earlier briefing—namely, that developments in the *Osinek* proceedings purportedly justify delaying this case, reopening or extending discovery, modifying the scheduling order, and postponing dispositive motion practice. *See* ECF No. 138 at 2–10. As explained in Defendants' prior opposition, those arguments do not support a stay or further modification of the Court's schedule.

In particular, the posture of this case independently forecloses the relief Relator seeks. Fact discovery is complete, and there is no ongoing discovery to stay or avoid. ECF No. 138 at 2–3. Relator's earlier request for a discovery stay was therefore moot, and expanding that request into a stay of the entire action does not cure that defect. Nor has Relator demonstrated diligence sufficient to justify delaying the case at this stage. This action has been pending since

2019, and Relator had years—and an extended discovery period—to develop his claims. ECF No. 138 at 3–10. Any remaining gaps in his investigation reflect a lack of diligence, not good cause for further delay. Finally, as set forth in Defendants' prior opposition, further postponement would prejudice Defendants by prolonging a long-pending case, increasing litigation costs, and risking the degradation of evidence and witness availability. ECF No. 138 at 8–10. These considerations continue to weigh strongly against any stay.

For these reasons, and those set forth more fully in ECF No. 138, Relator's modified motion should be denied.

IV. RELATOR FAILS TO SATISFY THE REQUIREMENTS FOR A STAY UNDER *LANDIS*

Nor is a stay of the entire case justified. A stay is an extraordinary remedy that requires the moving party to make a clear showing of hardship or inequity, demonstrate that a stay will not prejudice the opposing party, and establish that a parallel proceeding is likely to materially affect or control the case. *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936); *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109–10 (9th Cir. 2005). In evaluating such requests, courts balance "the competing interests which will be affected by the granting or refusal to grant a stay," including the possible damage resulting from a stay, the hardship to the moving party if required to proceed, and the orderly course of justice measured in terms of simplifying or complicating issues, proof, and questions of law. *Lockyer*, 398 F.3d at 1110; *see also Landis*, 299 U.S. at 254–55.

Relator's modified motion does not satisfy this standard. It does not identify any concrete hardship, does not demonstrate that a stay would materially simplify the case or conserve resources, and does not establish that the Ninth Circuit appeal will resolve the claims or defenses before this Court. Instead, Relator seeks to halt a mature case to avoid litigating the merits now based on a speculative appellate outcome. That is not a valid basis for a stay.

A. The Ninth Circuit Appeal Will Not Resolve or Materially Simplify the Claims or Defenses in This Action

Relator's motion rests on the premise that the pending Ninth Circuit appeal will "necessarily" resolve issues such as waiver, claim preclusion, offset, or mootness in this action. ECF No. 139 at 2–3, 6–10. But the appeal concerns a narrower question: whether Relator is entitled to recover a share of the *Osinek* settlement proceeds under the False Claims Act's "alternate remedy" provision, 31 U.S.C. § 3730(c)(5). *See* ECF No. 139-2, Friedman Decl., Ex. B ("Osinek Order") at 1–2.

The *Osinek* court made clear that the proceeding before it concerned Relator's entitlement to a relator's share under § 3730(c)(5). *Osinek* Order at 5–8. Its analysis focused on the relationship between the Government's *Osinek* settlement and Relator's claims for purposes of the FCA's alternate-remedy provision. *Id.* The court did not adjudicate liability in this action, resolve Defendants' defenses here, or determine the ultimate effect of the *Osinek* proceedings on the claims pending before this Court.

That distinction matters. Whether and to what extent prior proceedings may affect claims or remedies in this action remains a separate issue to be addressed, if necessary, on the record before this Court. Indeed, Relator's own Notice of Claim framed doctrines such as res judicata, collateral estoppel, waiver, and "damage credit" as anticipated future arguments that the parties might later raise concerning the effect of the *Osinek* settlement. *See* ECF No. 139-2, Friedman Decl., Ex. A ("Notice of Claim") at 6–8. In filings submitted in connection with the *Osinek* proceedings, Relator likewise asserted that the Government's settlement resolved claims involving the "same fraud" and the "same pool of money." *Id*. at 6–8, 13. But those assertions were not adjudicated in the *Osinek* proceeding and do not establish that the Ninth Circuit's decision on the alternate-remedy issue will control the claims or defenses presented here.

Relator's own hearing exhibit likewise confirms the contingent nature of those issues. During the *Osinek* hearing, Judge Chen discussed doctrines such as preclusion and offset only in the context of potential future proceedings before this Court and possible future motion practice by Defendants. *See* ECF No. 140, Friedman Decl., Ex. C at 16:1–10, 17:10–16, 20:13–21:6.

1 The hearing thus recognized that any effect of the *Osinek* proceedings on this action would
2 depend on subsequent rulings and case-specific determinations by this Court—not that the Ninth
3 Circuit appeal itself would resolve or control those issues.
4 Nor does Relator's reliance on the *Osinek* court's observation that future proceedings in
5 this action may need to "account for" its rulings alter the analysis. *See* ECF No. 139 at 6. That
6 observation merely recognizes that parties may later litigate the significance of prior proceedings
7 in this case. It does not suggest that the Ninth Circuit appeal will control the disposition of this
8 action or eliminate the need for this Court to adjudicate the claims and defenses presented here.
9 Relator's invocation of a "single recovery" theory likewise fails to transform the pending
10 appeal into a dispositive proceeding. ECF No. 139 at 6–7, 9. The relevant inquiry under *Landis*
11 is not whether another proceeding involves overlapping subject matter, but whether it is likely to
12 "decide, or to contribute to the decision of, the factual and legal issues before" this Court.
13 *Lockyer*, 398 F.3d at 1112–13. The Ninth Circuit appeal will not do so here. At most, Relator
14 seeks a stay because he believes the Ninth Circuit's eventual ruling may affect future merits
15 arguments concerning preclusion, waiver, offset, or recovery.
16 Relator's related assertion that the appeal may render this action "moot" fares no
17 better. *See* ECF No. 139 at 2–3, 9. As Relator's own filings recognize, issues concerning
18 preclusion, waiver, offset, or recovery remain contingent merits questions that may, if necessary,
19 be addressed through future dispositive motion practice on the record before this Court. *See* ECF
20 No. 139-2, Friedman Decl., Ex. A at 6–8; ECF No. 140, Friedman Decl., Ex. C at 16:1–10,
21 17:10–16, 20:13–21:6. The possibility that the Ninth Circuit's ruling may later affect the parties'
22 merits positions does not establish that the appeal will resolve or materially simplify this action,
23 nor does it justify halting a mature case pending appeal.
24 Courts routinely deny stays where a separate proceeding may provide future guidance or
25 affect aspects of the litigation but will not itself resolve the claims before the court. *See, e.g.*,
26 *Edwards v. Oportun, Inc.*, 193 F. Supp. 3d 1096, 1100–01 (N.D. Cal. 2016) (denying stay
27 pending appellate review where appeal might clarify governing law but would not materially
28 simplify remaining issues); *Andrews v. Plains All Am. Pipeline, L.P.*, 2018 WL 4191409, at *1–2

(C.D. Cal. Aug. 28, 2018) (denying stay pending Ninth Circuit proceedings where overlap with appellate issues did not justify delaying ongoing litigation). The principal Ninth Circuit authorities Relator cites involved materially different circumstances in which the parallel proceeding was expected to directly resolve claims, defenses, or governing legal issues in the stayed action itself. *See Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863–64 (9th Cir. 1979) (arbitration would substantially resolve contractual liability issues before the court); *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (arbitration would resolve core disputes between the parties); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (considering whether another proceeding would simplify "issues, proof, and questions of law" before the court). Here, by contrast, Relator hopes he can secure a share of the settlement in *Osinek,* and he does not want to spend the resources needed to litigate this action while he awaits a decision from the Ninth Circuit. That is simply not a basis for a stay.

B. Relator Shows No Cognizable Hardship

Relator's asserted hardship falls well short of the demanding standard required under *Landis*. A stay is an "extraordinary remedy." *Heckman v. Live Nation Ent., Inc.*, 2025 WL 3779065, at *2 (C.D. Cal. Jan. 3, 2025) (citing *Landis*). The moving party bears the burden of making out a "clear case of hardship or inequity" sufficient to justify delaying proceedings notwithstanding the resulting prejudice to the opposing party. *Landis,* 299 U.S. at 255. That burden is particularly demanding where, as here, the requested stay would halt a mature action pending the outcome of separate appellate proceedings. *Id*. "[O]nly in rare circumstances" may one litigant be required to "stand aside while a litigant in another settles the rule of law that will define the rights of both." *Id.*

Relator does not identify any comparable hardship here. Instead, the modified motion argues that a stay is warranted because the Ninth Circuit's eventual ruling may affect future motion practice, potentially narrow issues, or alter the parties' litigation positions concerning preclusion, waiver, offset, or recovery. ECF No. 139 at 2–3, 8–9. Relator similarly contends that proceeding now could result in "unnecessary" litigation activity if the Ninth Circuit later provides a "roadmap" concerning the effect of the *Osinek* settlement. *Id.* at 3, 8–9. But those

assertions merely reflect uncertainty about how future merits arguments may unfold. They do not establish the type of concrete hardship or inequity required under *Landis*.

Nor does Relator identify any present litigation burden that would actually be avoided by a stay. As set forth in Defendants' prior opposition, fact discovery is complete, there is no ongoing discovery to stay, and the case is prepared to proceed to dispositive motion practice. ECF No. 138 at 2–3. The remaining litigation steps—dispositive motion practice, pretrial preparation, and adjudication of any defenses raised by the parties—are ordinary incidents of litigation, not cognizable hardship. *See Clinton v. Jones*, 520 U.S. 681, 707–08 (1997). A cognizable hardship under *Landis* typically involves a concrete and substantial burden that would result from proceeding—such as extensive duplicative proceedings, inconsistent obligations, constitutional prejudice, or other inequities beyond the ordinary burdens of litigation. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066–67 (9th Cir. 2007); *I.K. ex rel. E.K. v. Sylvan Union Sch. Dist.*, 681 F. Supp. 2d 1179, 1194 (E.D. Cal. 2010) (denying stay where overlap between proceedings and potential future effects on the litigation were insufficient to establish hardship). Relator identifies no comparable burden here. At most, he contends that the Ninth Circuit's eventual ruling may affect future arguments concerning preclusion, waiver, offset, or recovery, and may therefore influence future motion practice or litigation strategy. *See* ECF No. 139 at 2–3, 8–9. But uncertainty regarding how future legal rulings may affect a party's litigation strategy does not constitute the type of hardship or inequity that warrants halting a mature case under *Landis*. *See also Aldapa v. Fowler Packing Co.*, 2016 WL 6124216, at *3–4 (E.D. Cal. Oct. 20, 2016) (denying stay where related proceedings might clarify certain legal issues but would not substantially simplify or resolve the broader action).

Relator's subsequent reply further confirms that the asserted hardship is speculative and strategic rather than practical. The supplemental Friedman declaration repeatedly frames the purported need for additional discovery and litigation activity as contingent on how the Ninth Circuit may ultimately rule. *See* ECF No. 142, Supplemental Friedman Decl. ¶ 5 (asserting that discovery "may" be required "[d]epending on how the Ninth Circuit determines" issues related to the Osinek settlement); *see also* ECF No. 141 at 2–3, 5–7. That type of contingent, wait-and-

see approach is not cognizable hardship under *Landis*. *See Lockyer*, 398 F.3d at 1112 (rejecting stay based on speculative and contingent harms).

The reply's new factual assertions likewise fail to establish diligence or inequity warranting further delay. Relator contends that certain materials were "late-produced" in October 2025 and that discovery could not reasonably proceed while the parties discussed settlement or while Relator substituted counsel. *See* ECF No. 141 at 5–7; ECF No. 142 ¶¶ 3–5. These arguments, in addition to being flat wrong, do not support a stay of the entire case for at least a year pending his appeal in *Osinek*. Relator had ample time to conduct discovery between October 2025 and the April 2026 fact discovery cutoff, but he chose not to do so. Indeed, he issued no follow-up written discovery, no meet and confer letters, and conducted no depositions. That was Relator's choice, and there is no prejudice that flows from his own litigation strategy.

Even accepting Relator's contentions regarding late-produced materials, settlement discussions, or changes in counsel, those circumstances do not explain the failure to pursue this newly-identified discovery before the close of fact discovery. The witnesses and discovery categories referenced in the reply concern issues central to Relator's longstanding allegations and were known throughout the discovery period. *See* ECF No. 107 ¶¶ 2–7, 45–107. Relator cannot transform belated litigation choices into cognizable hardship warranting a stay.

At bottom, Relator seeks to delay merits litigation unless and until the Ninth Circuit provides guidance that may affect his litigation strategy in this case. But *Landis* expressly cautions against requiring one litigant to "stand aside" merely because another proceeding may later bear on related legal questions. 299 U.S. at 255. Those rare circumstances are not present here.

C. A Stay Would Prejudice Defendants

A stay would impose substantial prejudice on Defendants. This action has been pending since 2019 and is now at an advanced stage, with fact discovery complete and the case prepared to proceed to dispositive motion practice. Further delay would prolong uncertainty, increase litigation costs, and postpone resolution of claims that have already been litigated for more than

seven years. Courts recognize that delay itself constitutes prejudice, particularly in long-pending cases. *See Lockyer*, 398 F.3d at 1112.

As set forth in Defendants' prior opposition, additional delay also increases the risk that evidence will become stale and witness recollections will fade over time. *See* ECF No. 138 at 8–10; *Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007) (noting that delay "inherently increases the risk that witnesses' memories will fade and evidence will become stale"). Those concerns are particularly acute here given the age of the underlying events and the procedural posture of the case. Defendants have completed discovery and prepared their case in reliance on the Court's scheduling order. Relator now seeks not a limited adjustment, but an indefinite halt to the action based on the possibility that the Ninth Circuit may later issue a ruling bearing on future merits arguments. *See* ECF No. 139 at 1–3, 8–9.

Nor is the requested delay insignificant merely because Relator suggests the appeal may conclude within several months. *See id.* at 2, 7. Experience suggests otherwise, and the Ninth Circuit advises that civil cases take 9-15 months (or longer) to brief, argue, and decide.[1] In any event, even a temporary stay would materially delay resolution of an already long-pending case that is otherwise ready to proceed.

Granting a stay at this stage would disrupt the orderly progression of the litigation and undermine Defendants' substantial interest in timely resolution. *See Lockyer*, 398 F.3d at 1112. These prejudice considerations weigh strongly against the extraordinary relief Relator seeks.

D. Judicial Economy Does Not Support a Stay

Judicial economy supports a stay only where the separate proceeding is likely to materially simplify, control, or dispose of issues before the Court. *See Lockyer*, 398 F.3d at 1110–12.

Relator contends that judicial economy favors a stay because the Ninth Circuit's decision may provide a "roadmap" for further proceedings and potentially affect future issues in this case.

[1] https://www.ca9.uscourts.gov/general/faq/ (Nos. 17 & 18.)

ECF No. 139 at 2–3, 8–9. But the mere possibility that another proceeding may later provide persuasive guidance or bear on future motion practice is insufficient under *Landis*. The district court cases Relator cites involved materially different circumstances where the separate proceeding was expected to resolve threshold legal issues governing liability or otherwise materially alter the governing law in the stayed action itself. *See, e.g., Bowden v. Contract Callers, Inc.,* 2017 WL 1732017, at *1-2 (N.D. Cal. May 2, 2017) (pending D.C. Circuit ruling expected to affect governing TCPA liability standards); *Fontes v. Time Warner Cable Inc*., 2015 WL 9272790, at *4–5 (C.D. Cal. Dec. 17, 2015) (pending FCC and appellate rulings could materially alter governing law); *Clean Fuels Dev. Coal. v. Kessler*, 2023 WL 5487498, at *3 (D. Minn. Aug. 24, 2023) (parallel proceeding challenged validity of the same regulatory regime at issue in the stayed action). Others arose at materially earlier stages of litigation before discovery had closed or the issues had been fully developed. *See, e.g., Gustavson v. Mars, Inc*., 2014 WL 6986421, at *2-3 (N.D. Cal. Dec. 10, 2014).

Judicial economy instead favors proceeding under the current schedule. Discovery is complete, the issues are fully framed, and the case is ready for dispositive motion practice. Staying the case now would not conserve judicial resources; it would merely postpone adjudication of a mature action based on speculation about how future appellate proceedings may affect later litigation strategy.

V. <u>CONCLUSION</u>

For the foregoing reasons, Relator's modified motion should be denied in its entirety.

Dated: May 11, 2026

HALPERN MAY YBARRA GELBERG LLP

/s/ Aaron M. May
Aaron M. May

Attorneys for Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC., SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, and COLORADO PERMANENTE MEDICAL GROUP, P.C.