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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 CITY OF LOS ANGELES, a municipal)
20 corporation,)
21 Plaintiff,)
22 v.)
23 JPMORGAN CHASE & CO.;)
24 JPMORGAN CHASE BANK, N.A.; and)
25 CHASE MANHATTAN BANK USA,)
26 N.A.,)
27 Defendants.)

No. 2:14-cv-04168-ODW-RZ
**PLAINTIFF'S EX PARTE
APPLICATION TO STAY CASE
PENDING APPEAL OF
RELATED ACTION**
Judge: Hon. Hon. Otis D. Wright II
Trial Date: March 1, 2016
Complaint filed: December 5, 2013

1 Plaintiff City of Los Angeles (“the City”) requests *ex parte* relief to stay this
2 case pending the City’s appeal of the related Wells Fargo action, in order to avoid
3 duplicative litigation both in the trial court and on appeal. In accordance with Local
4 Rule 7-19.1, the City conferred with Robert M. Swerdlow, counsel for JPMorgan
5 Chase & Co.; JPMorgan Chase Bank, N.A.; and Chase Manhattan Bank USA, N.A.,
6 (“JPMorgan”) on August 5, 2015, via telephone and provided notice of the City’s
7 intent to seek *ex parte* relief. See Declaration of Elaine Byszewski in support of
8 Plaintiff’s *Ex Parte* Application to Stay Case Pending Appeal of Related Action
9 (“Byszewski Decl.”), ¶ 10. Mr. Swerdlow’s contact information is as follows: Robert
10 M. Swerdlow, O’Melveny & Myers LLP, 400 South Hope Street, Los Angeles, CA
11 90071, and Telephone: (213) 430-6482, Email: RSwerdlow@omm.com.
12 Mr. Swerdlow informed the City that JPMorgan will oppose the City’s request. *Id.*

13 Three related actions brought by the City have been pending before this Court:
14 *City of Los Angeles v. Wells Fargo & Company, et al.*, No. 2:13-cv-09007-ODW
15 (RZx) (“the *Wells Fargo* action”); *City of Los Angeles v. JPMorgan Chase & Co., et*
16 *al.*, No. 2:14-cv-04168-ODW (RZx) (“the *JPMorgan* action”); and *City of Los*
17 *Angeles v. Citigroup, Inc., et al.*, No. 2:13-cv-09009-ODW (RZx) (“the *Citi* action”).¹
18 On July 17, 2015, this Court entered summary judgment against the City in the *Wells*
19 *Fargo* action. See ECF Dkt. No. 116.

20 On July 20, 2015, JPMorgan requested that the City dismiss the case against it,
21 because JPMorgan wanted to avoid the expense of filing a summary judgment motion
22 similar to the one filed in the *Wells Fargo* action – a “me-too” motion, as counsel for
23 the bank put it. Byszewski Decl., ¶ 2. JPMorgan also threatened to seek attorneys’
24 fees if the City did not dismiss its case outright and give up its appellate interests. *Id.*,
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¹ In addition to the three related cases before this Court, an additional related case entitled *City of Los Angeles v. Bank of America Corporation, et al.*, No. 12:13-cv-09046-PA-AGR (“the *Bank of America* action”) was pending in the Central District before Judge Percy Anderson, and the City is now appealing the entry of summary judgment against it based on inadequate Article III standing.

1 ¶ 3. On July 29, 2015, the City filed an appeal of the *Wells Fargo* action to the Ninth
2 Circuit. *See* ECF Dkt. No. 117.

3 On July 30, 2015, the City declined JPMorgan’s proposal that the City dismiss
4 the *JPMorgan* action; instead, the City proposed to JPMorgan that the parties stipulate
5 to a stay of the *JPMorgan* action pending the City’s appeal of the *Wells Fargo* action.
6 Byszewski Decl., ¶ 4. The City agrees that issues decided by this Court in the *Wells*
7 *Fargo* action may very well dispose of the *JPMorgan* action. *Id.*, ¶ 5. And the City
8 shares JPMorgan’s interest in avoiding the inefficiency and wasted time and expense
9 of a me-too summary judgment motion, but wants to preserve its appellate interests.
10 *Id.*, ¶ 6. On July 30, 2015, JPMorgan declined to enter into the stipulation, instead
11 stating that it will seek summary judgment on grounds “substantially similar” to those
12 argued in the *Wells Fargo* action and the *Bank of America* action. *Id.*, ¶ 7.

13 Thus, to avoid wasting the resources of the Court and the parties in re-litigating
14 issues already decided in the *Wells Fargo* action, the City respectfully requests that the
15 Court stay the *JPMorgan* action pending the outcome of the City’s appeal of the *Wells*
16 *Fargo* action. “[T]he power to stay proceedings is incidental to the power inherent in
17 every court to control the disposition of the causes on its docket with economy of time
18 and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S.
19 248, 254 (1936). “In determining whether to stay proceedings, the district court
20 should consider three factors: (1) conserving judicial resources and avoiding dupli-
21 cative litigation; (2) hardship and inequity to the moving party if the action is not
22 stayed; and (3) potential prejudice to the non-moving party if the action is stayed.”
23 *Blalock v. DePuy Orthopaedics, Inc.*, 2011 WL 6217540, at *1 (N.D. Cal. Dec. 14,
24 2011) (citing *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).²
25 All of these factors weigh in favor of a stay here.

26
27 ² In *City of Miami v. JPMorgan*, No. 1:14-CV-22205-WPD (S.D. Fla.), the district court granted
28 a stay of Miami’s action against JPMorgan pending appeal of related actions brought against other
banks, over JPMorgan’s objection, because “a stay can avoid wasting the time and energy of the parties

1 Moreover, the City seeks this relief on an *ex parte* basis, because JPMorgan
2 intends to file its me-too motion for summary judgment on August 14, 2015, which
3 means the parties will already be briefing that motion before this request for a stay – if
4 now brought as a noticed motion – would be heard in the normal course. Byszewski
5 Decl., ¶¶ 9, 12. If a noticed motion were filed today, it would not be heard until
6 September 14, 2015, within days of the City’s opposition being due on September 18.³
7 *Id.*, ¶ 13. And much like opposing the summary judgment motion brought in the *Wells*
8 *Fargo* action, preparing the summary judgment opposition papers in the *JPMorgan*
9 action is likely to take over a hundred hours of attorney time and considerable expert
10 expense, to create a record for purposes of appeal that is substantially similar to the
11 record in the *Wells Fargo* action. *Id.*, ¶ 14. Thus, the avoidance of both “duplicative
12 litigation” and “hardship and inequity” to the City in unnecessarily opposing the me-
13 too motion warrants entry of a stay at this time. *Rivers*, 980 F. Supp. at 1360.

14 And *ex parte* relief is particularly important here because JPMorgan has
15 indicated that it will seek attorneys’ fees from the City in bringing its me-too summary
16 judgment motion – although the City is willing to stay the *JPMorgan* action pending
17 appeal of the *Wells Fargo* action – because the City did not agree to dismiss its case
18 against JPMorgan. Byszewski Decl., ¶¶ 9, 15. But the City should not be expected to
19 waive application in the *JPMorgan* action of any favorable Ninth Circuit ruling the
20 City may obtain from appeal of the *Wells Fargo* action. And JPMorgan may have
21 already begun to incur such attorneys’ fees in preparing for its August 14 filing.

22 JPMorgan opposes the stay because it does not want to wait for appeal of the
23 *Wells Fargo* action for the case against it to be resolved, *id.*, ¶ 9, but it will have to
24 wait for an appeal, whether of the *Wells Fargo* action or its own. So JPMorgan will
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26 and the court, since determinations by the Eleventh Circuit could alter the course of this action or confirm
27 that dismissal is warranted without further litigation.” *See* ECF No. 38 (Oct. 9, 2014).

28 ³ The City has proposed to JPMorgan that its opposition be due this day; JPMorgan proposed
September 4, and the parties continue to negotiate a briefing schedule.

1 suffer no prejudice based on the time for appeal of the *Wells Fargo* action. *Id.*, ¶ 16.
2 And a me-too appeal would waste the resources of the parties and the judicial system,
3 just as a me-too summary judgment motion would waste such resources. *Id.*

4 For these reasons, the City respectfully requests that the Court stay the
5 *JPMorgan* action pending the Ninth Circuit's resolution of the City's appeal of the
6 *Wells Fargo* action.

7 DATED: August 6, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2015, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Elaine T. Byszewski
Elaine T. Byszewski