UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#93

CIVIL MINUTES - GENERAL

Case No.	CV 17-1694 PSG (SSx)	Date	October 8, 2019
Title	United States ex rel. Integra Med Analytics LLC v. Providence Health and Services, et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **Order GRANTING Defendants' motion to certify the order for interlocutory appeal, GRANTING Defendants' motion to stay, and DENYING the motion to phase discovery**

Before the Court is a motion to certify an order for interlocutory appeal and a motion to stay, or in the alternative to phase discovery filed by Defendants Providence Health & Services ("Providence" or "Providence H&S"), its affiliate hospitals, and Defendant J.A. Thomas and Associates, Inc. ("JATA"), (collectively, "Defendants"). *See* Dkt. # 93 ("*Mot.*"). Relator Integra Med Analytics LLC ("Relator") opposes, *see* Dkt. # 96 ("*Opp.*"), and Defendants filed a joint reply, *see* Dkt. # 97 ("*Reply*"). The Court held oral argument on this matter on October 7, 2019. After considering the moving papers and oral arguments, the Court **GRANTS** Defendants' motion for interlocutory appeal, **GRANTS** Defendants' motion to stay, and **DENIES** the motion to phase discovery.

I. Background

This action stems from Relator's allegation that Defendants conspired to submit, and did submit, false claims to Medicare in violation of the False Claims Act ("FCA"). The Court has previously recounted the full factual background of the case in another order. *See United States ex rel. Integra Med Analytics LLC v. Providence Health & Servs.*, No. CV 17-1694 PSG (SSx), 2019 WL 3282619, at *1–*3 (C.D. Cal. July 16, 2019).

Defendants brought a motion to dismiss Relator's Second Amended Complaint ("SAC"). *See id.* Specifically, Defendants argued that the public disclosure bar precluded Relator's claims and that Relator failed to state a FCA claim. *See id.* at *4. Defendants first argued that Relator could not bring a FCA claim against it because its complaint relied upon information that was publicly disclosed, and the FCA bars these claims. *See id.* at *5. Next, Defendants argued that

Relator failed to adequately plead falsity, materiality, and scienter under the FCA. *See id.* at *18.

On July 16, 2019, this Court issued an Order ("the Order") denying Defendants' motion because it held that the public disclosure bar did not apply and that Relator had adequately pleaded its FCA claim. *See id.* at *24. The Court found that the public disclosure bar did not apply to Defendant JATA's business practice information, which Relator relied on in its complaint, because it was not disclosed through the "news media." *See id.* at *18. Breaking with an apparent general consensus among other federal courts that reads the public disclosure bar's "news media" provision broadly to include almost all publicly available online information, the Court undertook an ordinary meaning analysis. *See id.* at *13. The Court consulted dictionaries, common usage, and statutory context, ultimately articulating five guideposts to determine whether something was disclosed from the "news media":

> (1) "the extent to which the information typically conveyed by a source would be considered newsworthy"; (2) whether there is "editorial independence, or at least some separation, between the original source of information and the medium that conveys it"; (3) "a source's intent to disseminate information widely, as opposed to only to a few individuals"; (4) how much "an online source functions like a traditional news outlet," particularly considering that source's primary purpose, and; (5) most importantly, "whether the source in question falls within the 'broad ordinary meaning' of the term 'news media.'"

See id. at *14–*15. The Court concluded that based on these factors, it could not determine whether the online information about JATA's business practices was publicly disclosed, and thus Defendants' public disclosure bar defense failed. *See id.* at *18.

Next, the Court concluded that Relator properly pleaded its FCA claim. *See id.* at *24. In particular, Relator adequately pleaded falsity because, based on its statistical analyses, Defendants' hospitals used MCCs for certain diagnoses at rates disproportionate to other hospitals. *See id.* at *19. Taken as true at the pleading stage, Relator's analyses combined with JATA's business practice tips created a reasonable inference that the hospital Defendants submitted false claims. *See id.*

On August 22, 2019, Defendants filed this motion for interlocutory appeal and for a stay pending appeal, or in the alternative, phased discovery. *See generally Mot.* Defendants seek interlocutory review of two questions.

II. Legal Standard

A. Interlocutory Appeal

As a general rule, an appellate court should not review a district court ruling until after the entry of final judgment. *See* 28 U.S.C. § 1291. As such, "[a] party seeking review of a nonfinal order must first obtain the consent of the trial judge." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 474 (1978). The trial judge has the discretion to certify a decision for interlocutory review if all of the following statutory elements are met: (1) the order "involves a controlling question of law"; (2) there is a "substantial ground for difference of opinion"; and (3) "an immediate appeal from the order may materially advance the termination of the litigation." 28 U.S.C. § 1292(b); *see also United States v. Woodbury*, 263 F.2d 784, 787 (9th Cir. 1959) ("Section 1292(b) was intended primarily as a means of expediting litigation by permitting appellate consideration during the early stages of litigation of legal issues which, if decided in favor of the appellant, would end the lawsuit."). Interlocutory review should be allowed only under "exceptional circumstances justify[ing] a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *Coopers & Lybrand*, 437 U.S. at 475. The moving party bears the burden of establishing § 1292(b)'s narrowly construed elements. *Id.*

B. Stay

The Court's authority to stay a proceeding is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Among the competing interests to be weighed when considering a stay are "the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). "The proponent of a stay bears the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

III. Discussion

Defendants pose two questions for certification:

1. Whether all online information is disclosed from the "news media" such that it would fall under the public disclosure bar of the False Claims Act?

2. Whether Relator adequately alleged falsity under the False Claims Act?

The Court next applies the § 1292(b) elements in turn, and then discusses Defendants' motion to stay.

A. Interlocutory Appeal

i. Question 1: News Media

a. Controlling Question of Law

A controlling question of law is one where "resolution of the issue on appeal could materially affect the outcome of litigation in the district court." *In re Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1981). Under § 1292(b), a "'question of law' means a 'pure question of law,' not a mixed question of law and fact or an application of law to a particular set of facts." *TCL Commc'ns Tech. Holdings Ltd v. Telefonaktenbologet LM Ericsson*, No. SACV 14-00341 JVS (ANx), 2014 WL 12588293, at *3 (C.D. Cal. Sept. 30, 2014) (quoting *Barrer v. Chase Bank, USA, N.A.*, 2011 WL 1979718, *4 (D. Or. May 18, 2011)). Routine applications of settled legal standards to facts alleged in a complaint are not proper for interlocutory appeal unless the question for review seeks to clarify a legal standard. *See Dukes v. Wal-Mart Stores, Inc.*, 2012 WL 6115536, at *3 (N.D. Cal. Dec. 10, 2012) (discussing *In re Text Messaging Antitrust Litig.*, 630 F.3d. 622, 625–27 (7th Cir. 2000)). In other words, a party presents a controlling legal question when it alleges that a court articulated an incorrect legal standard. *See Steering Committee v. United States*, 6 F.3d 572, 575 (9th Cir. 1993).

Defendants argue that the news media question raises a controlling question of law. *See Mot.* 6:17. First, it is a question of law because it involves an analysis of statutory construction, namely how courts are to define "news media" under the FCA. *See id.* 6:26–28. Next, it is a

controlling question because if the JATA business practice information came from the news media, the Court would have to dismiss the case under the public disclosure bar unless Relator could show that it was an original source. *See id.* 7:11–14. Relator counters that the question is not controlling because even if the Ninth Circuit adopted a news media definition that included the JATA business practice information, the Court would still have to decide whether Relator is an "original source" under the FCA. *See Opp.* 2:15–20.

The Court agrees with Defendants that the news media question presents a controlling question of law, first because it is a legal question. In the Order, the Court fashioned a standard for "news media" by looking to dictionary definitions, the term's ordinary meaning, and statutory context. *See Integra*, 2019 WL 3282619 at *14–*15. The standard that the Court formulated for what constitutes a "news media" presents a question of statutory construction that an appellate court would review de novo. *See Schleining v. Thomas*, 642 F.3d 1242, 1246 (9th Cir. 2011); *Rey v. Rey*, 666 F. App'x 675, 677 (9th Cir. 2016). Because the definition of "news media" under the FCA is "the abstract type of question [that] could be decided without significant engagement with the facts of this case," it is a question of law suited for interlocutory review. *See Rieve v. Coventry Health Care, Inc.*, 870 F. Supp. 2d 856, 879 (C.D. Cal. 2012).

Next, the question is also controlling because it would materially advance the termination of the litigation. *See In re Cement Antitrust Litig.*, 673 F.2d at 1026. If the Ninth Circuit answered the question in Defendants' favor, it would advance the case because the public disclosure bar would apply to Relator's claims. Although Relator argues that even if the public disclosure bar applied, the Court would still have to determine whether it is an "original source," this alternative argument does not mean that the news media question is not controlling. *See Opp.* 2:15–20. The Ninth Circuit has held that appellants do not need to pose a question of law that will determine who wins on the merits, but instead need only pose a question that could cause the "needless expense and delay of litigating a case." *See Kuehner v. Dickinson & Co.*, 84 F.3d 316, 319 (9th Cir. 1996) (citing *In re Cement Antitrust Litg.*, 673 F.2d at 1027 n.5); *see also Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 2011) ("However, neither § 1292(b)'s literal text nor controlling precedent requires that the interlocutory appeal have a final, dispositive effect on the litigation, only that it 'may materially advance' the litigation."). Ultimately, Defendants pose such a question.

Accordingly, because Defendants seek certification on a controlling question of law, they meet § 1292(b)'s first prong.

b. Substantial Ground for Difference of Opinion

"A substantial ground for difference of opinion exists where reasonable jurists might disagree on an issue's resolution." *Reese*, 643 F.3d at 688. Defendants argue that there is substantial ground for difference of opinion because, as the Court established in its Order, its definition of "news media" departed from the current district court consensus. *See Integra*, 2019 WL 3282619, at *13. Defendants cite numerous cases from this District and elsewhere that apply a much broader standard for "news media" than the Court's five-part test. *See Mot.* 11:11–13:16. Relator acknowledges that other district courts have more broadly defined "news media," but responds that adopting Defendants' definition "would lead to absurd results." *Opp.* 9:13–20.

The Court finds that there is substantial ground for difference of opinion, as it indicated in the Order itself. *See Integra*, 2019 WL 3282619, at *13. In its Order, the Court acknowledged that its approach represented a departure "from the general consensus in the federal courts." *Id.* To this point, Defendants identify several "conflicting and contradictory opinions" that employ a broader news media definition. *See Mot.* 11:11–13:16 (citing cases); *Couch v. Telescope, Inc.*, 611 F.3d 629, 634 (9th Cir. 2010) (quoting *Union Cty., Iowa v. Piper Jaffray & Co., Inc.*, 525 F.3d 643 (8th Cir. 2008)). While the Court crafted a definition from the ordinary meaning, its invitation for other courts to do the same indicates that other courts have, and could further, disagree.[1] *See Integra*, 2019 WL 3282619, at *22 n.8. The Court believes its approach is correct, but recognizes that reasonable jurists have used different methods. *See Reese*, 643 F.3d at 688.

Accordingly, because reasonable jurists could disagree on the definition of "news media" under the FCA, Defendants meet § 1292(b)'s second prong.

c. Materially Advance the Termination of the Litigation

The material advancement prong is met where "an interlocutory appeal of [an] issue may avoid protracted and expensive (but ultimately unnecessary) litigation and the burdens on the

[1] Relator cites *Hong* for the proposition that the Ninth Circuit has rejected Defendants' proposed "news media" definition as too broad, but Relator is mistaken. *See Opp.* 10:11–16; *United States ex rel. Hong v. Newport Sensors, Inc.*, 728 Fed. App'x 660, 662–63 (9th Cir. 2018). In *Hong*, the court did not outright reject the district court's "broad holding" defining "news media," but instead "d[id] not address [it]." *See Hong*, 728 F. App'x at 662–63.

litigants and court system that would result from the denial of § 1292(b) certification." *Beeman v. Anthem Prescription Mgmt., Inc.*, No. EDCV 04-407-VAP (SGLx), 2007 WL 8433884, at *2 (C.D. Cal. Aug. 2, 2007). "Courts apply pragmatic considerations to determine whether certifying non-final orders will materially advance the ultimate termination of the litigation." *See id.*

Defendants argue that certifying the Order will materially advance the termination of the litigation because the appeal, if successful, could allow Defendants to mitigate or even avoid the "far-reaching and tedious" discovery in this case. *See Mot.* 14:19. Specifically, they will need to provide Relator with individual medical records across numerous hospitals with differing policies and procedures, as well as hire various experts, which will place costly burdens on all parties. *See id.* 14:19–15:21. Relator refutes Defendants' argument that an appeal would advance the litigation because, even after the Ninth Circuit decides the news media issue, the Court will have to relitigate another motion to dismiss based on the Circuit's decision. *See Opp.* 10:19–26. According to Relator, this back and forth will delay trial. *See id.* 10:25–26. Finally, Relator disputes whether the discovery burden that Defendants articulate "is necessary or even allowed under the Federal Rules." *See id.* 11:15–16.

After analyzing the "pragmatic considerations" at issue here, the Court finds that certifying the Order would materially advance the termination of the litigation. *See Beeman*, 2007 WL 8433884, at *2. The Court agrees that Defendants' potential discovery burden is quite high given the quantity and complexity of the documents at issue. *See Mot.* 14:19–15:21. Further, Defendants will need to coordinate with the Government, outside experts, and its own affiliates. *See id*. Even if the Court needs to apply a different "news media" standard to Relator's allegations after the appeal, this presents a considerably lower burden than the potential discovery burden. *See Opp.* 10:19–26. Given the time and costs involved, the Court finds an interlocutory appeal proper on the news media question, which has "important implications for assigning liability." *City of Los Angeles v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, No. CV 12-7662 BRO (AGRx), 2014 WL 12573322, at *4 (C.D. Cal. Apr. 29, 2014).

Relator cites cases where this Court has declined to certify an interlocutory appeal because of the potential delay, even without a trial date, but those cases are distinguishable. *See Opp.* 10:25–11:3. In *Sirius XM*, the Court declined to certify an interlocutory appeal because the case had an impending trial date. *See Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. CV 13-5693 PSG (RZx), 2014 WL 12614472, at *2–3 (C.D. Cal. Nov. 20, 2014). Although a trial date was not yet set in *Andrews*, the Court and the parties had an idea of when trial would commence,

which was before the Ninth Circuit would have likely resolved the appeal. *See Andrews v. Plains All Am. Pipeline, L.P.*, No. CV 15-4113 PSG (JEMx), 2017 WL 9831401, at *5 (C.D. Cal. Nov. 7, 2017). Here, the parties have not yet even had a scheduling conference, and given the potential size of discovery, trial does not appear imminent. Therefore, unlike the questions in *Sirius XM* or *Andrews*, the Ninth Circuit will likely resolve the appeal before trial in this case.

As such, Defendants meet all three of § 1292(b)'s prongs on the "news media" question. The Court thus **CERTIFIES** the following question for interlocutory review: Whether all online information is disclosed from the "news media" such that it would fall under the public disclosure bar of the False Claims Act?

ii. Question 2: Pleading Falsity

The second question that Defendants seek to certify is whether Relator has adequately pleaded falsity. *See Mot.* 16:24. Interlocutory appeal is not usually appropriate for mixed questions of law and fact. *See Baranchick v. City of Redondo Beach*, No. CV 10-6870 PA (JCGx), 2011 WL 13217546, at *3 (C.D. Cal. Sep. 12, 2011); *Riley's Am. Heritage Farms, v. Claremont Unified Sch. Dist.*, No. EDCV-18-2185-JGB (SHKx), 2019 WL 4391128, at *3 (C.D. Cal. May 2, 2019). However, mixed questions of law and fact are suited for certification when there is at least one legal question and the mixed question is "material to the order." *Steering Comm.*, 6 F.3d at 575–76; *In re Fontem US, Inc. Consumer Class Action Litig.*, No. SACV 15-01026 JVS (RAOx), 2017 WL 10402988, at *5 (C.D. Cal. Mar. 8, 2017).

Because Defendants pose a legal question and the question of whether the Relator pleaded falsity is material to the order, the Court also certifies this question for interlocutory review. The second question is a mixed question of law and fact because the Court applied the settled falsity standard to Relator's allegations that, based on its statistical analyses, Defendants' hospitals used MCCs for certain diagnoses at rates disproportionate to other hospitals. *See Integra*, 2019 WL 3282619 at *19. However, this question is material to the order because it is dispositive. If Relator cannot state a claim for falsity, its FCA claims fail. *See In re Fontem US, Inc. Consumer Class Action Litig.*, No. SACV 15-01026 JVS (RAOx), 2017 WL 10402988, at *5 (C.D. Cal. Mar. 8, 2017) (holding that a mixed question was "material to the order" because the question was dispositive). Although Relator argues that resolving this question will require more than "minimal reliance on the record," the Circuit need only look at the face of the complaint. *See Opp.* 12:3–4. As a result, the Circuit will minimally rely on the record in determining whether Relator properly pleads falsity.

Next, there is substantial ground for difference of opinion. Defendants point to *Baylor*, decided soon after the Order in this case, to show how jurists can disagree on whether statistical analyses are enough to plead a fraudulent scheme under the FCA. *See Mot.* 17:3–18:12; *United States v. Baylor Scott & White Health*, No. 5:17-CV-886-DAE, 2019 WL 3713756, at *6 (W.D. Tex. Aug. 5, 2019). In *Baylor*, the court dismissed the same Relator's FCA claims because it did not believe that Relator pleaded falsity with its statistical analyses. *See Baylor*, 2019 WL 3713756, at *6. That conclusion conflicts with this Court's Order, as well as the reasoning of the Third Circuit, which held that high rates of coding for certain conditions "are highly unlikely to be caused by chance" and thus create a plausible inference of a fraudulent scheme. *See Integra*, 2019 WL 3282619 at *19–*20; *United States ex rel. Customs Fraud Investigations, LLC v. Victaulic Co.*, 839 F.3d 242, 258 (3d Cir. 2016). Because the Ninth Circuit has not weighed in on this issue and other courts have come to different conclusions, reasonable jurists could disagree here. *See Reese*, 643 F.3d at 688.

Finally, certifying this question would materially advance the termination of the litigation. *See Beeman*, 2007 WL 8433884, at *2. Like the news media question, the question of whether Relator has properly pleaded falsity has "important implications for assigning liability" because it is dispositive. *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 2014 WL 12573322, at *4. While Relator argues that the Court should discount Defendants' "discovery-based arguments," these considerations are crucial given the high discovery burden Defendants face. *See Opp.* 13:26–14:3. Ultimately, the Court finds that these "pragmatic considerations" weigh in favor of allowing interlocutory review. *See Beeman*, 2007 WL 8433884, at *2.

Accordingly, because the second question is paired with a question of law, is material to the Order, and meets § 1292(b)'s other requirements, the Court **CERTIFIES** the following question for interlocutory review: Whether Relator adequately alleged falsity under the False Claims Act?

B. Motion to Stay

The next question before the Court is Defendants' motion to stay the case pending the interlocutory appeal. *See Mot.* 19:10–22:11. Certification of an interlocutory appeal does not automatically stay district court proceedings. 28 U.S.C. § 1292(b). Rather, a court may grant a stay in its discretion "upon [consideration of] the circumstances of the particular case." *Nken v. Holder*, 129 S. Ct. 1749, 1761 (2009). The party requesting a stay bears the burden of showing that the circumstances justify a stay. *Id.* In determining whether to issue a stay pending an interlocutory appeal, the Supreme Court has required courts to consider four factors: (1) whether

the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured in the absence of a stay; (3) whether issuance of the stay will substantially injure the non-moving party; and (4) whether the stay is in the public interest. *See Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, CV 13–5693 PSG (RZx), 2015 WL 4397175, at *3 (C.D. Cal. June 8, 2015); *see also, e.g.*, *In re Apple & ATTM Antitrust Litig.*, No. C 07-5152 JW, 2010 WL 11489069, at *2 (N.D. Cal. Sept. 15, 2010) (citing *Nken*, 129 S. Ct. at 1761).

Courts balance these factors on a sliding scale where "a stronger showing of one element may offset a weaker showing of another." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011); *see also Finder v. Leprino Foods Co.*, No. CV 13-2059 AWI (BAMx), 2016 WL 4095833, at *5 (E.D. Cal. Aug. 1, 2016). Because the first two factors are most important in the analysis, some courts have grouped the four factors into two categories: (1) whether serious legal questions are raised on appeal, and (2) whether the balance of hardships tips in the moving party's favor. *See Golden Gate Restaurant Ass'n v. City & Cty. of S.F.*, 512 F.3d 1112, 1115–16 (9th Cir. 2008).

Defendants argue for a stay because the news media issue raises a serious legal question. *See Reply* 10:2–22. Further, Defendants would avoid the hardship of engaging in potentially wasteful discovery while Relator, by contrast, would merely suffer a delay. *See Mot.* 21. Relator contends that Defendants are unlikely to succeed on the merits given the broadness of their proposed news media definition. *See Opp.* 17:4–11. In addition, Relator argues that the balance of hardships tips in its favor because Defendants merely complain about ordinary litigation costs while Relator will potentially lose evidence given that "documents will be lost, memories will fade, and witnesses will become unavailable." *See id.* 18:18–26 (quoting *Consumer Fin. Prot. Bureau v. D & D Mktg., Inc.*, No. CV 15-9692 PSG (EX), 2017 WL 5974248, at *6 (C.D. Cal. Mar. 21, 2017)).

The Court finds a stay appropriate, first because the news media question presents a serious legal issue. The case is one of first impression given that the Ninth Circuit has never squarely defined "news media" under the FCA, which indicates this is a "substantial case." *See Munro v. Univ. of S. Cal.*, No. CV 16-6191 VAP (CFEx), 2017 WL 5592904, at *2 (C.D. Cal. July 7, 2017). Moreover, the decision will significantly impact the proceedings, possibly dismissing Relator's claim entirely. Although Defendants advocate for a broad definition of news media that this Court has rejected, Relator is incorrect that they must show that they are likely to succeed. *See Opp.* 17: 4–11; *See Flo & Eddie*, 2015 WL 4397175, at *2 ("To satisfy the likelihood of success factor, [Sirius XM] need *not* demonstrate that it is more likely than not

that [it] will succeed on the merits."). Instead, Defendants must only show that the appeal presents a serious question of law, which they have done here. *See Flo & Eddie*, 2015 WL 4397175, at *4–*5 ("Rather, 'the minimum quantum of likely success necessary to justify a stay' is a 'reasonable probability' of success, 'a substantial case on the merits,' or that 'serious questions are raised.'") (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011)).

Next, a stay is appropriate because Defendants have shown that the balance of hardships tips in its favor. *See id.* at *2. As previously noted, Defendants will have to produce volumes of complex documents, coordinate with various entities, and hire experts. *See Mot.* 14:19–15:21. Given the size of this case, this potentially burdensome discovery represents more than the ordinary litigation expenses that would counsel against a stay. *See Opp.* 17:12–14; *Flo & Eddie*, 2015 WL 4397175, at *3 ("[M]onetary losses can be considered irreparable harm if defendants are forced to incur much of the expense of potentially unnecessary trial-oriented litigation before their appeal is heard."). Moreover, the parties will have incurred any discovery costs inefficiently, or possibly needlessly, if the Court does not issue a stay and the Ninth Circuit alters the Court's news media standard. *See Finder v. Leprino Foods Co.*, No. 113 CV 02059 AWI (BAM), 2017 WL 1355104, at *4 (E.D. Cal. Jan. 20, 2017). Finally, the countervailing burden on Relator is slight. While Relator argues in general terms that the delay will cause a loss of evidence, it does not specifically explain what documents could be lost or what witnesses' memories will fade. *See Opp.* 18:18–26. Therefore, given the potential for "substantial, unrecoverable, and wasteful" discovery, the Court finds that the balance of the hardships tips towards Defendants. *See Pena v. Taylor Farms Pac., Inc.*, No. 2:13-CV-01282-KJM-AC, 2015 WL 5103157, at *4 (E.D. Cal. Aug. 31, 2015).

Lastly, the public interest favors a stay. This Court has stated that "[t]he public 'generally has an interest in accuracy of judicial proceedings and in efficient use of government resources.'" *See Flo & Eddie*, 2015 WL 4397175, at *4. Here, staying the case would serve this interest because it would avoid costly and unnecessary litigation, thus saving juridical resources, while the Ninth Circuit decides the news media issue. *See id.* Although a stay is not automatic upon certification of an interlocutory appeal, Defendants have shown that they face high burdens in terms of time and costs if and when discovery commences. *See Opp.* 18:27–19:4; *Mot.* 14:12–15:16. Given the potential for inefficiencies in the discovery process due to the pending Ninth Circuit appeal, a stay serves the public interest.

For the foregoing reasons, the Court **GRANTS** Defendants' application for a stay and simultaneously **DENIES** the motion to phase discovery.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-1694 PSG (SSx)	Date	October 8, 2019
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IV. Conclusion

The Court therefore **GRANTS** Defendants' motion to certify interlocutory appeal to the Ninth Circuit under 28 U.S.C. § 1292(b) on the following questions:

> Whether all online information is disclosed from the "news media" such that it would fall under the public disclosure bar of the False Claims Act?
>
> Whether Relator adequately alleged falsity under the False Claims Act?

Because Defendants pose a serious legal question and the balance of hardships tips in its favor, the Court simultaneously **GRANTS** Defendants' request for a stay and **DENIES** the motion to phase discovery.

IT IS SO ORDERED.