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15
 16 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

17 ISAAC KIGONDU KINITI, et al.,)
 18)
 19 Plaintiffs,)
 20 v.)
 21)
 22)
 23 JULIE L. MYERS, et al.,)
 24 Defendants.)
 25)
 26)

Case No. 3:05-cv-1013-DMS-PCL

EX PARTE APPLICATION BY
 DEFENDANTS SEEKING ADDITIONAL
 TIME TO FILE OPPOSITION TO
 PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION

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1 Pursuant to Fed. R. Civ. P. 6(b)(1), defendants hereby request a 30-day extension after the
2 Court's determination of defendants' Motion to Dismiss to file its opposition to plaintiffs' Motion for
3 Class Certification.^{1/} Defendants intend to file a Motion to Dismiss in the above matter by May 1, 2007.
4 Accordingly, to allow the case to proceed logically, defendants respectfully request that its opposition
5 to plaintiffs' Motion for Class Certification, currently due on May 4, 2007, be due 30 days after the
6 Court's determination of its Motion to Dismiss. Likewise, the hearing date for plaintiffs' Motion for
7 Class Certification, currently set for May 25, 2007, should also be adjusted accordingly.

8 Defendants expect to base their motion on the ground that plaintiffs' claims are moot, since there
9 is no "live" controversy in the case. Plaintiffs' complaint in this case is that the San Diego Correctional
10 Facility (SDCF or the Facility) is severely overcrowded, leading to constitutional violations. However,
11 since the time plaintiffs' Second Amended Complaint was filed, U.S. Immigration and Customs
12 Enforcement (ICE) housed no more than 700 immigration detainees at the Facility, well below SDCF's
13 maximum capacity, such that overcrowding is not a possibility. Moreover, since that date and thereafter,
14 there has been no "triple-celling" of any of the SDCF immigration detainees as alleged by plaintiffs.
15 Finally, as defendants will show with evidentiary support, defendants have no intent to overcrowd nor
16 can reasonably foresee any situation where the number of ICE detainees at SDCF would be raised to
17 levels that would make overcrowding possible, or where the alleged practice of "triple-celling" would
18 occur in the future. Good cause exists for this extension, as otherwise the Court would require briefing
19 on plaintiffs' Motion for Class Certification, a matter which may become moot after consideration of
20 defendants' Motion to Dismiss.^{2/}

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22 Dated: April 26, 2007

KAREN P. HEWITT

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24 ^{1/} Such an order is authorized under Fed. R. Civ. P. 6(b)(1), which provides discretionary authority to
25 enlarge time "with or without motion or notice. . . ." Authority to enlarge time naturally encompasses the power
to designate the proper time for response to a motion.

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27 ^{2/} Defendants' counsel contacted Ms. Gouri Bhat, plaintiffs' counsel, via e-mail on Monday, April 23,
28 2007 in an effort to enter into a joint motion regarding the rescheduling of the class certification briefing and
hearing dates. However, on Thursday, April 26, 2007, Ms. Bhat, after some discussion of alternative
arrangements, notified defendants via e-mail that plaintiffs would not join our application seeking additional time
for defendant to file its opposition to plaintiffs' Motion for Class Certification.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ISAAC KIGONDU KINITI, et al.,

Plaintiffs,

v.

JULIE L. MYERS, et al.,

Defendants.

Case No. 3:05-cv-1013-DMS-PCL

[PROPOSED] ORDER

Before the Court is defendants' application for an ex parte order requesting that defendants' opposition to plaintiffs' Motion for Class Certification be due 30 days after the Court's determination of defendants' Motion to Dismiss. Good cause having been shown, said application is GRANTED, and defendants' opposition to plaintiffs' Motion for Class Certification, currently due on May 4, 2007, shall be due 30 days after the Court's determination of Defendants' Motion to Dismiss. Furthermore, the hearing on plaintiffs' Motion for Class Certification, currently set for May 25, 2007, shall be postponed until after defendants' opposition to plaintiffs' Motion for Class Certification has been filed.

IT IS SO ORDERED.

San Diego, California, this ____ day of _____, 2007.

Hon. Dana M. Sabraw
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on this 26th day of April 2007 a true and correct copy of the foregoing Defendants' Ex Parte Application Seeking Additional Time to File Opposition to Plaintiffs' Motion for Class Certification was served by ECF Filing on all counsel of record and has been e-mailed to the following counsel of record:

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