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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SEANLUM YITH, et al.,

Case No. 1:14-cv-01875-LJO-SKO

Plaintiffs,

**ORDER GRANTING EX PARTE  
APPLICATION TO CONTINUE  
SCHEDULING CONFERENCE**

v.

(Doc. 20)

JEH JOHNSON, United States Department of  
Homeland Security, et al.,

Defendants.

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On February 2, 2014, Defendants filed an ex parte motion to extend the time in which to respond to the complaint by 45 days, which was denied. (Doc. 14, 18.) On February 13, 2015, Defendants filed a motion to dismiss the complaint in part. (Doc. 19.) Defendants also filed an application to continue the March 3, 2015, scheduling conference. (Doc. 20.) Plaintiffs oppose Defendants' request to continue the scheduling conference.

The Court generally continues scheduling conferences until all pre-answer motions or motions to remand have been ruled upon and, if relevant, until all defendants' answers have been filed. This assists with helping to avoid disputes over the scope of initial disclosures at a time when it is unknown what claims, if any, will survive a dispositive motion or what affirmative defenses or counterclaims will be made if and when an answer filed. Continuing the scheduling conference until all pleadings have been filed also reduces the need for repeated meet and confer efforts related to various claims that may or may not survive a dispositive motion. Finally,

1 preparing a discovery plan before the pleadings are filed does not allow the parties to adequately  
2 consider the entire universe of claims, affirmative defenses, and counterclaims. The discovery  
3 plan the parties are required to prepare pursuant to Rule 26(f) cannot be prepared with any degree  
4 of accuracy in the face of an outstanding Rule 12 motion and in the absence of an answer by  
5 Defendants.

6 The delay caused by the motion to dismiss will be relatively brief, and there is no basis  
7 under Rule 26 or Rule 16 to conduct the scheduling conference at a time when the parties will be  
8 unable to effectively complete the discovery proposal mandated by Rule 26(f).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Defendants' ex parte application to continue the Scheduling Conference set for  
11 March 3, 2015, is GRANTED;
- 12 2. The Scheduling Conference is CONTINUED to April 16, 2015, at 9:30 a.m. in  
13 Courtroom 7.

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15 IT IS SO ORDERED.

16 Dated: February 24, 2015

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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