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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ALTAMIRANO, MARLON, *et al.*,

PLAINTIFFS,

v.

ARNOLD SCHWARZENEGGER,
FORMER GOVERNER OF THE
STATE OF CALIFORNIA, *et al.*

DEFENDANTS.

Case No. 1:15-cv-00607-LJO-SAB

Related Cases: 1:14-cv-00060-LJO-SAB

**STIPULATION FOR ORDER AND
EXTENDING TIME BY WHICH
DEFENDANT J. CLARK KELSO
MUST RESPOND TO COMPLAINT**

1 Plaintiffs Marlon Altamirano, *et al.* (“Plaintiffs”) and Defendant J. Clark Kelso
2 (“Defendant Kelso”), by and through their undersigned counsel, stipulate as follows:

3 1. Pursuant to a previous stipulation of the parties, Defendant Kelso must
4 respond to the complaint on file herein by no later than July 13, 2015.

5 2. Defendant Kelso anticipates bringing a motion or motions to dismiss the
6 complaint under Rule 12(b) of the Federal Rules of Civil Procedure if this action proceeds.
7 As a result, on June 9, 2015, the parties submitted a stipulation for an order establishing a
8 briefing schedule for the anticipated motion to dismiss to be filed by Defendant Kelso and
9 which is on file herein as Dkt. No. 11.

10 3. On May 20, 2015, in *Smith et al. v. Schwarzenegger et al.*, 1:14-cv-00060-
11 LJO-SAB (“*Smith*”), the Magistrate Judge issued Findings and Recommendations (“F&R”)
12 granting the motion to dismiss on the basis of Qualified Immunity brought by the
13 defendants who had appeared in that action (Dkt. No. 164 in *Smith*). If the accuracy of the
14 F&R’s application of the Qualified Immunity analysis is upheld by the District Judge, the
15 *Smith* action might be dismissed. Plaintiffs’ objections to the F&R in *Smith* are currently
16 due to be filed on June 24, 2015.

17 4. The operative facts and many of the legal issues in *Smith* are substantially the
18 same as the facts and legal issues in this case. Plaintiffs and Defendant Kelso agree,
19 therefore, that, without waiving any claims or defenses they may assert, the outcome in
20 *Smith* is likely to have a significant effect at the trial level in connection with the claims
21 against Kelso in this action, at this level.

22 5. Accordingly, to conserve party and judicial resources, Plaintiffs and
23 Defendant Kelso hereby stipulate to an order vacating the May 27, 2015 stipulation with
24 respect to the briefing schedule filed as Dkt. No. 11. Instead, Plaintiffs and Defendant
25 Kelso stipulate to an order permitting Kelso an extension of time to appear in this action
26 pending the outcome of a ruling on the objections to the F&R by the District Judge in
27 *Smith*. Following the district judge’s ruling, the parties anticipate proceeding, as follows:

- 28 (a) if the district judge sustains the objections to the F&R, the parties will
submit a further stipulation for an order re-establishing a schedule for

1 Defendant Kelso's appearance in this action, including a briefing
2 schedule for any motion to dismiss that Defendant Kelso may wish to
3 bring, no later than 30 days after the ruling;

- 4 (b) If the district judge overrules the objections, Plaintiffs will present a
5 stipulation for the case against Kelso to be folded into a larger appeal
6 of the Qualified Immunity ruling.

7
8 So stipulated.

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10 Dated: June 17, 2015

FUTTERMAN DUPREE DODD
CROLEY MAIER LLP

By: /s/Martin H. Dodd

Martin H. Dodd

Attorneys for Defendant J. Clark Kelso

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16 Dated: June 17, 2015

PAVONE & FONNER, LLP



Benjamin Pavone, Esq.

Attorneys for Plaintiffs

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21 IT IS SO ORDERED.

22 Dated: June 17, 2015



UNITED STATES MAGISTRATE JUDGE

ORDER

Based on the Stipulation of the parties as set forth above, and good cause having been shown, it is hereby ORDERED that the May 27, 2015 stipulation for Defendant Kelso's briefing schedule on his motion(s) to dismiss filed herein as Dkt. No. 11 shall be vacated. Defendant Kelso shall have an extension of time to file a responsive pleading in this action at this time pending the determination by this Court in *Smith, et al. v. Schwarzenegger, et al.*, 1:14-cv-00060-LJO-SAB ("*Smith*") with respect to the ruling on Plaintiffs' objections to the Magistrate's Findings and Recommendations of May 20, 2015, Dkt. No. 164, not later than 30 days after the ruling.