

1 WENDY S. PARK (Bar No. 237331)  
2 TRENT W. ORR (Bar No. 77656)  
3 Earthjustice  
4 426 17th Street, 5<sup>th</sup> Floor  
5 Oakland, CA 94612  
6 Tel: (510) 550-6725  
7 Fax: (510) 550-6749  
8 wpark@earthjustice.org; torr@earthjustice.org

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Counsel for Plaintiffs League to Save Lake Tahoe &  
Sierra Club

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

10  
11 LEAGUE TO SAVE LAKE TAHOE and  
12 SIERRA CLUB,

13 Plaintiffs,

14 vs.

15 TAHOE REGIONAL PLANNING AGENCY,

16 Defendant.

17 ) Case No. 08-2828 LKK  
18 )  
19 ) REQUEST TO DEEM PRELIMINARY  
20 ) INJUNCTION REPLY BRIEF TIMELY  
21 ) FILED;  
22 )  
23 ) DECLARATION OF WENDY PARK IN  
24 ) SUPPORT THEREOF; and  
25 )  
26 ) ORDER  
27 )  
28 ) Judge: Hon. Lawrence K. Karlton  
)

10  
11  
12  
13  
14  
15  
16  
17  
18  
19 Pursuant to Local Rule 5-134 and United States District Court, Eastern District of California  
20 CM/ECF Final Procedures Rule C(20.0),<sup>1</sup> plaintiffs Sierra Club and League to Save Lake Tahoe  
21 (“plaintiffs”) file this request that the Court deem their preliminary injunction reply brief, filed in the  
22 above-entitled action on September 8, 2009 (Doc. 64), timely filed. The facts and authorities upon  
23 which this request is made are stated in the Declaration of Wendy Park, provided herewith. On the  
24 basis of those facts and authorities, plaintiffs respectfully request that the Court deem their reply  
25 brief in support of their motion for preliminary injunction and supporting papers timely filed.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
<sup>1</sup> Hereinafter, “ECF Final Procedures,” found at:  
[http://www.caed.uscourts.gov/caed/staticOther/page\\_1603.htm](http://www.caed.uscourts.gov/caed/staticOther/page_1603.htm).

1 DATED: September 8, 2009

Respectfully submitted,

2 /s/ Wendy S. Park  
3 TRENT W. ORR  
4 WENDY S. PARK  
Earthjustice

5 *Counsel for Plaintiffs League to Save Lake Tahoe &  
Sierra Club*

6

7 **DECLARATION OF WENDY PARK**

8 1. I am an attorney with Earthjustice, admitted to practice law in California. I am  
9 counsel for League to Save Lake Tahoe and Sierra Club in this action. I make this declaration based  
10 upon my own personal knowledge and if called upon to testify, could and would do so competently.

11 2. On September 4, 2009, plaintiffs' preliminary injunction reply brief ("reply brief")  
12 was due to be filed for hearing of the motion on September 14, 2009. *See* Doc. 45. At  
13 approximately 5:20 p.m. on September 4, I attempted to log onto the Eastern District of California  
14 CM/ECF website to file the reply brief. The CM/ECF website stated that the CM/ECF system was  
15 unavailable due to a system "outage" in effect from 5:00 p.m., September 4, 2009 until 8:00 p.m.,  
16 Monday, September 7, 2009 (the Labor Day holiday). Until that point, I was unaware of the system  
17 outage and had not received prior notice of the outage.

18 3. At approximately 5:45 p.m. on September 4, my litigation assistant Jessie Baird  
19 emailed to the Court a Microsoft Word version of the reply brief, pursuant to the Court's Initial  
20 Pretrial Scheduling Order of November 24, 2008 (Doc. 7, ¶ 10). At approximately 6:00 p.m., I  
21 emailed to all counsel on the CM/ECF electronic service list in this case a PDF version of the reply  
22 brief and supporting documents.

23 4. On the morning of September 8, 2009 at approximately 10:00 a.m., I electronically  
24 filed the reply brief and supporting documents through the CM/ECF system.

25 5. Plaintiffs now request that the Court deem the reply brief timely filed. Under Local  
26 Rule 5-134(c), "[t]he Clerk's Office shall deem the District ECF site to be subject to a technical  
27 failure on a given day if the site is unable to accept filings continuously or intermittently over the  
28

1 course of any period of time greater than two hours after 2:00 p.m. on a given day.”<sup>2</sup> Further, “a  
2 party may file on the next business day following the technical failure that is announced on the  
3 Court’s website.” *Id.* at 5-134(c)(1). The ECF system was subject to a technical failure from the  
4 evening of Friday, September 4 until the evening of September 7, 2009, the Labor Day Holiday. In  
5 compliance with Local Rule 5-134(c), plaintiffs filed their reply brief on Monday, September 8,  
6 2009, the next business day following the technical failure.

7 6. Under Local Rule 5-134(c)(2), “[i]f filing is impossible due to the District’s ECF  
8 failure, counsel shall timely serve the document directly on all counsel in the action by e-mail,  
9 overnight delivery or other expeditious means appropriate to the circumstances.” As related in  
10 paragraph 4, plaintiffs timely served the reply brief by e-mail on all counsel in the action the day that  
11 the reply brief was due.

12 7. Finally, pursuant to ECF Final Procedures Rule C.20.0 “[a] filing party whose filing  
13 is made untimely as the result of a technical failure of the court’s ECF site must seek appropriate  
14 relief from the court. Except in extraordinary circumstances, or where the court has previously  
15 determined not to excuse untimely filings due to technical failures, or has mandated a paper filing  
16 due to the technical failure, the court will excuse untimely filings caused by the District ECF  
17 failure.” Because none of the foregoing exceptions apply in this case; plaintiffs filed the reply brief  
18 on the next business day following the technical failure; and none of the other parties in this action  
19 have been prejudiced by the delay in filing, the appropriate relief in this case is to deem plaintiffs’  
20 reply brief timely filed.

21 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
22 knowledge.

23 DATED: September 8, 2009

24 \_\_\_\_\_  
25 /s/ Wendy Park  
26 Wendy Park  
27

28 \_\_\_\_\_  
2 The ECF Final Procedures specify that the ECF site is subject to a technical failure if it is unable to  
accept filings continuously or intermittently over the course of any period of time greater than one  
hour after 10:00 a.m. on a given day. *See* Rule C(20.0). In any event, the ECF site was subject to a  
technical failure on September 4, 2009.

## ORDER

Pursuant to Local Rule 5-134(c) and ECF Final Procedures Rule C.20.0, and in view of the representations of plaintiffs' counsel as set forth in the Declaration of Wendy Park, IT IS HEREBY ORDERED THAT plaintiffs' Reply Brief in Support of Motion for Preliminary Injunction (Doc. 64-1) and the accompanying filings (Doc. 64-1 through 64-5) are deemed to have been timely filed.

DATED: September 10, 2009

Lawrence K. Karlton  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT