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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALEX PHILO,)	
)	2:11-cv-03135-GEB-KJN
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
GAMESTOP CORP.; GAMESTOP, INC.,)	
)	
Defendants.)	
_____)	

On April 3, 2012, Plaintiff filed an *ex parte* application under Federal Rule of Civil Procedure 6(c)(1)(C) and Local Rule 144(e). Plaintiff seeks in the application an order shortening time on the hearing of his motion to stay proceedings; and in the alternative, an order continuing the scheduled April 16, 2012 hearing on Defendants' noticed motion to compel arbitration, so that this motion is not scheduled for hearing until after the National Labor Relations Board ("NLRB") resolves a labor charge Plaintiff filed with it on March 20, 2012.

Defendants counter that "Plaintiff has failed to demonstrate any of the required elements to seek 'extraordinary'" *ex parte* relief and therefore "Plaintiff's request for emergency relief should be denied." Defs.' Opp'n 2:5-10 (citing Mission Power Eng'g Co. v. Cont'l Cas. Co., 883 F. Supp. 488, 492 (C.D. Cal. 1995) ("Many *ex parte* motions are denied, not because the underlying request is unwarranted, but because the papers do not show that bypassing the regular noticed motion

1 procedure is necessary."); and Charley v. Chevron USA, No. CV 10-5063,
2 2010 WL 2792486, *2 (C.D. Cal. July 13, 2010) (indicating Plaintiff's
3 evidence should be evaluated for the purpose of determining whether
4 Plaintiff could have avoided the situation he opines justifies the *ex*
5 *parte* procedures he seeks)).

6 "Ex parte applications to shorten time will not be granted
7 except upon affidavit of counsel showing a satisfactory explanation for
8 the need for the issuance of such an order[.]" E.D. Cal. L.R. 144(e).
9 Christian Schreiber ("Schreiber"), counsel for Plaintiff, avers in his
10 declaration in support of the *ex parte* application that "Plaintiff is
11 unable to file a Motion to Stay Proceedings . . . and provide the
12 statutorily required notice to Defendant[s], as the hearing on
13 Defendant[s'] Motion to Compel Arbitration is currently scheduled for
14 April 16, 2012." (Schreiber Decl. ¶ 8.) Plaintiff argues in his *ex parte*
15 application that

16 [d]isallowing Plaintiff to stay this action or, in
17 the alternative, [disallowing] continuing the
18 [motion to compel arbitration scheduled for] April
19 16, 2012 until resolution of Plaintiff's unfair
20 labor practice charge by the NLRB will result in
prejudice to Plaintiff because the NLRB has primary
jurisdiction over the central issue in
Defendant[s'] Motion to Compel Arbitration.

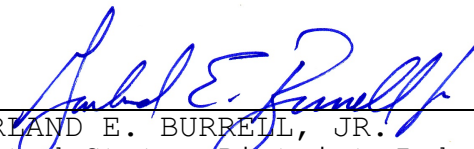
21 (Pl.'s Ex Parte Appl. 1:13-16.)

22 However, Plaintiff has not provided a "satisfactory
23 explanation for the need" for an order shortening time, since Plaintiff
24 fails to explain why he could not have made the arguments he now makes
25 earlier in the case in a duly noticed manner. E.D. Cal. L.R. 144(e).
26 "[T]he evidence submitted by Plaintiff reveals that Plaintiff . . .
27 creat[ed] the crisis . . . [he asserts] requires [the] *ex parte* relief"
28 he seeks. Charley, 2010 WL 2792486 at *2. It is evident that Plaintiff

1 delayed filing a labor charge with the NLRB until after Defendants'
2 motion to compel arbitration was fully briefed and duly scheduled for
3 hearing. Therefore, Plaintiff's *ex parte* application for an order
4 shortening time is denied.

5 Further, Plaintiff has not provided Defendants with a duly
6 noticed opportunity to respond to his argument that Defendants' motion
7 to compel arbitration should not be decided until after the NLRB
8 resolves Plaintiff's unfair labor practice charge. However, since
9 Plaintiff argues in his opposition to Defendants' motion to compel
10 arbitration that the class action waiver in the parties' arbitration
11 agreement is unenforceable because it violates the National Labor
12 Relations Act, and the same issue is involved in Plaintiff's stay
13 motion, the Court has decided to hear Plaintiff's motion to stay
14 proceedings and Defendants' motion to compel arbitration commencing at
15 9 a.m. on June 4, 2012; therefore, the hearing for Defendants' motion to
16 compel arbitration scheduled for April 16, 2012 is vacated.

17 Dated: April 9, 2012

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GARLAND E. BURRELL, JR.
United States District Judge