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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, acting by and  
through the CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION; and  
SACRAMENTO REGIONAL TRANSIT  
DISTRICT,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
LABOR; and THOMAS E. PEREZ, in his  
official capacity as SECRETARY OF  
LABOR,

Defendants.

No. 2:13-cv-02069-KJM-DAD

ORDER

This case is set on the court's calendar of September 30, 2014 for argument on the parties' cross-motions for summary judgment and on defendants' motion to dismiss plaintiffs' spending clause claim.

On January 14, 2014, the court granted the application filed by Amalgamated Transit Union (ATU) for leave to file an amicus curiae brief in support of defendants' motion. ECF No. 17. ATU filed a memorandum in support of defendants' original motion to dismiss, ECF No. 25, and also one in opposition to plaintiffs' motion for summary judgment. ECF No. 60.

1 ATU has now filed an ex parte application for leave to participate in oral  
2 argument, set for September 30 at 10:00 a.m. ECF No. 65. Plaintiffs have opposed, saying the  
3 request is improperly made *ex parte* and that they will be prejudiced by ATU's participation in  
4 argument. ECF No. 66. In reply, ATU reiterates that its "long and deep experience in Section  
5 13(c) matters" may assist the court in resolving the issues before it on summary judgment. ECF  
6 No. 67.

7 Plaintiffs are correct that ex parte applications are disfavored, *see Dugan v. Cnty.*  
8 *of Los Angeles*, No. 2:11-cv-08145-CAS-SHx, 2014 WL 2986480, at \*2 (C.D. Cal. Jul. 2,  
9 2014), but ATU's offer to make itself available for questions during argument on the pending  
10 motions does not fit neatly within the definition of a "motion" to be calendared. *See Melendez v.*  
11 *United States*, 518 U.S. 120, 126 (1996) ("[T]he term 'motion' generally means '[a]n application  
12 made to a court or judge for purpose of obtaining a rule or order directing some act to be done in  
13 favor of the applicant.'" (quoting Black's Law Dictionary 1013 (6th ed. 1990)). By filing its  
14 application, ATU is saying only that it will make itself available for questions, but is not insisting  
15 it be allowed to argue.

16 IT IS THEREFORE ORDERED that:

- 17 1. ATU's ex parte application, ECF No. 65, is granted; and
- 18 2. ATU will not participate in argument on September 30, but may make itself  
19 available should the court have questions for it.

20 DATED: September 18, 2014.

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23 UNITED STATES DISTRICT JUDGE  
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