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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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|---------------------------------------|----------------------------|
| MIGUEL A. CRUZ, and JOHN D. HANSEN,) | Case Nos. 07-2050 SC |
| individually and on behalf of all) | 07-4012 SC |
| others similarly situated,) | |
|) | |
| Plaintiffs,) | ORDER GRANTING |
|) | PLAINTIFF ROBERT |
| v.) | RUNNINGS' <u>EX PARTE</u> |
|) | APPLICATION TO |
| DOLLAR TREE STORES, INC.,) | ENLARGE TIME FOR |
|) | <u>CLASS CERTIFICATION</u> |
| Defendant.) | |
| _____) | |
|) | |
| ROBERT RUNNINGS, individually, and) | |
| on behalf of all others similarly) | |
| situated,) | |
| Plaintiffs,) | |
|) | |
| v.) | |
|) | |
| DOLLAR TREE STORES, INC.,) | |
|) | |
| Defendant.) | |
| _____) | |
|) | |

I. INTRODUCTION

This matter comes before the Court on Plaintiff Robert Runnings' Ex Parte Application to Enlarge Time for Class Certification ("Application"). Docket No. 88. Defendant Dollar Tree Stores, Inc. ("Defendant" or "Dollar Tree") filed an Opposition. Docket No. 91. For the following reasons, the Application is GRANTED.

1 **II. DISCUSSION**

2 In these consolidated cases, Plaintiffs allege they were
3 improperly classified as exempt managers and denied wages for
4 overtime. In August 2007, Dollar Tree removed Plaintiff's action
5 from state court to this Court. Docket No. 1. On December 13,
6 Plaintiff propounded his first set of special interrogatories.
7 Bissen Decl., Docket No. 89, ¶ 4, Ex. A. Special Interrogatory
8 No. 1 requested that Dollar Tree identify each and every class
9 member. Id. On January 19, 2008, Dollar Tree filed its summary
10 judgment motion. Docket No. 36. On January 29, Dollar Tree
11 objected to Plaintiff's Special Interrogatory No. 1. Bissen Decl.
12 ¶ 4, Ex. B. On February 15, the Court established a briefing
13 schedule for the summary judgment motion and set a hearing on the
14 motion for March 21. Docket No. 48. The hearing was subsequently
15 vacated, the Court took the summary judgment motion under
16 submission, and, on July 8, issued an Order denying the summary
17 judgment motion.¹ Docket No. 66.

18 On July 30, the Court ordered the parties to file their
19 respective motions, including Plaintiff's anticipated motion for
20 class certification, with a hearing date of December 5. Docket
21 No. 68. Two months after the Court denied Dollar Tree's motion
22 for summary judgment, and more than seven months after Dollar Tree
23 objected to Plaintiff's First Special Interrogatory No. 1,

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26 ¹ Plaintiff strenuously argues that the summary judgment
27 motion was pending before the Court for six months. As should be
28 obvious, however, motions are not pending until they are fully
 briefed and the motion hearing date has passed. Plaintiff's
 calculation of six months is, therefore, in error.

1 Plaintiff finally filed a motion to compel a response to this
2 interrogatory. Docket No. 69, filed on September 5, 2008.

3 Plaintiff now argues that he, and the proposed class, "may
4 experience substantial harm and irreversible prejudice" if an
5 enlargement is not granted, as discovery will not be complete.
6 Application at 3. Plaintiff's statement that "[t]here have been
7 no unjustified delays on Plaintiff's part in litigating this case"
8 is somewhat suspect in light of the above-detailed timeline.
9 Application at 3. Nonetheless, the Court finds that the risk of
10 prejudice, especially to other class members, warrants an
11 enlargement.

12
13 **III. CONCLUSION**

14 For the reasons stated above, Plaintiff's Application is
15 GRANTED. The Case Management Conference scheduled for December 5,
16 2008, is hereby RESCHEDULED for April 3, 2009, at 10:00 a.m. in
17 Courtroom 1 on the 17th floor. Any motions shall be filed and
18 noticed for April 3.

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21 IT IS SO ORDERED.

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23 Dated: November 12, 2008



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UNITED STATES DISTRICT JUDGE