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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

)	
JOSE BAUTISTA-PEREZ, <i>et al.</i> ,)	No. C 07-4192 TEH
Plaintiffs,)	JOINT STIPULATION TO RESET BRIEFING SCHEDULE AND HEARING DATE AND PROPOSED ORDER
v.)	
ERIC H. HOLDER, Jr., Attorney General, and JANET NAPOLITANO, Secretary of Homeland Security,)	
Defendants.)	
)	

Through their respective counsel, the parties hereby agree and stipulate as follows:

- In the above matter, the schedule for briefing plaintiffs’ motion for summary judgment, and any cross-motion by defendants, culminating in a hearing scheduled for October 26, 2009, was set by a scheduling order entered on August 31, 2009 (Docket no. 118).
- On September 11, 2009, defendants’ counsel of record began attempting to confer with plaintiffs’ counsel of record with respect to a proposed revision of this schedule. On September 14, 2009, counsel for the parties conferred by telephone. Defendants’ counsel advised plaintiffs’ counsel that good cause supported the requested revision, and asserted the following reasons for this request: defendants have been engaged in a substantial effort to review and respond to

1 plaintiffs' motion for summary judgment. This case concerns a class action concerning acts of
2 Congress and two agencies (the former Immigration and Naturalization Service "INS"), and the
3 United States Citizenship and Immigration Service ("CIS"), an entity within the Department of
4 Homeland Security ("DHS")). Plaintiffs' motion for summary judgment raises issues about acts
5 that have occurred during a period of approximately 20 years, dating back at least to 1990.
6 Defendants also assert that although they have made diligent efforts to investigate the facts and
7 legal issues raised by plaintiffs' motion, it became clear that additional time is necessary to
8 enable them to present fairly a fully-informed and helpful briefing of the issues. Defendants
9 have found that the task of responding to plaintiffs' motion, including their ability to obtain and
10 review records and interview personnel that they believe are necessary to ascertain the facts, has
11 taken more time than they had hoped, complicated by the time that has elapsed since events in
12 question dating back to 1990, and the number of issues and potential arguments raised by
13 plaintiffs' motion. Further, because this case has significant potential consequences to the
14 United States, defendants' counsel has been informed that, in addition to expected review and
15 coordination of positions that defendants may take within the Department of Justice (Justice) and
16 between Justice and CIS, that the Department of Homeland Security has requested that it review
17 any briefing before it is filed.

18 Defendants' counsel also noted that, before the present schedule was set, when plaintiffs'
19 counsel informed defendants of plaintiffs' motion and conferred regarding the schedule,
20 defendants' counsel indicated that he thought that the present schedule was tight and that he had
21 reservations due to several pre-existing matters that, if they consumed more time than
22 anticipated, could cause defendants to seek to revisit the schedule. Counsel of record for
23 defendant has devoted to this case as much time as is practicable, and the overwhelming
24 majority of his time, including evening and weekend work, to attempt to meet the present
25 schedule. The other pre-existing matters that have unavoidably occupied portions of counsel's
26 time since the August 17, 2009 filing of plaintiffs' motion for summary judgment include, but
27 are not limited to, Bank of Guam v. United States, no. 08-4078 (Fed. Cir.); Bank of America
28 FSB v. United States, no. 95-660C (Fed. Cl.); Suess, et al. v. United States, no. 90-981 (Fed.

1 Cl.), and Toys “R” Us v. United States, no. 07-115 (Ct. Int’l Trade). Moreover, certain
2 unanticipated events arose since the present schedule was set. In order to comply with the
3 court’s instructions in the Toys “R” Us case, defendant’s counsel expended an unexpected
4 amount of time during the period from August 14, 2009, through the termination of that matter
5 on August 28, 2009, working with plaintiff’s counsel in that matter and two agencies to resolve
6 that case. On August 25, 2009, after advising the court that Toys “R” Us is a related case, the
7 plaintiff in Target Corp. v. United States, no. 09-0315 (Ct. Int’l Trade) filed a complaint to
8 which defendant’s counsel must respond, another event not expected at the time the current
9 schedule was set. On September 9, 2009, the court in Suess deferred ruling on our motion to
10 dismiss, ordering that plaintiff submit supplemental briefing to be served on defendants by
11 October 9, 2009, and ordering that defendants submit a response brief by November 13, 2009,
12 another task not anticipated at the time the schedule was set.

13 For these reasons, defendants asserted that an enlargement of time is necessary in order to
14 complete their investigation of the facts and law, to coordinate their position with all concerned
15 departments and agencies of the United States, and to prepare a response that will be of the
16 greatest assistance to the Court.

17 3. The parties counsel conferred and developed a proposed schedule that dealt with
18 defendants’ scheduling issues and plaintiffs’ counsel’s pre-existing scheduling conflicts
19 triggered by defendants’ requested revision, and that targeted the earliest practicable hearing
20 date.

21 4. Based upon their stipulated proposed schedule revision, the parties jointly
22 respectfully request that the Court enter an order setting the briefing schedule proposed below,
23 superseding the current scheduling order entered on August 31, 2009 (Docket no. 118), and
24 resetting the hearing scheduled for October 26, 2009, as follows:

- 25 (1) defendants’ opposition to plaintiffs’ motion for summary judgment and (2)
26 defendants’ cross-motion for summary judgment, if any, due **October 2, 2009**;
27 (3) plaintiffs’ reply to defendant’s opposition, and (4) plaintiffs’ opposition to
28 defendants’ cross-motion, if any, due **October 26, 2009**;

1 (5) defendants' reply to plaintiffs' opposition to defendants' cross-motion, if any, due
2 **November 9, 2009**; and (6) hearing of oral argument on summary judgment motions,
3 **November ~~26~~²³, 2009 at 10:00 a.m.**

4
5 IT IS SO STIPULATED.

6 Dated: September 15, 2009:

TONY WEST
Assistant Attorney General
JEANNE E. DAVIDSON
Director

7
8 /s/ Brian A. Mizoguchi
9 BRIAN A. MIZOGUCHI
Senior Trial Counsel
10 Commercial Litigation Branch
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12 OF COUNSEL:

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United States Attorney

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14 /s/ Ila C. Deiss
ILA C. DEISS
Assistant United States Attorney

15
16 Attorneys for Defendants Eric H. Holder, Jr.,
Attorney General, United States Department of
17 Justice, and Janet Napolitano, Secretary, United
States Department of Homeland Security

18 ///

19
20 Dated: September 15, 2009

GOLDSTEIN, DEMCHAK, BALLER, BORGEN
& DARDARIAN

21 /s/ Linda M. Dardarian
22 JONATHAN M. KAUFMAN
Attorneys for Plaintiffs

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24 *

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26 **ORDER**

27 PURSUANT TO THE FOREGOING STIPULATION, IT IS

28 Dated: 09/16/09

HON. THELTON E.
United States District Judge

