

1 **\*\*E-filed 12/08/2010\*\***

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7 IN THE UNITED STATES DISTRICT COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 SAN FRANCISCO DIVISION

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11 COMMITTEE FOR IMMIGRANT RIGHTS

12 OF SONOMA COUNTY, et al.,

No. C 08-4220 RS

13 Plaintiffs,

**ORDER RE BRIEFING**

14 v.

15 COUNTY OF SONOMA, et al.,

16 Defendants.

17 \_\_\_\_\_/

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19 Plaintiffs have filed an objection to a nondispositive pretrial order of the magistrate judge

20 denying their motion for a “global” protective order.<sup>1</sup> The County defendants contend the objection

21 was untimely. The order in question was electronically filed on November 12, 2010. By operation

22 of General Order No. 45, § IX. A, the parties’ receipt of the notice of electronic filing automatically

23 generated by the ECF system is deemed to have been service of that order.

24 Under Fed. R. Civ. P. 72(a), any objections to the order were due within 14 days after service.

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27 <sup>1</sup> Pursuant to the recent amendments to Civil Local Rule 72-2, the objection should have been filed

28 and docketed as a “Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge.”

1 Fourteen days from November 12th was November 26th, a legal holiday within the meaning  
2 of Fed. R. Civ. P. 6 (a). See Fed. R. Civ. P. 6 (a)(6)(C) (“any other day declared a holiday by the  
3 state where the district court is located.”); Cal. Govt. Code §19853(a) (declaring day after  
4 Thanksgiving as holiday). Thus, pursuant to Fed. R. Civ. P. 6 (a)(1)(C) “the period continue[d] to  
5 run until the end of the next day that [was] not a Saturday, Sunday, or legal holiday,” which in this  
6 instance was Monday, November 29th.

7 With this much of the analysis, the parties are in agreement. They part company, however,  
8 over whether plaintiffs were entitled to an *additional* three days in which to file their objections by  
9 virtue of paragraph (d) of Rule 6, which provides that where service of a document is made by  
10 electronic means, “3 days are added after the period would otherwise expire under Rule 6(a).” If  
11 plaintiffs were entitled to the benefit of Rule 6(d), then their objection, filed on December 2, 2010,  
12 is timely. If not, then the Court at least arguably cannot consider the objection. See Fed. R. Civ. P.  
13 72(a) (“A party may not assign as error a defect in the order not timely objected to.”).<sup>2</sup>

14 The County defendants contend that under General Order 45, the electronic filing of an  
15 order, “constitutes immediate and effective service,” and therefore Rule 6(d) is inapplicable.  
16 General Order 45, however, states only that receipt of the automatically-generated notice of  
17 electronic filing “shall constitute service,” it does not purport to trump the Federal Rules, nor could  
18 it. Under General Order 45 and the ECF system, service *occurs* virtually simultaneously with the  
19 filing of a document, and the date of the filing is the date of service as well. That, however, does  
20 not somehow render inoperative Rule 6(d), which allows additional time whenever a deadline runs  
21 from the date of service, and service is accomplished by electronic means.<sup>3</sup>

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23 <sup>2</sup> While this provision plainly precludes challenging the order on appeal, it is less clear that it  
24 deprives the district court of discretion to hear the objection should circumstances warrant doing so.  
25 Certainly if a party moved for relief under Rule 6(b)(1)(B) and established excusable neglect, the  
26 court could grant the motion and reach the merits of the objection.

27 <sup>3</sup> *Cannon Partners, Ltd. v. CapeCod Biolab Corp.*, 225 F.R.D. 247 (N.D. Cal. 2003), cited by the  
28 County defendants, did not address Rule 6(d) and is therefore not authority as to whether it applies  
or not. See *Webster v. Fall*, 266 U.S. 507, (1925) (“Questions which merely lurk in the record,  
neither brought to the attention of the court nor ruled upon, are not to be considered as having been  
so decided as to constitute precedents.”).

1 Three additional days may be generous, given the speed and general reliability of email  
2 systems, and the frequency with which counsel typically check their messages, but it is the period  
3 that the drafters of the Federal Rules have seen fit to provide. Accordingly, plaintiffs' objection was  
4 timely filed.

5 No later than December 21, 2010, defendants shall file any opposition to the merits of  
6 plaintiffs' objection.<sup>4</sup> Unless otherwise ordered, the matter shall then be submitted for decision  
7 without further briefing or oral argument.<sup>5</sup>

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9 IT IS SO ORDERED.

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11 Dated: 12/08/2010

  
12 RICHARD SEEBORG  
13 UNITED STATES DISTRICT JUDGE

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23 <sup>4</sup> Civil Local Rule 72-2 limits motions challenging a magistrate judge's non-dispositive ruling to  
24 five pages. Plaintiffs somewhat exceeded that limit, in large part because they devoted two full  
25 pages to the unabbreviated case caption. There are two separately represented groups of defendants  
26 here, each of which is technically entitled to file an opposition. Should two separate oppositions be  
27 filed, neither shall be substantially lengthier than plaintiffs' objection.

28 <sup>5</sup> The Court recognizes that the County defendants hoped for a ruling on plaintiff's objection by  
December 14, 2010, in light of the effect they contend it might have on the settlement conference  
and on a deposition presently-scheduled for shortly thereafter. Because the objection is not subject  
to rejection on timeliness grounds, that is not feasible.