BRIAN J. STRETCH (CABN 163973)
United States Attorney

SARA WINSLOW (DCBN 457643)
Chief, Civil Division

ROBIN M. WALL (CABN 235690)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7071
Fax: (415) 436-6748
Robin.Wall@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

OUR CHILDREN'S EARTH FOUNDATION, et al.,	Case No. 14-cv-01130 WHO Case No. 14-cv-04365 WHO
Plaintiffs,	**DEFENDANTS' MOTION FOR EXTENSION OF HEARING DATE AND BRIEFING SCHEDULE ON PLAINTIFF'S MOTION FOR FEES; DECLARATION OF ROBIN M. WALL; ~~[PROPOSED]~~ ORDER**
v.	
NATIONAL MARINE FISHERIES SERVICE, et al.,	
Defendants.	

REQUEST FOR EXTENSION

Pursuant to Local Civil Rule 6-3, defendants request a continuance of the hearing date on plaintiffs' motion for attorney's fees and costs and an extension of the briefing schedule for the motion. Because defendants' opposition to the fee motion is currently due this Wednesday, May 25, 2016, defendants respectfully request expedited consideration of this scheduling motion.

Defendants' counsel has conferred with plaintiffs' counsel, who has indicated that they are available for a hearing on June 29, 2016, or on or after September 7, 2016, but at no other times this summer. Because agency counsel for defendant National Marine Fisheries Service ("NMFS") will not

be available to help prepare for or attend a June 29 hearing, defendants request an extension to the second date on which plaintiffs are available: September 7, 2016.

Plaintiffs do not oppose continuing the hearing date to June 29, 2016, but they do oppose an extension of the hearing date to September 7, 2016, or any extension of the briefing schedule.

BACKGROUND

Defendants' counsel is expected to be on parental leave beginning on or about June 3, 2016, when his wife is expected to deliver a baby girl, through June 17, 2016. While there is obviously some uncertainty regarding when the baby will arrive, defendant's counsel will almost certainly be unable to prepare for and attend the June 15, 2016, hearing date without unnecessary hardship. (Dkt. 82, Case No. 14-cv-01130-WHO.) (Declaration of Robin M. Wall ("Wall Decl.") ¶ 3.) When the parties proposed the existing schedule on the fee motion three months ago on March 23, 2016 (Dkt. 80), defendants' counsel had not yet scheduled his parental leave and unfortunately did not recognize the potential conflict. (Wall Decl. ¶ 4.)

Last week, on May 19, 2016, defendants' counsel informed plaintiffs' counsel of the conflict and requested a continuance of the hearing date as well as an extension of the briefing schedule. Plaintiffs' counsel rejected the request. In order to try to accommodate plaintiffs' concerns, defendants' counsel asked plaintiffs' counsel to identify other hearing dates when they would be available. Plaintiffs indicated that they would be available for a hearing only on June 29 or September 7, 2016, but at no other times in between, and that they would oppose an extension of the hearing to September 7 or any extension of the briefing schedule. (Wall Decl., ¶ 5, Ex. A.)

GROUNDS FOR EXTENSION

Defendant believes that there is good cause for an extension of the hearing date to September 7, 2016, and an extension of the briefing schedule. While plaintiffs oppose this request, they have indicated that they are available for a hearing on that date and do not have any scheduling conflicts with the following briefing schedule, which plaintiffs' counsel proposed: defendant's opposition to be due on August 3, 2016, and plaintiff's reply to be due on August 26, 2016. (Wall Decl., ¶ 5, Ex. A.)

If the continuance of the hearing date is not granted, defendant's counsel will be unable to prepare for and attend the June 15, 2016, hearing without undue hardship—that is, defendant's counsel

will not be available to care for his wife and newborn child. Unlike plaintiffs, who have been represented by five (5) attorneys as reflected in their billing records, defendant National Marine Fisheries Service ("NMFS") has been represented by only one attorney in the U.S. Attorney's Office for the Northern District of California with the assistance of agency counsel. Forcing defendant's counsel to cut short his parental leave to prepare for and attend the hearing on a motion for attorney's fees would inflict an avoidable and entirely unnecessary hardship.

If the extension of the briefing schedule is not granted, defendant will also be prejudiced. Plaintiffs seek approximately $650,000 in fees and costs. Plaintiffs' billing records reflect that plaintiffs' five attorneys have billed more than 150 hours to date on fee issues and their motion, which is an extraordinary (and unreasonable) amount of time. (See Dkt. 84-87.) Given the unprecedented size of the requested fee award and the amount of time that plaintiffs have spent pursuing fees, defendant NMFS requires additional time to prepare its opposition to the motion. The proposed schedule set forth in the proposed order filed herewith provides both parties with additional time for briefing in advance of the new proposed hearing date.

If the Court decides not to grant an extension of the hearing to September 7, 2016, defendant respectfully requests that the Court extend the hearing to June 29, 2016, and give each of the parties one additional week to file their opposition and reply briefs. Defendants do not request a longer extension of the briefing schedule, only because it would place defendants' opposition due date after the expected birth of counsel's child and during his two-week parental leave. Plaintiffs oppose this one-week extension. (Wall Decl. ¶ 6.)

The requested extension to September 7, 2016, will not have any impact on the schedule in the case. The Court has previously granted extensions in this case, including to the due date for plaintiffs' fee motion. (E.g., Dkt. 77, 81.)

Dated: May 23, 2016

BRIAN J. STRETCH
United States Attorney

/s/ Robin M. Wall

ROBIN M. WALL
Assistant United States Attorney
Attorney for Defendants

~~[PROPOSED]~~ ORDER

On good cause shown, the briefing schedule and hearing date on plaintiffs' motion for fees and costs is extended as follows:

- Defendant's opposition to the motion is due **June 1, 2016**;
- Plaintiff's reply is due **June 15, 2016**; and
- The hearing on the motion will take place on **June 29, 2016**, at 2 p.m.

IT IS SO ORDERED.

Dated: May 24, 2016

WILLIAM H. ORRICK
U.S. District Judge