

1
2
3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 SANDRA WEST and HECTOR
8 MEMBRANDO, individually and on behalf
9 of all others similarly situated,

10 Plaintiffs,

11 v.

12 CALIFORNIA SERVICE BUREAU, INC.,

13 Defendant.

Case No.16-cv-03124-YGR

**ORDER DENYING EX PARTE
APPLICATION TO STAY ACTION, OR,
IN THE ALTERNATIVE TO
CONTINUE CLASS NOTICE
DEADLINE**

Re: Dkt. No. 74

14 On December 11, 2017, this Court granted plaintiffs' motion for class certification. (Dkt.
15 No. 68.) Defendant California Service Bureau, Inc. ("CSB") petitioned the Ninth Circuit for leave
16 to appeal under Fed. R. Civ. P. 23(f) and Fed. R. App. P. 5 on December 28, 2017. (Dkt. No. 74-
17 1.) Now before the Court is defendant's *ex parte* application to stay the action or, in the
18 alternative, to continue the class notice deadline. (Dkt. No. 74, *Ex Parte* Application.) Having
19 carefully considered the application and the record in the above-captioned matter, and for the
20 reasons set forth below, the Court **DENIES** defendant's application.

21 Fed. R. Civ. P. 23(f) allows a district court to stay proceedings pending the outcome of "an
22 appeal from an order granting or denying class-action certification." *Id.*; *see also Rambus Inc. v.*
23 *Nvidia Corp.*, 2009 WL 636536, at *2 (N.D. Cal. 2009). In evaluating whether to issue a stay,
24 courts look to four factors, namely "(1) whether the stay applicant has made a strong showing that
25 he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a
26 stay; (3) whether issuance of the stay will substantially injure the other parties interested in the
27 proceeding; and (4) where the public interest lies." *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th
28 Cir. 2011) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

With regard to the first factor, the Court finds that defendant is not "likely to succeed on the

1 merits” of its appeal because the appeal was untimely. Defendant concedes that its petition was
2 filed “two days after the 14 day deadline required by Fed. R. Civ. P. 23(f).” (Ex Parte
3 Application, Ex. A at 1.) In any event, Rule 23(f) petitions are seldom granted. *See Chamberlan*
4 *v. Ford Motor Co.*, 402 F.3d 952, 959 (9th Cir. 2005) (noting that “class certification decisions
5 ‘present familiar and almost routine issues’” and stating petitions for “Rule 23(f) review should be
6 granted sparingly” in “rare cases”). Turning to the second factor, defendant fails to show that it “will
7 be irreparably injured absent a stay.” The mere fact that CSB will be required to incur “expenses
8 preparing to try the case as a class action” is not sufficient. The third factor also weighs against
9 granting a stay because CSB filed its motion just nine days before the dissemination of notice was
10 scheduled to commence. Plaintiffs’ counsel represents that it has already spent time and resources
11 working with administrator Kurtzman Carson Consultants (“KCC”) to begin the disseminating
12 notice to the class. With regard to the fourth factor, namely the public interest, defendant argues that
13 a stay “would avoid confusion among class members if the Class Certification Order is reversed or
14 modified.” (Ex Parte Application at 6.) The Court disagrees. Any potential confusion among class
15 members could be cured through dissemination of subsequent notice, if necessary.

16 For the reasons discussed above, the Court **DENIES** defendant’s application.

17 This terminates Dkt. No. 74.

18
19 **IT IS SO ORDERED.**

20 Dated: January 16, 2018

21
22 

23 YVONNE GONZALEZ ROGERS
24 United States District Judge
25
26
27
28