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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

STEVEN GOMO, et al.,  
Plaintiffs,  
v.  
NETAPP, INC., et al.,  
Defendants.

Case No. 17-cv-02990-BLF

**ORDER RE PLAINTIFFS' MOTION TO  
ENLARGE TIME FOR OPPOSITION  
TO DEFENDANTS' MOTION TO  
DISMISS**

[Re: ECF 15]

Plaintiffs filed this action on May 24, 2017, asserting ERISA<sup>1</sup> claims against their former employer, NetApp, Inc., and the NetApp Executive Medical Retirement Plan. *See* Compl., ECF 1. On June 15, 2017, Defendants filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6) and noticed their motion for hearing on November 16, 2017. Plaintiffs' response to the motion is due on June 29, 2017. *See* Civ. L.R. 7-3(a) (opposition due not more than fourteen days after motion is filed).

On June 21, 2017, Plaintiffs filed a motion to enlarge time for opposition pursuant to Civil Local Rule 6-3. Pls.' Motion, ECF 15. In that motion, Plaintiffs seek not only an enlargement of time to respond to Defendants' Rule 12(b)(6) motion, but they also seek to convert Defendants' motion to a summary judgment motion under Federal Rule of Civil Procedure 56. *Id.* Plaintiffs also request leave to conduct discovery before responding to the converted Rule 56 motion. *Id.* Finally, Plaintiffs assert that in order to complete discovery prior to responding to Defendants' motion, they need an enlargement of time until October 2, 2017 to respond to Defendants' motion.

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<sup>1</sup> Employee Retirement Income Security Act of 1974.

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Defendants have filed a timely opposition to the motion to enlarge time. Defs.’ Opp., ECF 16; *see also* Civ. L.R. 6-3(b) (opposition to motion to enlarge time due within four days after receipt of motion). Defendants argue that their Rule 12(b)(6) motion should not be converted to a Rule 56 motion and that the discovery requested by Plaintiffs therefore is unwarranted. Defs.’ Opp., ECF 16.

The Court declines to convert Defendants’ 12(b)(6) motion to a Rule 56 motion. Accordingly, the lengthy enlargement of time requested by Plaintiffs is unnecessary. However, the Court will grant Plaintiff fourteen days from the date of this order, until July 10, 2017, to file an opposition to Defendants’ Rule 12(b)(6) motion.

**IT IS SO ORDERED.**

Dated: June 26, 2017

  
BETH LABSON FREEMAN  
United States District Judge