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6 **UNITED STATES DISTRICT COURT**  
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8 BONA FIDE CONGLOMERATE,  
9 INC.,

10 Plaintiff,

11 v.

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13  
14 SOURCEAMERICA, et al.,

15 Defendants.  
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CASE NO. 14cv0751-GPC-DHB

**ORDER:**

**(1) GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
EX PARTE APPLICATION;**

[Dkt. No. 194.]

**(2) MODIFYING HEARING DATE  
AND BRIEFING SCHEDULE ON  
PLAINTIFF'S MOTION FOR  
CERTIFICATION UNDER 28  
U.S.C. § 1292(b)**

[Dkt. Nos. 195, 198.]

18 Before the Court is Plaintiff Bona Fide Conglomerate, Inc.'s ("Plaintiff") *ex*  
19 *parte* application to: (1) stay all proceedings in this action pending resolution of  
20 Plaintiff's motion for certification of interlocutory appeal under 28 U.S.C. § 1292(b);  
21 or, alternatively (2) continue Plaintiff's February 5, 2015 deadline to file a second  
22 amended complaint. (Dkt. No. 194.) The Defendants have filed a joint opposition.  
23 (Dkt. No. 199.) For the following reasons, the Court **DENIES** Plaintiff's *ex parte*  
24 application for a stay, but **GRANTS** Plaintiff's *ex parte* application to continue the  
25 deadline to file a second amended complaint.

26 **BACKGROUND**

27 Plaintiff brings this civil antitrust action against SourceAmerica and various non-  
28 profit and for-profit entities for allegedly rigging the process through which service

1 providers may compete for government contracts through the federal “AbilityOne  
2 Program.” (Dkt. No. 128 ¶¶ 1-2, 6.) On January 6, 2015, this Court issued an order  
3 (“Order”) granting in part and denying in part Defendants’ motions to dismiss  
4 Plaintiff’s first amended complaint, dismissing Plaintiff’s antitrust claims without  
5 prejudice, and granting Plaintiff thirty days, until February 5, 2015, to file a second  
6 amended complaint. (Dkt. No. 189.) On February 3, 2015, Plaintiff filed a motion  
7 seeking to certify the Court’s Order for interlocutory appeal under 28 U.S.C. § 1292(b),  
8 which the Court set for a hearing on April 10, 2015. (Dkt. Nos. 195, 198.) Plaintiff  
9 also concurrently filed the instant *ex parte* application to: (1) stay all proceedings in  
10 this action pending resolution of Plaintiff’s § 1292(b) motion; or, alternatively  
11 (2) continue Plaintiff’s February 5, 2015 deadline to file a second amended complaint.<sup>1</sup>  
12 (Dkt. No. 194.) Defendants filed a joint opposition to Plaintiff’s *ex parte* application.<sup>2</sup>  
13 (Dkt. No. 199.)

## 14 LEGAL STANDARD

15 “A district court has inherent power to control the disposition of the causes  
16 on its docket in a manner which will promote economy of time and effort for itself,  
17 for counsel, and for litigants.” *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir.  
18 1972) (citation and internal quotation marks omitted). When considering whether  
19 to stay proceedings, courts should consider “the possible damage which may result  
20 from the granting of a stay, the hardship or inequity which a party may suffer in  
21 being required to go forward, and the orderly course of justice measured in terms of  
22 the simplifying or complicating of issues, proof, and questions of law which could  
23 be expected to result from a stay.” *Id.* (citation and internal quotation marks  
24 omitted).

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26 <sup>1</sup>On January 27, 2015, Plaintiff contacted Defendants regarding its stay request.  
27 (Dkt. No. 194-1 ¶ 4.) On January 29, 2015, Defendants declined to stipulate to a stay.  
(*Id.*)

28 <sup>2</sup>The opposition excludes Defendant Corporate Source, Inc. because its counsel  
was unreachable due to an ongoing trial. (Dkt. No. 199 at 1.)

1 If the prescribed time period has not expired, a party must show “good cause”  
2 for an extension. Fed. R. Civ. P. 6(b)(1)(A). “[R]equests for extensions of time  
3 made before the applicable deadline has passed should ‘normally . . . be granted in  
4 the absence of bad faith on the part of the party seeking relief or prejudice to the  
5 adverse party.’” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir.  
6 2010) (citation omitted).

## 7 DISCUSSION

8 Plaintiff contends that this Court should stay proceedings pending resolution  
9 of its § 1292(b) motion because otherwise it will face the “Hobson’s choice” of  
10 either: (1) complying with the Court’s Order and filing a second amended complaint  
11 that will supersede the first amended complaint, thereby waiving appellate review of  
12 the Order and mooted the § 1292(b) motion; or (2) risking involuntary dismissal if  
13 it disobeys the Order. (Dkt. No. 194 at 2-4.) Alternatively, based on the same  
14 reasons, the Plaintiff requests that the Court continue the February 5, 2015 deadline  
15 to file a second amended complaint until 15 days after the Court enters an order on  
16 Plaintiff’s § 1292(b) motion. (*Id.* at 4-5.)

17 Defendants respond that this Court should deny Plaintiff’s *ex parte*  
18 application for three reasons: (1) the Court will likely deny Plaintiff’s § 1292(b)  
19 motion; (2) Plaintiff does not face a “Hobson’s choice” because under the Federal  
20 Rules of Civil Procedure Plaintiff can either timely file a second amended complaint  
21 or announce that it will stand on the first amended complaint and request entry of  
22 final judgment pursuant to Rule 54(b); and (3) Plaintiff’s timing is suspect because,  
23 even though the Court gave Plaintiff thirty days to amend, it waited until January 27  
24 to approach Defendants regarding the stay request, waited until February 3 to file its  
25 *ex parte* application, and did not file its *ex parte* application until the same day that  
26 Defendant SourceAmerica’s Answer was due which prevented SourceAmerica from  
27 seeking a continuance. (Dkt. No. 199 at 2-3.)

28 The Court concludes that Plaintiff has not shown that a stay is warranted, but

1 that there is good cause to grant Plaintiff an extension for filing its second amended  
2 complaint. Plaintiff filed their request before the deadline, there is no evidence of  
3 bad faith by Plaintiff, and Defendants do not contend they will be prejudiced.  
4 Moreover, an extension will alleviate any potential hardship to Plaintiff regarding  
5 its § 1292(b) motion.

6 Accordingly, the Court **DENIES** Plaintiff's request for a stay, but **GRANTS**  
7 Plaintiff's request to continue the deadline for filing a second amended complaint  
8 until 15 days after the Court enters an order on Plaintiff's motion for certification of  
9 interlocutory appeal under 28 U.S.C. § 1292(b).

10 However, the Court is concerned about delaying this action for too long in  
11 order to consider Plaintiff's § 1292(b) motion. Therefore, the Court modifies the  
12 hearing date on Plaintiff's Motion for Certification of Order for 28 U.S.C. § 1292(b)  
13 Interlocutory Appeal and Stay of Proceedings (Dkt. No. 195) to **March 6, 2015** at  
14 1:30 p.m. Defendants shall file a response on or by **February 20, 2015**. Any reply  
15 shall be due by **February 27, 2015**.

#### 16 **CONCLUSION AND ORDER**

17 For the foregoing reasons, **IT IS HEREBY ORDERED:**

- 18 (1) the Court **DENIES** Plaintiff's *ex parte* application to stay all  
19 proceedings in this action pending resolution of Plaintiff's motion for  
20 certification of interlocutory appeal under 28 U.S.C. § 1292(b), but  
21 **GRANTS** Plaintiff's *ex parte* application to continue the deadline for  
22 filing a second amended complaint until 15 days after the Court enters  
23 an order on Plaintiff's motion for certification of interlocutory appeal  
24 under 28 U.S.C. § 1292(b) (Dkt. No. 194);
- 25 (2) the Court **MODIFIES** the hearing date on Plaintiff's Motion for  
26 Certification of Order for 28 U.S.C. § 1292(b) Interlocutory Appeal  
27 and Stay of Proceedings (Dkt. No. 195) to **March 6, 2015** at 1:30 p.m.  
28 Defendants shall file a response on or by **February 20, 2015**. Any

1                   reply shall be due by **February 27, 2015.**

2                   **IT IS SO ORDERED.**

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4                   DATED: February 4, 2015

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6                   HON. GONZALO P. CURIEL  
7                   United States District Judge  
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