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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 STEVIE J. STEVENSON,

12 Plaintiff,

13 v.

14 JEFFREY BEARD, Ph.D., et al.,

15 Defendants.
16

Case No.: 16-CV-3079 TWR (RBM)

**ORDER DENYING DEFENDANTS’
EX PARTE APPLICATION TO
MODIFY BRIEFING SCHEDULE
IN ECF NO. 243**

(ECF Nos. 243, 248)

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18 Presently before the Court is Defendants C. Bell, C. Walker, J. Beard, N. Telles, P.
19 Couch, and R. Madden’s *Ex Parte* Application to Modify Briefing Schedule in ECF No.
20 243 (“*Ex Parte App.*,” ECF No. 248), in which the Court ordered the Parties on May 10,
21 2022, to show cause on or before June 24, 2022, “why summary judgment should not be
22 entered on qualified immunity grounds to [Plaintiff Stevie J. Stevenson’s] sole remaining
23 claim” pertaining to the opening of his legal mail outside of his presence. (*See* ECF No.
24 243 (“OSC”) at 9–10.) This was an issue that Defendants neglected to address in their
25 summary judgment briefing, (*see generally* ECF No. 167), and that the Court therefore
26 raised *sua sponte*. (*See* OSC at 7–9.)

27 Defendants now request a three-week extension of that deadline “because COVID-
28 19, and other pressing responsibilities, has made it impracticable to complete the briefing

1 by the date ordered.” (*See Ex Parte* App. at 1.) Specifically, defense counsel Lyndsay
2 Crenshaw indicates that, six days after the Court’s Order to Show Cause was docketed, she
3 “became an Acting Supervising Deputy Attorney General, which requires her to supervise
4 four other Deputy Attorney[s] General, and comprises approximately 80% of her work
5 day[,]” (*id.*), and that, “[o]n June 6, 2022, [her] children became ill with the COVID-19
6 virus . . . [and,] on June 13, 2022, [she] herself tested positive for COVID-19.” (*Id.* at 2.)
7 Defendants contend that “[t]he[ir] continuance has been sought in a timely manner, and is
8 not anticipated to prejudice Plaintiff.” (*See id.* at 3.)

9 The Court disagrees. The Court provided the Parties a generous 45 days to respond
10 to its May 10, 2022 Order to Show Cause. Defense counsel became aware a mere six days
11 later—39 days before the deadline—that her increased supervisory duties may impact her
12 ability to meet future deadlines.¹ Although the Court is sympathetic to the health of defense
13 counsel and her children, she filed Defendants’ *Ex Parte* Application five days after
14 contracting COVID-19. Further, while Defendants filed their *Ex Parte* Application one
15 week before the filing deadline, they did so near the close of business on the Friday before
16 a holiday weekend. For practical purposes, Defendants therefore made their request only
17 three court days before the deadline. Although this would usually suffice, *see* Standing
18 Order for Civil Cases § IV, Plaintiff is incarcerated and receives all filings and Court Orders
19 only by mail. By filing the *Ex Parte* Application when they did, Defendants have
20 essentially guaranteed that, if the Court were to extend the deadline to respond to the Order
21 to Show Cause, Plaintiff will be deprived of the benefit of the extension.


22 Consequently, under these circumstances, the requested extension is untimely and
23 would prejudice Plaintiff, the party defending against summary judgment. The Court
24 therefore **DENIES** Defendants’ *Ex Parte* Application. Both Plaintiff and Defendants
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27 ¹ Although co-counsel John P. Walters, II and Michelle DesJardins are list as “[i]nactive,” the docket also
28 reflects that yet another attorney—Tessa Rose Lessner—remains active defense counsel. The *Ex Parte*
Application, however, contains no mention of Ms. Lessner, much less any explanation as to why she was
unavailable to assist Ms. Crenshaw in meeting the relevant briefing deadline.

1 **SHALL RESPOND** to the May 10, 2022 Order to Show Cause on or before June 24, 2022,
2 as originally ordered. (*See* OSC at 9–10.)

3 **IT IS SO ORDERED.**

4 Dated: June 21, 2022

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7 Honorable Todd W. Robinson
8 United States District Judge
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