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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 COUNTY OF SANTA CLARA,
16
17 Plaintiff,
18 v.
19 DONALD J. TRUMP, *et al.*,
20 Defendants.

No. 3:17-cv-00574-WHO

**DEFENDANTS' ADMINISTRATIVE
MOTION TO COMBINE ORAL
ARGUMENTS ON PRELIMINARY
INJUNCTION MOTIONS**

21 INTRODUCTION

22 The preliminary injunction motions in this case and in the related case of *City and County*
23 *of San Francisco v. Trump, et al.*, Case No. 5:17-cv-00485-WHO (N.D. Cal.), are currently set
24 for argument on different dates – April 5 and April 12, respectively. Defendants move to hold
25 both arguments on April 12, 2017, for the convenience of the Court and the parties.
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1 BACKGROUND

2 Section 9 of Executive Order 13,768, 82 Fed. Reg. 8,799 (Jan. 30, 2017), instructs the
3 Attorney General and the Secretary of Homeland Security to “ensure that jurisdictions that
4 willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive
5 Federal grants, except as deemed necessary for law enforcement purposes by the Attorney
6 General or the Secretary.” It also instructs the Attorney General to “take appropriate enforcement
7 action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or
8 practice that prevents or hinders the enforcement of Federal law.” *Id.* § 9(a), 82 Fed. Reg. at
9 8,801.

10 The plaintiff in this action alleges that Executive Order 13,768 is unconstitutional under
11 the Tenth Amendment, the Spending Clause, and the Separation of Powers. The plaintiff in *San*
12 *Francisco v. Trump* also alleges that the Order is unconstitutional under the Tenth Amendment,
13 the Spending Clause, and the Separation of Powers. In addition to these common claims, the
14 plaintiff in this action pleads claims under the Due Process Clause, and the plaintiff in *San*
15 *Francisco v. Trump* pleads a claim that 8 U.S.C. 1373 itself violates the Tenth Amendment.

16 This action was initially filed in the San Jose Division of the Court. The plaintiff filed an
17 administrative motion as a non-party in the *San Francisco* case, suggesting that the Court should
18 consider whether the two cases are related under Civil Local Rule 3-12 (Case No. 5:17-cv-00485-
19 WHO, Doc. 11). Plaintiff’s motion said, “Given the overlap in parties, factual and legal issues
20 involved, and the relief sought in both Actions, it is possible that conducting the actions in two
21 courts simultaneously may lead to unnecessary duplication of effort and the potential for
22 conflicting results” (*id.* at 2). In response to plaintiff’s motion, the Court entered a Related Case
23 Order finding that this action is related to *San Francisco v. Trump* (Doc. 37), and this action was
24 thereafter transferred to the San Francisco Division.

25 On February 23, 2017, the plaintiff herein filed a motion for preliminary injunction,
26 seeking a nationwide injunction against the enforcement of Section 9 of the Executive Order and
27 against the withholding of any federal funds under the Order (Doc. 26 at i). Plaintiff noticed its
28 motion for argument on April 5, 2017. On March 8, 2017, the plaintiff in *San Francisco v.*

1 *Trump* filed a motion for preliminary injunction, seeking a nationwide injunction against the
2 enforcement of Section 9 and against enforcement of 8 U.S.C. § 1373 (Case No. 5:17-cv-00485-
3 WHO, Doc. 21). San Francisco noticed its motion for argument on April 12, 2017. Defendants
4 filed their opposition to the preliminary injunction motion in this action on March 9, 2017 (Doc.
5 46), and in *San Francisco v. Trump* on March 22, 2017 (Case No. 5:17-cv-00485-WHO, Doc.
6 35).

7 ARGUMENT

8 The plaintiffs in this action and *San Francisco v. Trump* seek preliminary injunctions
9 against enforcement of Section 9 of Executive Order 13,768, and the defendants make nearly
10 identical arguments in opposition to these motions. In both actions, defendants assert that
11 plaintiffs cannot show immediate irreparable harm, that the plaintiffs lack standing, and that their
12 claims are unripe, because several issues must be resolved and several steps must be taken before
13 Section 9 can be implemented. Thus, the two cases present essentially identical questions
14 regarding irreparable harm, the justiciability of the plaintiffs' claims, and the public interest and
15 balance of equities. Hearing these motions separately would require the defendants to make, and
16 the Court to hear, essentially the same arguments twice. Moreover, the outcome of the two
17 motions will almost certainly be the same.

18 Further, as noted already, this action and *San Francisco v. Trump* allege the same claims
19 at their core: that the Executive Order violates the Tenth Amendment, the Spending Clause, and
20 the Separation of Powers. The unique claims included in each case will make very little differ-
21 ence in the outcome of the pending motions, especially given that the arguments will focus on the
22 irreparable harm, standing, and ripeness issues raised by the defendants. In any event, the unique
23 claims in each case can readily be addressed, as appropriate, during the arguments on April 12,
24 and do not justify having two separate arguments on two different dates.

25 In summary, for the very same reasons given by the plaintiff in support of its related-case
26 motion – “[g]iven the overlap in parties, [the] factual and legal issues involved, and the relief
27 sought in both Actions” – holding separate arguments on the preliminary injunction motions in
28 these two cases would undoubtedly “lead to unnecessary duplication of effort.” It makes eminent

1 sense for the Court to combine the arguments in these two cases in order to avoid the undue
2 burden and expense that such duplication of effort would entail.

3 CONCLUSION

4 For the foregoing reasons, defendants respectfully request that the Court grant their
5 request that the preliminary injunction motions in this action and in *San Francisco v. Trump* be
6 heard together on April 12, 2017.¹

7 Dated: March 23, 2017

8 Respectfully submitted,

9 CHAD A. READLER
10 Acting Assistant Attorney General

11 BRIAN STRETCH
12 United States Attorney

13 JOHN R. TYLER
14 Assistant Director

15 /s/ W. Scott Simpson

16

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26 ¹ Defendants' counsel has consulted regarding this motion with counsel for the plaintiff,
27 who stated that plaintiff opposes the relief sought herein. *See* Declaration of W. Scott Simpson
28 (Attachment 1 hereto). Given that combining the two arguments would affect the plaintiff in *San*
Francisco v. Trump, defendants' counsel has also consulted with counsel for San Francisco, who
stated that the City would not object to combining the arguments.

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Director of the Office of Management and
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**DECLARATION OF W. SCOTT
 SIMPSON IN SUPPORT OF
 ADMINISTRATIVE MOTION
 TO COMBINE ORAL ARGUMENTS
 ON PRELIMINARY INJUNCTION
 MOTIONS**

25 1. I am a Senior Trial Counsel in the Civil Division of the U.S. Department of Justice in
 26 Washington, D.C. I am primarily responsible for representing the defendants in the above-
 27 captioned case. This declaration is based on personal knowledge obtained by me in the
 28 performance of my official duties.

