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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 COUNTY OF SANTA CLARA,

15 Plaintiff,

16 v.

17 DONALD J. TRUMP, President of the
18 United States of America, JOHN F. KELLY,
19 in his official capacity as Secretary of the
20 United States Department of Homeland
21 Security, JEFFERSON B. SESSIONS, in his
22 official capacity as Attorney General of the
23 United States, JOHN MICHAEL "MICK"
24 MULVANEY, in his official capacity as
25 Director of the Office of Management and
26 Budget, and DOES 1-50,

27 Defendants.

Case No. 17-cv-00574-WHO

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

Judge: Hon. William Orrick

Date Filed: February 3, 2017

Trial Date: Not yet set

1 **I. INTRODUCTION**

2 Plaintiff County of Santa Clara (“the County”) opposes defendants’ request to postpone
3 the April 5, 2017 oral argument in this case to coincide with the oral argument in *San Francisco*
4 *v. Trump*, 17-cv-00485-WHO (“SF Action”), set for April 12, 2017. Defendants’ belated motion
5 provides no persuasive reason to combine the two hearings, and in fact every relevant
6 consideration weighs in favor of keeping them separate. The Court should deny defendants’
7 motion.

8 **II. LEGAL STANDARD**

9 Although not styled expressly as such, defendants’ motion is a request for a continuance.
10 Whether to grant a continuance is left to the trial court’s discretion. *See Danjaq LLC v. Sony*
11 *Corp.*, 263 F.3d 942, 961 (9th Cir. 2001). Courts consider four factors when determining whether
12 to grant a continuance: (1) the diligence with which the requesting party acted in seeking the
13 continuance; (2) whether the continuance would serve a useful purpose; (3) whether the
14 continuance would inconvenience the court or the opposing party; and (4) the amount of
15 prejudice, if any, the requesting party would suffer if the continuance is denied. *See Armant v.*
16 *Marquez*, 772 F.2d 552, 556–57 (9th Cir. 1985); *see also United States v. Flynt*, 756 F.2d 1352,
17 1359 (9th Cir. 1985). “These factors are considered together, and the weight accorded any one
18 factor depends on the circumstances of each case.” *Martinez v. Scribner*, 2009 WL 2423100, at
19 *12 (C.D. Cal. Aug. 4, 2009).

20 **III. ARGUMENT**

21 Defendants’ request for a continuance fails to satisfy any of the four factors above.

22 *First*, defendants failed to exercise diligence in seeking to continue the hearing on the
23 County’s motion. The County filed its motion for a preliminary injunction on February 23, 2017,
24 noticing it for hearing on April 5. *See* ECF No. 26. The next day, this Court issued an order
25 setting a March 22 deadline for *amicus* briefs supporting or opposing the motion. *See* ECF No.
26 40. After amending its complaint, San Francisco filed its own motion for a preliminary injunction
27 on March 8, 2017, setting a separate hearing date of April 12. *See* SF Action, ECF No. 21.

28 All of the arguments defendants make in their Administration Motion were available to

1 them the day San Francisco filed its motion for a preliminary injunction. Yet defendants waited
2 12 days, until Monday, March 20, before asking the County to agree to combine the hearings.
3 Decl. of Scott Simpson ¶ 3, ECF No. 79-1. When they did, the County promptly informed them
4 that the County would oppose any such motion. *Id.* Defendants then waited three more days
5 before filing their request on March 23. In short, Defendants had no legitimate reason to wait two
6 weeks—with the hearing just two weeks away—to seek the relief they now request. There is
7 nothing diligent about this conduct.

8 ***Second***, combining the two hearings would advance no useful purpose, and instead would
9 take an already substantively meaty case and double it. Defendants argue that the two cases are
10 related under Local Rule 3-12. True enough. But Local Rule 3-12’s liberal standard for relation
11 has no bearing on whether key motion hearings in related cases should proceed in tandem.

12 Moreover, the County’s case diverges from San Francisco’s in important respects. The
13 County’s suit and preliminary injunction motion focus exclusively on the unconstitutionality of
14 Executive Order 13768. Although San Francisco’s lawsuit and preliminary injunction overlap
15 with respect to two causes of action, San Francisco’s motion presents an entirely separate
16 argument: “the constitutionality of 8 U.S.C. § 1373(a), an immigration statute referenced in the
17 Executive Order, as well as San Francisco’s compliance with that statute.” SF Action, ECF No.
18 11 at 1. That is why, in its Administrative Motion to Consider Whether Cases Should be Related,
19 the County explained that the two jurisdictions’ challenges were made “on different bases.” *Id.*

20 The two motions seek different relief as well. San Francisco’s motion seeks a nationwide
21 injunction of 8 U.S.C. § 1373. *See* SF Action, ECF 21-1 at 1. The County neither challenges the
22 constitutionality of section 1373, nor seeks to enjoin its application. Whether section 1373
23 violates the Tenth Amendment, either facially or as applied to San Francisco, and whether San
24 Francisco complies with section 1373 are complex legal issues that deserve their own hearing.

25 Defendants argue that the Court would need to hear “the same arguments twice” unless
26 the hearings are combined. Defs.’ Admin. Mot. at 3. But if the Court grants the County’s motion
27 on April 5 or shortly thereafter, it need not consider that portion of San Francisco’s motion the
28 following week. Likewise, defendants are wrong that “the outcome of the two motions will

1 almost certainly be the same.” *Id.* Resolving the County’s motion will resolve some, but not all,
2 of the issues presented in San Francisco’s motion—namely, it would resolve the causes of action
3 focusing on the Executive Order’s violation of the Separation of Powers and the Tenth
4 Amendment.¹ But even if the Court denies the County’s motion, it could still find section 1373
5 unconstitutional and grant San Francisco’s motion. It would best serve the interest of judicial
6 economy to use the April 5 hearing to resolve the County’s claims that the Executive Order
7 violates the Constitution, and then devote the April 12 hearing to questions regarding section
8 1373’s constitutionality or San Francisco’s compliance with that statute.

9 **Third**, the continuance would inconvenience the Court and the County for the reasons just
10 stated. Combining two substantively distinct motions into one hearing on an already busy law
11 and motion day would be unwieldy, inconvenient, and could deprive the Court and the parties of
12 the time they need to argue and consider the important issues presented in the motions. This is
13 particularly true given the Court’s April 12 calendar, which already includes eight pending
14 motions, in addition to San Francisco’s preliminary injunction motion.

15 **Fourth**, defendants identify no meaningful prejudice that the Administration would suffer
16 without a continuance, and instead seeks to postpone the hearing for its convenience alone. In the
17 absence of a showing of prejudice, the Court need not grant a continuance. *See Gallego v.*
18 *McDaniel*, 124 F.3d 1065, 1072 (9th Cir. 1997).

19 Unlike the Administration, the County will suffer prejudice if the Court postpones the
20 hearing. As set forth in its preliminary injunction briefing, the County is suffering concrete and
21 ongoing harm from the Executive Order. The Order violates its constitutional rights, and
22 unconstitutionally coerces it—along with every other state and local government across the
23 country—to change its local policies to fall in line with President Trump’s immigration agenda on
24 pain of crippling sanctions. Since the County filed its reply brief on March 16, and consistent
25 with President Trump’s repeated statements, the Administration has moved forward in
26 implementing the Executive Order. On March 20, 2017, the Department of Homeland Security

27 _____
28 ¹ The County has also advanced claims under the Fifth Amendment’s due process clause, which
do not appear in San Francisco’s complaint or in its motion seeking a preliminary injunction.

1 issued its first “Declined Detainer Outcome Report,” as called for in Section 9(b) of the Executive
 2 Order. *See* U.S. Immigration & Customs Enforcement, Weekly Declined Detainer Outcome
 3 Report, https://www.ice.gov/doclib/ddor/ddor2017_01-28to02-03.pdf. The County of Santa
 4 Clara is identified in that report. *Id.* at 4. Moreover, with each passing day, the County continues
 5 to spend money on essential services for which it is entitled to federal reimbursement. A one
 6 week delay may not mean much to the Trump Administration, but to a local government
 7 attempting to make budget decisions, remain solvent, and provide services to 1.9 million
 8 residents, it means very much indeed: the County incurs millions of dollars in expenses each day
 9 for which it is entitled to federal reimbursements threatened under the Executive Order.

10 The uncontroverted evidence submitted by the County in support of its motion makes this
 11 clear. During March and April, the County balances anticipated revenues with proposed budgets
 12 in order to develop the legally-required balanced budget that is then considered by the Board of
 13 Supervisors during May and June. *See* ECF No. 29, Marquez Decl. ¶ 13. **Any** delay in resolving
 14 the County’s motion will only exacerbate the fiscal and budgeting uncertainty the County
 15 currently faces as a result of the Executive Order.

16 **IV. CONCLUSION**

17 Because none of the four factors of the relevant legal test supports postponing the April 5
 18 hearing, the Court should deny defendants’ Administrative Motion and leave the hearing as set.

19 Respectfully submitted,

20 Dated: March 24, 2017

21 OFFICE OF THE COUNTY COUNSEL,
 COUNTY OF SANTA CLARA

22 By: /s/ James R. Williams
 JAMES R. WILLIAMS, County Counsel

23 Attorneys for Plaintiff COUNTY OF
 24 SANTA CLARA

25 Dated: March 24, 2017

KEKER, VAN NEST & PETERS LLP

26 By: /s/ John W. Keker
 27 JOHN W. KEKER

28 Attorneys for Plaintiff COUNTY OF
 SANTA CLARA

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FILER'S ATTESTATION

I, John W. Keke, am the ECF user whose identification and password are being used to file this document. Pursuant to Rule 5-1(i)(3), I hereby attest that the other above named signatories concur in this filing.

/s/ John W. Keke

JOHN W. KEKER