

Respectfully submitted,

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**ATTORNEYS FOR THE
DISTRICT DEFENDANTS**

February 27, 2003, the District Defendants filed a consent motion to enlarge to April 8, 2003, the time within which they might respond to the complaint. The Court granted the motion to enlarge on March 9, 2003.

On March 27, 2003, five named plaintiffs filed a putative class action in this Court, styled *Abbate v. Ramsey*, No. 03-767, challenging the Pershing Park arrests and detentions that are a principal subject of the amended complaint herein. The *Abbate* case was assigned to Judge Sullivan. On the following day, the plaintiffs in *Abbate* filed a motion to coordinate briefing and argument on the motions for class certification already on file in the present case and to be filed in *Abbate*.

Contemporaneously with this motion, the District Defendants are filing a comparable motion to enlarge and a memorandum in response to the *Abbate* plaintiffs' motion to coordinate. The District Defendants respectfully suggest that the Court should consolidate the two cases because they both purport to be class actions dealing with the same events and transactions.

Like this case, *Abbate* is a putative class action arising out of the Pershing Park arrests on September 27, 2003. The plaintiffs here have named more defendants than have the plaintiffs in *Abbate*, and the allegations here go beyond the arrests effected by the MPD at Pershing Park to include alleged activities of other governmental entities and events that transpired at additional locations. However, the core issues of the *Abbate* complaint, concerning the September 27 arrests at Pershing Park, plainly overlap the allegations of the complaint in this case.

The District Defendants believe that in response to the plaintiffs' motion, the Court should go beyond the mere coordination of argument on the class certification motions and should consolidate the two class actions. To that end, the Court should direct counsel for plaintiffs in the two cases to cooperate in the filing of a single consolidated amended complaint

that will embrace the allegations common to the two cases, so that the Court and the defendants do not have to deal with two simultaneous class actions that address the same occurrences and events.

Directing consolidation will be in accord with the general rule that the Court should not certify more than one class action where different putative class representatives and their counsel press competing claims. *See* Manual for Complex Litigation, § 30.15, at 219 (3d ed. 1995). A leading treatise on class actions is in accord:

To facilitate case management for determining common class issues which will be the basis for discovery and trial, the court may direct the multiple parties [plaintiffs] to file a consolidated class complaint or to amend the relevant complaints to make them uniform regarding the scope of the class and the alternative legal theories alleged

[3 Conte & Newberg, *Newberg on Class Actions*, § 7:31, at 93 (4th ed. 2002).] The District Defendants take no position as to whether this Court, or Judge Sullivan, to whom the plaintiffs have presented their motion to coordinate in *Abbate*, should preside over one consolidated proceeding. This Court has the earlier filed of the two proposed class actions.

Defendants note that the case of *Chang v. District of Columbia*, No. 02-2010, is also assigned to Judge Sullivan. *Chang* is an earlier case but not a proposed class action. It is brought by seven plaintiffs who challenge their arrests and the circumstances of their ensuing confinement, in connection with their presence at Pershing Park allegedly either as legal observers or as photojournalists, though not as demonstrators. *Chang* plainly is related in subject-matter to *Abbate* and the present case, and it may thus effect judicial economy to assign all three cases to a single Judge.²

²The Court also should be aware of *Franklin Jones v. District of Columbia*, 02-2310, pending before Judge Kessler. That case, filed after *Chang*, but before *Barham*, is not a class action and is brought by three plaintiffs – one of whom allegedly was arrested at Pershing Park and the

While the Court is considering the present motion to consolidate and the District Defendants' response to the *Abbate* plaintiffs' motion to coordinate, the District Defendants respectfully request that the Court enlarge further their time to respond to the amended complaint and enlarge their time to respond to the motion for class certification.

CONCLUSION

For the foregoing reasons, and for such further reasons as may appear to the Court, the District Defendants respectfully submit that the Court should consolidate this case with *Abbate* so as to present a single putative class action to which the various defendants may respond in due course. In the interim, the Court should defer the District defendants' responses to the complaint and the motion for class certification. A proposed form of order embodying the foregoing suggestion is annexed to this memorandum.³

other two elsewhere. The District previously submitted notices of related cases in *Chang* and *Jones*.

³The proposed order contemplates that counsel in the two pending putative class actions will be able to agree among themselves upon a single consolidated amended complaint. In the event that counsel are unable to do so, the Manual prescribes the various considerations that the Court will wish to consider and procedures to be followed in structuring a single putative class action. *See* Manual, *supra*, §§ 30.15 (multiple cases and classes/subclasses), 30.16 (selection of counsel and representatives).

In the event the Court declines to grant the instant motion, the District defendants respectfully request in the alternative that they be permitted an additional 15 and 30 days following the Court's decision on the motion, respectively, to respond to plaintiffs' amended complaint and motion for class certification.

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