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8 Attorneys for Defendants

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 CAROLYN ROBB HOOTKINS, et. al.) Case No. CV07-05696 (CAS)
13)
14 Plaintiffs,) EX PARTE APPLICATION TO
15) STRIKE PLAINTIFFS'
16 v.) UNAUTHORIZED REPLY IN
17) SUPPORT OF SUPPLEMENTAL
MICHAEL CHERTOFF, Secretary, U.S.) MEMORANDUM OF LAW IN SUPPORT
18 Department of Homeland Security,) OF MOTION FOR CLASS
and JONATHAN SCHARFEN,¹ Acting) CERTIFICATION, OR IN THE
19 Director U.S. Citizenship) ALTERNATIVE, FOR ORDER
and Immigration Services, et. al.) PERMITTING DEFENDANTS TO
20) FILE A SURREPLY TO
21 Defendants.) PLAINTIFFS' UNAUTHORIZED
22) REPLY IN SUPPORT OF
23) SUPPLEMENTAL MEMORANDUM OF
24) LAW IN SUPPORT OF MOTION FOR
25) CLASS CERTIFICATION;
26)
27) MEMORANDUM OF POINTS AND
28) AUTHORITIES;
29)
30) DECLARATION.

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33 ¹ Dr. Emilio Gonzalez resigned as Director, United States
34 Citizenship and Immigration Services ("USCIS"), effective April
35 18, 2008. Jonathan Scharfen, Acting Director, is automatically
36 substituted for Dr. Gonzalez. Fed. R. Civ. P. 25(d).
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EX PARTE APPLICATION

1
2 Defendants Michael Chertoff and Jonathan Scharfen
3 (collectively "Defendants"), by and through the undersigned
4 counsel, hereby apply *ex parte* for an order striking Plaintiffs'
5 unauthorized reply in support of supplemental memorandum of law
6 in support of motion for class certification, or in the
7 alternative, for an order permitting Defendants to file a
8 surreply to Plaintiffs' unauthorized reply in support of
9 supplemental memorandum of law in support of motion for class
10 certification.

11 Pursuant to Local Rule 7-19.1, on June 2, 2008, Defendants'
12 counsel provided notice of this *ex parte* application to
13 Plaintiffs' counsel Brent W. Renison via email. He stated that
14 he opposes the relief Defendants seek in this *ex parte*
15 application. Glaser Declaration ¶ 2.

16 This *ex parte* application is based upon the attached
17 memorandum of points and authorities, the attached Declaration of
18 Sheri R. Glaser, and the files and records in this case.

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28 Case No. CV07-05696 (CAS)
Defendants' *Ex parte* Application To Strike, or in The Alternative, For Order
Permitting Defendants To File a Surreply

1 Respectfully Submitted,

2 GREGORY G. KATSAS
3 United States Department of Justice
4 Acting Assistant Attorney General

5 By: S/ Elizabeth J. Stevens
6 ELIZABETH J. STEVENS
7 Assistant Director
8 District Court Section
9 Office of Immigration Litigation
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11 Elizabeth.Stevens@usdoj.gov

12 S/ Sheri R. Glaser
13 SHERI R. GLASER
14 Trial Attorney
15 District Court Section
16 Sheri.Glaser@usdoj.gov

17 Dated: 3 June 2008

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28 Case No. CV07-05696 (CAS)
Defendants' Ex parte Application To Strike, or in The Alternative, For Order
Permitting Defendants To File a Surreply

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Defendants, by and through the undersigned counsel, request
3 that this Court strike Plaintiffs' unauthorized reply in support
4 of supplemental memorandum of law in support of motion for class
5 certification ("reply"), or in the alternative, permit Defendants
6 to file a surreply in response to Plaintiffs' unauthorized reply.
7 The proposed surreply is filed as an attachment to this document.

8 Defendants request that this Court strike Plaintiffs' reply,
9 because it is "impertinent" under Fed. R. Civ. P. 12(f)(1).²
10 Black's Law Dictionary defines "impertinent" as "[t]hat which
11 does not belong to a . . . proceeding; out of place." *Black's*
12 *Law Dictionary* 754 (6th ed. 1999).

13 The Court ordered supplemental briefing on the issue of
14 class certification as follows: (1) "[o]n or by April 28, 2008,
15 Plaintiffs' [shall file] their supplemental brief in support of
16 their motion for class certification," (supp. brief) and (2)
17 "[o]n or by May 12, 2008, Defendants' [shall file their] reply to
18 plaintiffs' supplemental brief in support of plaintiffs' motion
19 for class certification" ("supp. response"). See docket No. 44.

20 The Court did not authorize Plaintiffs to file a reply to
21

22 ² Defendants' motion to strike is timely under Fed. R. Civ.
23 P. 12(f)(2) since Defendants filed it within 20 days of the date
24 Plaintiffs filed their reply. Fed. R. Civ. P. 12(f)(2) states
25 that "[t]he court may strike from a pleading an insufficient
26 defense or any redundant, immaterial, impertinent, or scandalous
27 matter. The court may act . . . on motion made by a party either
before responding to the pleading or, *if a response is not*
allowed, within 20 days after being served with the pleading.
(emphasis added). Plaintiffs filed their reply on May 19, 2008.

1 Defendants' response. Nevertheless, without leave of this Court
2 and without notice to Defendants, Plaintiffs filed a reply on May
3 19, 2008. This Court should strike Plaintiffs' reply, since
4 Plaintiffs were not granted leave of Court to file it; therefore
5 it is out of place in this proceeding; and "impertinent" under
6 Fed. R. Civ. P. 12(f)(1).

7 In addition, Plaintiffs had the opportunity to file a reply
8 to Defendants' opposition to Plaintiffs' motion for class
9 certification ("opposition"), in the ordinary course of briefing
10 under Local Rule 7-10. Plaintiffs failed to file a reply when
11 they had that authorized chance, which further supports
12 Defendants argument that Plaintiffs' reply should be stricken.

13 In the alternative, Defendants request permission to file a
14 surreply, since Plaintiffs' reply raises a new argument.
15 Plaintiffs' previous filings regarding class certification
16 focused solely on the argument that their proposed class is
17 maintainable under Fed. R. Civ. P. 23(b)(3). Their reply
18 includes a new argument that their proposed class is maintainable
19 under Fed. R. Civ. P. 23(b)(2). Defendants have not had the
20 opportunity to respond to Plaintiffs' new argument; and
21 Plaintiffs fail to meet their burden to show the proposed class
22 is maintainable under Fed. R. Civ. P. 23(b)(2). As such,
23 Defendants request this Court's permission to file a surreply.

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1 Respectfully Submitted,

2 GREGORY G. KATSAS
3 United States Department of Justice
4 Acting Assistant Attorney General

5 By: S/ Elizabeth J. Stevens
6 ELIZABETH J. STEVENS
7 Assistant Director
8 District Court Section
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10 Civil Division
11 Elizabeth.Stevens@usdoj.gov

12 S/ Sheri R. Glaser
13 SHERI R. GLASER
14 Trial Attorney
15 District Court Section
16 Sheri.Glaser@usdoj.gov

17 Dated: 3 June 2008
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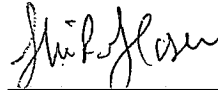
DECLARATION OF SHERI R. GLASER

I, SHERI R. GLASER, declare:

1. I am the United States Department of Justice Trial Attorney assigned to handle the instant action. As such, I have personal knowledge of the following facts and, if called as a witness, I could and would testify competently thereto.
2. Pursuant to Local Rule 7-19.1, on June 2, 2008, I provided notice of this *ex parte* application to Plaintiffs' counsel Brent W. Renison via email. He stated that he opposes the relief Defendants seek in this *ex parte* application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 3, 2008 at Washington, DC.



SHERI R. GLASER

CERTIFICATE OF SERVICE

Case No. C-07-5696-CAS

I hereby certify that on this 3rd day of June 2008, true and correct copies of the Defendants' **EX PARTE APPLICATION TO STRIKE PLAINTIFFS' UNAUTHORIZED REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION, OR IN THE ALTERNATIVE, FOR ORDER PERMITTING DEFENDANTS TO FILE A SURREPLY TO PLAINTIFFS' UNAUTHORIZED REPLY IN SUPPORT OF SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** were served pursuant to the district court's ECF system as to ECF filers on June 3, 2008, to the following ECF filers:

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