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11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 WESTERN DIVISION

14 ANDREW MASON DVASH-
15 BANKS, et al.,

16 Plaintiffs,

17 v.

18 MICHAEL R. POMPEO, in his
19 official capacity as U.S. Secretary
of State, et al.,

20 Defendants.

Case No. CV 18-523-JFW(JCx)

**Defendants' Unopposed Application for
One Business-Day Extension for Filing
Summary Judgment Replies and
Proposed Statements Of Decision, or In
the Alternative Leave to File Replies on
a Federal Holiday**

Re: Cross-Motions for Partial Summary
Judgment: ECF No. 83 (Pls.' Mot.);
ECF No. 89 (Def's.' Mot.).

Hearing Date: Feb. 4, 2019

Hearing Time: 1:30 pm

**Current reply
filing deadline:** Friday, Jan. 18, by
operation of Fed. R.
Civ. P. 6(a)

**Proposed reply
filing deadline:** Tuesday, Jan. 22, or in
the alternative
Monday, Jan. 21

**Current deadline
for Proposed
Stmt. of Decision:** Wednesday, Jan. 23

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**Proposed deadline
for Proposed
Stmnt. of Decision** Thursday, Jan. 24

Honorable John F. Walter

Defendants the United States Department of State and the Honorable Michael R. Pompeo, Secretary of State (“Defendants”) respectfully submit this unopposed request for a one-business day extension of the deadlines for the Parties to file their respective reply briefs and Proposed Statements of Decision in connection with their cross motions for partial summary judgment, such that the reply briefs would be due on Tuesday, January 22, 2019, and the Proposed Statements of Decision would be due on Thursday, January 24, 2019. In the alternative, Defendants seek leave for the Parties to file their reply briefs and associated documents (Combined Statements of Facts, Joint Exhibit Binders, and Joint Declaration Binders) on Monday, January 21, notwithstanding the federal holiday (Martin Luther King, Jr. Day) that day. In support of this request, Defendants state as follows:

1. The motions hearing for the Parties’ cross-motions for partial summary judgment has been noticed and is scheduled for February 4, 2019. The Parties filed their respective motions on Monday, January 7. *See* ECF No. 83 (Plaintiffs’ Notice of Motion and Motion for Partial Summary Judgment); ECF No. 89 (Defendants’ Notice of Motion and Motion for Partial Summary Judgment). They filed their respective opposition briefs and related documents on Monday, January 14. Ordinarily the Parties’ respective reply briefs and related documents would be due on Monday, January 21. *See* L.R. 7-10 (providing that “[a] moving party may, not later than fourteen (14) days before the date designated for the hearing of the motion, serve and file a reply memorandum, and declarations or other rebuttal evidence). However, Monday, January 21 is a federal holiday, Martin Luther King, Jr. Day. By operation of Rule 6(a) of the Federal Rules of Civil Procedure, the federal holiday works to extend the reply-brief deadline backwards, to Friday, January 18. *See* Fed. R. Civ. P. 6(a)(1)(C) (“When the [time] period is stated

1 in days ... include the last day of the period, but if the last day is a Saturday, Sunday, or
2 legal holiday, the period continues to run until the end of the *next day* that is not a
3 Saturday, Sunday, or legal holiday.”) (emphasis added); *id.* at 6(a)(5) (“‘*Next Day*
4 *Defined.* The ‘next day’ is determined by continuing to count forward when the period is
5 measured after an event and *backward when measured before an event.*”) (emphasis
6 added).

7 2. Under the current schedule—with their reply briefs due on January 18—the
8 Parties have only four calendar days following the January 14 filing of the oppositions in
9 which to prepare and file their respective reply-related filings. Those filings include for
10 each side, Plaintiffs and Defendants: a reply memoranda, a Combined Statement of Fact,
11 a Joint Set of Exhibits, and a Joint Set of Declaration. *See* Case Management Order, ECF
12 No. 52, at 10, 13 (describing requirements for the moving party to file, together with its
13 reply, a separate document entitled “Combined Statement of Facts,” a “Joint Set of
14 Exhibits,” and a “Joint Set of Declarations”).

15 3. Good cause exists to extend the reply deadline by one business day. The
16 reply-related filings are time consuming, yet the Parties currently have only four
17 calendar days in which to complete them. Doing so will require a significant outlay of
18 substantive and administrative work. For example, the Combined Statement of Facts that
19 Defendants are preparing requires Defendants to respond to eighty-two new facts
20 included in Plaintiffs’ Statement of Genuine Issues of Material Fact, ECF No. 95-1.
21 Additionally, the reply-related filings currently due on January 18, and particularly each
22 motion’s Joint Set of Exhibits and Joint Set of Declarations, require the Parties to meet
23 and confer with one another prior to filing, *see* Case Management Order, ECF No. 52, at
24 13, which adds to the time needed for finalizing the filings, as each side must send to the
25 other a draft of their proposed indices while allowing enough time for the meet and
26 confer process to take place. Closure of federal offices in the Washington, DC area on
27 Monday, January 14, and a two-hour delay on Tuesday, January 15, both due to
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1 snow/weather,¹ further strained Defendants’ ability to meet the current deadline of
2 January 18, because the closures caused the temporary unavailability of a contract
3 paralegal who otherwise would have been assisting Defendants’ counsel during that time
4 with the preparation of the reply-related filings.

5 4. A one business-day extension of the reply deadline, to Tuesday, January 22,
6 would not prejudice any Party. It would be in the interest of justice because it would
7 allow the Parties to take more time to better organize their filings prior to submitting
8 them to the Court.

9 5. Under the current schedule, the Parties must file Proposed Statements of
10 Decision by Wednesday, January 23—two days after the fourteen-days-prior-to-hearing
11 deadline for filing their reply briefs. *See* Case Management Order, ECF No. 52, at 16.
12 Because cross motions have been filed, each side—Plaintiffs and Defendants—will need
13 to file two Proposed Statements of Decision, one related to Plaintiffs’ motion and one
14 related to Defendants’ motion. Good cause exists for extending until Thursday, January
15 24 the deadline for filing the Proposed Statements of Decision, to allow the parties the
16 two days intended by the Court’s Case Management Order for preparing those
17 Statements. *See id.*

18 6. In the alternative to the above-requested relief, Defendants seek leave for
19 the Parties to file their replies and associated documents on Monday, January 21,
20 notwithstanding the federal holiday that day.

21 7. This is Defendants’ sixth request to extend any deadlines in this case. On
22 March 22, May 23, and July 11, 2018, Defendants filed seriatim Joint Stipulations for
23 Extension of Time to File Answer. *See* ECF Nos. 35, 40, 44. The first two of those
24 requests were granted, and the third request denied. *See* ECF Nos. 36, 41, 45. On

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26 ¹ *See* U.S. Office of Personnel Management (OPM) archived Operating Status for
27 Washington, DC Area for January 14, 2019, available at [https://www.opm.gov/policy-
28 data-oversight/snow-dismissal-procedures/status-archives/19/1/13/Office-Closure_858/](https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/status-archives/19/1/13/Office-Closure_858/),
and for January 15, 2019, available at [https://www.opm.gov/policy-data-
oversight/snow-dismissal-procedures/status-archives/19/1/14/Open---2-hours-Delayed-
Arrival_862/](https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/status-archives/19/1/14/Open---2-hours-Delayed-Arrival_862/).

1 December 21, 2018, Defendants filed a Joint Stipulation to extend by one week the
2 motion hearing cut-off date from January, 28, 2019, to February 4, 2019. *See* ECF No.
3 73. The Court granted that request on December 26, 2019. *See* ECF No. 75. On
4 December 26, 2018, Defendants filed an Ex Parte Application to Stay Litigation in light
5 of the lapse of appropriations funding Department of Justice employee (counsel and
6 staff) salaries. *See* ECF No. 74. The Court denied that request on December 26, 2018.
7 *See* ECF No. 76.

8 8. On January 16, 2019, Defendants’ counsel met and conferred with
9 Plaintiffs’ counsel regarding the relief requested herein. Plaintiffs’ counsel requested that
10 Defendants convey Plaintiffs’ position to the Court as follows: “Plaintiffs will abide by
11 any decision the Court makes or schedule the Court sets for the reply papers on both
12 [partial summary judgment] motions but respectfully request that any deadlines be
13 equally applicable to Plaintiffs and Defendants. Accordingly, Plaintiffs take no position
14 with respect to the motion.”

15 9. Defendants submit that this extension request is not for the purpose of
16 undue delay, that the continuance will not prejudice the conduct of the litigation, and that
17 granting the request will serve the interests of justice. Defendants request that any
18 extension be applicable to both Plaintiffs and Defendants.

19 Good cause, therefore, exists for Defendants’ requested one business-day
20 extension. The Court should grant the request.

21
22 Dated: January 16, 2019

Respectfully submitted,

23 JOSEPH H. HUNT
24 Assistant Attorney General

25 ANTHONY J. COPPOLINO
26 Deputy Director

27 /s/ Lisa Zeidner Marcus
28 LISA ZEIDNER MARCUS

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17 MICHAEL R. POMPEO, in his
official capacity as U.S. Secretary
18 of State, et al.,

19 Defendants.

Case No. CV 18-523-JFW(JCx)

[Proposed] Order Granting One Business-
Day Extension for Filing Summary
Judgment Replies and Proposed Statements
of Decision

Honorable John F. Walter
United States District Judge

20
21 The Court has received Defendants' unopposed application for a one
22 business-day extension of time for both Parties to file their summary judgment
23 replies and their Proposed Statements of Decision. Upon consideration of the
24 requested extension, and for good cause shown,

25 It is hereby ordered that:

26 The request is GRANTED.

27 The Parties shall file their summary judgment reply briefs, along with any
28 other papers required to be filed simultaneously with their replies, by Tuesday,

1 January 22, 2019. They shall file their Proposed Statements of Decision by
2 Thursday, January 24, 2019.

3
4 Dated _____, _____

5 HONORABLE JOHN F. WALTER
6 UNITED STATES DISTRICT JUDGE

7
8 Presented by:

9
10 Attorneys for Defendants
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12 Assistant Attorney General

13 ANTHONY J. COPPOLINO
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