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Christian Schreiber (Bar No. 245597)
christian@osclegal.com
Monique Olivier (Bar No. 190385)
monique@osclegal.com
Rachel Bien (Bar No. 315886)
rachel@osclegal.com
OLIVIER SCHREIBER & CHAO LLP
201 Filbert Street, Suite 201
San Francisco, California 94133
Tel: (415) 484-0980
Fax: (415) 658-7758

Attorneys for Proposed Intervenor
Department of Fair Employment and Housing

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC.,
BLIZZARD ENTERTAINMENT,
INC., ACTIVISION PUBLISHING,
INC., and KING.COM, INC., and
DOES ONE through TEN, inclusive

Defendants.

Case No. 2:21-CV-07682 DSF-JEM
**CALIFORNIA DEPARTMENT OF
FAIR EMPLOYMENT AND
HOUSING'S *EX PARTE*
APPLICATION**

Judge: Hon. Dale S. Fischer

Action Filed: September 27, 2021

1 Pursuant to Local Rule 7-19, the California Department of Fair Employment
2 & Housing (“DFEH”) appears before the Court to seek an *ex parte* application to
3 shorten the time required under Local Rule 7-3 to file a motion to intervene after
4 the meet and confer process. The proposed motion is attached as Exhibit D to the
5 Declaration of Christian Schreiber (“Schreiber Decl.”) filed herewith. Shortening of
6 time is necessary to prevent an irreparable harm to DFEH as entry of the proposed
7 consent decree is a looming temporal event that would result in irreparable harm to
8 DFEH’s own pending litigation. *DFEH v. Activision Blizzard, et al.*, Los Angeles
9 County Superior Court Case No. 21STCV26571 (filed July 20, 2021). The Parties
10 in this action also failed to file a “Notice of Pendency of Other Actions or
11 Proceedings,” regarding the DFEH action with this Court, as required Local Rule
12 83-1.4.

13 **I. Factual Background**

14 On July 20, 2021, DFEH filed its complaint against Defendants Activision
15 Blizzard, Inc., Blizzard Entertainment, Inc., Activision Publishing, Inc.
16 (“Defendants”) in the Superior Court for the County of Los Angeles, Case No.
17 21STCV26571. *See* Declaration of Christian Schreiber (“Schreiber Decl.”), Exh. A.
18 The DFEH lawsuit seeks relief for employees in California who were subjected to
19 unlawful employment practices including discrimination, harassment and retaliation
20 in violation of the California Fair Employment and Housing Act (“FEHA”), Cal.
21 Gov. Code, §12900 et seq. and other California laws.

22 On September 27, 2021, Plaintiff U.S. Equal Employment Opportunity
23 (“EEOC”) filed the instant case against Defendants Activision Blizzard, Inc.,
24 Blizzard Entertainment, Inc., Activision Publishing, Inc., and King.com, Inc. On
25 the same date, EEOC lodged a proposed consent decree with the Court seeking
26 approval of a settlement in this federal matter, including approval of *a procedure to*
27 *obtain releases of state claims to which EEOC is not a party and EEOC lacks*
28 *standing to prosecute*. *See Victa v. Merle Norman Cosmetics, Inc.*, 19 Cal.App.4th

1 454 (1993) (“the inability to assert the broader remedies of California law in the
2 EEOC case derived not from limitations on the courts but from limitations of the
3 EEOC’s power.”). EEOC’s underlying lawsuit alleges only federal claims,
4 including discrimination, harassment and retaliation claims, under Title VII of the
5 Civil Rights Act (“Title VII”), 42 U.S.C. §2000e *et seq.*

6 EEOC failed to alert the Court of DFEH’s pending enforcement action before
7 a state court despite the obligations contained in Local Rule 83-1.4, stating:

8 Whenever a civil action filed in or removed to this Court involves all
9 or a material part of the subject matter of an action then pending before
10 the United States Court of Appeals, Bankruptcy Appellate Panel,
11 Bankruptcy Court or any other federal or state court or administrative
12 agency, the attorney shall file a “Notice of Pendency of Other Actions
13 or Proceedings” with the original complaint or petition filed in this
14 Court. The duty imposed by L.R. 83-1.4 continues throughout the time
15 an action is before this Court.

16 Civ. Loc. R. 83-1.4

17 In addition to EEOC’s failure to comply with notice requirements to the
18 Court about the pending DFEH action, EEOC and Defendants also failed to provide
19 complete information in the proposed consent decree now lodged with the Court.
20 The proposed decree, for example, lacks a proposed notice, claim form and release.
21 It also provides no notice of DFEH’s pending action but seeks Court-approval of a
22 procedure whereby EEOC and Defendants arrange for outside counsel to assist with
23 obtaining releases of state claims to which EEOC is not a party and EEOC lacks
24 standing to prosecute under law. No information about Defendants’ potential
25 liability, the maximum damages recoverable in successful litigation, or the
26 allocation and distribution of monetary relief is included in the proposed decree.
27 Unclaimed settlement funds also revert back to Defendants, and the decree
28 proposes destruction or tampering of evidence necessary to DFEH’s case. Finally,
EEOC and Defendants did not request a fairness hearing, nor explain why the
settlement is fair, adequate or reasonable. *See U.S. v. Oregon*, 913 F.2d 576, 580-

1 581 (9th Cir. 1990) (a consent decree must be “...fundamentally fair, adequate and
2 reasonable” “as a whole” and “that the decree represents a ‘reasonable factual and
3 legal determination.’).

4 Given the deficiencies in the proposed consent decree and its potential
5 prejudicial impact on the state of California’s pending enforcement of FEHA,
6 DFEH notified both EEOC and Defendants that it intended to file a motion to
7 intervene concerning its objections on September 30, 2021 and requested that the
8 EEOC and Defendants provide their earliest availability to meet and confer.
9 Defendants and the EEOC notified DFEH that they were unavailable until October
10 5 and 6, respectively. Given this delay, DFEH requested in the intervening time that
11 Defendants and the EEOC ask the Court to delay entry of the decree and notify the
12 Court of DFEH’s motion to intervene and seek a fairness hearing. Defendants and
13 the EEOC would not agree to notify the Court nor request a fairness hearing.

14 On October 5, 2021, DFEH stated its position regarding the proposed consent
15 decree during its meet and confer with EEOC and Defendants. DFEH discussed the
16 basis for the DFEH’s motion to intervene in order to object to the proposed consent
17 decree and *ex parte* application, and counsel for the EEOC and for the Defendants
18 discussed their basis for opposing the same. *See* Declaration of Patrick O. Patterson
19 (“Patterson Decl.”) at ¶ 4. EEOC and Defendants to date have refused to request a
20 fairness hearing or delay in entry of the decree, thus necessitating this *ex parte*
21 application to shorten the time required under Local Rule 7-3 that requires a
22 moving party wait seven (7) days from the date of its meet and confer to file its
23 motion.

23 **II. Legal Arguments**

24 **A. Legal Standard**

25 An *ex parte* application is appropriate where a looming temporal event
26 threatens harm. *See Horne v. Wells Fargo Bank, N.A.*, 969 F.Supp.2d 1203, 1205-
27 06 (C.D. Cal. 2013). The *Horne* court noted that:

28 The use of such a procedure is justified only when (1) there is a threat

1 of immediate or irreparable injury; (2) there is danger that notice to the
2 other party may result in the destruction of evidence or the party’s
3 flight; or (3) the party seeks a routine procedural order that cannot be
4 obtained through a regularly noticed motion (i.e., to file an overlong
brief or shorten the time within which a motion may be brought).

5 *Horne*, 969 F. Supp. 2d at 1205.

6 **B. Granting of Ex Parte Application Is Appropriate Given Temporal**
7 **Urgency and Irreparable Harm**

8 An *ex parte* application is proper “where there is a temporal urgency such
9 that immediate and irreparable harm will occur if there is any delay in obtaining
10 relief. (‘The tomatoes will spoil if we don’t move them immediately.’)” *Mission*
11 *Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 490 (C.D. Cal. 1995); *see*
12 *also Horne*, 969 F.Supp.2d at 1206 (noting that proximity of nonjudicial
13 foreclosure sale of property would qualify as proper ground for *ex parte* relief).

14 Here, there is looming temporal event (entry of the consent decree by the
15 Court without all of the available information) that would result in irreparable harm
16 to DFEH. At a minimum, DFEH’s interests will be irreparably harmed by the
17 Court’s entry of the proposed consent decree. DFEH’s pending enforcement action
18 against Defendants will be harmed by uninformed waivers that the proposed decree
19 makes conditional for victims to obtain relief. The proposed consent decree also
20 contains provisions sanctioning the effective destruction and/or tampering of
21 evidence critical to the DFEH’s case, such as personnel files and other documents
22 referencing sexual harassment, retaliation and discrimination. Given that the
23 consent decree may result in the waiver of state claims relevant to DFEH’s pending
24 case and the destruction or tampering of evidence necessary to DFEH’s case,
25 shortening time for DFEH to file its motion is appropriate and the Court should
grant DFEH’s *ex parte* application.

26 **C. DFEH’s Ex Parte Application Seeks A Routine Procedural Order**
27 **Unavailable Through Regularly Noticed Motion**

28 An *ex parte* application is proper where “the party seeks a routine procedural

1 order that cannot be obtained through a regularly noticed motion (i.e., to file an
2 overlong brief or shorten the time within which a motion may be brought).” *Horne*,
3 969 F. Supp. 2d at 1205. Here, Local Rule 7-3 requires that a moving party meet
4 and confer before filing a motion and wait seven (7) days before the filing of the
5 motion from the meet and confer. DFEH immediately contacted EEOC and
6 Defendants to meet and confer after the filing of the proposed consent decree and
7 further sought that EEOC and Defendants seek a delay of entry of the consent
8 decree. The EEOC and Defendants refused. It is their refusal to notify the Court of
9 the DFEH’s motion and delay entry of the decree that forced DFEH to seek this *ex*
10 *parte* application. More importantly, this shortening of time, allowing DFEH to
11 immediately file the motion to intervene, lodged along with this *ex parte*
12 application, is precisely the type of routine procedural order that cannot be obtained
13 through a regularly noticed motion.

13 **III. Conclusion**

14 As there is a looming temporal event that would result in irreparable harm
15 and this *ex parte* application is seeking a routine procedural order not available
16 through a regularly noticed motion, the Court should grant this *ex parte* application
17 shortening time and allow DFEH to file a motion to intervene immediately.

19 Dated: October 6, 2021

Respectfully submitted,

21 OLIVIER SCHREIBER & CHAO LLP

22 /s/ Christian Schreiber
23 Christian Schreiber

24 *Attorneys for Proposed Intervenor*
25 *DEPARTMENT OF FAIR*
26 *EMPLOYMENT AND HOUSING*

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