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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **EASTERN DIVISION – RIVERSIDE**

23 FAOUR ABDALLAH FRAIHAT, *et al.*,
24 Plaintiffs,
25 v.
26 U.S. IMMIGRATION AND CUSTOMS
27 ENFORCEMENT, *et al.*,

28 Defendants.

Case No. 19-cv-01546-JGB(SHKx)

CLASS ACTION

**Plaintiffs’ Opposition to
Defendants’ Motion for
Reconsideration**

Date: February 24, 2020

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1 **I. INTRODUCTION**

2 Plaintiffs respectfully submit this response in opposition to Defendants'
3 Motion for Reconsideration, ECF No. 52.

4 Plaintiffs filed a Notice of Related Cases, ECF No. 4, regarding *Torres v.*
5 *DHS*, No. 5:18-cv-02604-JGB-SHK (C.D. Cal. filed Dec. 14, 2018) and *Novoa v.*
6 *The Geo Group*, No. 5:17-cv-02514-JGB-SHK (C.D. Cal. filed Dec. 19, 2017),
7 with their complaint on August 19, 2019. Shortly thereafter, on August 22, 2019,
8 the Court entered an Order re Transfer Pursuant to General Order 19-03 (“Order”),
9 relating Plaintiffs’ complaint to *Torres*. ECF No. 20. Defendants were served with
10 the complaint on August 29, 2019. Inexplicably, Defendants then waited nearly 90
11 days to file a Motion for Reconsideration of the Order relating this case to *Torres*.

12 This Court should deny Defendants’ Motion because (1) Defendants failed
13 to timely contest the notice of related cases without any reasonable explanation for
14 the delay; (2) Defendants fail to show that reconsideration is justified under any of
15 the circumstances prescribed by F.R.C.P. 59(e) and Local Rule 7-18; and (3) this
16 case and *Torres* are related for all the reasons stated in Plaintiffs’ Notice of Related
17 Cases and this Court’s Order relating them.

18 Reconsideration is an “extraordinary remedy, to be used sparingly in the
19 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v.*
20 *Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (citing 12 James W. Moore et
21 al., Moore’s Federal Practice §59.30[4] (3d ed. 2000)). Accordingly, Federal Rule
22 of Civil Procedure 59(e) and Local Rule 7-18 place strict limitations on when
23 reconsideration is warranted.

24 Under Fed. R. Civ. P. 59(e), “[r]econsideration may not be granted, absent
25 highly unusual circumstances, unless the district court is presented with newly
26 discovered evidence, committed clear error or there is an intervening change in
27 controlling law.” *Kona Enters., Inc.*, 229 F.3d at 890 (citation omitted). L.R. 7-18
28

1 supplements Rule 59(e) and places additional limitations on a motion for
2 reconsideration. *Scottsdale Ins. Co. v. Dickstein Shapiro LLP*, 389 F. Supp. 3d 794,
3 835-36 (C.D. Cal. 2019). To warrant reconsideration under L.R. 7-18, the moving
4 party must show:

5 [A] material difference in fact or law from that presented to the Court
6 before the decision that in the exercise of reasonable diligence could
7 not have been known to the party moving for reconsideration at the
8 time of the decision, or (b) the emergence of new material facts or a
9 change of law occurring after the time of the decision, or (c) a
10 manifest showing of a failure to consider material facts presented to
11 the court before the decision.

12 *See* C.D. Cal. R. 7-18.

13 II. ARGUMENT

14 A. Defendants' Motion is Untimely, and They Otherwise Fail to 15 Satisfy Any of the Prerequisites to Justify Reconsideration.

16 Motions for Reconsideration under Local Rule 7-18 must be filed within a
17 reasonable time. *Rockefeller v. Perkins Coie LLP*, No. 2:09-cv-04675-SVW-FFM,
18 2019 WL 1034316, *2 (C.D. Cal. Jan. 31, 2019); *see also Selectron Indus. Co.,*
19 *Inc. v. Selectron Int'l.*, No. CV 04-4146-PLA, 2007 WL 5193735, *3 (C.D. Cal.
20 Sept. 25, 2007) (denying motion for reconsideration as untimely based on four-
21 month delay); *see also Mattel, Inc. v. MGA Entm't, Inc.*, 782 F. Supp. 2d 911, 960
22 (C.D. Cal. 2011) (denying motion for reconsideration of a two-month-old order as
23 untimely). If a party is delayed in seeking reconsideration, it must show good cause
24 for the failure to take appropriate action sooner. *See Mutual Life Ins. Co. v. Pointe*
25 *Tapatio Resort Prop. No. 1 Ltd. P'ship.*, 206 F.R.D. 495, 498 (D. Ariz. 2002).

26 Under Local Rule 83-1.3.2, Defendants had five days to contest the Notice
27 of Related Case after being served or after they first appeared in the case. But
28

1 Defendants did not file their Motion for Reconsideration until nearly three months
2 after being served and nearly two months after entering an appearance. ECF No.
3 52. This was untimely. Moreover, Defendants offer no reason whatsoever for their
4 months-long delay in seeking reconsideration of the Court’s order. *See Selectron*
5 *Indus. Co.*, 2007 WL 5193735, at *3 (denying motion for reconsideration where
6 Defendants offered no “convincing reason” for delay in filing). For this reason
7 alone, Defendants’ motion for reconsideration should be denied.

8 Had Defendants timely sought reconsideration, they would still fail to satisfy
9 any of the prerequisites for reconsideration prescribed by F.R.C.P. 59(e) and L.R.
10 7-18. *See United States v. Certain Rights to and Interests in Shares of Series D*
11 *Preferred Stock in Palantir Technologies*, No. CV 17-4446-DSF (PLAx), 2018
12 WL 9903314, *1 (C.D. Cal. Sept. 24, 2018) (denying motion for reconsideration
13 where moving party made “no attempt to satisfy the requirements of Local Rule 7-
14 18”). Although Defendants complain that this Court ruled before they could
15 respond to Plaintiffs’ Notice of Related Cases, these circumstances do not rise to
16 the level of a manifest injustice necessitating reconsideration. Indeed, this Court
17 has previously held that a court’s ruling without considering arguments in
18 opposition “is insufficient to warrant reconsideration” of that ruling. *See Gonzalez*
19 *v. Coverall N. Am., Inc.*, No. EDCV 16-02287, 2017 WL 4653017, *3 (C.D. Cal.
20 May 26, 2017) (Bernal, J.); *accord Honeywell Int’l., Inc. v. W. Support Grp.*, No.
21 CV 12-00645-PHX-JAT, 2013 WL 2369919, *3 (D. Ariz. May 29, 2013) (“The
22 Motion for Reconsideration of the Court's decision to deny a second summary
23 judgment motion is denied because the Court’s ruling on Defendants’ motion
24 before they were given an opportunity to file a reply does not fall into any of the
25 four situations that would entitle Defendants to reconsideration of that Order.”).
26 All of Defendants’ other arguments for reconsideration concern their mere
27 disagreement with the merits of this Court’s decision, but “disagreement with a
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1 judgment is not a proper ground for seeking reconsideration pursuant to Local Rule
2 7.18(a).” *Scottsdale Ins. Co.*, 389 F. Supp. 3d at 836.

3 For all these reasons, Defendants have failed to show that the “extraordinary
4 remedy” of reconsideration is justified here. *See Kona Enters., Inc.*, 229 F.3d at
5 890.

6 **B. The Court Acted Within Its Broad Discretion to Relate this Case**
7 **to *Torres* Given the Substantial Overlap of Law and Fact and to**
8 **Conserve Judicial Resources.**

9 In their Motion for Reconsideration, Defendants take great pains to parse
10 and magnify some of the differences between this case and *Torres*.¹ In so doing,
11 Defendants not only elide the crucial interconnections between the two cases but
12 also erroneously imply that the two cases must be the same in each and every
13 possible way in order to justify relating them. Not so.

14 Local Rule 83-1.3 vests trial courts with broad discretion to relate two cases
15 if *any* of the following three circumstances are present: the two cases “(a) arise
16 from the same or a closely related transaction, happening, or event; (b) call for
17 determination of the same or substantially related or similar questions of law and
18 fact; or (c) for other reasons [that] would entail substantial duplication of labor if
19

20 ¹ Defendants also contend that the Court erred in relating this case to *Novoa*.
21 However, the Court’s Order (ECF No. 20) appears to relate this case only to *Torres*.
22 Therefore, Plaintiffs focus in this Opposition on the reasons why this Court acted
23 within its broad discretion in relating this case to *Torres*. However, for all the reasons
24 assigned in the original Notice of Related Cases (ECF No. 4), Plaintiffs respectfully
25 contend that this Court could also relate this case to *Novoa*. Additionally, after
26 Plaintiffs filed their Notice, this Court certified various classes of individuals in
27 immigration detention in *Novoa* based on alleged systemic non-compliance with the
28 Performance-Based National Detention Standards similar to the non-compliance
alleged in this case, further demonstrating the strong relationship between the two
cases. *See generally Novoa v. GEO Grp., Inc.*, EDCV 17-2514 JGB, 2019 WL
7195331 (C.D. Cal. Nov. 26, 2019) (Bernal, J.).

1 heard by different judges.” *See* C.D. Cal. L.R. 83-1.3; *see also In re 450 S.*
2 *Burlington Partners, LLC.*, No. CV 09-06184 DMG, 2011 WL 2470102, *11 (C.D.
3 Cal. June 20, 2011) (noting that courts “ha[ve] broad discretion to interpret and
4 apply [their] local rules regarding the assignment of cases.”) (citation omitted).

5 Contrary to Defendants’ contention, this Court acted entirely within its
6 discretion in concluding that all three of these circumstances weighed in favor of
7 relating this case to *Torres*. As detailed in Plaintiffs’ Notice of Related Cases, the
8 claims in both *Torres* and this case challenge unlawfully punitive conditions of
9 confinement in ICE facilities as well as Defendants’ abdication of their
10 responsibility to monitor conditions in ICE facilities and ensure that they comply
11 with constitutional and statutory dictates. *See* ECF No. 4, at 4-6.² Both cases
12 require this Court to assess whether Defendants violate substantive due process by
13 subjecting individuals in ICE’s custody to conditions that are the same as or worse
14 than conditions in prisons or jails. *See id.* at 5.

15 Moreover, as this Court has already recognized, there would be substantial
16 duplication of labor if Plaintiffs’ case and the *Torres* case were heard by different
17 judges given many of the same legal and factual issues underlying both cases. To
18 provide but one example, Defendants in both cases have raised many of the same
19 legal arguments at the motion to dismiss stage, such as organizational standing,
20 mootness, and failure to state a substantive due process claim challenging punitive
21 conditions. *Compare* ECF No. 54 at 12-14, 30-31, 34-37, with *Torres v. DHS*,
22 EDCV 18-2604, 2019WL 5883685, *8-*9 (organizational standing), *11-*12
23 (mootness), *18-*19 (substantive due process challenging punitive conditions)
24 (C.D. Cal. Oct. 24, 2019) (Bernal, J.). Conserving scarce judicial resources thus
25 militates in favor of not requiring another judge to reacquaint themselves with the
26

27 ² Page numbers referenced in connection with ECF citations are to the page
28 number in the ECF stamp printed at the top of the page.

1 law underlying Defendants’ arguments. Compare Pl.’s Opp. to Mot. to Dismiss at
2 16-19 (emphasizing that Plaintiffs have sufficiently alleged both a presumption of
3 punitiveness and that there are less restrictive methods to the challenged forms of
4 confinement) with *Torres*, 2019 WL 5883685, at *19 (“Having raised an
5 un rebutted presumption of punitiveness, Plaintiffs successfully plead a substantive
6 due process claim. But they also satisfy *Jones*’s alternative test by sufficiently
7 alleging that the restrictions are employed to achieve objectives that could be
8 accomplished in so many alternative and less harsh methods.”) (internal quotation
9 marks omitted).

10 **III. CONCLUSION**

11 For all these reasons, Plaintiffs respectfully request the Court to deny
12 Defendants’ Motion for Reconsideration.

13
14 Dated: January 20, 2020

Respectfully Submitted,

15
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