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14 *City of Berkeley and Christine Daniel*

15  
16 UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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19 CTIA – THE WIRELESS ASSOCIATION,  
20 Plaintiff,  
21 vs.  
22 CITY OF BERKELEY,  
23 CHRISTINE DANIEL, CITY MANAGER OF  
CITY OF BERKELEY,  
24 Defendants.

NO. C15-02529 EMC

DEFENDANTS' RESPONSE TO  
PLAINTIFF'S OPPOSITION TO NATURAL  
RESOURCES DEFENSE COUNCIL'S  
APPLICATION FOR LEAVE TO FILE  
AMICUS BRIEF

Date: August 20, 2015

Time: 1:30 p.m.

Place: Courtroom 5, 17th Flr., San Francisco

## INTRODUCTION

The Natural Resources Defense Council (“NRDC”) timely sought leave to participate in these proceeding as amicus curiae. CTIA’s opposition to NRDC’s participation is frivolous. There is ample time in the current schedule for Plaintiff to respond to NRDC if it so desires, and Plaintiff is in no way prejudiced. The Court should grant NRDC’s application.

## ARGUMENT

“[I]n general, courts have ‘exercised great liberality’ in deciding whether to grant amicus curiae status.” *Ou-Young v. Roberts*, No. C-13-4442 EMC, 2013 WL 6732118, at \*3 (N.D. Calif. Dec. 20, 2013) (quoting *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C06–1254 SBA, 2007 WL 81911, at \*3 (N.D. Cal. Jan. 9, 2007)). “District courts frequently welcome amicus briefs from nonparties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 335 F. Supp. 2d 1016, 1067 (N.D. Cal. 2005) (quotation omitted).

As a national public health and environmental advocacy organization with an interest in the issues being litigated in this case, NRDC may timely seek leave to file an amicus brief regardless of whether the parties’ schedule expressly contemplates amicus filings. *See* Fed. R. Civ. P. 29. NRDC timely filed its motion on July 13th, Dkt. 36, 7 days after Defendant’s brief was filed, Dkt. 33. *See* Fed. R. App. P. 29.

NRDC’s motion is regardless fully consistent with the current schedule, and Plaintiff will in no way be prejudiced. Argument is scheduled for August 20th, Dkt. 24, more than a *full month* after NRDC’s motion was filed. This schedule provides ample time for Plaintiff to respond to NRDC’s brief, should it so desire. Defendants do not oppose Plaintiff’s request to file a 5-page supplemental response. In the interest of fairness, Defendants request that the Court require Plaintiff to submit such a response, if any, within 7 days.

## CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court grant NRDC’s motion to participate as amicus.

1 DATED: July 30, 2015

2 By: /s/ Lester Lawrence Lessig, III  
3 LESTER LAWRENCE LESSIG, III

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