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11 UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 CAROLYN JEWEL, et al.,
 15
 16 Plaintiffs,
 17 v.
 18 NATIONAL SECURITY AGENCY, et al.,
 19 Defendants.

) CASE NO. C-08-4373-VRW
)
) **PLAINTIFFS' MOTION FOR**
) **ADMINISTRATIVE RELIEF FROM**
) **IMPROPER MOTION FOR**
) **RECONSIDERATION BY INDIVIDUAL**
) **CAPACITY DEFENDANTS**
) **REQUEST FOR IMMEDIATE STATUS**
) **CONFERENCE ON JULY 15, 2009**
) **Local Rule 7-11**

1 Pursuant to Civil Local Rule 7-11, Plaintiffs hereby move for administrative relief from the
2 Individual Capacity Defendants' improperly filed Motion for Relief from this Court's April 28 and
3 May 8 Orders (Dkt. No. 32), filed on the afternoon of Friday, July 10, 2009. Plaintiffs respectfully
4 request that Defendants' motion be treated as a motion for reconsideration, denied as such, and
5 Defendants be held to the requirement that they answer or otherwise respond to the Complaint by
6 the date ordered by this Court: July 15, 2009. Alternatively, Plaintiffs seek a status conference after
7 the hearing on the Motion to Dismiss on July 15, 2009 to discuss the procedure for moving forward
8 this portion of the case. Plaintiffs' counsel contacted defense counsel on the morning of July 13,
9 2009 to request that the motion be withdrawn. Defense counsel declined. Plaintiffs' counsel and
10 defense counsel agree, however, that if a status conference is to be held it would be most efficient
11 for the court and all parties if it was held on July 15, 2009 after the hearing on the Motion to
12 Dismiss brought by the other defendants in this action. Cohn Decl, paras. 3-5.

13 The Individual Capacity Defendants previously moved this Court for a stay such that they
14 did not have to respond to the Complaint until after the government's motion to dismiss was
15 resolved. (Dkt. No. 22). That motion was filed on the day that the government's response was due.
16 This Court denied their administrative motion and ordered them to respond on July 15, 2009. (Dkt.
17 Nos. 25, 27). Now, the Individual Capacity Defendants have effectively moved for reconsideration
18 of the Court's Order, and have filed a motion noticed for September 17, 2009 (Dkt. No. 32).
19 Effectively, said Defendants have unilaterally given themselves at least an additional two-month
20 stay. This is unacceptable.

21 While styled as a "Motion for Relief from Court's Orders," Defendants' motion plainly
22 seeks reconsideration of this Court's Orders, and should be treated as a Motion for
23 Reconsideration. *See Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 635 (9th Cir.1989) ("nomenclature
24 is not controlling," courts will decide "whether a motion, however styled, is appropriate for the
25 relief request."); *see also e.g. Sodipo v. Caymas Systems, Inc.*, 2006 WL 2850056 (N.D. Cal.
26 2006); *Saini v. I.N.S.*, 64 F. Supp. 2d 923 (D. Ariz. 1999); *Puckett v. Dyer*, 2007 WL 4180686
27 (E.D. Cal. 2007). In the Northern District, a motion for reconsideration is governed by Civil Local
28

1 Rule 7-9. The Individual Capacity Defendants failed to follow the requirements of Local Rule 7-9
2 or meet the standard set therein. Under Local Rule 7-9, a Motion for Reconsideration requires
3 leave of court. *See* Civil L.R. 7-9(a); *Avery v. Thompson*, 2009 WL 765105 (N.D. Cal. 2009).
4 Defendants plainly did not seek leave of Court before filing this motion,¹ and “for this reason
5 alone, the motion could be denied.” *Flotsam of Cal. v. Huntington Beach Conf. and Visitors Bur.*,
6 2007 WL 1152682 (N.D. Cal. 2007). Nor are Defendants excused from this requirement because
7 this Court’s April 27 Order (Dkt. No. 25) was “without prejudice.” Mot. For Relief at 1-2; *see e.g.*
8 *County of Santa Clara v. Astra USA, Inc.*, 2009 WL 1765811 (N.D. Cal. 2009) (considering motion
9 for leave to file motion for reconsideration of prior motion decided without prejudice); *Newman v.*
10 *McGrath*, 2008 WL 512726 (N.D. Cal. 2008) (same).

11 Nor do Defendants satisfy any of the requirements for a motion for reconsideration. *See*
12 Civil L.R. 7-9(b) (listing requirements for a motion for reconsideration). Indeed, the motion largely
13 restates the arguments that were properly rejected by this Court in its Order of April 27, 2009 (Dkt.
14 No. 25). Local Rule 7-9(c) explicitly prohibits such re-argument.

15 Plaintiffs have already explained why the Individual Capacity Defendants have not met the
16 standard for a stay of the claims against them, in response to Defendants’ first Motion to Enlarge
17 Time, filed on the last deadline for their responsive pleading, April 3, 2009 (Dkt. No. 22). Three
18 more months have now passed, making it nearly ten months since this case was filed, and these
19 Defendants still refuse to provide a responsive pleading.

20 The only portion of the Individual Capacity Defendants’ motion that is arguably new is the
21 dubious and unsupported claim that the individual Defendants have an “absolute right” to file a
22 motion for summary judgment on their qualified immunity defenses prior to discovery, a “right”
23 the Defendants claim they cannot yet exercise due to the government’s assertion of the state secrets
24 privilege. Defendants make no effort to explain why they could not have reasonably raised this
25 argument in their original motion (or more than three court days prior to the due date), but more
26 importantly it is meritless.

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¹ Nor did Defendants meet and confer with Plaintiffs.

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