

IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

THE NEZ PERCE TRIBE, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 DIRK KEMPTHORNE,)
 Secretary of the Interior, et al.,)
)
 Defendants.)
 _____)

Case No. 06cv02239-JR

**DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME
WITHIN WHICH TO FILE ANSWER OR OTHERWISE RESPOND TO
COMPLAINT OR AMENDED COMPLAINT; SUPPORTING EXHIBIT;
AND [PROPOSED] ORDER**

Pursuant to Federal Rule of Civil Procedure (Fed. R. Civ. P.) 6(b) and Local Civil Rule (LCvR) 7, Defendants hereby respectfully make this unopposed motion for enlargement of time, to and including May 11, 2007, within which to file their Answer or otherwise respond to the Complaint. In the event that Plaintiffs file an Amended Complaint between now and May 11, 2007, before Defendants respond to the Complaint, as Plaintiffs have informed Defendants that they intend to do, Defendants respectfully make the unopposed motion that they be allowed to file their Answer or otherwise respond to the Amended Complaint, instead of the original Complaint, and that their time for doing so be enlarged by 60 days after the date of service of the Amended Complaint. This unopposed motion is Defendants' first such motion. The grounds for the unopposed motion are as follows:

1. Plaintiffs filed this case as a proposed class action for declaratory and injunctive

relief on December 28, 2006.^{1/} See Complaint, Doc. 1. Plaintiffs make allegations in the case relating to the trust accounting and other trust duties and responsibilities allegedly owed by Defendants to Plaintiffs.

2. Based on the date of service under Fed. R. Civ. P. 4, the deadline for Defendants to file their Answer or otherwise respond to the Complaint in this case is March 12, 2007.

3. After the filing of this case, undersigned counsel for Defendants conferred with Plaintiffs' counsel, Melody L. McCoy, by telephone about the case. Further, on February 9, 2007, Defendants' counsel met and discussed the case with Ms. McCoy; attorneys from the Solicitor's Office of the United States Department of the Interior (Interior) and from the Chief Counsel's Office of the Financial Management Service of the United States Department of the Treasury (Treasury); the Special Trustee for American Indians; and representatives of the Office of Historical Trust Accounting (OHTA) of the Interior Department and of the Treasury Department. Among other things, counsel and representatives of the parties discussed the fact that there are presently about 103 Tribal trust accounting and trust mismanagement lawsuits pending in this Court,^{2/} in other United

^{1/} Additionally, Plaintiffs Nez Perce Tribe and Pawnee Tribe of Oklahoma filed separate companion cases for damages in the United States Court of Federal Claims (CFC): Nez Perce Tribe v. United States, No. 06-cv-00910-CFL, and Pawnee Tribe of Oklahoma v. United States, No. 07-cv-00002-SGB (Fed. Cl.), on December 28, 2006, and January 3, 2007, respectively.

^{2/} There are currently 37 Tribal trust cases, including the instant case, in this Court. See Exhibit (Exh.) 1. Like the Nez Perce Tribe and the Pawnee Tribe, most of the Tribes bringing these lawsuits have also filed companion cases in the CFC. Id.

States District Courts,^{3/}and in the CFC.^{4/} Exh. 1. Additionally, counsel and representatives of the parties discussed and agreed on extending certain litigation deadlines, including the deadline for Defendants to file their Answer or otherwise respond to the Complaint. Among other things, Plaintiffs' counsel stated that Plaintiffs intend to file an Amended Complaint in the case. Since the February 9 meeting, counsel for the parties conferred several times by telephone and e-mail, and Plaintiffs' counsel reaffirmed Plaintiffs' intent to file an Amended Complaint, and Defendants' counsel re-affirmed Defendants' need for additional time to file a responsive pleading under Fed. R. Civ. P. 12. Counsel agreed that, in the event that Plaintiffs file an Amended Complaint, Defendants should have 60 days from the date of service of that pleading to file their Answer or otherwise respond to the Amended Complaint.

4. Defendants need the requested enlargement of time, because, given the number of cases, there exists a significant risk of overtaxing their already scarce resources. Defendants have been and continue to be busy not only preparing responses to the allegations of the Complaint in this case but also addressing the demands of many of the other 102 pending Tribal trust cases (as well as other unrelated litigation).^{5/} Also, after Defendants complete the preparation of their responsive

^{3/} There are currently nine Tribal trust cases in the United States District Courts in Oklahoma. Exh. 1. Like the Nez Perce Tribe and the Pawnee Tribe, most of the Tribes bringing these lawsuits have also filed companion cases in the CFC. Id.

^{4/} There are currently 57 Tribal trust cases, including the companion cases brought by Plaintiff Nez Perce Tribe and Plaintiff Pawnee Tribe, in the CFC. Exh. 1. The Tribes in many of those cases, like the Nez Perce Tribe and the Pawnee Tribe, have filed cases for declaratory and injunctive relief in the United States District Courts as well.

^{5/} Defendants have been and continue to be working diligently with other Tribes currently in litigation and their counsel, to determine the feasibility of developing a joint, cooperative approach for resolving the Tribes' issues and claims, as an alternative to litigation.

pleading under Fed. R. Civ. P. 12 in this case, Defendants need to submit the pleading for review and comment by the appropriate officials and personnel at the Departments of Justice, the Interior, and the Treasury; incorporate or address any comments; and finalize and file the document. Further, Defendants are working to determine the possibility of making informal productions of documents and data responsive to Plaintiffs' needs, if possible. Further, in the event that Plaintiffs pursue the possibility of class certification, Defendants may take discovery or request from Plaintiffs the informal production of documents and data relating to class certification issues. Additionally, Defendants plan to work with Plaintiffs and develop, if possible, joint stipulations and proposed orders to protect the confidentiality of any settlement discussions that may occur between Plaintiffs and Defendants and of certain documents and data that may be produced by Defendants to Plaintiffs, herein.

6. Based on the foregoing, Defendants hereby respectfully request that the Court grant their unopposed motion for an enlargement of time, to and including May 11, 2007, within which to file their Answer or otherwise respond to the Complaint. In the event that Plaintiffs file an Amended Complaint between now and May 11, 2007, before Defendants respond to the Complaint, Defendants respectfully request that they be allowed to file their Answer or otherwise respond to the Amended Complaint, instead of the original Complaint, and that their time for doing so be enlarged by 60 days after the date of service of the Amended Complaint.

7. Undersigned Defendants' counsel conferred with Plaintiffs' counsel, Ms. McCoy, about this motion, among other things, on March 8, 9, and 10, 2007, and Ms. McCoy authorized Defendants' counsel to state that Plaintiffs do not oppose the motion.

8. On the one hand, the granting of this unopposed motion would serve the public

interest by promoting judicial economy and conserving limited litigation resources. Further, it would not cause any undue prejudice or harm to the rights and interests of the parties herein. On the other hand, the denial of the joint motion would unduly interfere with Defendants' ability to complete and file a fully adequate Answer or response to the Complaint. It would also hamper Defendants' ability to work with Tribes currently in litigation and determine the possibility of devising an efficient, cost-effective, and resource-conserving way for addressing and handling the cases (or some portion of those cases) in this Court, in other United States District Courts, and in the CFC.

WHEREFORE, Defendants respectfully request that their unopposed motion be GRANTED.

Respectfully submitted this 10th day of March, 2007,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO FILE ANSWER OR OTHERWISE RESPOND TO COMPLAINT OR AMENDED COMPLAINT; SUPPORTING EXHIBIT; AND [PROPOSED] ORDER was served on March 10, 2007, by Electronic Case Filing or by regular, first-class United States mail, postage pre-paid, and by electronic mail or telefax, unless otherwise noted below, on the following counsel:

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