

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NEZ PERCE TRIBE, *et al.*,)
)
)
Plaintiffs,)
) No. 06cv02239-JR
)
)
v.)
)
)
DIRK KEMPTHORNE,)
Secretary of the Interior, *et al.*,)
)
)
Defendants.)
_____)

**PLAINTIFFS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME
IN THE AMOUNT OF THIRTY DAYS FOLLOWING THE ANSWER OR OTHER
RESPONSE BY DEFENDANTS TO PLAINTIFFS' AMENDED COMPLAINT WITHIN
WHICH PLAINTIFFS' MAY MOVE FOR CLASS CERTIFICATION,
AND FOR EXPEDITED CONSIDERATION OF THIS MOTION FOR ENLARGEMENT**

Pursuant to LCvRs 7 and 23.1(b), Plaintiffs hereby move this Court for an Order enlarging the time within which Plaintiffs may move for class certification in this action in the amount of thirty (30) days following the Answer or other response by Defendants to Plaintiffs' Amended Complaint, and for expedited consideration of this Motion for Enlargement. In support of this unopposed Motion, Plaintiffs state the following specific points and authorities.

1. The Complaint in this action was filed on December 28, 2006 and was filed as an action sought to be maintained as a class action. (Doc. 1).

2. Under LCvR 23.1(b), plaintiffs must move for class certification within ninety (90) days after the filing of a complaint in a case sought to be maintained as a class action, unless the court in

the exercise of its discretion has extended this period. Accordingly, under LCvR 23.1(b), Plaintiffs' motion for class certification would be due on March 28, 2007, unless the Court in the exercise of its discretion extends this period

3. Under Fed. R. Civ. P. 4, Defendants' Answer in this action was due on March 12, 2007. On March 10, 2007, Defendants filed an "Unopposed Motion for Enlargement of Time within which to File Answer or Otherwise Respond to Complaint or Amended Complaint." (Doc. 24). In that Motion, Defendants requested an enlargement of time, to and including May 11, 2007, within which to file their Answer or otherwise respond to the Complaint. Defendants' Motion is pending before this Court.

4. In their Motion for Enlargement of Time within which to File Answer, Defendants correctly state that Plaintiffs intend to file an Amended Complaint in this action. Plaintiffs intend to file their Amended Complaint on or before April 2, 2007.

5. In their Motion for Enlargement of Time within which to File Answer, Defendants request, in the event that Plaintiffs file an Amended Complaint, an enlargement of time of sixty (60) days after the date of service of the Amended Complaint within which to file their Answer or otherwise respond to the Amended Complaint.

6. Assuming *arguendo* that Plaintiffs file their Amended Complaint on April 2, 2007, and further assuming *arguendo* that this Court grants Defendants' request for an enlargement of time of sixty (60) days after the date of service of the Amended Complaint within which to file their Answer or otherwise respond to the Amended Complaint, Defendants would have until on or about June 1, 2007 (plus possible additional time to account for service of the Amended Complaint) within which to file their Answer or otherwise respond to the Amended Complaint.

7. Plaintiffs submit that the proper time for filing a motion for class certification in this action is after Defendants have had this opportunity to file their Answer or otherwise respond to the Amended Complaint. The requested additional thirty (30) days following Defendants' Answer or other response to the Amended Complaint would make Plaintiffs' class certification motion due on or about July 2, 2007 (plus any additional time to account for service of the Amended Complaint which triggers Defendants' Answer or response time thereto). In the event that this Court grants Defendants less than their requested additional sixty (60) days after the date of service of the Amended Complaint within which to file their Answer or otherwise respond to the Amended Complaint, Plaintiffs nevertheless respectfully request that they be granted thirty (days) from the date that Defendants' Answer or other response to the Amended Complaint is due within which to file their class certification motion.

8. Moreover, as Defendants allude to in their Motion for Enlargement of Time within which to File Answer, counsel for the parties have discussed Plaintiffs' informal discovery requests related to class certification issues in this case. Plaintiffs' Counsel is awaiting a definitive response from Defendants' Counsel about these informal discovery requests. The information requested through informal discovery will help shape Plaintiffs' class certification motion, and thus the additional time requested herein is needed.

9. Plaintiffs have not requested or received any previous enlargement of time regarding the filing of a motion for class certification in this action.

10. On March 15, 2007, Plaintiffs' Counsel discussed with Anthony Hoang, Defendants' Counsel, the need for the additional thirty (30) days following Defendants' Answer or other response to an Amended Complaint within which Plaintiffs may file their class certification motion, and on

March 19, 2007 Defendants' Counsel stated that he does not oppose this request of Plaintiffs for enlargement.

11. An enlargement of thirty (30) days following Defendants' Answer or other response to an Amended Complaint within which Plaintiffs may file their class certification motion will not unduly delay the proceedings in this action.

12. In light of the strict construction by this Court of LCvR 23.1(b), *see, e.g., Howard v. Gutierrez*, No. 05-1968, 2007 WL 404352, at *10-13 (D.D.C. Feb. 6, 2007), Plaintiffs request expedited consideration of this Motion for Enlargement in order to comply with LCvR 23.1(b).

Accordingly, Plaintiffs move this Court for an Order enlarging the time within which Plaintiffs may file a motion for class certification in the amount of thirty (30) days thirty days following Defendants' Answer or other response to an Amended Complaint, and request expedited consideration of this Motion for Enlargement. Pursuant to LCvR 7(c), a proposed Order granting this Motion is submitted herewith.

DATED this 19th day of March, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2007, a true and correct copy of the foregoing PLAINTIFFS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME IN THE AMOUNT OF THIRTY DAYS FOLLOWING THE ANSWER OR OTHER RESPONSE BY DEFENDANTS TO PLAINTIFFS' AMENDED COMPLAINT WITHIN WHICH PLAINTIFFS MAY MOVE FOR CLASS CERTIFICATION, AND FOR EXPEDITED CONSIDERATION OF THIS MOTION FOR ENLARGEMENT; AND [PROPOSED] ORDER was served by Electronic Case Filing or by regular, first class United States mail, postage pre-paid, on the following counsel:

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