

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<hr/>		)
TUNICA-BILOXI TRIBE OF LOUISIANA;	)	)
RAMAH NAVAJO SCHOOL BOARD, INC.,	)	)
	)	)
Plaintiffs,	)	) Case No. 1:02CV02413
	)	) Judge Reggie B. Walton
v.	)	) Magistrate Judge Deborah A. Robinson
	)	)
UNITED STATES of AMERICA;	)	)
CHARLES E. JOHNSON, Acting Secretary of the	)	)
United States Department of Health and Human	)	)
Services; KEN SALAZAR, Secretary	)	)
of the United States Department of the Interior,	)	)
	)	)
Defendants.	)	)
<hr/>		)

**DEFENDANTS’ REPLY IN SUPPORT OF MOTION TO STAY**

Defendants, by and through undersigned counsel, hereby file this Reply in support of their Motion to Stay Briefing on Class Certification (dated March 19, 2009, docketed as #177, and hereinafter “Defendants’ Stay Motion”).

Defendants filed their Stay Motion in response to a recent motion filed by Plaintiffs, in which Plaintiffs seek an order that the Secretary of the U.S. Department of Health and Human Services “HHS”) follow the terms of a settlement agreement entered into by another government agency. In the same Motion, Plaintiffs seek to have this issue--whether the HHS Secretary should follow a settlement agreement to which he is not a party--certified as a Rule 23(b)(2) class claim. As explained in Defendants’ Opposition to Plaintiffs’ Motion, there are numerous infirmities with Plaintiffs’ underlying Motion, including the failure to raise this new claim in a complaint, the failure to satisfy the standing and ripeness prerequisites of Article III of the Constitution, and the failure to state a claim. Defendants have also opposed Plaintiffs’ class

certification motion. In the alternative, Defendants have moved to stay consideration of all class issues pending resolution of Plaintiffs' Motion to File Second Supplemental Complaint, a separate Motion in which Plaintiffs seek to expand manifold the remaining claims in this case.

If the Court denies Plaintiffs' underlying Motion, Defendants' Stay Motion will be moot. If the Court is willing to entertain Plaintiffs' latest motion for class certification, Defendants move to stay briefing on and resolution of this issue at least until the Court rules on Plaintiffs' Supplemental Complaint Motion. As explained in Defendants' Stay Motion, doing so will serve judicial economy and hasten, as opposed to delay, the resolution of this matter.

In response, Plaintiffs have not explained why the Court should consider their request for class certification in a piecemeal fashion nor do they agree to dismiss their claims for class certification as to any other claim in this case, including those they seek to add to this case. Instead, Plaintiffs seek to blame Defendants for the fact that this case has been pending for many years. Plaintiffs' attempt, however, is belied by a review of the docket and proceedings in this case, which demonstrate that it is Plaintiffs that have filed numerous pleadings and motions that have required multiple rounds of briefing and in some instances discovery and that have sought to enlarge the scope of this case many times, regardless of whether the claims that they seek to add even met the basic threshold requirements for new claims previously outlined by the Court. For all of these reasons, Plaintiffs' Motion for Order and for Certification of a Rule 23(b)(2) class should be denied. In the alternative, Defendants' Stay Motion should be granted, and the Court should stay consideration of class certification until after the Court rules on Plaintiffs' Motion to File a Second Supplemental Complaint.

Respectfully submitted,

MICHAEL F. HERTZ  
Deputy Assistant Attorney General

JEFFREY A. TAYLOR  
United States Attorney

SHEILA M. LIEBER  
Deputy Director

/s/Rachel J. Hines

---

RACHEL J. HINES (D.C. Bar #424774)

Senior Counsel  
Federal Programs Branch, Room 7314  
Civil Division

Mailing Address

P.O. Box 883  
Washington, DC 20044

Delivery Address

20 Massachusetts Avenue, NW  
Washington, DC 20001

Telephone: (202) 514-5532

Facsimile: (202) 318-7604

E-mail: rachel.hines@usdoj.gov

Dated: April 27, 2009

Counsel for Defendants