

APR 08 2005

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PUEBLO of ZUNI,)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES of AMERICA;)
 MICHAEL O. LEAVITT, Secretary of the)
 United States Department of Health and)
 Human Services; and CHARLES W. GRIM,)
 Director of the Indian Health Service,)
 United States Department of Health and)
 Human Services,)
)
 Defendants.)

No. CIV 01-1046 LH/LEG

DEFENDANTS' MOTION FOR AN ENLARGEMENT OF TIME IN WHICH TO ANSWER OR OTHERWISE RESPOND TO THE FIRST AMENDED COMPLAINT

Defendants, by and through undersigned counsel, hereby move for an enlargement of time in which to answer or otherwise respond to the First Amended Complaint, as explained herein. In support of this Motion, Defendants respectfully submit:

1. On December 12, 2001, Plaintiff filed a First Amended Complaint in the above-referenced action (docketed as #5). Shortly thereafter and before Defendants had filed an answer or otherwise responded, Plaintiff moved for a stay of proceedings pending final resolution of a related case, Cherokee Nation v. Leavitt (docketed as #6).

2. On December 28, 2001, the Court granted the motion to stay, and by separate Order dated the same day, ordered Defendants to answer or otherwise respond to the First

Amended Complaint within 20 days of the date that the stay was lifted (docketed as ##8, 9).

3. On March 1, 2005, the Supreme Court issued a decision in Cherokee Nation.

4. On March 17, 2005, the Court ordered that the stay in this case be lifted (docketed as #32).

5. Thus, Defendants must answer or otherwise respond to the First Amended Complaint by April 6, 2005.

6. On March 25, 2005, however, Defendants filed a Motion to Stay Class Certification and Merits Discovery (docketed as #35). Defendants explained in their Motion that they had identified certain jurisdictional issues raised by Zuni's First Amended Complaint that warranted additional investigation and that, if present, would support a motion to dismiss some or all of the claims on jurisdictional grounds. (Defs.' Mot. at 10-11.)

7. Because jurisdiction must be decided at the outset of a case for both legal and practical reasons, (Defs.' Mot. at 7-9), Defendants requested the following relief in their Motion: An extension of time of 45 days to first investigate the allegations made in the First Amended Complaint and then to file either a motion to dismiss for lack of subject matter jurisdiction or an answer. They requested that class certification be stayed pending the earlier of (1) a ruling on any jurisdictional motion Defendants' filed or (2) the filing of an answer. Defendants requested 80 days from the earlier of these occurrences to take any necessary class discovery and file a response to Plaintiff's Motion for Class Certification. Finally, Defendants requested that merits discovery be stayed and that the March 11, 2005 Initial Scheduling Order be vacated pending a

ruling on class certification. Upon a ruling on class certification, Defendants requested that the parties have 30 days to meet and confer, file a proposed joint scheduling order, and request a Rule 16 Scheduling Conference. (Defs.' Mot. at 12-13.)

8. Plaintiff filed an Opposition to Defendants' Motion (docketed as #36), and Defendants filed a Reply to Plaintiff's Opposition (docketed as #39). Briefing on Defendants' Motion has now been completed, but the Court has not yet ruled on it.

9. Defendants thus move for an enlargement of time in which to answer or otherwise respond to the First Amended Complaint until such time as the Court can rule on Defendants' Motion to Stay.

10. If the Court grants Defendants' Motion to Stay for all of the reasons set forth therein, no additional enlargement will be necessary as the Court will have granted Defendants' request for an additional 45 days in which to answer or otherwise respond to the First Amended Complaint.

11. In the event that the Court denies this Motion or Defendants' Motion to Stay, however, Defendants respectfully request that they be given 14 days from the date of any such denial to answer or otherwise respond to the Complaint. Although such response will not reflect the thorough preparation and consideration of the many issues raised by Plaintiff's Complaint (particularly given the three intervening years that this case was stayed), Defendants seek this alternative relief to avoid, in the event of a denial of this Motion or their Motion to Stay, being in default of their response date.

12. Counsel for Defendants has conferred with counsel for Plaintiff about this Motion. Counsel for Plaintiff has indicated that he does not consent to this Motion.

For the foregoing reasons, Defendants' Motion for an Enlargement of Time in Which to Answer or Otherwise Respond to the First Amended Complaint should be granted.

Respectfully submitted,

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Dated: April 4, 2005

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2005, I sent, via electronic and first class mail, postage pre-paid, a copy of Defendants' Motion for an Enlargement of Time in Which to Answer or Otherwise Respond to the First Amended Complaint, with proposed order, addressed to:

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