

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

PUEBLO OF ZUNI, on behalf of itself)
and all others similarly situated,)
)
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.)
_____)

Case No. CIV 01-1046 LH/LFG
Filed Electronically

**PLAINTIFF’S OPPOSITION TO THE DEFENDANTS’
MOTION (Dkt. No. 42) FOR AN ENLARGEMENT OF
TIME IN WHICH TO ANSWER OR OTHERWISE RESPOND**

As defendants acknowledge in their motion (Dkt. No. 42), the defendants were required by Orders of this Court to “answer or otherwise respond to the First Amended Complaint by April 6, 2005.” *Id.* at 2. And yet, to date no Answer has been filed, and no enlargement of time to file an Answer has been granted.

Instead of either answering or securing timely relief from this Court’s Orders, the defendants on the evening of April 6th filed a motion for additional time. The only basis offered for that motion is a summary of the defendants’ motion filed some two weeks earlier (Dkt. No.

35), in which the defendants have thus far unsuccessfully sought to replace this Court's routine and orderly management of this case with a unique case management regime more to the defendants' liking. Why the defendants never filed their newest motion two weeks earlier on March 25, together with a motion for expedited consideration, is never explained. Instead, the defendants appear to count on the proposition that by simply filing their motion, however late, some enlargement will automatically follow. *See* Defendant's lodged Order (Dkt. No. 42) (proposing to grant the defendants a 14-day enlargement even if their motion in other respects is denied).¹

For the reasons explained at length in the plaintiff's opposition to the defendant's March 25 motion (*see* Dkt. No. 36), the requested enlargement of time should be denied. As noted there, the defendants' proposed case management regime will only serve to delay for months the pre-trial development of a case in which key liability issues are now conceded.

In denying the requested enlargement of time, the plaintiff respectfully suggests that the Court direct the defendants to file their Answer (or otherwise respond to the First Amended Complaint) within 7 days from the date of the Court's Order denying the motion. Even if the Court were to enter its Order denying the defendants' motion on April 19 (the date of Magistrate Garcia's scheduling conference in this case), the defendants by their motion would have secured

¹ Even in litigation against the Government where defaults are disfavored (and, on the merits, prohibited, *see* Fed.R.Civ.P. 55(e)), courts have criticized the Government's filing of unexplained late enlargement motions to effectively secure automatic extensions without prior court approval. *See, e.g., M.R.K. Corp. v. United States*, 6 Cl. Ct. 544 (1984); *Whorton v. United States*, 553 F.Supp. 400, 1 Cl. Ct. 41 (1982).

a total of 40 days to Answer since the stay in this case was lifted, double the time permitted by this Court's Order of December 28, 2001 (Dkt. No. 9).

Respectfully submitted this 15th day of April 2005.

Attorneys for Plaintiff

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/s/ Lloyd B. Miller

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CERTIFICATE OF SERVICE

I hereby certify that I sent by electronic mail, or caused to be sent by electronic mail, a true and correct copy of the following document:

**PLAINTIFF'S OPPOSITION TO THE
DEFENDANTS' MOTION (Dkt. No. 42) FOR AN
ENLARGEMENT OF TIME IN WHICH TO
ANSWER OR OTHERWISE RESPOND**

to the following attorney of record this 15th day of April 2005:

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