

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN A. PATTERSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 5:17-CV-00467
)	
DEFENSE POW/MIA ACCOUNTING)	
AGENCY, et al.,)	
)	
Defendants.)	

**DEFENDANTS’ UNOPPOSED MOTION FOR AN EXTENSION OF TIME TO MOVE OR
PLEAD IN RESPONSE TO PLAINTIFF’S COMPLAINT**

Pursuant to Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure and the Court’s inherent authority to manage its docket, the U.S. Department of Defense, Defense POW/MIA Accounting Agency (“DPAA”), American Battle Monuments Commission, and the heads of those agencies sued in their official capacities (collectively “Defendants”), respectfully request additional time to move or plead in response to Plaintiff’s Complaint. In support of this motion, Defendants show as follows:

1. On May 25, 2017, Plaintiffs filed this original complaint seeking judicial review under the Declaratory Judgment Act, 28 U.S.C. § 2201, and Mandamus Act, 28 U.S.C. §§ 1361, 1651, alleging improper inaction by the DPAA in accounting for certain deceased World War II era Army service members.

2. On June 14, 2017, Plaintiffs served the United States Attorney’s Office for the Western District of Texas by hand. At that time, Plaintiffs did not serve the Attorney General or the Defendants as required by Fed. R. Civ. P. 4(i).

3. On July 12, 2017, undersigned counsel informed Plaintiff's counsel that service had not been perfected as required by Rule 4. Since that time, undersigned counsel has agreed to accept service on behalf of the defendant agencies, and has provided guidance regarding serving the Attorney General by certified mail.

4. The Federal Rules provide sixty days from service on the U.S. Attorney for a response to suits involving federal agencies. *See* Fed. R. Civ. P. 12(a)(2). During the 60-day period specified in Rule 12(a)(2), the assigned government attorney identifies the appropriate agency representative, requests and obtains the information necessary to prepare a response from the agency, researches the claims and potential defenses, determines whether Plaintiff exhausted administrative remedies, and prepares a response. Because service was not perfected under Rule 4(i), undersigned counsel was significantly delayed in beginning that process.

5. Defendants' response is currently due August 14, 2017. Undersigned counsel has numerous significant deadlines in the week prior to that date, including a court hearing in the U.S. District Court for the District of Minnesota, and two briefs in the U.S. District Court for the District of Columbia.

6. For all these reasons, Defendants respectfully request that the Court grant this motion, and that it allow Defendant until September 13, 2017 to move or plead in response to Plaintiff's Complaint. Granting Defendants additional time to respond will not excessively delay this case. A proposed Order is attached for the Court's review and entry.

CERTIFICATION OF GOOD FAITH CONFERENCE

The undersigned hereby certifies that he conferred with Benoit Letendre and Ron Sprague, counsel for Plaintiff, on July 12 and 17, 2017 for the purpose of seeking Plaintiff's

agreement with this motion. On July 17, 2017, Plaintiffs' counsel notified the undersigned that Plaintiffs consent to Defendant's request for an extension of time through September 13, 2017.

Dated: July 25, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

RICHARD L. DURBIN, JR
United States Attorney

ANTHONY J. COPPOLINO
Deputy Director
Civil Division, Federal Programs Branch

/s/ Galen N. Thorp
GALEN N. THORP (VA Bar # 75517)
Senior Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
950 Pennsylvania Avenue NW
Washington, D.C. 20530
Tel: (202) 514-4781 / Fax: (405) 553-8885
galen.thorp@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Benoit M. Letendre
221 Third Avenue, PO Box 556
Baraboo, WI 53913

Ron A. Sprague
Gendry & Sprague PC
900 Isom Road, Suite 300
San Antonio, TX 78216

/s/ Galen N. Thorp
GALEN N. THORP
Senior Counsel