

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.	)	

**UNOPPOSED MOTION FOR NUNC PRO TUNC EXTENSION OF TIME**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, Defendants request that the Court grant a brief extension to permit Defendants to complete their summary judgment filing. Grants of extensions of time under Rule 6(b) “fall[] to the district court’s discretion.” *Uxomba v. Bexar County*, No. 14-372, 2014 WL 3919573, at \*1 (W.D. Tex. Aug. 8, 2014) (quoting *McCarty v. Thaler*, 376 F. App’x 442, 443 (5th Cir. 2010)). There is good cause to grant Defendants’ request here.

Undersigned counsel understood Defendants’ motion for summary judgment to be due on Friday, April 19, 2019. *See* Joint Mot. to Extend Schedule at 1-2, Apr. 9, 2019, ECF No. 60 (seeking a “one week extension of Defendants’ summary judgment motion deadline” from April 12, 2019). While undersigned counsel sought and received Plaintiffs’ counsel’s consent for an extension through April 19, *see* Exhibit 1, undersigned counsel inadvertently listed the proposed deadline as April 17 instead of April 19 in the motion and proposed order. *See* ECF No. 60 at 2. The Court’s order granting the extension stated “[t]he summary judgment deadlines are modified as set out in the parties’ joint motion,” and did not specify the dates. *See* Minute Order, Apr. 10,

2019. Undersigned counsel therefore planned to file Defendants' summary judgment motion on April 19 and was in the processing of completing the motion that evening when a major technology system update took his work computer offline. Undersigned counsel was not aware that the backup system would not permit him to access the network folder where the documents related to this case were stored. This lack of access significantly delayed his ability to complete the relevant motion. Upon successfully logging back in, undersigned counsel completed filing of the motion and appended statement of facts at 1:18 AM Central Time, April 20, 2019. *See* Defs.' Mot. Summ. Judgment, ECF No. 61. Given the late hour, and the fact that the supporting exhibits comprise 22 primary exhibits, with 86 subexhibits, *see* ECF No. 61-1 at 3-6, Index of Exhibits, undersigned counsel was unable to file the exhibits at that time. Moreover, undersigned counsel's personal obligations over Easter weekend, prevented him from completing the filing before today.

Plaintiffs will not be prejudiced by this brief extension. They had indicated their willingness for Defendants' motion to be filed on April 19, and the motion and statement of facts were filed a mere 80 minutes after that date. Moreover, because the detailed statement of facts was included with the motion, along with an index of the exhibits, Plaintiffs' counsel, should they have wished to do so, could have begun preparing their response over the weekend, even though Defendants' exhibits had not yet been filed.

Undersigned counsel emailed Plaintiffs' counsel on Friday night, immediately upon learning of the technology difficulty, and again early on Saturday morning when he was unable to complete filing the exhibits. Undersigned counsel first became aware that the extension motion used the incorrect date of April 17, 2019 from Plaintiffs' counsel in an email today, April 22. After conferring today, Plaintiffs' counsel stated that Plaintiffs do not oppose this motion.

For all of these reasons, Defendants request that the Court (1) grant an extension nunc pro tunc for the approximately 80 minutes that the motion was late (or alternatively, if the Court construes the inadvertent April 17 date as binding, an extension of two days and 80 minutes), and (2) grant an extension through today, April 22, 2019, for Defendants to file the exhibits supporting their motion for summary judgment. A proposed Order is attached for the Court's review and entry.

Dated: April 22, 2019

Respectfully submitted,

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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of April, 2019, 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:

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