

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

JONATHAN R., <i>et al.</i> ,)	
)	
<i>Plaintiffs</i> ,)	
v.)	
)	
JIM JUSTICE, in his official capacity as)	Case No. 3:19-cv-00710
Governor of West Virginia, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**DEFENDANTS’ MOTION FOR EXTENSION OF TIME TO RESPOND TO
PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), Defendants move for a 60-day extension to respond to Plaintiffs’ Motion for Class Certification and Appointment of Class Counsel (“Motion for Class Certification”), Doc. 130. This would extend Defendants’ deadline from September 16, 2020 to November 16, 2020.¹

Plaintiffs’ Motion for Class Certification and exhibits, filed on September 2, 2020, total nearly 5,400 pages, including four expert reports prepared by six experts of nearly 600 pages, which Plaintiffs’ counsel presumably have been working on for the 11 months since they filed their Complaint. Under Local Rule 7.1(a)(7), Defendants have 14 days to respond.

Federal Rule of Civil Procedure 6 provides that a court may extend the time allotted for a party to respond to a motion for “good cause.” *See* Fed. R. Civ. P. 6(b)(1).

In this case, good cause exists for a 60-day extension in light of the scope and volume of Plaintiffs’ Motion for Class Certification and supporting materials. Defendants’ counsel requires this additional time to work with their clients to review and analyze the motion and the 600 pages

¹ Defendants’ counsel consulted with Plaintiffs’ counsel about this motion, and Plaintiffs’ counsel informed Defendants’ counsel that they will oppose a 60-day extension.

of expert reports; work with Defendants' own expert to assess Plaintiffs' expert reports; and draft a response to the Motion for Class Certification. *See* Peisch Decl. ¶¶ 2-3. Defendants' counsel will also seek to depose each of Plaintiffs' six experts, whose reports and identities were just disclosed to Defendants' counsel yesterday, *see* Peisch Decl. ¶ 2. Scheduling, preparing for, and taking six expert depositions in 14 days is not possible; it will take at least 30-45 days for Defendants' counsel, working diligently, to depose these experts. *See* Peisch Decl. ¶¶ 2-3.

In addition, while Defendants and their counsel are working to respond to Plaintiffs' Motion for Class Certification, they will also have to spend time preparing for and defending two additional Rule 30(b)(6) depositions recently noticed by Plaintiffs, as well as any other discovery requests from Plaintiffs. *See* Peisch Decl. ¶¶ 5-6. Just today, Plaintiffs' counsel noticed a new Rule 30(b)(6) deposition for September 22, 2020, *see* Peisch Decl. ¶ 5, and two weeks ago they noticed another Rule 30(b)(6) deposition, which Plaintiffs' counsel have indicated they wish to take in the coming weeks. *See* Peisch Decl. ¶ 6.

Plaintiffs' counsel has informed Defendants counsel that Plaintiffs will only agree to a 14-day extension of Defendants' deadline, which would give Defendants a total of 28 days to respond to Plaintiffs Motion for Class Certification. *See* Peisch Decl. ¶ 4. It is unreasonable to expect Defendants' counsel to analyze 600 pages of expert reports, take the depositions of six separate experts, and draft a response to a 60-page motion within just 28 days. *See* Peisch Decl. ¶¶ 2-3. And what is Plaintiffs' purpose in trying to force Defendants to do so?

Indeed, the 60-day extension that Defendants request here is much shorter than the timetables other courts have provided Defendants to respond to similar motions for class certification filed by lead counsel in this case, Marcia Lowery and A Better Childhood, Inc. ("ABC"). For example, in *Elisa W. v. City of New York*, the court gave the defendants 13 months

to respond to the motion for class certification filed by ABC. Order, No. 15-cv-5273 (S.D.N.Y), Doc. 488; *see also* Motion to Certify the class, *Elisa W.*, No. 15-cv-5273, Doc. 439 (filed on July 30, 2019); Memorandum in Opposition to Motion to Certify the Class, *Elisa W.*, No. 15-cv-5273, Doc. 493 (filed on August 31, 2020). Similarly, in *Wyatt B. v. Brown*, the court gave defendants nearly eight (8) months to respond to the motion for class certification filed by ABC. Scheduling Order, No. 19-cv-00556 (D. Or.), Doc. 105; *see also* Motion to Certify the Class, *Wyatt B.*, No. 19-cv-00556, Doc. 64 (filed on December 9, 2019); Response in Opposition to Motion to Certify the Class, *Wyatt B.*, No. 19-cv-00556, Doc. 117 (filed on August 3, 2020).

In this case, the two-and-a-half months the Defendants request – 14 days provided under local rules, plus the 60-day extension – is very aggressive. Defendants are interested in bringing this case to a prompt conclusion, because Defendants’ factual investigation has confirmed that Plaintiffs’ claims are wholly without merit and discovery in this case has placed an extraordinary burden on DHHR. Peisch Decl. ¶ 4. As a result, Defendants are seeking the shortest extension that will allow counsel, working diligently, to respond to the Motion for Class Certification. *Id.* But Defendants’ counsel does not see how they can competently respond to Plaintiffs’ Motion for Class Certification with less than a 60-day extension. Peisch Decl. ¶ 3.

This proposed extension will not necessarily impact the scheduled deadlines in this case, except that Plaintiffs’ reply would be due November 23, 2020 instead of September 23, 2020. Plaintiffs’ counsel has informed Defendants that they believe the deadline for responding to the Motion for Class Certification will necessitate a corresponding extension of the deadline for the close of discovery, which is currently set at February 1, 2021. Peisch Decl. ¶ 4. In the interest of compromise, Defendants informed Plaintiffs’ counsel that they were willing to agree to a 60-day

extension of this discovery deadline if Plaintiffs' agree to Defendants 60-day extension request, despite the enormous burden discovery has placed on Defendants. *Id.*

For the foregoing reasons, Defendants respectfully request that the Court grant Defendants' request for an extension of time until November 16, 2020 to allow them to fully respond to Plaintiffs' Motion for Class Certification.

Respectfully submitted,

September 3, 2020

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CERTIFICATE OF SERVICE

I, Philip J. Peisch, hereby certify that I caused a true and correct copy of Defendants' Opposed Motion for Extension of Time to Respond to Plaintiffs' Motion for Class Certification to be delivered to the following via ECF notification:

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