

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ANGE SAMMA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:20-cv-01104-PLF
)	The Honorable Paul L. Friedman
UNITED STATES DEPARTMENT OF)	
DEFENSE and LLOYD J. AUSTIN III, in his)	
official capacity as Secretary of Defense,)	
)	
Defendants.)	
_____)	

**DEFENDANTS’ MOTION FOR LEAVE OF COURT TO RESPOND TO
PLAINTIFFS’ SUBMISSION NO LATER THAN OCTOBER 18, 2021**

Defendants, United States Department of Defense and Lloyd J. Austin III, in his official capacity as Secretary of Defense, by and through undersigned counsel, respectfully request that they be permitted 60 days—until October 18, 2021—to respond to Plaintiffs’ “Motion to Enforce Court Order,” ECF Nos. 58-73. In support of this motion, Defendants submit the following:

1. On August 25, 2020, this Court entered a final order and judgment, terminating this case. ECF No. 47.
2. On August 17, 2021, Plaintiffs submitted a “Motion to Enforce Court Order,” supported by an accompanying memorandum, declarations, and exhibits totaling 455 pages. ECF Nos. 58-73.
3. Plaintiffs’ memorandum includes 28 pages of allegations under the heading “Defendants’ Non-Compliance with this Court’s Order” purporting to suggest that Defendants have violated the Court’s final order and judgment, *id.* at 7-34, two pages of argument, *id.* at 35-36, and a prayer for relief seeking at least ten “remedies,” *id.* at 36-37.

4. To the extent Plaintiffs' submissions are properly styled as a motion, Defendants' response would be due on August 31, 2021. LCvR 7.
5. However, a leading treatise on Federal Practice and Procedure indicates that Plaintiffs' submission should be governed "by analogy to Rule 8" of the Federal Rules of Civil Procedure, which addresses pleadings, not motions. 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2960. Plaintiffs have not sought leave of Court to file an Amended or Supplemental Pleading and neither the allegations nor the prayer for relief included in the "Motion to Enforce Court Order" are included in any pleading in the record.
6. Federal Rule of Civil Procedure 12(a)(2) provides that the United States must respond to a typical pleading within 60 days after service on the United States attorney. Given that Plaintiffs' submission is more analogous to a pleading than a motion, *see supra* ¶ 5, Defendants submit that there is good cause for providing them 60 days to respond.
7. Even if the Court's local rules regarding motions applies, additional reasons support Defendants request to extend the response time. Plaintiffs' 455 pages of submissions include not only a memorandum in the nature of a pleading, but 406 pages of declarations and exhibits, akin to a complex motion for summary judgment.
8. Plaintiffs' filings suggest that they have been developing this record for nearly a year. For example, the Declaration of Bonchan Goo describes incidents that allegedly occurred in June, August, and September 2020. ECF No. 64 ¶¶ 7, 10. The Declaration of Darya Kutovaya describes incidents that allegedly occurred in July 2020 and September 2020. ECF No. 65 ¶¶ 7, 8. Providing Defendants time to address dated and extensive allegations is more than reasonable and necessary for Defendants to exercise due diligence in preparing

a defense. In turn, providing Defendants with sufficient time to respond to these allegations will aid the Court's resolution of any disputed issues.

9. The amount of time Defendants need is reasonable to address all facets of Plaintiffs' filings. For example, Defendants need to collect and submit their own evidence showing their compliance with the Court's order, as well as the additional actions Defendants have taken to purge any arguable past violations of the order.
10. Defendants also need time to collect and submit evidence responding to the Plaintiffs' prayers for relief. ECF No. 58 at 36-37. For example, Plaintiffs request that Defendants provide monthly status reports with names of service members who have requested a characterization of military service as honorable on a certified Form N-426. ECF No. 58 at 36. Defendants need time to collect and submit evidence sufficient to explain the complexity of the issues they raise, as well as the extent of the Court's jurisdiction to issue such relief.
11. Moreover, Plaintiffs are unlikely to suffer undue prejudice from providing Defendants with the time requested to respond to Plaintiffs' submissions. Defendants have worked with Plaintiffs to obtain a certified Form N-426 for each service member that Plaintiffs have identified as encountering a problem. *See, e.g.*, ECF No. 65 at ¶ 21. Defendants are processing Forms N-426 for those identified individuals and will be issuing the final three imminently. Defendants' time period for responding to Plaintiffs' submission has no effect on Defendants' commitment to ensuring that any outstanding Form N-426 for an individual has been identified by Plaintiffs or that is otherwise brought to their attention is certified promptly.

12. Defendants' recent actions make it even less likely that Plaintiffs will experience undue prejudice from permitting Defendants the requested time period to respond to their submissions. For example, on August 20, 2021, the Department of the Army issued an Army-wide order that details certifying officials' obligations upon receipt of a request for a certified N-426. The order requires commanders at all levels across the Army to ensure that all noncitizen soldiers and their supervisory chains are provided a copy of those obligations. The order also requires commanders at all levels to disseminate the information in the order to the lowest levels of the chain of command and to ensure that all leaders, including squad leaders and drill sergeants, understand their responsibilities to process and route Forms N-426 as expeditiously as possible to their commanders. This action addresses issues identified by Plaintiffs.
13. In addition, Class Counsel has declined to provide information needed by the Department of Defense to investigate allegations of noncompliance. *See, e.g.*, ECF No. 60-13, 60-14. The time requested may allow for an opportunity to exchange information to address some of the allegations.
14. Defendants believed that the parties have been working collaboratively to address allegations of noncompliance and Defendants are in the process of taking meaningful steps to address these allegations. *See* ECF No. 58 at 2 n.1. Defendants reasonably believed that they would be provided with more notice that Plaintiffs would abandon the parties' collaborative out-of-court process and turn to legal process.
15. Given the significance of Plaintiffs' allegations; the scale of their submissions; the fact that the process for filing an accurate, comprehensive, and adequately supported response will require coordination among officials of the Department of Defense, the Department of the

Army, and the Department of Justice; taking to account the change in administration from the time the Court issued its order; and Plaintiffs' lack of undue prejudice given Defendants' commitment to certify any identified outstanding Form N-426 and recent remedial actions, sixty days—a time period consistent with what the Federal Rules of Civil Procedure typically permits the government to respond to complaints—is a reasonable period for Defendants to prepare their response.

16. Defendants respectfully submit that permitting Defendants the time requested to respond to Plaintiffs' submissions will allow Defendants to file a response that will aid the Court's substantive consideration of Plaintiffs' claims and requests for relief.
17. The Department of Defense respectfully submits that the press of other pending business before senior leaders of the agency who will be involved in review of this matter is an additional factor requiring the amount of time to respond that Defendants request.
18. Pursuant to LCvR 7(m), counsel for Defendants conferred with Class Counsel by e-mail on August 20, 2021, in a good faith effort to narrow or resolve this dispute prior to filing but were unable to do so. Plaintiffs have provided their position on this motion as follows: "We oppose the government's motion for an extension until October 18 to respond to our motion to enforce. However, we would like the government to indicate in its motion that Plaintiffs would consent to an extension until September 10." Class Counsel also requested that the government indicate that Plaintiffs intend to file an opposition to the motion. For the foregoing reasons, the September 10, 2021 response date proposed by Plaintiffs would be insufficient.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court issue an order permitting them leave to file a response to Plaintiffs' submissions no later than October 18, 2021.

Dated: August 23, 2021

Respectfully submitted,

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