

1 BENJAMIN B. WAGNER
United States Attorney
2 LYNN TRINKA ERNCE
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2720

5 Attorneys for Defendant
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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 JERRY L. GRENIER,

12 Plaintiff,

13 v.

14 WENDY SPENCER, Chief Executive Officer
of the Corporation for National and
15 Community Service,¹

16 Defendant.
17

Case No. 2:12-cv-00258 KJM GGH

**EX PARTE APPLICATION
FOR AN ORDER EXTENDING
THE TIME FOR DEFENDANT
TO RESPOND TO AMENDED
COMPLAINT; DECLARATION
OF LYNN TRINKA ERNCE;
ORDER**

18 Defendant Wendy Spencer respectfully requests that the Court enter an order granting her a
19 60-day extension of time to respond to plaintiff's complaint. In support of this *ex parte* application,
20 defendant respectfully represents as follows:

- 21 1. On January 31, 2012, plaintiff filed his original complaint alleging eleven causes of
22 action under Title VII. Docket 1.
- 23 2. On April 23, 2012, plaintiff filed an amended complaint alleging four causes of action
24 under the Age Discrimination in Employment Act, Title VII, and the Rehabilitation Act. Docket 4. The
25 amended complaint is lengthy – nearly 60 pages long – and includes 283 allegations. *Id.*
26

27 _____
28 ¹ Pursuant to the Notice of Substitution of Defendant filed herein, Wendy Spencer is the proper party
defendant in this case, and she has been substituted in as defendant pursuant to Fed. R. Civ. P. 25(d).

1 3. Plaintiff served the amended complaint on the United States Attorney's Office on April
2 27, 2012. Docket 8. Defendant's response is due on June 15, 2012. Fed. R. Civ. P. 12(a)(2)

3 4. On May 16, 2012, the undersigned Assistant United States Attorney ("AUSA")
4 responded to an email from plaintiff in which plaintiff asked the AUSA to acknowledge receipt of the
5 proof of service that plaintiff filed as Docket 8. Declaration of Lynn Trinka Ernce ("Ernce Decl.", ¶ 2).

6 5. In her email to plaintiff, the AUSA acknowledged receipt of the proof of service and also
7 informed plaintiff that she would need additional time beyond June 15, 2012 to review, analyze, and
8 respond to his lengthy amended complaint. *Id.*, ¶ 3. The AUSA asked plaintiff if he would be willing to
9 stipulate to allow defendant additional time to respond to the amended complaint, as permitted by the
10 Local Rules. *Id.* and Ex. A. Plaintiff responded that he believed defendant's response was due on
11 May 25, 2012, and he stated that he would not agree to stipulate to the requested extension. *Id.*

12 6. On May 17, 2012, the AUSA sent plaintiff another email explaining why the response
13 deadline is June 15, 2012, and that, contrary to plaintiff's statements in his May 16 email, there is no
14 large team of attorneys at the agency defending this case. *Id.*, ¶ 6. The AUSA explained that she is the
15 only attorney defending this action and that, in light of plaintiff's decision not to grant the courtesy of an
16 extension, she may decide to seek an extension from the Court directly via ex parte application. *Id.*

17 7. That same day, plaintiff responded that he agreed that the response is due on June 15,
18 2012, and acknowledging that the AUSA may seek an extension from the Court. *Id.*, ¶ 6. and Ex. A.

19 8. The amended complaint is very lengthy, the allegations are disorganized and confusing,
20 and plaintiff's actual claims being asserted in this action are difficult to discern. While the amended
21 complaint purports to assert claims under ADEA, Title VII and the Rehabilitation Act, there are
22 numerous allegations throughout the pleading which do not appear to relate to claims under any of those
23 federal statutes. *Id.*, ¶ 7.

24 9. Additionally, some of the claims that plaintiff seems to be asserting in the amended
25 complaint appear to relate to multiple administrative proceedings that occurred before the Equal
26 Employment Opportunity Commission and/or the Merit Systems Protection Board. One of the threshold
27 issues that the AUSA needs to analyze is whether plaintiff has exhausted his administrative remedies for
28 all of his claims in the amended complaint such that the Court has subject matter jurisdiction over the

1 claims. However, as of the date of this application, the AUSA has not been able to complete her
2 analysis because she has not yet received the administrative claim files from the agency. *Id.*, ¶ 8. The
3 AUSA expects to receive the administrative claim files from the agency soon. *Id.* However, once she
4 receives them, she will need some time to review and analyze them before she can prepare defendant's
5 response.

6 10. In sum, the AUSA needs additional time to review and analyze the amended complaint
7 and to formulate defendant's response, whether it be an answer to the amended complaint, or, more
8 likely, a motion for more definite statement, and/or a motion to dismiss.

9 11. The AUSA defending this action carries a full case load and has multiple deadlines,
10 hearings, conferences, and depositions scheduled in the next 30 days. *Id.*, ¶ 9. Additionally, the AUSA
11 is scheduled to be on leave the last two weeks of July/first week of August. *Id.* Thus, defendant is
12 requesting a 60-day extension of time for her response to the amended complaint, to August 17, 2012.

13 **ARGUMENT**

14 **The Court Should Extend The Time For Defendants To Respond To The Complaint**

15 Under Local Rule 144(c), the Court may, in its discretion, grant an *ex parte* request for extension
16 of time to respond to a complaint "upon the affidavit of counsel that a stipulation extending time cannot
17 reasonably be obtained, explaining the reasons why such a stipulation cannot be obtained, and the
18 reasons why an extension is necessary." The requirements for *ex parte* relief are met in this case.

19 For all of the reasons set forth above, defendant is not in a position to file her response to the
20 complaint by the current June 15, 2012 deadline, and she respectfully requests a 60-day extension of
21 time to respond. A stipulation extending time cannot be reasonably obtained because plaintiff has
22 refused to agree to any extension of time for defendant to respond to the amended complaint.

23 **CONCLUSION**

24 Defendant respectfully requests that the Court extend the time for her to respond to plaintiff's
25 amended complaint to August 17, 2012.

26 DATED: June 7, 2012

BENJAMIN B. WAGNER

United States Attorney

By: /s/ Lynn Trinka Ernce

LYNN TRINKA ERNCE

Assistant United States Attorney

1 **DECLARATION OF LYNN TRINKA ERNCE**

2 I, Lynn Trinka Ernce, declare as follows:

3 1. I am an Assistant United States Attorney and have been assigned to handle the defense of
4 this litigation. I make this declaration in support of the *ex parte* application for an order extending the
5 time for defendant to respond to plaintiff's complaint. Except for matters stated on information and
6 belief, I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could
7 and would testify competently to these facts.

8 2. On May 16, 2012, I responded to an email from plaintiff in which he asked me to
9 acknowledge receipt of the proof of service he had filed as Docket 8.

10 3. In my email to plaintiff, I acknowledged receipt of the proof of service and also informed
11 him that I would need additional time beyond June 15, 2012 to review, analyze, and respond to his
12 lengthy amended complaint. I asked plaintiff if he would be willing to stipulate to allow defendant
13 additional time to respond to the amended complaint, as permitted by the Local Rules. A true and
14 correct copy of my email to plaintiff (and the entire email exchange with plaintiff described in this
15 declaration) is attached hereto as Exhibit A.

16 4. In another May 16, 2012 email, plaintiff stated that he believed defendant's response was
17 due on May 25, 2012, and that he would not agree to stipulate to the requested extension.

18 5. On May 17, 2012, I sent plaintiff another email explaining why the response deadline is
19 June 15, 2012, and that, contrary to plaintiff's statements in his May 16 email, there is no large team of
20 attorneys at the agency defending this case. I explained that I am the only attorney defending this action
21 and that, in light of plaintiff's decision not to grant the courtesy of an extension, I may decide to seek an
22 extension from the Court directly via *ex parte* application.

23 6. That same day, plaintiff responded that he agreed that the response is due on June 15,
24 2012, and he acknowledged that I may seek an extension from the Court.

25 7. The amended complaint is very lengthy, the allegations are disorganized and confusing,
26 and plaintiff's actual claims being asserted in this action are difficult to discern. While the amended
27 complaint purports to assert claims under ADEA, Title VII and the Rehabilitation Act, there are
28 numerous allegations which do not appear to relate to claims under any of those federal statutes.

1 8. Additionally, some of the claims that plaintiff seems to be asserting in the amended
2 complaint appear to relate to multiple administrative proceedings that occurred before the Equal
3 Employment Opportunity Commission and/or the Merit Systems Protection Board. One of the threshold
4 issues that I must analyze is whether plaintiff has exhausted his administrative remedies for all of his
5 claims in the amended complaint such that the Court has subject matter jurisdiction over the claims.
6 However, as of the date of this application, I have not been able to complete my analysis because I have
7 not yet received the administrative claim files from the agency. I expect to receive them soon. But once
8 I receive them, I will need time to review and analyze them before I can prepare defendant's response,
9 whether it be an answer to the amended complaint, or, more likely, a motion for more definite statement,
10 and/or a motion to dismiss.

11 9. I carry a full case load and have multiple deadlines, hearings, conferences, and
12 depositions scheduled in the next 30 days. Additionally, I am scheduled to be on leave the last two
13 weeks of July/first week of August. Thus, defendant is requesting a 60-day extension of time for her
14 response to the amended complaint, to August 17, 2012.

15 10. A stipulation extending time cannot be reasonably obtained because plaintiff has refused
16 to agree to any extension of time to respond to the complaint. *See* Ex. A.

17 Executed this 7th day of June, 2012, in Sacramento, California.

18 I declare under penalty of perjury that the foregoing is true and correct.

19
20 /s/ Lynn Trinka Ernce
LYNN TRINKA ERNCE

21 **ORDER**

22 Based on the *ex parte* application and declaration, and good cause appearing therefore,

23 IT IS HEREBY ORDERED that the application is granted;

24 IT IS HEREBY FURTHER ORDERED that defendant shall have until August 17, 2012 to
25 respond to the amended complaint. No further extensions.

26 DATED: June 11, 2012

27 /s/ Gregory G. Hollows
United States Magistrate Judge