

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-21748-CIV-MARTINEZ/BANDSTRA

MARK J. GAINOR and ELYSE GAINOR,

Plaintiffs,

v.

SIDLEY AUSTIN LLP, a Delaware limited liability partnership, f/k/a SIDLEY AUSTIN BROWN & WOOD, f/k/a BROWM & WOOD, R.J. RUBLE, an individual, ARTHUR ANDERSEN, LLP an Illinois limited liability partnership, MICHAEL S. MARX, an individual, P. ANTHONY NISSLEY, an individual, MERRILL LYNCH & CO., INC., a Delaware corporation, and MARK C. KLOPFENSTEIN, an individual,

Defendants.

**DEFENDANT MERRILL LYNCH & CO., INC.'S
UNOPPOSED MOTION FOR ENLARGEMENT OF TIME
TO RESPOND TO PLAINTIFFS' AMENDED COMPLAINT**

Defendant Merrill Lynch & Co., Inc. ("Merrill Lynch") moves the Court, pursuant to Fed. R. Civ. P. 6(b), for an enlargement of time through and including May 11, 2007, to respond to Plaintiffs' Amended Complaint. Plaintiffs do not oppose this Motion. As grounds for this Motion, Merrill Lynch states:

1. On March 23, 2007, Plaintiffs first served their Amended Complaint upon Merrill Lynch.¹

¹ Merrill Lynch was not named as a defendant in the original complaint. The Amended Complaint added Merrill Lynch as a party to the instant matter.

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2. FED. R. CIV. P. 12 states that a defendant shall serve a response within 20 days after being served with the summons and complaint. Merrill Lynch's response to the Amended Complaint is therefore due on April 12, 2007.

3. Due to the nature of the claims made in the Amended Complaint, Merrill Lynch is currently in the process of reviewing the allegations and the relevant documents and information and formulating its response.

4. Additionally, Plaintiffs have invited Merrill Lynch to attend a mediation scheduled for May 4, 2007. A settlement at such mediation would make a response to the Amended Complaint unnecessary.

5. Merrill Lynch submits that under these circumstances, the requested enlargement of time will not delay the case, nor prejudice Plaintiffs.

6. Counsel for Merrill Lynch has conferred with Plaintiffs' counsel. Plaintiffs' counsel has graciously agreed to the enlargement of time, though and including May 11, 2007, for Merrill Lynch to respond to Plaintiffs' Amended Complaint.

7. For these reasons, and based on the analysis set forth below, Merrill Lynch respectfully asks the Court to grant the requested enlargement of time.

Memorandum of Law

This Court has "wide discretion" under Fed. R. Civ. P. 6(b)(1) to grant the requested extension of time. *E.g.*, *United States v. Real Property Located at 414 Riverside Road*, 1994 U.S. App. Lexis 920, n.4 (9th Cir. 1994); *Jackson v. Domino's Pizza Corp.*, 1991 U.S. Dist. Lexis 15932 *6 (N.D. Cal. 1991) (court has "broad discretion"). The Court enjoys such discretion because the time for serving a response to Plaintiffs' Amended Complaint has not

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passed. As a result, this request for an enlargement of time is made on a timely basis. *See Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 895 and n.5 (1990); *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126 (11th Cir. 1994); *Ritter v. Smith*, 811 F.2d 1398 (11th Cir.), *cert. denied*, 483 U.S. 1010 (1987). Courts have recognized that a timely requested extension, such as the one requested here, is “readily available.” *Motsinger v. Flynt*, 119 F.R.D. 373, 378 (M.D. N.C. 1988); *accord Sherrod v. Piedmont Aviation, Inc.*, 516 F.Supp. 39, 41 (E.D. Tenn 1978) (Plaintiff could have “obtained readily an enlargement,” had he made a timely request).

With this Motion, undersigned counsel has provided the Court with a proposed order granting the requested enlargement of time.

WHEREFORE, Merrill Lynch respectfully requests that this Court enter an Order granting this Unopposed Motion for Enlargement of Time to Respond to Plaintiff’s Amended Complaint through and including May 11, 2007.

Respectfully submitted,

s/Coren H. Stern
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of *Defendant Merrill Lynch & Co., Inc.'s Unopposed Motion for Enlargement of Time to Respond to Plaintiffs' Amended Complaint* has been furnished via U.S. Mail to **Richard Benjamin Wilkes, Esq.**, 600 South Magnolia Avenue, Suite 200, Tampa, FL 33606, on this 12th day of April, 2007.

s/Coren H. Stern _____