

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DMITRIY SHIROKOV, on behalf of himself)
and all others similarly situated)
))
Plaintiff,)
v.)
))
DUNLAP, GRUBB & WEAVER, PLLC; US)
COPYRIGHT GROUP; THOMAS DUNLAP;)
NICHOLAS KURTZ; GUARDALEY, LIMITED;)
and ACHTE/NEUNTE Boll Kino)
Beteiligungs Gmbh & Co KG,)
))
Defendants.)

Case: 1:10-cv-12043-GAO

Hearing Requested

**OPPOSITION TO MOTION PURSUANT TO FED. R. CIV. P. 6(b) FOR SECOND
EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANTS DUNLAP, GRUBB &
WEAVER, PLLC, THOMAS DUNLAP AND NICHOLAS KURTZ’S MOTION TO
DISMISS AND MOTION FOR SACTIONS**

Defendants Dunlap, Grubb & Weaver, PLLC, Thomas Dunlap, and Nicholas Kurtz (“the defendant attorneys”) respectfully submit this opposition to the Motion Pursuant to Fed. R. Civ. P. 6(b) for Second Extension of Time to File Response to Defendants Dunlap, Grubb& Weaver, PLLC, Thomas Dunlap And Nicholas Kurtz’s Motion to Dismiss and Motion for Sanctions. *See* Docket Entry # 13. As grounds for their opposition, the defendant attorneys state that the plaintiff has not demonstrated good cause for his motion.

A. The Plaintiff's Motion for An Extension of Time to the Defendants' Motion for Sanctions Should be Denied as the Plaintiff has had Over Seventy Days to Prepare an Opposition and No Good Cause Has Been Shown for an Extension.

The defendant attorneys originally served their Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 ("Rule 11 Motion") by personal service on plaintiff's counsel on December 9, 2010, along with a letter indicating that if the plaintiff did not withdraw his original Complaint within twenty one days, they would file the motion with this Court. *See* Docket Entry # 6 and Exhibit 1 thereto. The plaintiff did not respond in any way to the letter or motion. Accordingly, the defendant attorneys filed the motion on January 25, 2010. The plaintiffs, who had already had 47 days to prepare an opposition, and who were entitled to an additional 14 days following the January 25, 2010 filing date, requested and received an additional extension of time to respond, until February 24, 2011. In the meantime, the plaintiff filed an Amended Class Action Complaint on February 8, 2011, followed by a motion for leave to file a Second Amended Class Action Complaint on February 18, 2011. *See* Docket Entries # 10-12.

The plaintiff now seeks an additional extension of 12 days to respond to the Rule 11 Motion without citing any new grounds for requesting this second extension. If the extension is granted, the plaintiffs will have had over three months in which to prepare an opposition. The plaintiff cites two reasons for seeking an extension of time to respond to the Rule 11 Motion: because "[t]he complexity of the issues involved in the matter, combined with the volume of citations relied on by the Moving Defendants (including over 100 cases in their Motion to Dismiss) requires extensive review and research; and because the plaintiff has sought leave to file a Second Amended Complaint, which if the Court allows, would affect the plaintiff's responses to the defendant attorneys' motions. Neither of these reasons provides any justification as to why an extension of time is needed to respond to the Rule 11 Motion (as opposed to the

motion to dismiss). The plaintiff has had the Rule 11 Motion since December 9, 2010. The Rule 11 Motion is supported by a twenty page memorandum of law summarizing the defendant attorneys' position as to the merits of the claims set forth in the original Complaint. There is nothing especially complex about the motion. Furthermore, any research and analysis as to whether the claims asserted in the original Complaint were viable should have been done by plaintiff's counsel before the original Complaint was filed. The plaintiff has not shown good cause for an additional extension, and the defendant attorneys respectfully request that he be ordered to file an opposition, if he intends to do so, with no further extensions.

B. The Plaintiff's Motion for An Extension of Time to the Defendants' Motion to Dismiss Should be Denied as Moot.

The plaintiff's request for an extension to respond to the defendants' first motion to dismiss is moot because the filing of an Amended Class Action Complaint superseded the original Complaint, giving rise to a new obligation of the defendants to file an answer or other responsive pleading. The defendants have accordingly on this date filed a new motion to dismiss, addressing the First Amended Class Action Complaint. A response is due in fourteen days, on March 8.

The plaintiff has requested an extension of time to respond to the defendant attorneys' motion to dismiss because he hopes to be permitted to file a Second Amended Complaint before responding. The defendant attorneys respectfully request that this Court not allow the plaintiff to file yet another amended pleading prior to ruling on the defendant attorneys' motion to dismiss, as the plaintiff has requested. The defendant attorneys are entitled to an adjudication of their arguments that the legal theories articulated by the plaintiff fail to state claims on which relief can be granted. If the Court agrees, then the plaintiffs may seek leave to amend their pleading accordingly.

Wherefore, defendants Dunlap, Grubb & Weaver, PLLC, Thomas Dunlap, and Nicholas Kurtz respectfully request that the plaintiff's Motion Pursuant to Fed. R. Civ. P. 6(b) for Second Extension of Time to File Response to Defendants Dunlap, Grubb & Weaver, PLLC, Thomas Dunlap And Nicholas Kurtz's Motion to Dismiss and Motion for Sanctions be denied.

The Defendants,
Dunlap, Grubb & Weaver, PLLC,
Thomas Dunlap, and Nicholas Kurtz
By their counsel,

/s/ Kara Thorvaldsen
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Certificate Of Service

I, Kara Thorvaldsen, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). I am not aware of any party who is not a registered participant, and therefore electronic filing is the sole means of service of this document.

/s/ Kara Thorvaldsen