

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 4:10-cv-142-D

_____)	
MARK DANIEL LYTTLE,)	
)	
Plaintiff)	MOTION FOR EXTENSION OF TIME
)	TO ANSWER OR OTHERWISE
v.)	RESPOND TO COMPLAINT FOR
)	DEFENDANT UNITED STATES OF
)	AMERICA
)	
UNITED STATES OF AMERICA, et al.,)	
)	Fed. R. Civ. P. 6(b)
Defendants.))	Local Civil Rule 6.1
_____)	

**UNITED STATES’ SECOND UNOPPOSED MOTION FOR
EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A) and Local Civil Rule 6.1, the United States respectfully requests that the Court extend the time for it to answer or otherwise respond to plaintiff’s complaint by twenty-six days, up to and including February 22, 2011. Counsel for the United States has conferred with counsel for plaintiff, Mark Daniel Lyttle, and is authorized to represent that plaintiff consents to the requested extension of time.

Lyttle filed a “Corrected” complaint in this action on October 15, 2010. *See* Doc. No. 8. Because he effected service on the U.S. Attorney for the Eastern District of North Carolina on October 25, 2010, the United States was required to answer or otherwise respond on or before December 27, 2010. *See* Fed. R. Civ. P. 12(a)(2). On December 22, 2010, this Court granted the United States’ unopposed motion for an extension of time, allowing until and including January 27, 2011, to respond to the complaint. *See* Doc. No. 21.

In addition to the instant action, Lyttle has filed a related action in the Northern District of

Georgia. *See Lyttle v. United States*, No. 10-3302 (N.D. Ga.), Doc. No. 1. Given the factual and legal similarities between the two cases, all Federal defendants named in both actions filed a motion with the United States Judicial Panel on Multidistrict Litigation (the “MDL Panel”) on December 23, 2010, seeking centralization of those cases before this Court. *See In Re Mark Daniel Lyttle Litig.*, MDL No. 2227, Doc. No. 1.¹ That motion is still pending before the Panel.

All Federal defendants named in the instant action then filed a motion on January 11, 2011, requesting that this Court grant a temporary stay of pretrial proceedings pending the MDL Panel’s decision.² *See* Doc. No. 27. All parties have consented to the pending motion to stay. *See* Doc. No. 23.

The United States’ response to the complaint is currently due on January 27, 2011. *See* Doc. No. 21. Accordingly, it is respectfully requested that the Court extend the deadline for the United States to answer or otherwise respond to plaintiff’s complaint until and including February 22, 2011. In light of Federal defendant’s pending motions, this Court has already granted defendant Caputo’s motion for an extension of time to respond to the complaint until February 22, 2011. *See* Doc. Nos. 30, 32. And that is also the same day by which defendant Kendall is presently required to respond.

For the reasons stated above, and for good cause shown, the United States respectfully requests that the Court extend the deadline for it to answer or otherwise respond to plaintiff’s complaint until and including February 22, 2011.

¹ Federal defendants also filed a copy of the MDL motion with this Court on December 23, 2010. *See* Doc. No. 26.

² Federal defendants named in the related Georgia action similarly filed a motion to stay proceedings pending a decision of the MDL Panel, and on January 21, 2011, the Northern District of Georgia granted their motion to stay. *See Lyttle v. United States*, No. 1:10-3302 (N.D. Ga.), Doc. Nos. 34, 37.

Respectfully submitted this 25th day of January 2011,

TONY WEST
Assistant Attorney General, Civil Division

TIMOTHY P. GARREN
Director, Torts Branch

C. SALVATORE D'ALESSIO
Senior Trial Counsel, Torts Branch

/s/ David G. Cutler

DAVID G. CUTLER
Trial Attorney
United States Department of Justice
Torts Branch, Civil Division
P.O. Box 7146
Ben Franklin Station
Washington, D.C. 20044-7146
Tel: (202) 616-0674
Fax: (202) 616-4314
E-mail: david.g.cutler@usdoj.gov
IL Bar No. 6303130

GEORGE E.B. HOLDING
United States Attorney

W. ELLIS BOYLE
Assistant United States Attorney
Civil Division
310 New Bern Avenue
Suite 800 Federal Building
Raleigh, NC 27601-1461
Tel: (919) 856-4530
Fax: (919) 856-4821
E-mail: ellis.boyle@usdoj.gov
N.C. Bar No. 33826

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on January 25, 2011, I electronically filed the United States' "Second Unopposed Motion for Extension of Time to Answer or Otherwise Respond to Complaint" using the Court's CM/ECF system, which will send notification of such filing to the following counsel of record:

COUNSEL FOR PLAINTIFF:

Jeremy L. McKinney
jeremy@mckinneyandjustice.com

Ann Marie Dooley
annmarie@mckinneyandjustice.com

Michael E. Johnson
michael.johnson@troutmansanders.com

Brian P. Watt
brian.watt@troutmansanders.com

Alexandria J. Reyes
alex.reyes@troutmansanders.com

Katherine L. Parker
acluncklp@nc.rr.com

Judy Rabinovitz
jrabinovitz@aclu.org

COUNSEL FOR DEFENDANT NORTH CAROLINA DEPARTMENT OF CORRECTION:

Joseph Finarelli
jfinarelli@ncdoj.gov

/s/ David G. Cutler

DAVID G. CUTLER

Trial Attorney

United States Department of Justice

Torts Branch, Civil Division

P.O. Box 7146

Ben Franklin Station

Washington, D.C. 20044-7146

Tel: (202) 616-0674

Fax: (202) 616-4314

E-mail: david.g.cutler@usdoj.gov

IL Bar No. 6303130