



Plaintiffs Chad and Jennifer Brackeen, Frank and Heather Libretti, Altagracia Hernandez, and Jason and Danielle Clifford (together, the “Individual Plaintiffs”) and the States of Texas, Louisiana, and Indiana (the “State Plaintiffs”) (collectively, “Plaintiffs”) move for leave to each file a combined brief in opposition to Defendants’ motions to dismiss and in support of Plaintiffs’ motions for summary judgment, or, in the alternative, for leave to file 35-page briefs (each) in opposition to Defendants’ motions to dismiss.

1. On March 22, 2018, the Court entered a scheduling order for the Federal Defendants’ motion to dismiss the Second Amended Complaint, directing that the Federal Defendants file their motion within 14 days, and that Plaintiffs file their response within 21 days, in accordance with the Local Rules. ECF No. 34.

2. On March 26, 2018, the Cherokee Nation, Oneida Nation, Quinalt Indian Nation, and Morongo Band of Mission Indians (the “Intervenor Defendants”) moved to intervene in the case as defendants. ECF No. 41. The Court granted their motion to intervene on March 28, 2018. ECF No. 45.

3. On April 2, 2018, the Federal Defendants moved for a 15-page extension of the page limit on their motion to dismiss the Second Amended Complaint. ECF No. 54. Plaintiffs did not oppose this request. The Court granted the motion on April 4, 2018. ECF No. 55.

4. On April 5, 2018, the Federal Defendants filed their motion to dismiss the Second Amended Complaint. ECF No. 56. The Intervenor Defendants also moved to dismiss the Second Amended Complaint and adopted the Federal Defendants’ brief in support. ECF No. 58.

5. Pursuant to the March 22, 2018 scheduling order, Plaintiffs’ briefs in opposition to Defendants’ motions to dismiss are currently due on April 26, 2018. The March 22, 2018 scheduling order does not address briefing deadlines for summary judgment motions.

6. Individual Plaintiffs and State Plaintiffs now seek leave to each file a combined brief in opposition to Defendants' motions to dismiss and in support of Plaintiffs' motions for summary judgment. The combined briefs are in lieu of the Individual Plaintiffs and State Plaintiffs each filing briefs in support of their separate motions for summary judgment, as permitted by Federal Rule of Civil Procedure 56.

7. Each combined brief will be not more than 70 pages in length, which is less than the total number of pages allowed under the Local Rules if Individual Plaintiffs and State Plaintiffs were to separately file their briefs in opposition to Defendants' motions to dismiss and in support of their motions for summary judgment.

8. Allowing Plaintiffs to file combined briefs will thus result in a more efficient presentation of the issues by reducing both the number of briefs and the number of pages that need to be filed before the Court can resolve this case on the merits. It will also avoid the substantial duplication that will result if Plaintiffs file their briefs in opposition to Defendants' motion to dismiss and in support of their motions for summary judgment.

9. Allowing Plaintiffs to file combined briefs will also allow a prompt adjudication of the issues in this case, which implicates the serious constitutional injuries imposed by the Indian Child Welfare Act of 1978 ("ICWA"), and the corresponding regulations promulgated by the Bureau of Indian Affairs in 2016 (the "Final Rule"). Because this case turns on questions of law, and because the legal questions raised by Defendants' motions to dismiss are intertwined with the merits, a prompt adjudication of Plaintiffs' summary judgment motion is appropriate.

10. In the alternative, if this Court denies leave to file combined briefs, Individual Plaintiffs and State Plaintiffs each request a 10-page extension of the page limit for their briefs in opposition to Defendants' motions to dismiss.

11. The Federal Defendants have not indicated any opposition to Plaintiffs' request for leave to file a combined brief. The Federal Defendants consent to Plaintiffs' alternative request for a 10-page extension of the page limit for their briefs in opposition.

12. The Intervenor Defendants indicate that they oppose both Plaintiffs' request for leave to file a combined brief and Plaintiffs' alternative request for a 10-page extension as to each brief in opposition to Defendants' motions to dismiss.

13. The Federal Defendants state that they intend to seek a stay of the summary judgment briefing pending disposition of their motion to dismiss. Individual Plaintiffs will oppose any stay of the briefing on Plaintiffs' motions for summary judgment on the ground that Individual Plaintiffs and State Plaintiffs are, because of ICWA and its regulations, suffering serious harms each and every day that can be remedied only prospectively.

Accordingly, Plaintiffs respectfully request that the Court enter an order granting Individual Plaintiffs and State Plaintiffs each leave to file a combined brief of no more than 70 pages in opposition to Defendants' motions to dismiss and in supporting Plaintiffs' motions for summary judgment. In the alternative, Individual Plaintiffs and State Plaintiffs each request a 10-page extension to the page limits as to their briefs in opposition to Defendants' motions to dismiss.

Dated: April 24, 2018

Respectfully submitted,

/s/ Matthew D. McGill

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**CERTIFICATE OF CONFERENCE**

I hereby certify that, on April 23, 2018, I conferred with counsel for the Defendants regarding this motion. The Federal Defendants have not indicated any opposition to Plaintiffs' request for leave to file a combined brief, and consent to Plaintiffs' alternative request for a 10-page extension of the page limit for their briefs in opposition. The Intervenor Defendants oppose both Plaintiffs' request for leave to file a combined brief and Plaintiffs' alternative request for a 10-page extension of the page limit for their briefs in opposition.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on April 24, 2018, I filed the foregoing document using the Court's ECF system. Service on all counsel of record for all parties was accomplished electronically using the Court's CM/ECF system.

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