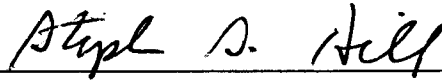


Respectfully submitted,



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GUADALUPE L. GARCIA, JR., et al.

Dated: January 6, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:00CVO2445
)	Judge Robertson
ANN VENEMAN,)	
)	
Defendant.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS’
EMERGENCY MOTION TO MODIFY DECEMBER 9, 2002 ORDER STAYING
PROCEEDINGS *NUNC PRO TUNC* TO DECEMBER 2, 2002 FOR PURPOSES
OF TOLLING THE STATUTE OF LIMITATIONS**

INTRODUCTION

Pursuant to LCvR 7.1, plaintiffs have filed herewith a motion and proposed order modifying this Court’s December 9, 2002 Order staying proceedings in this case for purposes of tolling the statute of limitations by (1) deleting from the first paragraph the words “pending resolution of plaintiffs’ Rule 23(f) appeal and defendant’s opposition thereto,” and (2) deleting from the second paragraph the words “pending resolution of plaintiffs’ Rule 23 (f) appeal” and substituting therefor the words “until further order of the Court.” The proposed amendments are necessitated by plaintiffs’ decision to withdraw their Rule 23(f) petition for review by the District of Columbia Circuit Court of Appeals. As required by LCvR 7.1(m), plaintiffs’ counsel conferred with defendant’s counsel, Lisa Olson, Esq., concerning this motion and Ms. Olson has indicated that defendant does not oppose the motion. This memorandum is submitted in support of that motion.

ARGUMENT

MODIFICATION OF THE DECEMBER 9, 2002 ORDER STAYING THE PROCEEDINGS FOR PURPOSES OF TOLLING THE STATUTE OF LIMITATIONS IS NECESSARY TO CONTINUE TO TOLL THE STATUTE OF LIMITATION IN LIGHT OF PLAINTIFFS' DECISION TO WITHDRAW THEIR RULE 23(f) APPEAL

As set forth more fully in plaintiffs' initial emergency motion, plaintiffs in good faith embarked upon a procedure proposed by the Court for the purpose of narrowing disputes with respect to proposed class discovery. Without ever addressing plaintiffs' concerns with respect to the unreasonable limitations that defendant sought to impose upon plaintiffs' proposed discovery or lifting the stay on discovery, the Court, rather than narrowing the discovery issues in dispute as it indicated it would, instead denied plaintiffs' long-standing motion for class certification in a Memorandum Opinion and accompanying Order.

The Order denying plaintiffs' motion for class certification also set a status conference for December 18, 2002, two days after the deadline for filing a petition pursuant to Fed. R. Civ. P. 23(f). Given the effect of the Order on the tolling of the statute of limitations with respect to the putative class, plaintiffs were compelled to file an emergency motion to stay proceedings *nunc pro tunc* to December 2, 2002, pending an interlocutory appeal and to petition the Court of Appeals for permission to take an interlocutory appeal pursuant to Fed. R. Civ. P. 23(f).

Subsequently, on December 18, 2002, the Court convened the status conference scheduled in the December 2 Order. During the course of that status conference, the Court indicated its willingness to permit plaintiffs to take their long-sought class discovery. The Court also indicated that plaintiffs could renew their motion for class certification at the conclusion of that discovery.

Inasmuch as the Court has indicated a willingness to afford plaintiffs the discovery that lays at the heart of their Rule 23(f) petition and to continue in effect a stay tolling the statute of limitations for the putative class, plaintiffs have elected to withdraw their petition without

prejudice to their ability to petition the Court of Appeals in the future in the event that circumstances warrant such a petition.

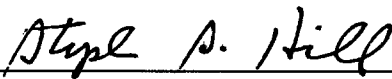
CONCLUSION

Accordingly, for the foregoing reasons, plaintiffs request that this Court modify the December 9, 2002 order staying these proceedings for purposes of tolling the statute of limitations by (1) deleting from the first paragraph of the order the words “pending resolution of plaintiffs’ Rule 23(f) appeal and defendant’s opposition thereto” and (2) deleting from the second paragraph the words “pending resolution of the plaintiffs’ Rule 23(f) appeal” and substituting therefor the words “until further order of the Court.” A conforming order is attached.

Respectfully submitted,

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Dated: January 6, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:00CVO2445
)	Judge Robertson
ANNE VENEMAN,)	
)	
Defendant.)	

ORDER

Upon consideration of plaintiffs' unopposed emergency motion to modify the December 9, 2002 Order staying proceedings in this case *nunc pro tunc* to December 2, 2002 for purposes of tolling the statute of limitations, it is by the Court hereby

ORDERED that plaintiffs' motion to modify the December 9, 2002 Order staying proceedings for purposes of tolling the statute of limitations is GRANTED, and the case is STAYED *nunc pro tunc* to December 2, 2002 for purposes of tolling the statute of limitations until further order of the Court.

SO ORDERED this _____ day of January, 2003

James Robertson
United States District Judge

cc: Alan W. Wiseman #187971
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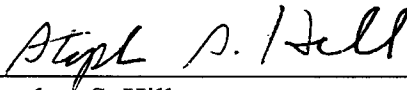
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiffs' Motion to Modify the December 9, 2002 Order Staying Proceedings *Nunc Pro Tunc* to December 2, 2002 For Purposes of Tolling the Statute of Limitations was served by hand delivery on this 6th day of January, 2003 upon the following:

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Stephen S. Hill