

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Filed Electronically: October 25, 2017

Y AND J PROPERTIES, LTD.,)	
<i>individually and on behalf of all other</i>)	
<i>persons similarly situated,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01189 L
)	
BRYANT BANES, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01191 L
)	
MATTHEW SALO, <i>et al.</i> ,)	
<i>individually and on behalf of all other</i>)	
<i>persons similarly situated,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01194 L
)	
ANGELA BOUZERAND, <i>et al.</i> ,)	
<i>individually and on behalf of all other</i>)	
<i>persons similarly situated,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01195 L
)	
VAL ANTHONY ALDRED, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01206 L
)	
KENNETH LEE SMITH, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01215 L
)	
GARNER TIP STRICKLAND, IV, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01216 L
)	
BONNIE CLARK GOMEZ, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01232 L
)	
VIRGINIA MILTON, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01235 L

CHRISTINA MICU, <i>and all others similarly situated,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01277 L
)	
WAYNE HOLLIS, JR., <i>et al., individually and on behalf of all other persons similarly situated,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01300 L
)	
ANTHONY ARRIAGA, <i>et al.,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01303 L
)	
BASIM MOUSILLI,)	
)	
Plaintiff,	)	No. 1:17-cv-01332 L
)	
SANDRA JACOBSON, <i>et al.,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01374 L
)	
HENRY DE LA GARZA, <i>et al.,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01390 L
)	
MARTHA POLLOCK,)	
)	
Plaintiff,	)	No. 1:17-cv-01391 L
)	
MARY KHOURY,)	
)	
Plaintiff,	)	No. 1:17-cv-01393 L
)	
AGL, LLC, <i>et al.,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01394 L
)	
LUDWIGSEN FAMILY LIVING TRUST, <i>et al.,</i>)	
)	
)	
Plaintiffs,	)	No. 1:17-cv-01395 L
)	
GERARDO REYES,)	
)	
Plaintiff,	)	No. 1:17-cv-01396 L

VANESSA VANCE,)	
)	
Plaintiff,	)	No. 1:17-cv-01397 L
)	
LISA ERWIN,)	
)	
Plaintiff,	)	No. 1:17-cv-01398 L
)	
MARYAM JAFARNIA,)	
)	
Plaintiff,	)	No. 1:17-cv-01399 L
)	
EMILIANO BRUZOS, <i>et al.</i> ,)	
)	
)	
Plaintiffs,	)	No. 1:17-cv-01408 L
)	
EDGAR ABLAN, <i>et al.</i> ,)	
)	
)	
Plaintiffs,	)	No. 1:17-cv-01409 L
)	
DELFINA GOVIA,)	
)	
Plaintiff,	)	No. 1:17-cv-01423 L
)	
BURTON HERING, <i>et al.</i> ,)	
)	
)	
Plaintiffs,	)	No. 1:17-cv-01427 L
)	
FAITH LEWIS,)	
)	
Plaintiff,	)	No. 1:17-cv-01428 L
)	
ADRIENNE MURRAY, <i>et al.</i> ,)	
)	
)	
Plaintiffs,	)	No. 1:17-cv-01430 L
)	
JARRET VENGHAUS,)	
)	
)	
Plaintiff,	)	No. 1:17-cv-01433 L
)	
JACK RUSSO,)	
)	
)	
Plaintiff,	)	No. 1:17-cv-01434 L
)	
)	

JOSEPH NEAL,)	
)	
Plaintiff,	)	No. 1:17-cv-01435 L
)	
IGOR EFFIMOFF,)	
)	
Plaintiff,	)	No. 1:17-cv-01436 L
)	
ANIL THAKER,)	
)	
Plaintiff,	)	No. 1:17-cv-01437 L
	)	No. 1:17-cv-01438 L
JANE GILLIS,)	
)	
Plaintiff,	)	No. 1:17-cv-01439 L
)	
WILLIAM E. WOLF, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01450 L
)	
MEMORIAL SMC INVESTMENT 2013 LP, A TEXAS LIMITED PARTNERSHIP,)	
)	
Plaintiff,	)	No. 1:17-cv-01451 L
)	
ROBERT CEBALLOS,)	
)	
Plaintiff,	)	No. 1:17-cv-01453 L
)	
JAMES L. DRONE, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01454 L
)	
JACQUELINE WILLIAMSON, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01456 L
)	
MEADOWS ON MEMORIAL OWNERS ASSOCIATION INC., <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01457 L
)	
BE MEMORIAL REALTY LTD,)	
)	
Plaintiff,	)	No. 1:17-cv-01458 L

GEORGE CUTLER, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01459 L
)	
CHERYL L. HANKINSON,)	
)	
Plaintiff,	)	No. 1:17-cv-01460 L
)	
CHRISTOPHER TITA, <i>et al.</i> , <i>individually and</i>)	
<i>on behalf of all others similarly situated,</i>)	
)	
Plaintiffs,	)	No. 1:17-cv-01461 L
)	
BRENSON ABBOTT, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01512 L
)	
GERALDINE CROKER,)	
)	
Plaintiff,	)	No. 1:17-cv-01514 L
)	
KARLA MURCIA,)	
)	
Plaintiff,	)	No. 1:17-cv-01515 L
)	
VLADIMIR KOCHARYAN,)	
)	
Plaintiff,	)	No. 1:17-cv-01516 L
)	
AURELIO AGREDA,)	
)	
Plaintiff,	)	No. 1:17-cv-01517 L
)	
THOMAS REED,)	
)	
Plaintiff,	)	No. 1:17-cv-01518 L
)	
STAN ALFORD,)	
)	
Plaintiff,	)	No. 1:17-cv-01519 L
)	
NAEEM RAVAT,)	
)	
Plaintiff,	)	No. 1:17-cv-01520 L
)	
)	

DAN NGUYEN,)	
)	
Plaintiff,	)	No. 1:17-cv-01520 L
)	
ELAINE CHEN,)	
)	
Plaintiff,	)	No. 1:17-cv-01522 L
)	
CAROLE PAGNOTTO,)	
)	
Plaintiff,	)	No. 1:17-cv-01523 L
)	
OSCAR MORAN,)	
)	
Plaintiff,	)	No. 1:17-cv-01524 L
)	
DAVID RAZNAHAN,)	
)	
Plaintiff,	)	No. 1:17-cv-01525 L
)	
DAVID YOUNG, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01545 L
)	
BILLIE WILLIAMS, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01555 L
)	
EDITH C. REYES, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01559 L
)	
PHILIP ANGELL, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01564 L
)	
SHIRLEY CORTE,)	
)	
Plaintiff,	)	No. 1:17-cv-01565 L
)	
LARRY MILLER,)	
)	
Plaintiff,	)	No. 1:17-cv-01566 L
)	
)	
)	
)	

SCOTT UECKERT, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01564 L
)	
MELISSA YOUNG, <i>et al.</i> ,)	
)	
Plaintiffs,	)	No. 1:17-cv-01569 L
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**UNITED STATES’ MOTION TO ESTABLISH UNIFORM DEADLINES TO FILE
RESPONSES TO COMPLAINTS**

Pursuant to Rule 7(b) of the Rules of the United States Court of Federal Claims (“RCFC”), Defendant, the United States of America, hereby moves the Court to set a uniform deadline for amendment and/or consolidations of Plaintiffs’ complaints in the above-referenced actions, and to establish a specific date by which the United States is to file responses to the respective complaints. In particular, the United States requests that this Court establish a deadline 15 days after the Court issues its final order on any class certification motions for Plaintiffs to file any amended and/or consolidated complaints, and provide the United States 30 days from that date to file responses to the operative complaints.

Several plaintiffs have already indicated that they intend to amend or consolidate their claims in the coming months. The United States proposes that the Court establish a uniform schedule to facilitate the anticipated amendments and to ensure the orderly and efficient administration of the many pending cases.

STATEMENT OF FACTS

On September 5, 2017, not long after extreme rainfall caused by Hurricane Harvey occurred in Houston, Y and J Properties, Ltd. filed a putative class action alleging that the Corps' controlled release of water from the Addicks and Barker dams effected a taking of their properties. *See Y and J Properties, Ltd. v. United States*, Case No. 17-cv-1189 (Fed. Cl.) (J. Horn). Since that initial case was filed, hundreds of plaintiffs have filed more than 70 other actions. More than 15 of the pending complaints are styled as putative class actions. In accordance with the Court's usual procedures, the cases have been assigned to a number of different judges in this Court.

On October 6, 2017, Chief Judge Braden held a status conference to initiate a process for managing these cases. *Y and J Properties*, Case No. 17-cv-1189, ECF No. 5. At the status conference, Chief Judge Braden said that she intended to set a deadline by which amended complaints should be filed. Oct. 6 Hr'g Tr. 92:16-25, *id.*, ECF No. 15. Counsel for multiple different plaintiffs indicated that they in fact intended to amend or consolidate their claims. *See, e.g., id.* at 52:1-25 (counsel for *Hollis v. United States*, Case No. 17-cv-1300); *id.* at 55:5, 18-19 (counsel for the *Aldred v. United States*, Case No. 17-cv-1206 and *Cutler v. United States*, Case No. 17-cv-1459, stating that there were many "related actions" and informing the Court that "there's probably going to be other consolidations in this courthouse . . ."); *id.* at 62:22-23 (counsel for *Murray v. United States*, Case No. 17-cv-430 and *Hollis v. United States*, Case No. 17-cv-1300, stating that cases filed here "should be treated in a consolidation."); *id.* at 89:23-90:4 (counsel requesting a deadline for amended complaints). Many of the pending actions are brought as separate actions by the same law firm and may be consolidated into one action. *See, e.g., Aldred v. United States*, Case No. 17-cv-1206, and *Cutler v. United States*, Case No. 17-cv-

1459, both filed by Mr. Potts; *Smith v. United States*, Case No. 17-1215 and *Strickland v. United States*, Case No. 17-cv-1216, both filed by Christopher Johns; 15 separate actions, all filed by Kurt Arnold; *Meadows v. United States*, Case No. 17-cv-1457 and *Be Memorial v. United States*, Case No. 17-1458, both filed by Jeffrey Raizner; and *Bouzerand v. United States*, Case No. 17-cv-1195, and *Tita v. United States*, Case No. 17-cv-1461, both filed by Jay Edelson.

After the hearing, Chief Judge Braden issued three orders in all pending cases. First, an October 11, 2017 order directed Plaintiffs to file statements of interest by October 20, 2017, to inform the Court whether any counsel wished to be considered as lead or class counsel, and to present plaintiffs' positions on consolidation. *See, e.g., Y and J Properties, Ltd. v. United States*, Case No. 17-cv-1189, ECF No. 12. The order scheduled a hearing for November 1, 2017 regarding any statements of interest filed. Second, a separate October 11, 2017 order directed Plaintiffs to file motions for class certification on or before November 9, 2017. *See, e.g., Y and J Properties, Ltd. v. United States*, Case No. 17-cv-1189, ECF No. 13. Third, an October 12, 2017 order directed Plaintiffs to identify whether their respective actions should be categorized as "downstream" or "upstream." *See, e.g., Y and J Properties, Ltd. v. United States*, Case No. 17-cv-1189, ECF No. 16. In subsequent filings, several plaintiffs' counsel expressed an intent to amend their complaints. *See, e.g., Lewis v. United States*, Case No. 17-cv-1428, ECF No. 16 at 7 (describing a plan to file amended class complaints). Counsel representing plaintiffs not seeking class certification also filed statements of interest reflecting an intent to serve as counsel for a group of non-class plaintiffs. *See, e.g., Pollack v. United States*, Case No. 17-cv-1391, ECF No. 19 at 1-4; *Smith v. United States*, Case No. 17-cv-1215, *Strickland v. United States*, Case No. 17-cv-1216, and *Wolf v. United States*, Case No. 17-cv-1450, ECF No. 16 at 2; *Meadows v. United States*, Case No. 17-cv-1457, ECF No. 11 at 1-2. Some counsel indicated that they needed

additional information before decided whether to enter into any classes. *See, e.g., Memorial SMC Investment 2013 LP v. United States*, Case No. 17-cv-1451, ECF No. 14 at 1-2; *Drone v. United States*, Case No. 17-cv-1454, ECF No. 11 at 1.

On October 23, 2017, by email, the United States contacted counsel of record for plaintiffs who had filed actions as of October 19, 2017 to inquire whether they would oppose this request to establish a coordinated schedule in pending cases. On October 25, 2017, counsel for the United States held a telephonic meet and confer with plaintiffs' counsel who could participate. The majority of plaintiffs' counsel on the call appeared to oppose the United States' proposed motion, and no group consensus was reached.

ARGUMENT

The Court's rules require the United States to file responses to complaints within 60 days after being served. *See* RCFC 12(a)(1)(A). Under this rule, the United States must at present make 71 separate filings—one for each complaint currently on file—between November 6 and December 21, 2017. That process is unwieldy, inefficient and unnecessary, particularly because the Court has already issued an order requiring class certification requests to be addressed during that time period and because several plaintiffs have indicated they intend to amend or consolidate some of their complaints. Not only will the United States be responding to complaints that Plaintiffs intend to change, the burden of responding to over 71 complaints will interfere with the United States' ability to respond to requests for class certification.

The United States, therefore, requests that the Court set a uniform deadline for Plaintiffs to amend or consolidate their complaints and to establish a date by which the United States is to file responses to the operative complaints. The United States proposes that the deadline for filing consolidated and/or amended complaints be set 15 days after this Court issues the final order on

class certification motions, and that the Court provide the United States 30 days from that deadline to file responses to the operative complaints.

There is good cause to grant the United States' motion. Plaintiffs' statements at the status conference and statements supporting consolidation in their October 20 filings indicate that consolidation and amendment of complaints is likely. Indeed, several plaintiffs described how they represented additional individuals who are not yet party to any action. Requiring the United States to file 71 responses to the original complaints, only to file amended responses to the anticipated amended or consolidated complaints, is inefficient. Establishing a schedule by which Plaintiffs will amend or consolidate their complaints before the United States files its responses will save resources of the parties and the Court, considering the sheer number of claims at issue and cases currently filed. In other actions involving claims of hundreds of parties, courts have required the filing of "master" complaints consolidating similar claims of parties. See e.g. Ex. 1 at 12, *MC-UA Local 119 v. GlaxoSmithKline* (E.D. Pa.), Case Mgmt. Order; Ex. 2 at 5, *In re Lenovo Adware Litigation* (N.D. Cal.), Case Mgmt. Order. Given the current state of flux of the pending complaints and the likelihood that some plaintiffs will consolidate and/or amend their complaints in the future, an extension of the United States' response deadlines to establish a uniform response date is in all parties' interest.

Setting an amendment date after any determination on class certification is also most efficient because it will enable the United States to focus on responding to already-scheduled class certification motions and because the Court's ruling may impact the nature of the amended or consolidated complaints that are filed. The schedule proposed by the United States provides an organized approach to these cases that will ultimately benefit all parties. As the Manual for Complex Litigation describes "class certification or its denial will have a substantial impact on

further proceedings, including the scope of discovery, the definition of issues, the length and complexity of trial, and the opportunity for settlement.”^[1] Manual for Complex Litigation (Fourth) § 11.213 (2004). Indeed, RCFC 23(c)(1)(A) expressly provides that class certification is determined at “an early practicable time.”

For these reasons, the United States’ requests that its motion to establish uniform deadlines be granted, and that the Court issue an order (1) setting a deadline requiring Plaintiffs to file amended and/or consolidated complaints 15 days after this Court issues its final order on class certification motions, and (2) providing the United States 30 days from that date to file responses to the operative complaints in these actions.

Dated: October 25, 2017

Respectfully submitted,

JEFFREY H. WOOD
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Environment & Natural Resources Division

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^[1] The class certification procedures described in the Manual refer to Federal Rule of Civil Procedure 23 instead of Court of Federal Claims Rule 23, which are different. Many of the same considerations with respect to case management nevertheless apply.

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