

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GREGORY HEWITT, et al.,

Plaintiffs,

v.

MICHAEL O. LEAVITT, Secretary of the
Department of Health and Human Services,
et al.,

Defendants.

Civil Action No. 3:07-CV-1038 (EK)

**DEFENDANTS' UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE REPLY**

Defendants Secretary Michael O. Leavitt and Acting Administrator Leslie V. Norwalk, through their undersigned counsel, hereby respectfully request an extension of time of fourteen (14) days to file their reply to Plaintiffs' Response to Defendants' Motion to Dismiss. **Counsel for Defendants has consulted with Counsel for Plaintiffs who does not oppose the relief requested herein.** *See infra*, ¶ 4; Certificate of Counsel. In support of their motion, Defendants state as follows:

1. On June 12, 2007, Plaintiffs filed their Complaint in this case. *See* Docket Entry 1. The Complaint challenges the implementation of the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program on the grounds that it violates the Due Process and Equal Protection Clauses of the Constitution. *Id.*
2. Defendants filed their Motion to Dismiss on September 12, 2007 and Plaintiffs filed their response on October 2, 2007. *See* Docket Entries 9 and 10.

3. According to the Local Rules of this Court, Defendants' reply brief would be due October 17, 2007. *See* N.D. Tex. Loc. R. 7.1(f).

4. On October 12, 2007, Elizabeth Jay Kelhoffer, Counsel for Defendants, conferred with Robert C. Vartabedian, Counsel for Plaintiffs, regarding the timing of Defendants' reply brief. **Counsel for Plaintiffs does not oppose Defendants' request to enlarge the time for filing the response by fourteen (14) days, which would make the new deadline October 31, 2007.**

5. The relief requested herein is for good cause and will not result in undue delay in the administration of this case. The Complaint and the briefs regarding the Motion to Dismiss raises complex issues of law. An enlargement of time for filing Defendants' response is necessary due to the agency employees' workload and travel schedule.

6. No dates have been set for a pre-trial conference or trial.

IN WITNESS WHEREOF, Defendants respectfully move that the Court extend the time for filing their reply brief to October 31, 2007.

Dated October 12, 2007
Washington, D.C.

Respectfully submitted,

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