

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

JOHN DeGROOTE SERVICES, LLC, <u>et al.</u> ,)
)
Plaintiffs,)
)
v.)
)
F. EDWIN HARBACH, ALBERT L. LORD,)
RODERICK C. McGEARY, J. TERRY)
STRANGE, DOUGLAS C. ALLRED,)
BETSY J. BERNARD, SPENCER C.)
FLEISCHER, JILL KANIN-LOVERS, and)
EDWARD MUNSON,)
)
Defendants.)

Case No.: 1:11cv959
(GBL/TRJ)

**UNOPPOSED MOTION FOR EXTENSION OF TIME
TO FILE PLEADINGS OR MOTIONS IN RESPONSE TO COMPLAINT**

COME NOW Defendants F. Edwin Harbach, Albert L. Lord, Roderick C. McGeary, J. Terry Strange, Douglas C. Allred, Betsy J. Bernard, Spencer Fleischer, Jill Kanin-Lovers, and Edward Munson (collectively, “Defendants”), by counsel, and respectfully move for an extension of time to file pleadings or motions in response to the Complaint.

1. On July 21, 2011, the Plaintiffs commenced this civil action (“Action”) by filing a Complaint in the Circuit Court for the County of Fairfax, Virginia (“Fairfax Circuit Court”). The clerk of the Fairfax Circuit Court issued the summonses on July 29, 2011.

2. Pursuant to a Stipulation and Consent Order entered by the Fairfax Circuit Court on August 12, 2011, Defendants agreed to accept service of the Complaint and summons. In addition, pursuant to the Stipulation and Consent Order, Defendants’ deadline to file a pleading or motion in response to the Complaint was extended to the date sixty (60) days after Defendants received the Complaint and summonses.

3. Defendants’ counsel received the Complaint and summonses on August 10, 2011.

4. By notice dated September 7, 2011, Defendants removed the Action to this Court pursuant to 28 U.S.C. §§ 1441, 1446, and 1452.

5. To date, Defendants have not filed a pleading or motion under Rule 12 of the Federal Rules of Civil Procedure in response to the Complaint.

6. Rule 81(c)(2) of the Federal Rules of Civil Procedure provides, in relevant part, that:

A defendant who did not answer before removal must answer or present other defenses or objections within the longest of these periods:

- (A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;
- (B) 21 days after being served with the summons for an initial pleading on file at the time of service; or
- (C) 7 days after the notice of removal is filed.

Fed. R. Civ. P. 81(c)(2).

7. Accordingly, under Rule 81(c)(2)(C), absent extension, Defendants' deadline to respond to the Complaint, notwithstanding the prior stipulation of the parties, arguably is September 14, 2011.

8. Plaintiffs' Complaint contains over 300 numbered paragraphs and exceeds 80 pages in length. Responding to the Complaint requires Defendants to undertake substantial investigation and preparation. In addition, until the Court resolves Defendants' Motion to Dismiss on the Ground of Forum Non Conveniens or, in the Alternative, for Transfer Under 28 U.S.C. § 1412 ("Motion to Dismiss or Transfer"), the parties will not know which court the case will proceed in and thus what procedural rules and standards apply to any responsive pleading that may be filed.

9. Plaintiffs have advised the Defendants that Plaintiffs intend to file a motion for abstention and remand as well as an opposition to the Motion to Dismiss or Transfer.

10. To accommodate the time and effort needed to respond to the Complaint, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, and to avoid the unnecessary expense of preparing a responsive pleading in this Court that will be mooted if the case is dismissed or transferred, Defendants respectfully request that the Court extend the deadline to respond to the Complaint until twenty-one (21) days after any ruling by the Court granting Plaintiffs' anticipated motion for abstention and remand to the Circuit Court for the County of Fairfax, Virginia or, if the motion for abstention and remand is denied, until twenty-one (21) days after the ruling on the pending Motion to Dismiss or Transfer.

11. Prior to filing this motion, Defendants conferred with counsel to Plaintiffs, and Plaintiffs have consented to the relief requested in this motion.

WHEREFORE, Defendants respectfully request that the Court enter the proposed Consent Order attached hereto as Exhibit A granting this motion and extending the deadline by which Defendants must answer or move in response to the Complaint until twenty-one (21) days after any ruling by the Court granting Plaintiffs' anticipated motion for abstention and remand to the Circuit Court for the County of Fairfax, Virginia or, if the motion for abstention and remand is denied, until twenty-one (21) days after the ruling on the pending Motion to Dismiss or Transfer, and granting Defendants such other and further relief as the Court deems appropriate.

Respectfully submitted,

F. EDWIN HARBACH
ALBERT L. LORD
RODERICK C. MCGEARY
J. TERRY STRANGE
DOUGLAS C. ALLRED
SPENCER FLEISCHER
BETSY J. BERNARD
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By Counsel

Date: September 9, 2011

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and, Edward Munson*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September 2011, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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And I hereby certify that I will mail the document by U.S. mail to the following non-filing users:

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