

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

U.S. PASTOR COUNCIL et al.,

Plaintiffs,

v.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION et al.,

Defendants.

Civil Action No. 18-0824

**DEFENDANTS' UNOPPOSED MOTION FOR CLARIFICATION  
OR, IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME**

Out of an abundance of caution, Defendants respectfully request clarification on when they must submit their Response to Plaintiffs' Motion for Summary Judgment, ECF No. 72, and Cross-Motion for Summary Judgment. In the alternative, they seek an extension to file their Response and Cross-Motion.

On May 3, 2021, the parties filed a Joint Status Report, in which they proposed a schedule for class certification briefing. ECF No. 69. The parties included a deadline for Plaintiffs' Motion for Summary Judgment but did not identify a specific deadline for Defendants' Response and Cross-Motion for Summary Judgment. Instead, they proposed, "After the Court rules on the plaintiffs' motion for class certification, the parties will submit a joint status report within 14 days to propose a briefing schedule for the defendants response to the plaintiffs' motion for summary judgment and the plaintiffs' reply brief, as well as any cross-motion for summary judgment that the defendants may wish to submit."

The parties suggested this approach because it is impractical for Defendants to respond to a motion for summary judgment or cross-move for summary judgment without knowing whether

a class would be certified and, if so, its parameters. For example, Defendants' legal arguments would vary depending on the scope and characteristics of the class that might be certified. Further, if the Court were to certify a class, it is not certain which Plaintiffs would be deemed adequate class representatives or whether Plaintiffs' counsel would be determined qualified to be class counsel, *see* Fed. R. Civ. P. 23(g).

For these reasons, the Federal Rules of Civil Procedure direct courts to determine whether to certify an action as a class action “[a]t an early practicable time after a person sues.” Fed. R. Civ. P. 23(c)(1)(A). At a minimum, this decision should occur before the summary judgment stage of litigation because “a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified,” *Standard Fire Ins. v. Knowles*, 568 U.S. 588, 593 (2013). Accordingly, Plaintiffs cannot obtain summary judgment for the proposed classes before a class is certified. *See Schwarzschild v. Tse*, 69 F.3d 293, 295 (9th Cir. 1995) (observing “that district courts generally do not grant summary judgment on the merits of a class action until the class has been properly certified and notified . . . to ensure that the plaintiff class receives notice of the action well before the merits of the case are adjudicated”). Indeed, as this Court pointed out in its scheduling order, “Local Rule 23.2 requires a motion for certification within 90 days of filing a class action complaint so that the Court may resolve it in a timely manner, early on in the case so that the parties have plenty of time to conduct discovery, if needed, and prepare for summary judgment.” ECF No. 70.

Although the Court's scheduling order does not set forth a specific deadline for Defendants' Response and Cross-Motion for Summary Judgment, it likewise does not include the parties' proposal to submit a JSR proposing a briefing schedule for Defendants' motion for summary judgment within fourteen days of a ruling on the Motion for Class Certification. Without

clarification, Defendants are concerned that their deadline may be subject to the Local Rules, pursuant to which their Response would be due by June 14, 2021, twenty-one days after Plaintiffs filed their Motion for Summary Judgment. For the reasons stated above, requiring Defendants to respond to Plaintiffs' Summary Judgment motion before the Court rules on class certification would be both impracticable and contrary to both the Federal Rules of Civil Procedure and Local Rules. Accordingly, they seek clarification that their deadline to respond to Plaintiffs' summary judgment motion will not be scheduled until after the Court issues an order on their motion to certify a class. Alternatively, if Defendants' deadline for summary judgment is in fact June 14, 2021, Defendants seek an extension to file their Response and Cross-Motion twenty-one days after the Court rules on Plaintiffs' Motion for Class Certification.

Plaintiffs do not oppose this Motion.

Dated: May 27, 2021

Respectfully submitted,

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**[PROPOSED] ORDER**

Defendants' Motion for Clarification is GRANTED. The parties are directed to file a joint status report with a proposed summary judgment briefing schedule within fourteen days of a ruling on Plaintiffs' Motion for Class Certification, ECF No. 71.

Dated: \_\_\_\_\_

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REED O'CONNOR  
United States District Judge