

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

MARTA REYES; LAWRENCE WOOD; *et al.*,  
on behalf of themselves  
and all those similarly situated,

CASE NO. 1:20-cv-21108-AMC  
HON. AILEEN M. CANNON

Plaintiffs,

CLASS ACTION

v.

PEOPLE’S REPUBLIC OF CHINA;  
COMMUNIST PARTY OF CHINA; *et al.*,

Defendants.

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**MOTION FOR EXTENSION OF TIME TO FILE AN AMENDED COMPLAINT**

Plaintiffs hereby respectfully move the Court for an order modifying the Court’s February 19, 2021 Order, [DE 148], as to the filing of a Second Amended Complaint, and request that the deadline for such filing be extended to a date after service is completed, and as grounds therefor, further state:

1. On February 19, 2021, the Court entered an Order, [DE 148], which stated, in part: “4. Plaintiffs may file a Second Amended Complaint on or before May 3, 2021.”

2. Plaintiffs requested this deadline prior to consulting with the scholars and conducting the research that informed the April 15, 2021 brief, [DE 152], under the belief that service could be considered completed since China refused service under 28 U.S.C. § 1608(2).

3. However, as set forth in the April 15<sup>th</sup> brief, as part of the work and research that went into that brief, Plaintiffs came to understand that the best path forward for the case was to complete the hierarchal steps of service under § 1608.

4. Since service is not complete,<sup>1</sup> as Plaintiffs have been working on the structure of the amendments, they further understood that a May 3, 2021 amendment request was premature. If Plaintiffs amend now, rather than waiting for service to be complete, then arguably the Plaintiffs would need to re-serve the amended complaint under the § 1608 hierarchy and repeat the process from the beginning. *See Gellert v. Richardson*, Case No. 95-256-CIV-ORL-19, 1996 LEXIS 23413, at \*8 (M.D. Fla. Jan. 26, 1996) (“Serving a complaint which has been superseded with the summons on a defendant after filing an amended complaint is not proper service of process.”) (citing *Gilles v. United States*, 906 F.2d 1386, 1390 (10th Cir. 1990); *Phillips v. Murchison*, 194 F. Supp. 620 (S.D. N.Y. 1961)). Plaintiffs’ research in the April 15<sup>th</sup> brief bears out that the hierarchy of § 1608 would need to be followed again. In the interest of judicial economy, it appears more prudent to finish the service process, rather than re-starting it.

5. China has already demonstrated that it does not respect the 60-day summons under § 1608(2), having taken just under six months to return their response under Article 13. When service is completed under § 1608(3) and/or (4), as set forth in the April 15, 2021 brief, Defendants will have either appeared or will be in default and Article 13 does not apply to those steps.<sup>2</sup> Once the determination that service is complete may be made, an amended complaint need only be filed, rather than served, either on a set deadline or as part of a scheduling order.

6. Part of purpose of the Second Amended Complaint, as Plaintiffs have stated, is to expand the factual allegations of how the pandemic unfolded and how agents and actors of Defendants committed wrongful acts within the United States. These additional allegations and potential new defendants who are U.S.-based should not affect the Court’s ability to consider

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<sup>1</sup> Plaintiffs provisionally waived their argument that service could be considered complete. [See DE 152, p. 3 & n.6].

<sup>2</sup> [See DE 152, n.7].

Plaintiff's arguments in the April 15<sup>th</sup> brief.<sup>3</sup>

7. Apart from the service issues, there are additional reasons why more time is required. First, since the research for the April 15<sup>th</sup> brief does appear to lead to additional U.S. based defendants who acted on behalf of or in aid of China to further the pandemic, Plaintiffs require additional time for due diligence to be sure that any additional U.S. defendants are proper.

8. Second, the Court's decision on the treatment of the Chinese Community Party as sovereign or non-sovereign (as Plaintiffs urge) will also influence the drafting of jurisdictional allegations as well as the allegations of how CCP actors and agents within the United States conducted themselves and furthered the pandemic.

9. Third, if the Court agrees that the CCP is not sovereign, then the allegations regarding how the PRC's (and other sovereign defendants') actors and agents within the United States conducted themselves in furtherance of the pandemic are separate and apart from the CCP's.

10. Plaintiffs are diligently working on these amendments, but for the reasons stated above, request that a Second Amended Complaint not be due until thirty (30) days after the time has expired for Defendants to respond/appear under the remaining service step(s) required under § 1608, or, alternatively, pursuant to a Scheduling Order entered by the Court including a deadline for amendments and addition of parties.

11. Pursuant to Local Rule 7.1, as no Defendants have appeared, Plaintiffs have not sought their consent or position.

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<sup>3</sup> If the Court was waiting for the additional allegations to make its decision(s) on the April 15<sup>th</sup> brief, then Plaintiffs respectfully request a reasonable opportunity to provide the substance of those additional allegations in a short, supplemental memorandum instead of an amendment at this juncture.

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WHEREFORE, Plaintiffs respectfully request that the Court modify and extend the deadline for the filing of a Second Amended Complaint to either thirty (30) days after the deadline for Defendants' appearance has passed after completing service, or to a date determined by a Scheduling Order entered by the Court, and for such other relief as the Court deems just and proper.

Respectfully submitted this 28th day of April, 2021.

By: /s Matthew T. Moore

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been filed this April 28, 2021, with the Court's CM/ECF filing system, which shall cause an e-mail notice to be sent to all parties of record in this matter.

By: /s Matthew T. Moore

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Fla. Bar No. 70034