

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:11-cv-00504 HEA
	)	
MASK OF KA-NEFER-NEFER,	)	
	)	
Defendant.	)	

**MOTION FOR ENLARGEMENT OF TIME
TO FILE MOTION FOR RECONSIDERATION AND/OR TO SEEK
LEAVE TO FILE AMENDED COMPLAINT PRIOR TO ENTRY OF JUDGMENT**

COMES NOW Plaintiff the United States of America, by and through its attorneys, Richard G. Callahan, United States Attorney for the Eastern District of Missouri, and Richard E. Finneran, Assistant United States Attorney for said district, and for its Motion for Enlargement of Time states as follows:

1. On March 31, 2012, this Court entered its Order dismissing the Verified Complaint (Doc. #33) and its supporting Opinion, Memorandum, and Order (Doc. #34). The United States received electronic notice of the Order on April 2, 2012.

2. By its terms, the Order dismisses the Verified Complaint but does not dismiss the underlying action. As such, this Court retains jurisdiction until judgment is entered to modify its Order or permit amendment to the Verified Complaint.¹

¹ To the extent that this Court construes its Order as an adjudication on the merits and thus a dismissal of the “action”, *see* Fed. R. Civ. P. 41(b), the United States requests that this Motion be considered a motion to alter or amend the judgment under Rule 59(e), or a motion for relief from judgment under Rule 60(b)(6), so as to permit the Court to grant the relief requested herein.

3. Counsel for the United States is currently in trial on another matter that is not expected to conclude until possibly as late as April 20, 2012, and counsel is further scheduled to be out of town for a conference the following week. Counsel's commitments in this regard have already caused the Court to grant counsel's request for a continuance of the trial in the matter of *United States v. Thompson*, Case No. 4:11-cr-364, until May 7, 2012.²

4. The United States requests that a similar length of time be permitted for counsel to consider what action to take in response to the Court's Order. The United States expects that such action may include filing a motion for reconsideration and/or seeking leave to file an amended complaint.

5. District courts routinely do not terminate a case at the same time that they grant a motion to dismiss; rather, they generally dismiss the plaintiff's complaint without prejudice and give the plaintiff at least one opportunity to amend his complaint. *Foster v. DeLuca*, 545 F.3d 582, 584 (7th Cir. 2008).

6. While the right to amend under Federal Rule of Civil Procedure 15(a) terminates upon dismissal of a complaint, the plaintiff may still move for leave to amend, and amendments should be granted liberally. *Hawks v. J. P. Morgan Chase Bank*, 591 F.3d 1043, 1050 (8th Cir. 2010). An amendment should only be denied where the court has clearly indicated either that no amendment is possible or that dismissal of the complaint constitutes dismissal of the action. *Id.*

7. If the Court believes that any proposed amendment would be futile, the United States requests that the Court clarify its Order to indicate whether it is to be considered a judgment on the merits and thus would require appeal to be taken by the United States within the time permitted by

² In addition, AUSA Dianna Collins, who is also assigned to this case, is currently on maternity leave.

law. Even in that event, the United States requests that the Court allow it time to file a motion for reconsideration of the Order prior to the entry of final judgment.

8. Granting the relief requested will not prejudice the Claimant Saint Louis Art Museum, who retains beneficial use of the defendant property under this Court's Restraining Order (Doc. #3).

9. The relief sought herein is not requested for purpose of delay.

WHEREFORE the United States prays that the Court withhold entry of judgment in the instant matter until May 7, 2012, or until such time as the Court has ruled on any motion for reconsideration or motion for leave to file an amended complaint that the United States may file within that time, whichever is later, and for such other and further relief as the Court deems just and proper.

Dated: April 6, 2012

Respectfully submitted,

RICHARD G. CALLAHAN
United States Attorney

/s/ Richard E. Finneran
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 6, 2012, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Richard E. Finneran
RICHARD E. FINNERAN, #60768
Assistant United States Attorney