

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LARRY BLAIR and)	
CHARLIE DAVIS,)	
On Behalf Of Themselves And)	
All Other Persons Similarly Situated,)	
)	
Plaintiffs,)	
v.)	Case No: 09-2443-EFM
)	
TRANSAM TRUCKING, INC.)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

Plaintiffs have filed for an extension of time to send Rule 23 opt out notices (Doc. 193). Plaintiffs inform the Court that they filed a proposed notice with the Court on October 30, 2015, Defendant filed its objections to the proposed notice on November 13, 2015, and a reply was filed on November 25, 2015, but the Court has not yet ruled on the proposed notice or objections. Plaintiffs request an extension of time until fourteen days after the Court has ruled in which to serve such opt-out notice, and further request that the current date set for the opt-out period to close be extended by the same number of days as the service deadline is extended.

The Supplemental Scheduling Order filed in this case on September 18, 2015 (Doc. 150) that set forth these dates required notice and objections to be filed, and specified that once the opt-out notice had been approved by the Court the notice was to be served on potential opt-out plaintiffs by February 15. Because Court approval is required, the Plaintiffs should have filed a motion for the same (although the Court acknowledges that the Supplemental Scheduling Order called for a “notice” and not a “motion”). Because Plaintiffs filed a “Notice” and not a “Motion” the filing was not flagged for Court attention (as the docket sheet makes obvious, this case is

replete with notices, none of which otherwise required Court action). Therefore, this matter did not come to the Court's attention until the present motion was filed.

Because the motion recited the Defendant did not consent to the motion, the Court delayed ruling on this motion for an extension of time until it had an opportunity to review Defendant's objection. Plaintiffs' motion was filed on February 5, 2015, which made Defendant's response due on February 19, 2015.¹ Unfortunately, Defendant apparently decided to not join the motion, not file in opposition to it, and not inform the Court that such were its plans. This has unnecessarily created an extra two weeks of delay (particularly since the Court was mystified as to what grounds the Defendant might have to oppose this rather common sense motion).

Plaintiffs' Motion for an Extension of Time is granted. Moreover, now that Plaintiffs' "Notice" (a motion, really), has been brought to the Court's attention, it will be ruled on promptly.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for an Extension of Time (doc. 193) is GRANTED. Plaintiff will be given at least 14 days after the Court's ruling on the notice in which to serve opt-out notices.

IT IS SO ORDERED.

Dated this 24th day of February, 2016.

A handwritten signature in black ink, reading "Eric F. Melgren". The signature is written in a cursive, flowing style.

ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE

¹ "Responses to non-dispositive motions . . . must be filed and served within 14 days." D. Kan. Rule 6.1(d)(1).