

2002 WL 1163619  
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United States District Court, E.D. Louisiana.

Melanie KRAMER, et al.  
v.  
NEW ORLEANS SAINTS, et al.  
No. Civ.A. 01-2451. | May 30, 2002.

## Opinion

### ORDER

FALLON, J.

\*1 Before the Court is the motion of plaintiffs to extend the deadlines for class certification in this case. Also before the Court is the defendants' motion to strike the class allegations contained in plaintiffs' complaint on the grounds that plaintiffs have failed to comply with the court-ordered deadline for the filing of a motion for class certification. The Court heard oral argument from the parties on these motions on May 28, 2002.

Plaintiffs seek to extend the deadline for the filing of a motion for class certification in this case for the third time. This lawsuit was filed on August 13, 2001. On November 11, 2001 plaintiffs moved for an extension of the 90 day time period set by local rule for the filing of a motion for class certification. The Court granted the motion and extended the deadline to March 12, 2002. On March 11, 2002, plaintiffs again moved the Court for extension of the deadline in which to file a motion for class certification. The Court again granted the request and extended the deadline to May 20, 2002. On May 20, 2002, plaintiffs filed the instant motion. Counsel for plaintiffs explains that she has been preoccupied with other pressing legal matters which were not expected. Counsel further explains that further discovery is required before class certification can be sought.

Defendants oppose the motion to extend, contending that counsel for plaintiffs has had ample opportunity to participate in discovery but that she has not cooperated. Defendants point out that over the course of the past year, defendants have been forced to file against the plaintiffs two motions to compel the production of discovery materials. Defendants also point out that as of this date no depositions have been conducted in this case.

As a condition to class certification, Federal Rule of Civil Procedure 23(a)(4) requires that the representative parties will fairly and adequately protect the interests of the class. The Court finds this prerequisite lacking in this case. Plaintiffs have demonstrated a lack of interest in aggressively pursuing the interests of the putative class in matters of discovery and class certification.

In *East Texas Motor Freight v. Rodriguez*, 431 U.S. 395 (1977), the Supreme Court held that the failure to move in a timely fashion for certification of a class bears strongly on the adequacy of representation that the class members might expect to receive. Indeed, several courts have denied class certification on the basis of delays in seeking certification even if that is the sole indicia of inadequate representation. See *Wilson v. Seven Seventeen HB Philadelphia Corp.*, 2001 WL 484193 (E.D.Pa.); *In re Folding Carton Litigation*, 88 F.R.D. 211 (N.D.Ill.1980) (citing cases); and *Flora v. Moore*, 78 F.R.D. 358 (N.D.Miss.1979).

Having considered the facts of this case and the arguments of counsel,

IT IS ORDERED that plaintiffs' motion to extend deadlines for class certification be and hereby is DENIED.

\*2 IT IS FURTHER ORDERED that the defendants' motion to strike plaintiffs' class allegations, be and hereby is GRANTED. Accordingly,

**Kramer v. New Orleans Saints, Not Reported in F.Supp.2d (2002)**

IT IS FURTHER ORDERED that counsel for plaintiffs shall with twenty (20) days file in this Court an amended complaint in which the previously asserted class allegation are stricken.