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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

A.D. and C. by CAROL COGHLAN  
CARTER, their next friend;  
S.H. and J.H., a married couple;  
M.C. and K.C., a married couple;  
for themselves and on behalf of a class of  
similarly-situated individuals,

Plaintiffs,

v.

KEVIN WASHBURN, in his official  
capacity as Assistant Secretary of BUREAU  
OF INDIAN AFFAIRS; SALLY JEWELL,  
in her official capacity as Secretary of  
Interior, U.S. DEPARTMENT OF THE  
INTERIOR;  
GREGORY A. McKAY, in his official  
capacity as Director of the ARIZONA  
DEPARTMART OF CHILD SAFETY,

Defendants.

No. 2:15-CV-01259- PHX-NVW

**STIPULATION FOR STAY OF  
DEFENDANTS’ DEADLINE TO  
FILE ANSWER OR RESPONSIVE  
MOTION (Second Request) AND  
STAY OF DEADLINE TO  
RESPOND TO MOTION FOR  
CLASS CERTIFICATION (First  
Request) AND JOINT MOTION  
FOR STATUS CONFERENCE**

(Assigned to The Honorable Neil V.  
Wake)

Pursuant to Rule 7(b)(1), Federal Rules of Civil Procedure, State Defendant  
Gregory A. McKay, Federal Defendants Kevin Washburn and Sally Jewell, and  
Plaintiffs move for a status conference to address scheduling disagreements and  
stipulate to stay Defendants’ pending deadlines to (1) answer or file a responsive  
pleading to Plaintiffs’ Complaint, which deadline is currently September 8, 2015; and  
(2) to stay Defendants’ respective deadlines to respond to Plaintiffs’ Motion for Class

1 Certification. Such stay will remain in effect until this Court resolves scheduling  
2 disagreements. Good cause supports this stipulation and motion as follows:

3  
4 Plaintiffs' filed a Complaint against Defendants on July 6, 2015. ECF No. 1.  
5 That Complaint challenges the constitutionality of the Indian Child Welfare Act, 25  
6 U.S.C. § 1901 *et seq.*, on multiple grounds. *Id.* In addition to challenging this thirty-  
7 seven year old statute, it seeks review under the Administrative Procedure Act of the  
8 Bureau of Indian Affairs' Guidelines for State Courts and Agencies in Indian Child  
9 Custody Proceedings, 80 Fed. Reg. 10,146 (Feb. 25, 2015). *Id.* Finally, it seeks  
10 certification of a class of plaintiffs encompassing all "off-reservation Arizona children  
11 with Indian ancestry" and "off-reservation non-Indian Arizona-resident foster,  
12 preadoptive, and prospective adoptive parents in child custody proceedings" involving  
13 Indian children. *Id.* at ¶ 30.

14  
15 Defendants currently are obliged to file an answer or responsive pleading to  
16 Plaintiffs' complaint on September 8, 2015.<sup>1</sup> On August 21, 2015, before an Answer or  
17 other responsive pleading was due, Plaintiffs filed a Motion for Class Certification  
18 (ECF No. 22) to which the Federal Defendants' response is due September 8, and State  
19 Defendant's response is due September 17.<sup>2</sup>

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24 <sup>1</sup> Defendant McKay's deadline to answer or otherwise respond was originally July 31,  
25 2015, but this Court so-ordered a stipulation extending that deadline to coincide with  
26 Federal Defendants' deadline of September 8, 2015. ECF No. 21. The Federal  
27 Defendants have not previously requested any extensions of any deadlines in this case,  
28 their obligation to Answer having been originally September 8, 2015.

<sup>2</sup> Under the LRCiv 7.2(b), Defendants have fourteen days to respond, but the Federal  
Defendants could not be electronically served because they have not yet appeared and

1 On September 2, 2015, counsel for all parties conferred by phone at Defendants'  
2 request, and Defendants proposed an orderly briefing schedule for filing motions to  
3 dismiss all claims in Plaintiffs' Complaint. The proposed schedule involved:

- 4 1. Filing of Defendants' opening briefs on October 16, 2015;
- 5 2. Filing Plaintiffs' response briefs on November 13, 2015; and
- 6 3. Filing Defendants' reply briefs on December 4, 2015.

7  
8 Defendants further proposed that their deadline to respond to the class  
9 certification motion be stayed until their motions to dismiss are resolved. That is  
10 because Defendants expect all claims in this case to be dismissed (thereby eliminating  
11 the need for addressing class certification) or to be reduced in number (thereby  
12 impacting the scope of class certification). Further, the class certification motion is  
13 premature because discovery is needed. Without such discovery, Defendants cannot  
14 ascertain whether the proposed class comports with the requirements of Fed. R. Civ. P.  
15 23, including determining the appropriateness of the proposed class representatives and  
16 class counsel. Therefore, Defendants proposed that the deadline for responding to  
17 Plaintiffs' motion for class certification be stayed pending resolution of Defendants'  
18 motions to dismiss.  
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23 Defendant McKay required service by mail as well because the motion was supported  
24 by declarations subject to a pending motion by Plaintiffs' to seal and thus not available  
25 on the ECF System. Thus, adding three days for service by mail, Fed. R. Civ. P. 6(d),  
26 combined with the fact that September 7 is a federal holiday, the deadline for the  
27 Federal Defendants falls on September 8. The declarations supporting Plaintiffs'  
28 Motion for Class Certification (ECF No. 22), which were lodged under seal, were  
ultimately served by hand on State Defendant McKay on September 3. Therefore, under  
LRCiv 7.2(b), State Defendant's response is due September 17.

1           Plaintiffs did not offer a counter-proposal but indicated that the parties should  
2 approach the Court to resolve scheduling issues. Plaintiffs further provide:

3                           Plaintiffs oppose the proposed schedule in light of the previously  
4 stipulated extension of time for responsive pleadings and because the need  
5 for relief in this case is urgent both for the individual plaintiffs and the  
6 proposed class members. They will request that the Court set prompt  
7 deadlines for responsive pleadings, dispositive motions, and discovery.

8           Plaintiffs agreed to stipulate to a stay of Defendants' pending response deadlines  
9 until the scheduling issues could be resolved by the Court at the requested status  
10 conference. Undersigned counsel avows that the parties have entered into this  
11 stipulation in good faith and not for purposes of delay and that the stipulated stay best  
12 serves the administration of justice in this case.  
13

14           Accordingly, having been unable to secure Plaintiffs' consent to Defendants'  
15 proposed schedule, Defendants, in accord with Plaintiffs' wishes, hereby respectfully  
16 request that the Court:  
17

- 18           1. Approve the stipulation to stay Defendants' September 8 deadline to respond  
19           to Plaintiffs' complaint until this Court can establish a suitable schedule for  
20           briefing motions to dismiss at a status conference;
- 21           2. Approve the stipulation to stay Defendants' respective deadlines to respond to  
22           Plaintiffs' Motion for Class Certification until this Court can establish a  
23           suitable schedule for briefing motions to dismiss at a status conference;
- 24           3. Hold a status conference, allowing parties to participate telephonically if  
25           necessary, at the court's earliest convenience.  
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1 Counsel for all parties have reviewed the proposed form of order attached  
2 to this stipulation, and each approves its form and content.

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4 A proposed form of order is attached.

5 RESPECTFULLY SUBMITTED this 3rd day of September, 2015.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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5 CARTER, their next friend;  
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7 M.C. and K.C., a married couple;  
8 for themselves and on behalf of a class of  
9 similarly-situated individuals,

10 Plaintiffs,

11 v.

12 KEVIN WASHBURN, in his official  
13 capacity as Assistant Secretary of BUREAU  
14 OF INDIAN AFFAIRS; SALLY JEWELL,  
15 in her official capacity as Secretary of  
16 Interior, U.S. DEPARTMENT OF THE  
17 INTERIOR;  
18 GREGORY A. McKAY, in his official  
19 capacity as Director of the ARIZONA  
20 DEPARTMART OF CHILD SAFETY,

21 Defendants.

No. 2:15-CV-01259- PHX-NVW

**ORDER**

22 The Court having considered the parties' stipulation to stay deadlines and motion  
23 for status conference, and good cause appearing,

24 **IT IS ORDERED** the stipulation is **APPROVED**.

25 **IT IS FURTHER ORDERED** the deadline for Defendants to answer or  
26 otherwise respond to the complaint is stayed until this Court at a status conference  
27 establishes a suitable deadline; and

28 **IT IS FURTHER ORDERED** the deadline for Defendants to respond to  
Plaintiffs' motion for class certification is stayed until this Court at a status conference  
establishes a suitable deadline; and

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**IT IS FURTHER ORDERED** that the parties shall appear before this Court for a status conference to be set at a time convenient to the Court.