

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GARRISON SOUTHFIELD PARK LLC,
Plaintiff,

v.

CLOSED LOOP REFINING AND RECOVERY,
INC., et al.,
Defendants.

Case No. 2:17-cv-00783

Judge George C. Smith

Magistrate Judge Chelsey M.
Vascura

**JOINT MOTION OF PLAINTIFF GARRISON SOUTHFIELD PARK LLC
AND DEFENDANTS KUUSAKOSKI INC., KUUSAKOSKI GLASS RECYCLING
LLC, KUUSAKOSKI US LLC, VINTAGE TECH, LLC, AND FEDERAL PRISON
INDUSTRIES, INC. d/b/a UNICOR FOR EXTENSION OF TIME FOR THESE
DEFENDANTS TO FILE ANSWER OR OTHERWISE PLEAD**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and Local Rules 6.1 and 7.3, Plaintiff Garrison Southfield Park LLC (“Plaintiff” or “Garrison”) and Defendants Kuusakoski Inc., Kuusakoski Glass Recycling LLC, Kuusakoski US LLC, Vintage Tech, LLC, and Federal Prison Industries, Inc. d/b/a UNICOR (“UNICOR”) (collectively, “Defendants”), have consulted in good faith and agreed to move jointly for an extension of time for these Defendants to move, answer, or otherwise plead in response to Plaintiff’s Complaint (Doc. No. 1), with the Defendants’ response due on April 15, 2019. A memorandum in support follows below and a proposed order is attached.

MEMORANDUM IN SUPPORT

Plaintiff and the above-named Defendants file this motion seeking additional time for Defendants to respond to the Complaint (Doc. No. 1). Previously, these parties had requested, and the Court approved, extensions of this deadline to allow Plaintiff to pursue settlement negotiations with these Defendants and potential new defendants and to make additional progress in discussions with the State of Ohio, acting on behalf of the Ohio Environmental Protection Agency, in advance of filing an amended Complaint in the pending action. Defendants' current deadline to respond to the Complaint is February 28, 2019, as provided in the Court's entry of December 3, 2018 (Doc. No. 79).

Garrison's objective in the negotiations is to recover costs to fund the removal and remediation of electronic wastes in two of Garrison's warehouses in Columbus, Ohio in accordance with the National Contingency Plan regulations under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and other applicable environmental requirements. Garrison wishes to complete negotiations with as many Defendants and potential new defendants as possible before filing the amended Complaint, so that settlement agreements can be presented to the Court for approval and contribution protection pursuant to CERCLA Section 113(f)(1) at the time of, or soon after, the amended Complaint is filed.

Garrison has continued its discussions with the State of Ohio to obtain the State's assurance that it will not object to Garrison's settlement agreements with defendants in this litigation or to the extension of CERCLA Section 113(f)(1) contribution protection to them. The State has indicated that it is willing to provide these assurances, if Garrison and the State can reach agreement as to other terms and conditions. Finalizing these discussions with the State of

Ohio is important to the settling defendants so that they can avoid litigation with the State by settling with Garrison.

At the State's request, Garrison has been coordinating its settlement negotiations with Olymbec USA LLC ("Olymbec"), a landlord of another Columbus warehouse leased by Closed Loop Refining and Recovery, Inc. ("Closed Loop"), *i.e.*, the same company that leased Garrison's warehouses and abandoned electronic wastes in them. Garrison and Olymbec intend to base their proposed settlements with Defendants and potential new defendants on the total amount of electronic waste shipped to all three warehouses, regardless of which warehouse currently houses the waste. This approach would provide an opportunity for defendants to settle any liabilities they may have to Garrison and Olymbec in a single settlement agreement with CERCLA Section 113(f)(1) contribution protection.

In support of this approach, Olymbec has estimated the costs of removing and remediating the electronic wastes that were shipped to its warehouse. Using this new information, Garrison has sent letters advising Defendants and potential new defendants of their revised shares of the removal and remediation costs at the three Garrison and Olymbec warehouses and inviting them to negotiate settlements of these claims. Garrison needs more time to complete this negotiation process before filing the amended Complaint.

Pursuant to Local Rule 7.3(a), Garrison's counsel has consulted with all Defendants to determine whether they are opposed to this motion (except for Closed Loop, which has not entered an appearance, and Defendants Benham, Cauchi, and LaPoint, for whom the case is stayed due to their bankruptcy filings). All consulted parties have joined this motion. A proposed entry granting this motion is attached for the Court's consideration.

Respectfully submitted,

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JUSTICE**

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*Attorneys for Defendants Kuusakoski Inc.,
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US LLC, and Vintage Tech, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on February 28, 2019, a copy of the foregoing motion was filed electronically with the Court's CM/ECF system, which will send notification to all attorneys registered to receive such service. Parties may access this filing through the Court's electronic filing system.

In addition, a copy of the foregoing Motion was sent on February 28, 2019 by first class U.S. mail to David Cauchi, 128 Nevada Way, #1050, Gilbert, AZ 85233. The motion was sent by electronic mail on August 23, 2018 to Brian LaPoint, 5953 W. Gary Drive, Chandler, AZ 85226, at blapoint@gmail.com and Brent Benham, 31704 N. 139th Place, Scottsdale, AZ 85262, at brentb@babenham.com, per their written consent to receive filings by email.

/s Jack A. Van Kley
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Trial Attorney

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ORDER

Upon consideration of the Joint Motion for Extension of Time for Certain Defendants to File Answer or Otherwise Plead (Doc. No. ____), and finding it just and proper to do so, it is hereby ORDERED that said Motion is GRANTED. The deadline for Defendants Kuusakoski Inc., Kuusakoski Glass Recycling LLC, Kuusakoski US LLC, Vintage Tech, LLC, and Federal Prison Industries, Inc. d/b/a UNICOR to move, answer, or otherwise plead in response to Plaintiff's complaint in the above-captioned action is extended to April 15, 2019.

Dated: _____, 2019.

IT IS SO ORDERED.

HON. CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE