UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

MARIE LAVENTURE, et al.,

Plaintiffs,

- against -

UNITED NATIONS, et al.,

Defendants

----------X

ORDER

14-cv-1611 (SLT) (RLM)

TOWNES, United States District Judge,

Plaintiffs, who include at least two Eastern District residents claiming family relations in Haiti, initiated this putative "class [and] mass action" in March 2014 against the United Nations ("UN"), the UN Stabilization Mission in Haiti ("MINUSTAH"), and certain UN and MINUSTAH officials, including former UN Secretary-General Ban Ki Moon, alleging that Defendants are responsible for the widespread 2010 cholera outbreak in Haiti that sickened or killed Plaintiffs or their family members. (*See* Docket Entries ("DE") 1, 4, 6). Exactly one year after Plaintiffs filed their initial complaint, Magistrate Judge Mann noted the absence of proof of service of the Amended Complaint and ordered Plaintiffs to show cause why the case should not be dismissed for failure to effect service and for lack of prosecution. (DE 6). In their March 18, 2015 response, Plaintiffs justified their delay, in part, by contending that they had been awaiting a ruling in *Georges v. United Nations,* 13-cv-7146, a strikingly similar case based on the 2010 cholera outbreak brought against the UN, MINUSTAH, and several individual defendants in the Southern District of New York.[1] (DE 7 at 6). Plaintiffs also noted they had been preparing an argument not made in *Georges*, based "upon the United Nations' express waiver of immunity."

[1] *See Georges v. United Nations,* 84 F.Supp.3d 246 (S.D.N.Y. 2015), *aff'd,* 834 F.3d 88 (2d Cir. 2016)

(*Id.*). Judge Mann then stayed the case several days later on Plaintiffs' request, after the Southern District dismissed *Georges* on immunity grounds and while appeal of that decision was pending before the Second Circuit. (DE 8).

Some two years later, on March 23, 2017, well after the Second Circuit affirmed the Southern District's dismissal in *Georges* on August 16, 2016, the Court again ordered Plaintiffs to show cause why the case should not be dismissed for lack of prosecution and in light of the Second Circuit's opinion in *Georges*.[2] (DE 13). Plaintiffs' response "apologize[d]" for and adequately justified their failure to notify the Court during the pendency and eventual abandonment of efforts to appeal that decision to the Supreme Court. (DE 14 at 3-7). Plaintiffs' show cause response also requested leave to file an amended complaint that will add plaintiffs and allegations supportive of their theory that the UN expressly waived immunity for each Defendant here. (*Id.* at 7). Noting her "serious doubts about the validity of [Plaintiffs'] claims in light of the Second Circuit's decision in *Georges v. United Nations,*" Judge Mann then invited the United States to express its views pursuant to 28 U.S.C. § 517.[3] (DE 15). The Department of Justice then responded with a Statement of Interest on May 24, 2017, expressing its view that the UN is immune from both suit and service under the Convention on Privileges and Immunities of the United Nations ("CPIUN") and asserting that the Court should therefore dismiss the action for lack of jurisdiction. (DE 17). Finally, on June 6, 2017, Plaintiff docketed a letter to the Court construing the United States' Statement of Interest as "effectively a motion to dismiss the case" and requesting, among other things, a lengthy briefing schedule extending to September 25 and calling for both reply and sur-reply briefs. (DE 18 at 2).

---

[2] *See Georges v. United Nations*, 834 F.3d 88 (2d Cir. 2016)

[3] 28 U.S.C. § 517 provides that the "Solicitor General, or any other office of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States."

The Court finds so extensive a briefing schedule unnecessary. As the Second Circuit explained in *Georges*, the Executive Branch's interpretation of the CPIUN is "entitled to great weight." *Georges*, 834 F.3d at 94 (2d Cir. 2016) (quoting *Lozano v. Alvarez*, 697 F.3d 41, 50 (2d Cir. 2012)). The plain language of the CPIUN, moreover, conveys exceedingly broad immunity from suit. Specifically, it provides that "[t]he United Nations . . . shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity." CPUIN, art. II, sec. 2 (emphasis added). Under that provision, "the United Nations' immunity is absolute, subject only to the organization's express waiver thereof in particular cases." *Boimah v. United Nations General Assembly*, 664 F. Supp. 69, 71 (E.D.N.Y. 1987) (Nickerson, J.). Here, Plaintiffs' express waiver argument appears to rely on various statements, reports, and UN acts that preceded the cholera outbreak on which their claims are based. The Court echoes Judge Mann's doubts as to that basis for express waiver and therefore finds extended briefing unnecessary. The Court also finds that further delay in this matter unnecessary, especially considering that Plaintiffs have purportedly been developing this theory since March of 2015. (*See* DE 7 at 6). Accordingly, Plaintiffs shall file a single brief in response to the government's filing. Plaintiffs are directed to limit their response to 20 pages and the topics of immunity and express waiver. Any such response must be filed on or before June 23, 2017. Plaintiffs will also be permitted to file a proposed amended complaint by the same date. The UN or the government may, at their discretion, submit a reply brief on or before July 7, 2017.

The Clerk of Court is respectfully directed to mail copies of this order to the United Nations Office of Legal Affairs and the United States Attorney's Office for the Eastern District of New York.

SO ORDERED.

/s/ Sandra L. Townes
SANDRA L. TOWNES
United States District Judge

Dated: Brooklyn, New York
June 9, 2017