

Edward TEMENGIL, et al.  
vs.  
GOVERNMENT OF THE TRUST  
TERRITORY OF THE PACIFIC  
ISLANDS, et al.

Jose DLG. DIAZ, et al.  
vs.  
TRUST TERRITORY OF THE  
PACIFIC ISLANDS, et al.

Civil Action Nos. 81-0006  
and 84-0001  
District Court NMI

Decided April 23, 1985

suggested deadline, and where class representatives have made considerable progress along with the defendant government in negotiating stipulations regarding the admissibility of documents and facts, and where court at certification stage designated team of attorneys to control litigation, intervention would cause undue delay and prejudice without countervailing benefits and was for those reasons denied. Fed.R.Civ.P. 23 (d), 24 (a).

**1. Civil Procedure - Class Actions - Consolidation**

Where moving plaintiffs in second employment discrimination action are already included within class as certified in first action, their motion to consolidate is not appropriate and will be denied.

**2. Civil Procedure - Intervention**

To qualify as intervenors of right in class action, parties must demonstrate that the representation of their interests by the class representatives and class counsel is inadequate. Fed.R.Civ.P. 24 (a).

**3. Civil Procedure - Intervention**

In considering permissive intervention, the court must consider the potential delay or prejudice to the rights of the original parties which the intervention may bring about. Fed.R.Civ.P. 24 (b).

**4. Civil Procedure - Intervention**

Where members of certified plaintiff employee class in discrimination action against the Trust Territory government seek to intervene as class representatives, and where motion to intervene was filed more than six months after court's

FILED  
Clerk  
District Court

APR 23 1985

IN THE DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

For The  
Jr. *Chapman*

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EDWARD TEMENGIL, et al., )  
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Plaintiffs, )  
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vs. )  
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GOVERNMENT OF THE TRUST )  
TERRITORY OF THE PACIFIC )  
ISLANDS, et al., )  
 )  
Defendants. )

CIVIL ACTION NO. 81-0006

JOSE DLG. DIAZ, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
TRUST TERRITORY OF THE PACIFIC )  
ISLANDS, et al., )  
 )  
Defendants. )

CIVIL ACTION NO. 84-0001

DECISION DENYING MOTION  
TO CONSOLIDATE OR TO  
INTERVENE

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The instant motion involves two separate actions based on the alleged wage discrimination practices of the government of the Trust Territory of the Pacific Islands (hereinafter Trust Territory). The events underlying these actions are summarized in the previous decisions filed in the Temengil, et al., v. Trust Territory, et al., Civ.No. 81-0006 (D.N.M.I.) ("Temengil"). Due to the similarity among the claims asserted in Diaz, et al., v. Trust Territory, et al., Civ.No. 84-0001 ("Diaz") and in Temengil, those plaintiffs in the Diaz case who are included in the Temengil class as defined in the class certification decision

1 filed May 29, 1984 now wish to join the Temengil action either  
2 through consolidation or intervention. For the reasons stated  
3 below, the Court denies the motion.

4 [4] Plaintiffs move initially to consolidate the Diaz  
5 action with the Temengil action, at least insofar as the overlap  
6 between the two classes of plaintiffs extends. In effect, the  
7 Diaz plaintiffs are willing to ~~subdivide~~ their class. Those  
8 members described as within the Temengil class will dismiss out  
9 of Diaz and join the Temengil plaintiffs; the remaining plain-  
10 tiffs in Diaz will pursue their claims which differ in a signifi-  
11 cant degree from those of the Temengil class members. The Diaz  
12 plaintiffs correctly note that ~~the~~ new proposed sub-class is  
13 already within the Temengil class which is described as:

14 Present and past employees of the  
15 Trust Territory of the Pacific  
16 Islands who have worked and are  
17 working within the territorial  
18 limits of the Commonwealth of the  
19 Northern Mariana Islands since  
January 9, 1978, through the  
present and are classified in terms  
of race and national origin as  
Micronesians.

20 Since the moving plaintiffs are already within the Temengil  
21 class, consolidation is not appropriate, and that part of the  
22 motion is accordingly denied.

23 In the alternative, ~~the~~ Diaz plaintiffs move for  
24 intervention. Federal Rule of Civil Procedure 24 sets forth the  
25 requirements of intervention:

26 Rule 24. Intervention.

1 (a) Intervention of Right.  
2 Upon timely application anyone  
3 shall be permitted to inter-  
4 vene in an action... (2) when  
5 the applicant claims an  
6 interest relating to the  
7 property or transaction which  
8 is the subject of the action  
9 and he is so situated that the  
10 disposition of the action may  
11 as a practical matter impair  
12 or impede his ability to  
13 protect that interest, unless  
14 the applicant's interest is  
15 adequately represented by  
16 existing parties.

10 (b) Permissive Intervention.  
11 Upon timely application anyone  
12 may be permitted to intervene  
13 in an action... (2) when an  
14 applicant's claim or defense  
15 and the main action have a  
16 question of law or fact in  
17 common... In exercising its  
18 discretion the court shall  
19 consider whether the inter-  
20 vention will unduly delay or  
21 prejudice the adjudication of  
22 the rights of the original  
23 parties.

17 [2] To qualify as intervenors of right, then, plaintiffs  
18 must demonstrate that the representation of their interests by  
19 the Temengil class representatives and class counsel is inade-  
20 quate. Plaintiffs have attempted no such showing. Moreover,  
21 this Court has already undertaken an extensive review of the  
22 class representation prior to its decision to certify the class.  
23 The Court is satisfied that the interests of the members of the  
24 Temengil class are now adequately represented in the action.

25 [3] Permissive intervention, of course, is available under  
26 Rule 24(b). Under this subsection, the Court must consider the

1 potential delay or prejudice to the rights of the original  
2 parties which the intervention may bring about.

3 [4] The Temengil case was filed in 1981. Since that time  
4 the Court, in addition to issuing its certification decision, has  
5 addressed two significant dismissal/summary judgment motions,  
6 each of which included substantial jurisdictional arguments. As  
7 important, the parties have engaged in extensive discovery which  
8 has produced volumes of data and information relating to the  
9 merits of the claims. Moreover, under the Court's guidance, the  
10 parties have undertaken an effort to enter into stipulations  
11 regarding uncontested factual and legal issues, including agree-  
12 ments on documentary evidence. It is readily apparent to the  
13 Court that the Temengil parties have spent a great deal of time  
14 and effort readying this case for judicial resolution in the near  
15 future; this Court has already supervised three status confer-  
16 ences regarding the extensive stipulations involved. Out of this  
17 effort has been produced hundreds of pages of stipulated documen-  
18 tary evidence as well as numerous other stipulations regarding  
19 the factual issues. Because of this monumental effort, the  
20 parties expect to have this case ready for summary judgment  
21 disposition by mid-1985. In other words, the Temengil litigation  
22 is past the club house turn and well into the home stretch.

23 The Diaz plaintiffs now want in. The Court was noti-  
24 fied of this intention back on August 3 of 1984 when the Diaz  
25 counsel appeared at one of the aforementioned Temengil status  
26 conferences. See Temengil (order filed October 19, 1984). The

1 counsel represented the desire of those Diaz plaintiffs included  
2 within the Temengil class to become directly involved in the  
3 Temengil action. The counsel further represented to the Court  
4 that he would take action regarding some involvement within 45  
5 days; in other words, by September 17, 1984. The present motion  
6 was filed March 1, 1985. Not only has nearly six months passed,  
7 but, as noted above, the Temengil parties in that time have  
8 negotiated extensive stipulations. Moreover, since the filing of  
9 their action in 1984, three years after the initiation of the  
10 Temengil case, there is no evidence that Diaz plaintiffs have  
11 taken any action in the prosecution of their case with the  
12 exception of the preparation of one minor request for production.

13 The Court finds this motion to be too little, too late.  
14 The Temengil action is almost ready for disposition by summary  
15 judgment. To allow the intervention or even an entry of appear-  
16 ance now would unduly delay the action and prejudice the existing  
17 parties. This decision is further supported by the Court's firm  
18 belief that the existing class representatives and class counsel  
19 are representing the interests of the class with skill, expertise  
20 and determination. Accordingly, under this Court's authority  
21 over the management of class actions, see Federal Rule of  
22 Civ.Proc. 23(d), the Court:

- 23 1. In Civil Action No. 81-0006, DENIES the  
24 Motion for Partial Consolidation (or in  
25 the Alternative, for Partial  
Intervention); and
- 26 2. In Civil Action No. 84-0001, DISMISSES

1 from the Diaz action all claims therein  
2 asserted which are included within the  
3 claims asserted by the class representa-  
4 tives in Temengil, and which are assert-  
5 ed by persons who fall within the class  
6 as defined in Temengil (Decision dated  
7 May 29, 1984).

8 DATED this 23<sup>rd</sup> day of April, 1985.

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14 JUDGE ALFRED LAURETA  
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