

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

ASA MOSSMAN, *et al.*,

Plaintiffs,

v.

U.S. CENTERS FOR DISEASE CONTROL
AND PREVENTION, *et al.*,

Defendants.

Case No. 1:21-cv-00028-CJW-MAR

Hon C.J. Williams

**DEFENDANTS' PARTIALLY UNOPOSED MOTION
FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT**

Defendants Centers for Disease Control and Prevention; Dr. Rochelle P. Walensky, in her official capacity as Director, Centers for Disease Control and Prevention; Sherri A. Berger, in her official capacity as Acting Chief of Staff, Centers for Disease Control and Prevention; Xavier Becerra, in his official capacity as Secretary of Health and Human Services;¹ U.S. Department of Health and Human Services; and the United States of America, by and through undersigned counsel, respectfully move for a thirty-day extension of time—through and including July 22, 2021—in which to answer or otherwise respond to Plaintiffs' complaint in this case.² In support of this request, Defendants state as follows.

1. This action challenges a temporary moratorium on certain residential evictions ordered by the Centers for Disease Control and Prevention (CDC) to help fight the COVID-19 pandemic.

¹ Defendants Berger and Becerra are automatically substituted as defendants in their official capacities pursuant to Federal Rule of Civil Procedure 25(d).

² Pursuant to Local Civil Rule 7(j), Defendants state that their deadline to respond to the Complaint has not been previously extended and that there are no other pending deadlines in this case.

Plaintiffs commenced this action by filing a complaint on March 18, 2021. *See* ECF No. 1. The United States Attorney for the Northern District of Iowa was served with the summons and complaint on April 23, 2021, *see* ECF No. 15, and Defendants' response to the complaint is therefore due June 22, 2021. *See* Fed. R. Civ. P. 12(a)(2).

2. The CDC Order that Plaintiffs challenge was originally entered in September 2020, and applied through December 31, 2020. *See* 85 Fed. Reg. 55,292 (Sept. 4, 2020). In December 2020, Congress extended the moratorium for an additional month, *see* Pub. L. No. 116-260, div. N, tit. V, § 502, 134 Stat. 1182, 2079 (2020), and CDC thereafter extended the moratorium through June 30, 2021. *See* 86 Fed. Reg. 8020 (Feb. 3, 2021) (extension through March 2021); 86 Fed. Reg. 16,731 (Mar. 31, 2021) (extension through June 2021). The Order is thus now scheduled to expire on June 30, 2021—eight days after Defendants' response to the complaint is currently due.

3. As of the date of this filing, CDC has not determined whether public health conditions require an extension of the Order beyond its current expiration date of June 30, 2021, and if so, in what form. As of this filing, it is therefore unknown whether (1) the Order will be allowed to expire, rendering this controversy moot; (2) the Order will be extended in a modified form, requiring the filing of an amended complaint; or (3) the Order will be extended as is, rendering merits litigation on the existing complaint appropriate. Until it is known what course CDC selects, Defendants respectfully submit that it would be highly inefficient to require them to respond to a 202-paragraph class action complaint.

4. Defendants further note that there is an application currently pending before the Supreme Court of the United States that is directly relevant to this case. *See Ala. Ass'n of Realtors v. HHS*, No. 20A169 (S. Ct.). In *Alabama Association of Realtors*, the district court had entered a nationwide vacatur of the same CDC order at issue here, reasoning that it fell outside CDC's statutory authority. *See Ala. Ass'n of Realtors v. HHS*, --- F. Supp. 3d ----, 2021 WL 1779282 (D.D.C. May 5, 2021). The

district court stayed its ruling pending appeal, finding that there was a serious question on the merits and that the balance of the equities favored a stay. *See Ala. Ass'n of Realtors v. HHS*, --- F. Supp. 3d ---, 2021 WL 1946376 (D.D.C. May 14, 2021). On June 2, 2021, a D.C. Circuit motions panel denied the plaintiffs' motion to vacate the stay, finding that the government was likely to succeed on the merits and that the equities otherwise favored the government. *See Ala. Ass'n of Realtors v. HHS*, No. 21-5093, 2021 WL 2221646 (D.C. Cir. June 2, 2021). The plaintiffs have asked the Supreme Court to vacate the stay, and that request was fully briefed as of yesterday. Any resulting Supreme Court order is likely to be highly relevant to further proceedings in this case.

5. Counsel for Defendants conferred with counsel for Plaintiffs prior to filing this motion. Counsel for Plaintiffs indicated that Plaintiffs do not object to an extension to July 12, 2021, but would oppose an extension beyond that date. Defendants respectfully suggest that twelve days is too close to the potential June 30 expiration of the challenged Order to permit the preparation of a response to the complaint that is useful to the Court, especially considering the intervening Federal holiday, when undersigned counsel (as well as other relevant personnel at the Defendant agencies) anticipates being away from the office.

6. Plaintiffs will not be prejudiced by Defendants' proposed thirty-day extension. As set out above, the challenged order was first entered in September 2020, but Plaintiffs waited more than six months to file this action. Plaintiffs have not sought preliminary relief, and every court to consider the question has agreed that the temporary eviction moratorium does not cause landlords irreparable harm warranting such relief. *See Brown v. Azar*, 497 F. Supp. 3d 1270, 1282 (N.D. Ga. 2020) (denying preliminary injunction), *appeal filed*, No. 20-14210 (11th Cir. Nov. 9, 2020), *mot. for inj. pending appeal denied*, No. 20-14210 (11th Cir. Dec. 17, 2020); *Tiger Lily LLC v. U.S. Dep't of Housing & Urban Dev.*, 499 F. Supp. 3d 538, 552 (W.D. Tenn. 2020) (denying preliminary injunction); *Chambless Enters., LLC v. Redfield*, No. 20-cv-1455, 2020 WL 7588849 (W.D. La. Dec. 22, 2020) (denying preliminary

injunction), *appeal filed*, No. 21-30037 (5th Cir. Jan. 22, 2021); *Dixon Ventures, Inc. v. Dep't of Health & Human Servs.*, No. 20-cv-1518, 2021 WL 1604250 (E.D. Ark. Apr. 23, 2021) (denying preliminary injunction); *KBW Inv. Props. LLC v. Azar*, No. 20-cv-4852 (S.D. Ohio Sept. 25, 2020) (denying temporary restraining order).

WHEREFORE, Defendants respectfully request a 30-day extension of time, through and including July 22, 2021, to answer or otherwise respond to Plaintiffs' complaint.

Dated: June 11, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

ERIC BECKENHAUER
Assistant Director, Federal Programs Branch

/s/ Steven A. Myers

STEVEN A. MYERS
Senior Trial Counsel (NY Bar No. 4823043)
LESLIE COOPER VIGEN
Trial Attorney (DC Bar No. 1019782)
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 305-8648
Fax: (202) 616-8470
E-mail: steven.a.myers@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify I served this document today by filing it using the Court's CM/ECF system, which will automatically notify all counsel of record.

Dated: June 11, 2021

/s/ Steven A. Myers

Steven A. Myers

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[PROPOSED] ORDER

Upon consideration of Defendants' Partially Unopposed Motion for Extension of Time to Respond to Complaint, IT IS HEREBY ORDERED that the Motion is GRANTED. Defendants may file their response to the Complaint on or before July 22, 2021.

SO ORDERED.

DATED:

HON. C.J. WILLIAMS
UNITED STATES DISTRICT JUDGE