



U.S. Department of Justice
Civil Division
Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005

Tel: (202) 305-0878
Fax: (202) 616-8470
Bradley.Humphreys@usdoj.gov

June 27, 2019

BY ELECTRONIC COURT FILING

The Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 2201
New York, NY 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/27/19

Re: Defendants' letter motion for extension of time until Monday, July 1, 2019 to Oppose Plaintiffs' Motions for Preliminary Injunction, No. 1:19-cv-04676-PAE (consolidated with Nos. 1:19-cv-05433-PAE & 1:19-cv-05435-PAE).

Dear Judge Engelmayer:

Defendants Alex M. Azar II, in his official capacity as Secretary of Health and Human Services, and the U.S. Department of Health and Human Services (HHS) respectfully ask that the Court extend the current deadline to oppose Plaintiffs' motions for preliminary injunction by three calendar days, from Friday, June 28, 2019 to Monday, July 1, 2019 (by midnight). Defendants make this modest request in light of the Court's denial of Defendants' earlier motion to continue the deadline to oppose Plaintiffs' motions for preliminary injunction and to set a summary judgment briefing schedule; or, in the alternative, for enlargement of time to file Defendants' opposition to Plaintiffs' motions for preliminary injunctions, ECF No. 79.

Over the course of the past several weeks, Defendants have been working diligently to attempt to maintain the status quo in this litigation for a period of time that would allow this case to be decided on the merits and without the need to consider a request for extraordinary injunctive relief, and in hopes of conserving the resources of the Court and the parties. Doing so has required Defendants and the undersigned to expend significant time in internal discussions and in discussions with counsel for Plaintiffs and other litigants challenging the same HHS Final Rule in other cases. Defendants appreciate that neither Plaintiffs nor the Court are satisfied that Defendants' proposal to delay any enforcement of the Final Rule would, in fact, accomplish those goals. However, Defendants' efforts were in good faith, and they have, regrettably, taken away from Defendants' time to draft an opposition to Plaintiffs' motions for preliminary injunction. Defendants also note that they are also required to file oppositions to motions for preliminary injunctions in three similar cases in the Northern District of California by 3:00 PM Eastern on July 1, 2019, and in one case

in the District of Maryland by 4:30 PM Eastern, also on July 1, 2019, and those additional deadlines have stretched the resources of the attorneys working on these matters.

Defendants, therefore, respectfully ask that the Court grant Defendants a modest extension of three calendar days, until midnight on July 1, 2019, for Defendants to file their opposition to Plaintiffs' motions for preliminary injunction. These three additional calendar days will allow Defendants to better respond to Plaintiffs' arguments, which, in turn, should assist the Court in considering Plaintiffs' challenge to the Final Rule. The requested delay also will not prejudice Plaintiffs, given that the effective date of the Final Rule is still nearly one-month away. Defendants respectfully submit that the short requested extension is warranted and ask for the Court's understanding.

Counsel for Defendants have conferred with counsel for Plaintiffs, who indicated that Plaintiffs do not consent to Defendants' motion. This is Defendants' second request for an extension of time; however, Defendants' prior request was denied, and here Defendants seek a much more limited extension.

We appreciate your Honor's time and attention to this request.

Sincerely,

/s/ Bradley P. Humphreys
BRADLEY P. HUMPHREYS
Trial Attorney
U.S. Department of Justice, Civil Division

Denied. The Court set this schedule over a month ago on June 13, 2019. *See* Dkt. 38. Plaintiffs' reply is due July 5, 2019. *See id.* Extending defendants' time to respond at this late juncture would require plaintiffs to spend the entirety of the week of the July 4 holiday drafting a reply brief, without the benefit of a weekend. The Court carefully considered the schedule it set on June 13, 2019 and declines to modify it at this late stage.

SO ORDERED.

Paul A. Engelmayer 6/27/19

PAUL A. ENGELMAYER
United States District Judge