

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN HOSPITAL ASSOCIATION, *et al.*,

Plaintiffs,

v.

ERIC D. HARGAN, in his official capacity as
Acting Secretary of Health and Human Services,

Defendant.

Civil Action No. 14-cv-00851 (JEB)

**DEFENDANT’S PARTIALLY UNOPPOSED MOTION FOR EXTENSION
OF TIME TO FILE MOTION FOR SUMMARY JUDGMENT**

Defendant Eric D. Hargan, in his official capacity as Acting Secretary of Health and Human Services (“HHS”),¹ respectfully moves this Court to extend Defendant’s time to file his motion for summary judgment by fourteen days, from October 26, 2017 to November 9, 2017. Undersigned counsel has conferred with counsel for Plaintiffs, who states that Plaintiffs consent to a one-week extension (to November 2, 2017) but oppose a two-week extension. In support of this motion, Defendant states as follows:

1. On September 28, 2017, this Court entered a scheduling order, which directs Defendant to file his motion for summary judgment by October 26, 2017. The order further provides for a limited discovery period to be completed by November 30, 2017. Plaintiffs’ combined cross-motion for summary judgment and opposition to the Secretary’s motion is due December 20, 2017.

2. HHS’s new leadership has assessed additional measures that it believes may alleviate the backlog but HHS needs additional time to finalize and, where necessary, to obtain

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Eric D. Hargan is substituted as the official-capacity Defendant.

formal intra-agency or inter-agency approval for any such initiatives. Defendants require an additional two weeks to secure such approval from the appropriate officials.

3. Furthermore, HHS is preparing a declaration that will explain the effect that pending False Claims Act investigations and other program integrity considerations have on the backlog and on HHS's efforts to address the backlog. Given the sensitivity of this information, HHS will separately seek the Court's permission to submit any such declaration *ex parte*. Due to unanticipated challenges related to the verification of False Claims Act investigations and program integrity considerations, HHS will require an additional two weeks to complete its preparation of these sensitive materials. HHS has been working diligently since the Court's order in an attempt to meet the deadlines in the current scheduling order, but, given these tasks—as well as the resource-intensive nature of Defendant's filing more generally—HHS requires a two-week extension to finalize and file Defendant's motion papers.

4. Defendant respectfully submits that Plaintiffs will not be prejudiced by a two-week extension. The Court's scheduling order currently provides for a limited discovery period to be completed by November 30, 2017. By the terms of that order, any such discovery is restricted to depositions of any HHS declarants and production of any documents underlying the Secretary's contentions, which can be accomplished between November 9 and 30, 2017. Plaintiffs' response brief, moreover, is not due until December 20, 2017, nearly six weeks after Defendant's motion would be due if the extension were granted.

5. Plaintiffs have indicated that they do not believe a one-week extension should necessitate an adjustment of the schedule. Given the above considerations, Defendant believes the same is true of a two-week extension. Nonetheless, if the Court grants Defendant's motion for a two-week extension, undersigned counsel has informed counsel for Plaintiffs that Defendant

would not object to a reasonable adjustment of the remaining schedule. Plaintiffs' counsel did not take a position on whether the remaining schedule should be adjusted if this motion is granted in full.

6. Pursuant to Local Rule 7(m), undersigned counsel conferred with counsel for Plaintiffs. Counsel for Plaintiffs stated that Plaintiffs consent to a one-week extension (to November 2, 2017) but oppose a two-week extension.

7. Accordingly, for the foregoing reasons, Defendant respectfully requests that the Court grant him until November 9, 2017 to file his motion for summary judgment.

Dated: October 19, 2017

Respectfully submitted,

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