

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

ROBERT L. VAZZO, LMFT, individually)	
and on behalf of his patients, DAVID H.)	
PICKUP, LMFT, individually and on)	Civil Action No.: <u>8:17-cv-02896-CEH-AAS</u>
behalf of his patients,)	
)	
Plaintiffs,)	INJUNCTIVE RELIEF SOUGHT
)	
v.)	
)	
CITY OF TAMPA, FLORIDA,)	
)	
Defendant)	

**PLAINTIFFS’ RESPONSE IN OPPOSITION TO DEFENDANT’S
MOTION FOR EXTENSION OF TIME TO ANSWER COMPLAINT
AND RESPOND TO MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to M.D. Fla. Local Rule 3.01(b), Plaintiffs, Robert L. Vazzo, LMFT, and David H. Pickup, LMFT, individually and on behalf of their patients (collectively “Plaintiffs”), by and through the undersigned counsel, hereby submit their Response in Partial Opposition to Defendant’s Motion for Extension of Time to Respond to Plaintiffs’ Complaint and Motion for Preliminary Injunction. For the reasons that follow, Defendant’s motion should be denied in part.

INTRODUCTION

1. On December 4, 2017, Plaintiffs filed their Verified Complaint (dkt. 1, “Complaint”) and Motion for Preliminary Injunction. (Dkt. 3, “PI Motion”).

2. Defendant was served with Plaintiffs’ Complaint and PI Motion on December 5, 2017. (Dkt.7).

3. Pursuant to Fed. R. Civ. P. 12(a)(1)(A), Defendant’s Answer to Plaintiffs’ Complaint is due December 26, 2017.

4. Pursuant to M.D. Fla. Local Rule 3.01(b), Defendant’s Response in Opposition to

Plaintiffs' PI Motion is due **tomorrow, December 19, 2017**.

5. On December 18, 2017, only one day prior to Defendant's PI Motion opposition deadline, Defendant contacted counsel for Plaintiffs requesting a 24-day extension of time, to and including January 12, 2018, to respond to Plaintiffs' Complaint and PI Motion.

6. On December 18, 2017, Defendant filed its motion requesting the same relief from this Court. (Dkt. 14).

RESPONSE TO EXTENSION OF TIME TO ANSWER COMPLAINT

7. As a professional courtesy, Plaintiffs do not object to extending Defendant's deadline to respond to Plaintiffs' Complaint, from December 26, 2017 until and including January 12, 2018.

PLAINTIFFS OBJECT TO EXTENSION OF TIME TO RESPOND TO PI MOTION

8. However, Plaintiffs must and do object to Defendant's request for an extension of time to respond to Plaintiff's PI Motion.

9. Defendant's purported justification for its requested 24-day extension – **an extension which would almost triple the response period contemplated by this Court's rules** – is that the upcoming Christmas and New Year's holidays necessitate more time to respond. (Dkt. 14, ¶ 2).

10. Defendant's purported rationale does not hold water. Pursuant to this Court's local rules, Defendant's response to Plaintiffs' PI Motion is due **December 19, 2017**, which falls well before the Christmas and New Year's holidays. Therefore, the stated justification on its face does not warrant an extension of time. *See, e.g., In re Woods*, 260 B.R. 41, 44 (N.D. Fla. 2001) (holding that counsel's argument "that the holiday period was a major factor in their request for an extension of the filing deadline" "**carries no weight [when] the vast majority of the time in which**

[counsel] could have investigated the case occurred prior to the holiday period.”) (emphasis added).

11. Defendant’s stated rationale is also unmerited as a matter of law. Neither the holidays nor the busy affairs of counsel warrant tripling Defendant’s response time on a motion which demonstrably alleges irreparable harm absent immediate relief. *See, e.g., McLaughlin v. City of LaGrange*, 662 F.2d 1385, 1387 (11th Cir. 1981) (extensions of time are not warranted merely because “counsel has a busy practice”); *Marcaida v. Rascoe*, 569 F.2d 828, 830 (5th Cir. 1978) (“preoccupation of counsel with other matters does not dispense with the necessity of compliance with the rules that require timely filing”);¹ *Duncan v. Iolab Corp.*, No. 90-1435-CIV-T-17, 1992 WL 567313, *1 (M.D. Fla. May 20, 1992) (“[m]erely being busy with other matters” does not justify failing to comply with filing deadlines).

12. Defendant also claims that no prejudice will result from the **tripling** of its response period. (Dkt. 14, ¶ 3). This is incorrect as a matter of settled law. Defendant’s attempt to triple the amount of time to respond to Plaintiffs’ PI Motion only compounds and exacerbates the ongoing and irreparable injury being visited on Plaintiffs and their clients on a daily basis. As Plaintiffs pointed out in their PI Motion, “[t]he loss of First Amendment freedoms, **for even minimal periods of time, unquestionably** constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (emphasis added); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1271-72 (11th Cir. 2006) (same). Plaintiffs’ verified allegations of violation of their First Amendment freedoms is sufficient to support a finding of irreparable injury. *See, e.g., Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965) (allegations of a complaint “clearly show irreparable injury” when they

¹ The Eleventh Circuit has adopted as binding decisions of Fifth Circuit prior to September 30, 1981. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

“suggest that a substantial loss or impairment of freedoms of expression will occur”); *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (“When an alleged constitutional right is involved, most courts hold that **no further showing of irreparable injury is necessary.**” (emphasis added) (quoting 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* §2948.1 (2d ed. 1995)); *see also Mithcell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) (same); *Nat’l People’s Action v. Vill. of Wilmette*, 914 F.2d 1008, 1013 (7th Cir. 1990) (same).

13. The undersigned counsel typically extend professional courtesy in most instances regarding requested extensions of time. However, permitting Defendant to triple the amount of time to respond to Plaintiffs’ PI Motion exacerbates and compounds the irreparable injury being imposed on Plaintiffs and their clients each and every day the challenged Ordinance remains in effect.

14. Plaintiffs therefore request that this Court deny Defendant’s requested extension as to the PI Motion, require Defendant to file its timely opposition on December 19th, and schedule a hearing on the PI Motion at the Court’s earliest opportunity.

Respectfully submitted,

/s/ Horatio G. Mihet

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2017, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all parties and counsel of record by the Court's electronic notification system.

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