

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE**

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KAYLA GORE; JASON SCOTT; L.G.;  
and K.N.,

*Plaintiffs,*

v.

WILLIAM BYRON LEE, in his official  
capacity as Governor of the State of  
Tennessee; and LISA PIERCEY, in her  
official capacity as Commissioner of the  
Tennessee Department of Health,

*Defendants.*

No. 3:19-cv-00328

Judge Eli J. Richardson  
Magistrate Judge Barbara D. Holmes

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**DEFENDANTS' MOTION FOR AN EXTENSION OF TIME  
TO RESPOND TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendants, by and through the undersigned and pursuant to Fed. R. Civ. P. 6(b) and 56(d), and LR 6.01, respectfully move for an extension of their deadline to respond to Plaintiffs' Motion for Summary Judgment from April 6, 2020 through July 10, 2020. Plaintiffs' counsel has advised that they oppose this extension of the deadline. In support of this Motion, Defendants state the following:

1. In accordance with the Court's March 2, 2020 Order (Doc. 58), Plaintiffs filed their Amended Complaint (Doc. 59) on March 3, 2020. Among other changes, the Amended Complaint added a plaintiff, Jaime Combs.

2. In response to the Amended Complaint, Defendants filed a Motion to Dismiss the Amended Complaint on March 17, 2020. (Doc. 65).

3. Plaintiffs filed and served their Motion for Summary Judgment (Doc. 60) on March 9, 2020.

4. Defendants' current deadline to respond to Plaintiffs' Motion for Summary Judgment is April 6, 2020.

5. Defendants seek an extension of time to respond to Plaintiffs' Motion for Summary Judgment not for purposes of delay, but so that they can complete the necessary discovery to adequately prepare a response, if a response is necessary following the Court's consideration of the Motion to Dismiss the Amended Complaint.

6. Defendants propounded written discovery to the new plaintiff, Jaime Combs on March 18, 2020.

7. Neither party has taken any depositions as of March 18, 2020. Defendants plan to depose, at a minimum, the following witnesses: Plaintiffs, including the new Plaintiff, and the two experts whose declarations have been submitted as exhibits to Plaintiffs' Motion for Summary Judgment.

8. As set forth in the accompanying Declaration of Dianna Baker Shew, Defendants cannot complete the necessary discovery and prepare and file a response to Plaintiffs' Motion for Summary Judgment by April 6, 2020.

9. Defendants' requested extension should not impact any current deadlines set forth in the Initial Case Management Order (Doc. 36). In fact, the requested deadline of July 10, 2020 is almost two weeks earlier than the current deadline for *filing* dispositive motions, July 23, 2020.

10. The next case management conference in this case is scheduled for March 25, 2020.

11. The undersigned conferred with Plaintiffs' counsel via email on March 16, 2020 regarding this Motion. Plaintiffs' counsel has advised that they "do not oppose a limited extension of say two weeks if necessary as a result of our new circumstances related to the COVID-19 pandemic. Plaintiffs oppose, however, the requested 13 and ½ week extension. " A two week extension, until approximately April 20, will not provide sufficient time to review the new plaintiff's discovery responses, depose all four plaintiffs, depose two expert witnesses and then prepare an adequate response. The logistics would be nearly impossible under the best of circumstances, and our current public health environment exacerbates the problem.

For the foregoing reasons, Defendants respectfully request that the Court extend the time for Defendants to respond to Plaintiffs' Motion for Summary Judgment through July 10, 2020.

Respectfully Submitted

*s/Dianna Baker Shew*

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P.O. Box 20207

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*Counsel for the Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2020 I filed the foregoing *Defendants' Motion for an Extension of Time to Respond to Plaintiffs' Motion for Summary Judgment* electronically through the Court's CM/ECF System and thereby served it on the following:

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*s/ Dianna Baker Shew*

Dianna Baker Shew

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Tennessee Department of Health, )

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No. 3:19-cv-00328

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**DECLARATION OF DIANNA BAKER SHEW**

1. I, Dianna Baker Shew, am an attorney licensed to practice law in the State of Tennessee and admitted to practice before all of the federal district courts of this State. Along with my colleagues at the Tennessee Attorney General's Office, I represent the Defendants in this case.

2. We have exchanged written discovery with the Plaintiffs in this case but neither party has taken any depositions as of this date.

3. The Amended Complaint (Doc. 59), filed March 3, 2020, added a plaintiff. Defendants propounded written discovery on that plaintiff on March 18, 2020.

4. On March 17, 2020 Defendants filed a Motion to Dismiss the Amended Complaint (Doc. 65) and Memorandum of Law in support of that motion (Doc. 66).

5. On March 9, 2020 Plaintiffs filed a Motion for Summary Judgment (Doc. 60) and Memorandum of Law in support of that motion (Doc. 61). The motion includes as exhibits

declarations by two experts and all four plaintiffs. Plaintiffs also filed the declaration of their counsel (Doc. 62) which includes twenty exhibits.

6. Defendants' deadline for responding to Plaintiffs' Motion for Summary Judgment is currently April 6, 2020. Defendants seek an extension of time through July 10, 2020. Defendants seek an extension of time to respond not for purposes of delay, but so that they can complete the necessary discovery to adequately prepare a response. At a minimum, Defendant will review the discovery responses received from new plaintiff Jaime Combs, depose all four plaintiffs, and depose the two experts disclosed by Plaintiffs. Without additional time, Defendants will not be able to respond adequately to Plaintiffs' motion.

7. Plaintiffs' counsel has advised that they "do not oppose a limited extension of say two weeks if necessary as a result of our new circumstances related to the COVID-19 pandemic. Plaintiffs oppose, however, the requested 13 and ½ week extension." A two week extension, until approximately April 20, will not provide sufficient time to review the new plaintiff's discovery responses, depose all four plaintiffs, depose two expert witnesses and then prepare an adequate response. The logistics would be nearly impossible under the best of circumstances, and our current public health environment exacerbates the problem.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 18th day of March 2020.



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*Counsel for the Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of March 2020 I filed the foregoing electronically through the Court's CM/ECF System and thereby served the following:

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*s/ Dianna Baker Shew*  
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