

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 14. Motion for Extension of Time

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form14instructions.pdf>

9th Cir. Case Number(s) 20-15398

Case Name City & County of San Francisco v. Alex Azar, II, et al.

Requesting Party Name(s) City & County of San Francisco

I am: ☐ The party requesting the extension.
☒ Counsel for the party or parties requesting the extension.

I request an extension of time to file a:

- ☒ Brief (you **must** also complete the Declaration on page 3)
☐ Motion to proceed in forma pauperis
☐ Motion for a certificate of appealability
☐ Response/opposition to a pending motion
☐ Reply to a response/opposition to a pending motion
☐ Certified Administrative Record
☐ Response to court order dated
☐ Other (you **must** describe the document)

The requested new due date is: October 13, 2020

I request the extension of time because (**cannot be left blank**):
(attach additional pages if necessary)

Please see attached.

Signature /s/Jaime Huling Delaye

Date July 8, 2020

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Recitals in criminal and immigration cases pursuant to Circuit Rule 27-8
Complete this section for criminal or immigration cases.

Previous requests for extension of time to file the document, including any request for a Streamlined Extension of Time under Circuit Rule 31-2.2(a) (*select one*):

- ☐ I have **NOT** filed a previous request to extend time to file the document.
- ☐ I have previously requested an extension of time to file the document.

This motion is my request.
(Examples: first, second)

Bail/detention status (*select one*):

- ☐ The defendant is incarcerated. The projected release date is: .
- ☐ The petitioner is detained.
- ☐ The defendant/petitioner in this criminal/immigration case is at liberty.

Signature **Date**
(use "s/[typed name]" to sign electronically-filed documents)

Declaration in support of extension to file brief under Circuit Rule 31-2.2(b)
Complete this section if you are requesting an extension of time to file a brief.

1. I request an extension of time to file the brief.
(Examples: opening, answering, reply, first cross-appeal)
2. The brief's current due date is:
3. The brief's first due date was:
4. A more detailed explanation of why the extension of time to file the brief is necessary: *(Under Circuit Rule 31-2.2(b), a request for extension of time to file a brief must be "supported by a showing of diligence and substantial need" and a conclusory statement as to the press of business does not constitute such a showing. Attach additional pages if necessary.)*

Please see attached.
5. The position of the other party/parties regarding this request is:
☐ Unopposed.
☒ Opposed by *(name of party/parties opposing this motion)*:

Alex M. Azar II, Roger T. Severino & U.S. Dept. of Health & Human Servs.

☐ Unknown. I am unable to verify the position of the other party/parties because:
6. ☒ The court reporter is not in default with regard to any designated transcripts.
If the court reporter is in default, please explain:
7. ☒ I have exercised diligence and I will file the brief within the time requested.

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

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ATTACHMENT TO
FORM 14. MOTION FOR EXTENSION OF TIME

Good cause exists for a 90-day extension. As an initial matter, this is a complicated case that raises issues of nationwide importance. Extra time is necessary to address adequately these issues in the brief. Additionally, the brief will need to be reviewed by numerous attorneys in the City Attorney's Office and will require coordination with the San Francisco Department of Public Health, which is currently focused on addressing the global pandemic. Counsel believe that the presentation of this case to the Court would benefit from coordination between the various plaintiffs, and request that a shared deadline be set for appellees' answering briefs to promote such coordination.

Furthermore, one of the attorneys primarily responsible for drafting this brief is currently serving as counsel to the San Francisco Health Officer in connection with the City's COVID-19 response, and therefore has limited availability to work on other matters over the next several weeks. In addition, Ms. Eisenberg is also counsel on (1) *City and County of San Francisco v. USCIS*, 19-17213, which was set for argument before the Ninth Circuit on September 15, 2020, and (2) a pending case against Uber and Lyft for misclassifying their drivers, in which the parties are currently briefing four separate motions that are scheduled to be heard in the San Francisco Superior Court in mid-August.

The other attorney primarily responsible for drafting this brief is also the attorney primarily responsible for drafting appellee's answering brief in the Ninth Circuit appeal, *Synergy Project Management, Inc. v. City and County of San Francisco, et al.*, 19-17558, due on September 25, 2020. Ms. Huling Delaye is also counsel in *San Francisco Federal Credit Union v. San Francisco Municipal Transportation Agency*, No. CGC-18-565325, a case in the San Francisco Superior Court in which summary judgment has been denied that is scheduled for a three-week trial beginning on September 28, 2020.

On July 7, 2020, counsel for Defendants informed us: "we unfortunately can't consent to the proposed extension, given that we're appealing in this case from the nationwide vacatur of a rule of significant importance to HHS." In response, we informed DOJ that in the Ninth Circuit "the date of the filing of the notice of appeal controls when an appeal is assigned to a three-judge panel for

decision, so extension of the briefing schedule does not delay disposition of the appeal.” DOJ replied that this did not alter their position.

CERTIFICATE OF SERVICE

I, MARTINA HASSETT, hereby certify that I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECFsystem on July 8, 2020.

FORM 14. MOTION FOR EXTENSION OF TIME

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed July 8, 2020, at San Francisco, California.

/s/ MARTINA HASSETT
MARTINA HASSETT