UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

FEDERAL TRADE COMMISSION, *et al.*,

Defendants.

Case No. 6:25-cv-00009-JDK

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME AND EXTENSION OF PAGE LIMITS

On August 15, 2025, Defendants moved for a modest 21-day extension of time and 10-page expansion of the page limit for their opposition to plaintiffs' motion for summary judgment and cross-motion for summary judgment. Dkt. 52. In a surprising and unnecessarily contentious opposition, defendants oppose those reasonable requests, requiring the Court's intervention for this routine scheduling issue. Dkt. 54. Plaintiffs seem to fault the Commission for this case lingering into the fall while ignoring their own role in the delay. Plaintiffs further ignore that the Commission's requests would create hardly any delay given plaintiffs' consent that the oral argument be moved to a date other than October 1-10. Defendants offer the following points in further support of their motion:

First, Plaintiffs are now in a rush to decide this case even though they have never moved to expedite the case and did not seek a preliminary injunction—presumably because they could not identify any imminent irreparable injury. There are procedural mechanisms available for parties seeking an immediate decision, but plaintiffs have not availed themselves of those options here, and for good reason.

Second, the pace at which this case is proceeding is by no means unusual, and that timing and pacing are largely due to plaintiffs' choices. Plaintiffs did not bring this case until January 10, 2025, even though the final rule was published in the Federal Register on November 12, 2024. *See Premerger Notification; Reporting and Waiting Period Requirements*, 89 Fed. Reg. 89,216 (Nov. 12, 2024). When plaintiffs finally did bring their suit, their complaint was so inadequate that they chose to amend it rather than opposing the Commission's motion to dismiss or transfer. *See* Dkt. 24. And plaintiffs sought and received (with no objection from the Commission) an extension before filing that amended complaint on May 8, 2025. In short, through no fault of defendants, this case did not begin in earnest until six months after the final rule was published.

Third, plaintiffs put great emphasis on their prior proposal that the parties consolidate summary judgment briefing with defendants' motion to dismiss. Dkt. 54 at 1-2. But the Court denied that request after the Commission raised legitimate concerns about venue and jurisdiction. Dkts. 33-34. Notably, plaintiffs' proposed consolidated briefing schedule at that stage included a 30-day response time for the

Commission to file a "cross-motion for summary judgment," and proposed that the Commission have "[u]p to 40 pages" for that motion. Dkt. 31 at 5.

Contradicting their prior position, plaintiffs now assert that no cross-motion for summary judgment is necessary, and that a page extension is unnecessary because the parties have already briefed standing and venue. Dkt. 54 at 5. As plaintiffs are surely aware, however, the standard at summary judgment is different than the standard on a motion to dismiss, *see Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (explaining that plaintiff must establish standing consistent "with the manner and degree of evidence required at the successive stages of the litigation"), and plaintiffs have submitted new evidence to support their standing argument, *see* Dkts. 44-1 – 44-4. Defendants intend to argue in their cross-motion that the new evidence is insufficient to demonstrate standing at the summary judgment stage. As to remedies, plaintiffs say that "there is no need for separate briefing on remedies until (and unless) the Court rules on the merits for the Plaintiffs." Dkt. 54 at 5. Plaintiffs do not explain why, on the one hand, they are in such a rush to receive a decision on the merits of the case that they cannot agree to a modest extension of time, while on the other hand they believe that any actual resolution should be further delayed by separate briefing on remedies after the Court renders a decision on the merits. A party seeking summary judgment should ordinarily address all issues before the court, and defendants intend to address the proper scope of relief if judgment were to be granted for any party. Nor do plaintiffs reconcile their prior position that Rule 56 allows parties to file a motion for summary judgment "at any time until" shortly before trial, Dkt. 41 at 4, with their new position that the Commission should not be able to file a cross-motion for summary judgment.

Likewise, plaintiffs do not reconcile their position here with their conduct in other cases. Last year, the same four plaintiffs—represented by the same counsel—challenged an FTC rule in a suit under the APA filed in a nearby district. *See Ryan LLC* and *U.S. Chamber of Commerce, et al. v. FTC*, No. 3:24-cv-986 (N.D. Tex.). And there, the parties proposed a briefing schedule that included cross-motions for summary judgment, extensions of time, and expanded page limits. *Id.* Dkt. 156. Indeed, the U.S. Chamber of Commerce frequently brings APA challenges to government regulations, and it frequently proposes joint schedules with cross-motions for summary judgment, appropriately expanded page limits, and extensions of time to accommodate the respective needs of both sides. *See, e.g.*, *Chamber of Commerce of the U.S., et al. v. NLRB*, 6:23-cv-553 (E.D. Tex. Nov. 17, 2023), Dkt. 22; *Chamber of Commerce of the U.S., et al. v. OSHA et al.*, No. 6:24-cv-271 (W.D. Tex. June 7, 2024), Dkt. 23.

Fourth, defendants ignore that the Commission's requested extension would likely create only a negligible delay. Plaintiffs do not oppose the Court moving the oral argument date to a date other than October 1-10. Dkt. 54 at 1. As the Commission explained, the proposed extension of time would mean that briefing will be completed on October 10. Dkt. 52 a 3. The Commission is prepared to present oral argument as soon as the Court desires after that date. *Id.*

Fifth, defendants do not rebut the reasons the Commission has offered in support of its requested extension. To be clear, the Commission requires more time to adequately prepare its brief in this case with complex issues, a sizeable record, and a policy of national importance. Dkt. 52 at 3. More time is also necessary because of the substantial attrition the Commission has faced, resulting in fewer attorneys handling more cases. *Id.* And this motion also requires review and coordination between two different federal agencies, which necessarily requires additional time.

In discussions before filing the motion, the Commission initially proposed 30 additional days to file its response and cross-motion for summary judgment. In response to plaintiffs' concerns about timing, the Commission then modified its initial request and sought only 21 days in its extension motion. *Id.* The requested 21-day extension and 10 additional pages are the minimum the Commission believes necessary to prepare an effective brief that has been reviewed by the necessary agency officials. The Commission respectfully requests that the motion be granted.

August 19, 2025

Respectfully submitted,

Benjamin F. Aiken

/s/ Benjamin F. Aiken
D.C. Bar No. 1046730
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
T: (202) 326-2151
baiken@ftc.gov