

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES JIMENEZ, an individual; HOPE) Case No.: 3:21-cv-00027-BEN-AGS
SCOTT, an individual; L.J., a minor, by)
and through her guardian ad litem, CHERI) **ORDER GRANTING JOINT**
SCOTT; M.J., a minor, by and through her) **MOTION TO STAY**
guardian ad litem, CHERI SCOTT,)
Plaintiff,) [ECF No. 21]
)
v.)
SAN DIEGO FAMILY HOUSING, LLC,)
a California limited liability company;)
LINCOLN MILITARY PROPERTY)
MANAGEMENT, L.P., a Delaware)
limited partnership; DOES 1 through 50,)
Defendant.)

I. INTRODUCTION

Plaintiffs James Jimenez, an individual; Hope Scott, an individual; L.J., a minor, by and through her guardian ad litem, Cheri Scott; M.J., a minor, by and through her guardian ad litem, Cheri Scott (collectively, “Plaintiffs”) bring this action against Defendants San Diego Family Housing, LLC, a California limited liability company; Lincoln Military Property Management, L.P., a Delaware limited partnership (collectively, “Defendants”) relating to alleged uninhabitable conditions at their military housing. ECF No. 1 at 2-3, ¶ 1. Before the Court is the Joint Motion to Stay (the “Joint

1 Motion"). ECF No. 21. After considering the papers submitted, supporting
2 documentation, and applicable law, the Court **GRANTS** the Joint Motion.

3 **II. BACKGROUND**

4 This matter is one of five cases involving allegations of untenable living conditions
5 at various military housing properties. The other three, earlier-filed cases are *Vincent v.*
6 *San Diego Family Housing, LLC*, 3:20-cv-1794-LAB-DEB; *Spangler v. San Diego*
7 *Family Housing, LLC*, 3:20-cv-2287-W-DEB; and *Huffman v. San Diego Family*
8 *Housing, LLC*, 3:20-cv-2514-H-JLB (collectively, the "Related Cases").

9 **A. Statement of Facts**

10 Plaintiffs allege that they lived and occupied their former military housing located
11 at 10276 Taussig Court, San Diego, California 92124 beginning on or about August 6,
12 2018. Complaint, ECF No. 1-2 ("Compl.") at 3,¹ ¶ 1, 5, ¶¶ 12-13. They plead that during
13 their tenancy, they discovered various defective conditions, such as, *inter alia*, microbial
14 growth and peeling paint, which Defendants failed to timely repair. *Id.* at 5-6, ¶¶ 15-16.

15 **B. Procedural History**

16 On November 24, 2020, Plaintiffs filed their Complaint with the San Diego County
17 Superior Court, alleging causes of action for (1) negligence; (2) nuisance; (3) constructive
18 (wrongful) eviction; (4) negligent misrepresentation; (5) negligent infliction of emotional
19 distress; (6) breach of rental agreement; (7) breach of implied warranty of habitability;
20 (8) breach of implied covenant of quiet use and enjoyment; (9) rent abatement; and (10)
21 negligence against contractor working on the premises. Compl. at 1.

22 On January 8, 2020, Defendants timely removed the case, ECF No. 1, and on
23 January 15, 2021, they filed an Answer to the Complaint. *See* ECF No. 4. On March 19,
24 2021, Magistrate Judge Andrew G. Schopler granted the parties' joint motion to
25 consolidate this case with the Related Cases for pretrial purposes. ECF No. 10.

26 On July 27, 2021, Defendants filed a Motion to Dismiss this case pursuant to Rule

27 ¹ Unless otherwise indicated, all page number references are to the ECF-generated
28 page number contained in the header of each ECF-filed document.

1 12(b)(1) of the Federal Rules of Civil Procedure, arguing that Defendants qualify as
2 government contractors entitled to derivative sovereign immunity. ECF No. 13 at 6:6-16.
3 Defendants filed the same motion in all Related Cases. *See* Joint Motion, ECF No. 16 at
4 2:19-22. Thus, on August 18, 2021, the parties moved to continue the hearing date and
5 responsive briefing deadlines for Defendants' Motion to Dismiss to permit the parties to
6 engage in consolidated jurisdictional discovery before opposing Defendants' motion. *Id.*
7 at 2:19-3:4. On August 24, 2021, the Court granted this request, and re-set the hearing
8 date in this case to October 18, 2021. *See* Minute Order, ECF No. 17.

9 On September 29, 2021, the Parties filed this Joint Motion to Stay the Case pending
10 global settlement of this case and all Related Cases. Joint Motion, ECF No. 21 at 2:1-4.

11 **III. LEGAL STANDARD**

12 A court's decision to grant a stay is discretionary, "dependent upon the
13 circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 432 (2009). The
14 movant bears the burden of showing the circumstances justifying a stay. *Id.* at 433-34; *see*
15 *Clinton v. Jones*, 520 U.S. 681, 708 (1997). A court may stay proceedings incidental to its
16 power "to control the disposition of the causes on its docket with economy of time and
17 effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254
18 (1936). In determining whether a stay is appropriate, a federal court considers the (1)
19 "possibility damage may result from the granting of a stay," (2) "hardship or inequity which
20 a party may suffer in being required to go forward," and (3) "orderly course of justice
21 measured in terms of the simplifying or complicating of issues, proof, and questions of law
22 which could be expected to result from a stay." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268
23 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254-55).

24 **IV. DISCUSSION**

25 The Parties seek a Court Order approving their Joint Motion to Stay Proceedings
26 for ninety (90) days, including discovery and all pretrial deadlines imposed by the Local
27 Rules and the Federal Rules of Civil Procedure, to allow the Parties to continue settlement
28 discussions. Joint Motion, ECF No. 21 at 2:1-6. They note that "[t]he requested stay

1 would also have the benefit of potentially allowing time for issuance of an opinion by the
2 Ninth Circuit Court of Appeals in *Childs v. San Diego Family Housing, LLC, et al.*,
3 [Appeal] No. 20-56049, addressing the same derivative sovereign immunity issue that is
4 the subject of Defendants' motion to dismiss in this matter," which the Ninth Circuit took
5 under submission on August 31, 2021. *Id.* at 2:23-3:4.

6 Given the length of the stay is only ninety (90) days, the purpose of the stay is to
7 facilitate settlement, and neither party opposes the stay, the Court grants the stay after
8 concluding that (1) little to no damage will result from the stay, (2) no parties will suffer
9 inequity as a result of the stay, and (3) the orderly course of justice measured in terms of
10 simplifying issues warrants granting the stay.

11 **V. CONCLUSION**

12 For the above reasons, the Court **GRANTS** the Joint Motion as follows:

13 1. This case is stayed for ninety (90) days, at which point the stay will expire on
14 Thursday, December 30, 2021.

15 2. If the parties fail to file a Notice of Dismissal pursuant to Rule 41(a)(1)(A) of
16 the Federal Rules of Civil Procedure before December 30, 2021, then, the following dates
17 will apply:

18 a. A status conference will be held in Courtroom 5A on Monday, January
19 3, 2022, at 10:30 a.m.

20 b. Given the Parties have not addressed whether the pending Motion to
21 Dismiss is withdrawn in light of the settlement, the below dates will apply to that Motion:

22 c. Plaintiffs' opposition brief will be due on Thursday, January 6, 2022.

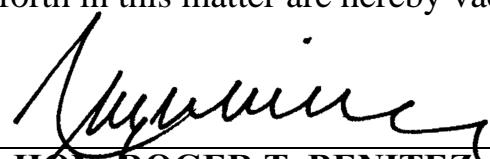
23 d. Defendants' reply brief will be due on Thursday, January 13, 2022.

24 e. Unless submitted on the papers, the hearing on Defendants' Motion to
25 Dismiss will take place on Monday, January 17, 2022.

26 3. All remaining deadlines and dates set forth in this matter are hereby vacated.

27 **IT IS SO ORDERED.**

28 DATED: September 30, 2021


HON. ROGER T. BENITEZ
United States District Judge