



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 DENYING JOINT MOTION**
SCOTT; M.J., a minor, by and through her) **TO STAY**
guardian ad litem, CHERI SCOTT,)
Plaintiff,) **[ECF No. 26]**
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 Second Joint Motion to Stay (the

1 “Joint Motion”). ECF No. 26. After considering the papers submitted, supporting
 2 documentation, and applicable law, the Court **DENIES** 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* ECF No. 16 at 2:19-22. Thus,
4 on August 18, 2021, the parties moved to continue the hearing date and responsive
5 briefing deadlines for Defendants' Motion to Dismiss to permit the parties to engage in
6 consolidated jurisdictional discovery before opposing Defendants' motion. *Id.* at 2:19-
7 3:4. On August 24, 2021, the Court granted this request, and re-set the hearing date in
8 this case to October 18, 2021. *See* 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. ECF No. 21 at 2:1-4. On October 1,
11 2021, the Court granted the First Joint Motion to Stay, and stayed the case for ninety (90)
12 days, at which pointed the stay would be set to expire on Thursday, December 30, 2021.
13 ECF No. 22. The Court also set a status conference for January 3, 2022, at 10:30 a.m. *Id.*

14 On November 30, 2021, Magistrate Judge Andrew Schopler held a status
15 conference and set a settlement conference for this and all related cases for January 14,
16 2022, at 9:00 a.m. ECF No. 24. However, at the parties' request, he later continued the
17 settlement conference to January 28, 2022. ECF No. 25.

18 On December 14, 2021, the parties filed the instant Joint Motion to Stay the Entire
19 Civil Action a second time. ECF No. 26.

20 **III. LEGAL STANDARD**

21 A court's decision to grant a stay is discretionary, "dependent upon the
22 circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 432 (2009). The
23 movant bears the burden of showing the circumstances justifying a stay. *Id.* at 433-34; *see*
24 *Clinton v. Jones*, 520 U.S. 681, 708 (1997). A court may stay proceedings incidental to its
25 power "to control the disposition of the causes on its docket with economy of time and
26 effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254
27 (1936). In considering a stay request, courts generally consider the following:

28 (1) the interest of the plaintiffs in proceeding expeditiously with

1 this litigation or any particular aspect of it, and the potential
2 prejudice to plaintiffs of a delay; (2) the burden which any
3 particular aspect of the proceedings may impose on defendants;
4 (3) the convenience of the court in the management of its cases,
5 and the efficient use of judicial resources; (4) the interests of
persons not parties to the civil litigation; and (5) the interest of
the public in the pending civil and criminal litigation.

6 *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324-325 (9th Cir. 1995); *see also Doe*
7 *l v. AOL LLC*, 719 F. Supp. 2d 1102, 1107-08 (N.D. Cal. 2010) (denying a stay after
8 finding that “there is no compelling reason to delay this action further”).

9 **IV. DISCUSSION**

10 The Parties seek a Court Order approving their Joint Motion to Stay this case for
11 an additional sixty-one (61) days to allow the Parties to continue settlement discussions.
12 ECF No. 26 at 2:1-6. They indicate that since the Court’s order two months ago staying
13 the case until December 30, 2021, they have “met and conferred and continue to believe
14 that a global settlement of this and four similar matters is possible.” *Id.* at 2:19-22. They
15 state that if the cases are resolved at the January 28, 2022 settlement conference, they
16 “anticipate significant additional time will be needed thereafter to document and finalize
17 the settlement(s) due to the need to submit minors’ compromises in each matter.” *Id.* at
18 2:24-3:3.” Thus, they request a stay until March 1, 2022. *Id.* at 3:4-5.

19 The Court notes that Defendants still have a pending Motion to Dismiss on the
20 docket that was filed on July 31, 2021. *See* ECF No. 13. Previously, the parties advised
21 that “[t]he requested stay would also have the benefit of potentially allowing time for
22 issuance of an opinion by the Ninth Circuit Court of Appeals in *Childs v. San Diego*
23 *Family Housing, LLC, et al.*, [Appeal] No. 20-56049, addressing the same derivative
24 sovereign immunity issue that is the subject of Defendants’ motion to dismiss in this
25 matter,” which the Ninth Circuit took under submission on August 31, 2021. ECF No.
26 21 at 2:23-3:4. However, the *Childs* case is still awaiting issuance of the written opinion,
27 and in the interim, Defendants have not withdrawn the pending motion. If the Court
28 granted the requested stay, it would result in the case being stayed for a sum total of 151

1 days, or approximately five months, which is more than ample time for the parties to
2 determine whether the case will settle. Further, in that 151 days, Defendants' motion will
3 have been pending without a ruling for eight months, and Defendants do not indicate that
4 they intend to withdraw the motion.

5 On the one hand, the stay would not give rise to the "possibility of damage" or
6 "hardship or inequity." *CMAX*, 300 F.2d at 268. However, "[a] court also considers how
7 granting a stay will impact the efficient use of judicial resources, including the court's
8 ability to clear its docket." *Chrome Hearts, LLC v. Old Sch. Fairfax, Inc.*, No. 2:16-cv-
9 09080ABJPRX, 2018 WL 1942766, at *3-4 (C.D. Cal. Feb. 26, 2018) (citing *Fed. Sav.*
10 & *Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989) (noting that the district
11 court did not abuse its discretion by denying the defendant's motion to stay where the
12 district court had considered its "interest in clearing its docket"). Here, Defendant's
13 Motion to Dismiss remains pending on the Court's docket, and by the time the requested
14 stay would lift, it would have been pending for eight months. Further, the parties have
15 already been granted two months to decide upon a settlement since their last request but
16 appear to have made no progress and now request an additional two months.

17 Because granting this stay would result a total stay of 151 days, and a motion
18 pending on the Court's docket for eight months, the Court **DENIES** the Joint Motion.

19 **V. CONCLUSION**

20 For the above reasons, the Court **DENIES** the Joint Motion as follows:

21 1. This case remains stayed until Thursday, December 30, 2021.

22 2. The previously set Status Conference scheduled for Courtroom 5A on
23 Monday, January 3, 2022, at 10:30 a.m. is vacated.

24 3. If the parties fail to file a Notice of Dismissal pursuant to Rule 41(a)(1)(A) of
25 the Federal Rules of Civil Procedure before February 11, 2022, then, the following dates
26 will apply:

27 a. A status conference will be held in Courtroom 5A on Monday, February
28 14, 2022 at 10:30 a.m.

b. Given the Parties have not addressed whether the pending Motion to Dismiss is withdrawn in light of the settlement, but a settlement conference is scheduled for January 28, 2022, the below dates will apply to that Motion:

c. Plaintiffs' opposition brief will be due on Friday, February 18, 2022.

d. Defendants' reply brief will be due on Friday, February 25, 2022.

e. The previously set hearing date is vacated given the Court finds the matter appropriate for submission on the papers. 1

IT IS SO ORDERED.

DATED: December 17, 2021

HON. ROGER T. BENITEZ
United States District Judge