UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DV DIAMOND CLUB
OF FLINT, LLC, *et al.*,

Plaintiffs,

Case No. 20-cv-10899
Hon. Matthew F. Leitman

v.

UNITED STATES SMALL BUSINESS
ADMINISTRATION, *et al.*,

Defendants.
_____/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' EMERGENCY MOTION FOR A STAY (ECF No. 45)

On May 13, 2020, Defendants filed an emergency motion to stay this Court's Opinion and Order granting Plaintiffs' and Intervenors' motion for a preliminary injunction. (*See* Mot., ECF No. 45.) In the alternative, Defendants ask the Court for an additional 36 hours to comply with the Court's order that they contact Plaintiffs' and Intervenors' lenders and inform the lenders that the applications by Plaintiffs and Intervenors for PPP loans shall not be denied based on the "prurient sexual nature" provisions of the Original SBA Ineligibility Rule, the 2019 SOP, and/or the PPP Ineligibility Rule (as those terms were defined in the Opinion and Order). (*See id.*) The Court **DENIES** Defendants a stay, but it **GRANTS** Defendants an additional 36 hours to comply with the Court's Opinion and Order.

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"A stay is an intrusion into the ordinary processes of administration and judicial review." *Dodds v. United States Dep't of Education*, 845. F.3d 217, 220 (6th Cir. 2016) (quoting *Nken v. Holder*, 556 U.S. 418, 425 (2009)). "To determine whether to stay the grant of a preliminary injunction, [courts] balance four factors: the movant's likelihood of success on appeal; whether irreparable injury to the movant will result in the absence of a stay; prospective harm to others if a stay is granted; and the public's interest in granting a stay." *Id.* These are the "the same factors considered in determining whether to issue a TRO or preliminary injunction." *Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008).

For all of the same reasons that the Court explained in its Opinion and Order, it remains persuaded that Plaintiffs and Intervenors are entitled to a preliminary injunction. Thus, for all of those same reasons, the Court concludes that Defendants have not shown a likelihood of success on appeal; that Defendants will not suffer irreparable injury in the absence of a stay; and that the harm to others and public interest factors weigh against a stay of the Court's decision. Indeed, because the loan guarantees at issue here are made on a "first-come, first-serve" basis, a stay while the Court's Opinion and Order is appealed could foreclose Plaintiffs and Intervenors from participating in the PPP program at all, even if they succeed on appeal. That possibility "outweighs any harm the [Defendants] would suffer without a stay." (5/4/2020 Order Denying Stay, *Camelot Banquet Rooms et. al. v. U.S. Small*

Bus. Admin. et al., ECF No. 39-4, PageID.1145.) For all of these reasons, the Court declines to stay its Opinion and Order.

However, the Court does conclude that a temporary extension of time for Defendants to comply with the Court's Opinion and Order while Defendants seek a stay in the United States Court of Appeals for the Sixth Circuit will not unduly harm Plaintiffs or Intervenors. The Court will therefore grant Defendants' request for an additional 36 hours to comply with the Court's Opinion and Order.

Accordingly, for all of the reasons stated above, **IT IS HEREBY ORDERED** that Defendants' emergency motion for a stay (ECF No. 45) is **GRANTED IN PART AND DENIED IN PART**. Defendants' request for a stay pending appeal is **DENIED**. Defendants' request for an additional 36 hours to comply with the Court's Opinion and Order is **GRANTED**. Defendants shall comply with the Court's Opinion and Order by no later than **11:59 p.m. on May 15, 2020**.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: May 13, 2020

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 13, 2020, by electronic means and/or ordinary mail.

s/ Holly A. Monda
Case Manager
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