

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION,
DR. ADAM CORLEY, and TYLER RE-
GIONAL HOSPITAL, LLC,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, DE-
PARTMENT OF LABOR, DEPARTMENT
OF THE TREASURY, and the CURRENT
HEADS OF THOSE AGENCIES IN THEIR
OFFICIAL CAPACITIES,

Defendants.

Civil Action No. 6:22-cv-00372-JDK

**JOINT MOTION TO CONSOLIDATE AND TO SET AN
EXPEDITED SUMMARY JUDGMENT BRIEFING SCHEDULE**

The parties to the above-captioned case respectfully submit this joint motion to consolidate this action with *LifeNet, Inc. v. Department of Health & Human Services*, No. 6:22-cv-00373, and to set an expedited summary judgment briefing schedule that would permit this Court to render a decision in the consolidated actions by the end of January 2023. Counsel for LifeNet has authorized the parties to represent that LifeNet joins in the relief sought in this motion.

These two cases are follow-on actions to *Texas Medical Association v. Department of Health & Human Services*, No. 6:21-CV-425-JDK, 2022 WL 542879 (E.D. Tex. Feb. 23, 2022), and *LifeNet, Inc. v. Department of Health & Human Services*, 2022 WL 2959715, No. 6:22-cv-00162 (E.D. Tex. July 26, 2022), in which this Court invalidated portions of an interim final rule issued by defendants that addressed the standards for the independent dispute resolution (“IDR”) process established by the No Surprises Act (“NSA”).

Defendants have now issued a final rule implementing the NSA’s IDR process. *See* 87 Fed. Reg. 52,618 (Aug. 26, 2022). The final rule removes the provisions of the interim final rule that were vacated by this Court in the earlier actions and replaces them with a new set of provisions. In the two new cases, plaintiffs challenge the final rule on substantially similar grounds, alleging that it unlawfully privileges the qualifying payment amount (“QPA”) over the other statutory factors. Defendants dispute this characterization of the final rule, and they deny that plaintiffs are entitled to relief with respect to that rule. Because the cases raise common issues of law, judicial economy would best be served by consolidating them for purposes of briefing and decision. *See* Fed. R. Civ. P. 42(a) (authorizing consolidation where “actions before the court involve a common question of law or fact”). The parties request that this action be designated the lead case, and that all future filings be made in this docket.

The final rule takes effect on October 25, 2022, 87 Fed. Reg. at 52,618, and applies to items and services provided or furnished on or after that date, *id.* at 52,632. The parties estimate that arbitrators could begin reviewing cases under the final rule by the first week of February 2023 and that arbitrators would begin issuing decisions under the final rule by early March 2023. Accordingly, the parties jointly move the Court to adopt the following agreed-upon schedule for summary judgment briefing:

- Plaintiffs’ motions for summary judgment – October 12, 2022
- *Amicus curiae* briefs supporting plaintiffs – October 19, 2022
- Defendants’ opposition/cross-motion for summary judgment – November 9, 2022
- *Amicus curiae* briefs supporting defendants – November 16, 2022
- Plaintiffs’ oppositions/replies in support of summary judgment – November 23, 2022
- Defendants’ reply in support of summary judgment – December 15, 2022

All counsel in both matters note that they are available for oral argument from December 19 through December 22, 2022, and on January 3, 2023.

For the briefing format, the parties propose that plaintiffs in each of the two cases be permitted to file (i) separate summary judgment motions of up to 30 pages each and (ii) separate opposition/reply briefs of up to 30 pages each. However, plaintiffs anticipate that they may be able to coordinate to avoid duplication and may not use all of their allotted pages. Therefore, the parties propose that defendants be permitted to file (i) a single consolidated opposition/cross-motion for summary judgment of at least 40 pages, up to a maximum of the total combined page count of plaintiffs' summary judgment motions and (ii) a single consolidated reply brief of at least 30 pages, up to a maximum of half the total combined page count of plaintiffs' opposition/reply briefs. All parties reserve the right to request additional pages for their opposition and reply briefs, after reviewing the other parties' submissions.

Plaintiffs agree to waive defendants' obligation to answer the complaints, and defendants reserve the right to raise threshold objections to either complaint in their dispositive briefing.

CONCLUSION

For these reasons, the parties respectfully request that the Court consolidate the two actions and enter the proposed briefing schedule and format set out above. Proposed orders are attached.

Dated: September 30, 2022

Respectfully submitted,

/s/ Penny P. Reid

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CERTIFICATE OF CONFERENCE

Undersigned counsel certifies that counsel for all parties have agreed upon this motion.

/s/ Penny P. Reid

Penny P. Reid

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). This document was also served on all counsel via email service, on September 30, 2022.

/s/ Penny P. Reid

Penny P. Reid

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
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TEXAS MEDICAL ASSOCIATION,
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LIFENET, INC.

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
DEPARTMENT OF LABOR,
DEPARTMENT OF THE TREASURY,
OFFICE OF PERSONNEL MANAGEMENT,
and the CURRENT HEADS OF THOSE
AGENCIES IN THEIR OFFICIAL
CAPACITIES,

Defendants.

Case Nos.:

6:22-cv-00372 (lead case)

6:22-cv-00373

[PROPOSED] ORDER GRANTING JOINT MOTION TO CONSOLIDATE

Before the Court is the parties' Joint Motion to Consolidate. Having considered the motion, and being well-advised that it is agreed, the Court is of the opinion that the motion should be **GRANTED**. It is therefore **ORDERED** that Case Nos. 6:22-cv-00372 and 6:22-cv-00373 are hereby consolidated, with Case No. 6:22-cv-00372 as the lead case, such that all future filings in the consolidated case should be made in the docket for Case No. 6:22-cv-00372.

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
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AGENCIES IN THEIR OFFICIAL
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Defendants.

Case Nos.:
6:22-cv-00372 (lead case)
6:22-cv-00373

**[PROPOSED] ORDER GRANTING JOINT MOTION TO SET AN EXPEDITED
SUMMARY JUDGMENT BRIEFING SCHEDULE**

Before the Court is the parties' Joint Motion to Set an Expedited Summary Judgment Briefing Schedule. Being well-advised that the briefing schedule is agreed, and having fully considered the motion, the Court is of the opinion that the motion should be **GRANTED**. It is therefore

ORDERED that the briefing schedule for summary judgment in this matter is as follows:

- Plaintiffs' motions for summary judgment – October 12, 2022
- *Amicus curiae* briefs supporting plaintiffs – October 19, 2022
- Defendants' opposition/cross-motion for summary judgment – November 9, 2022
- *Amicus curiae* briefs supporting defendants – November 16, 2022

- Plaintiffs' oppositions/replies in support of summary judgment – November 23, 2022
- Defendants' reply in support of summary judgment – December 15, 2022

Plaintiffs in each of the two consolidated cases may file (i) separate summary judgment motions of up to 30 pages each and (ii) separate opposition/reply briefs of up to 30 pages each. Defendants may file (i) a single consolidated opposition/cross-motion for summary judgment of at least 40 pages, up to a maximum of the total combined page count of plaintiffs' summary judgment motions and (ii) a single consolidated reply brief of at least 30 pages, up to a maximum of half the total combined page count of plaintiffs' opposition/reply briefs. Defendants' obligation to answer the complaints in these actions is waived.