

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

NATIONAL INFUSION CENTER
ASSOCIATION, on behalf of itself and its
members; GLOBAL COLON CANCER
ASSOCIATION, on behalf of itself and its
members; and PHARMACEUTICAL
RESEARCH AND MANUFACTURERS OF
AMERICA, on behalf of itself and its
members,

Plaintiffs,

vs.

XAVIER BECERRA, in his official capacity
as Secretary of the U.S. Department of Health
and Human Services; the U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; CHIQUITA BROOKS-
LASURE, in her official capacity as
Administrator of the Centers for Medicare and
Medicaid Services; and the CENTERS FOR
MEDICARE AND MEDICAID SERVICES,

Defendants.

Civil Action No. 1:23-cv-00707

EMERGENCY OPPOSED MOTION FOR EXTENSION OF TIME

Plaintiffs respectfully move for an extension of time to respond to the Government's motion to dismiss (ECF No. 39) for a period of fourteen days, up to and including September 25, 2023. Plaintiffs respectfully request that the Court act on this request expeditiously, as the current deadline for Plaintiffs to respond to the Government's motion to dismiss is September 11. Plaintiffs sought the Government's consent to this request, and the Government opposes.

The request is based on the following grounds:

1. On August 1, 2023, the parties jointly moved the Court to establish a scheduling order in which the parties would brief cross-motions for summary judgment. ECF No. 33.

2. On August 2, the Court granted the parties' joint request, establishing a schedule and page limits for the parties' respective cross-motions for summary judgment. ECF No. 34.

3. Under that scheduling order, on August 10, Plaintiffs filed their motion for summary judgment and supporting evidence. ECF No. 35.

4. On August 28, however, outside the agreed schedule, the Government moved to dismiss this action. ECF No. 39. The next day, the Government also moved to vacate the Court's previously entered scheduling order and to extend indefinitely the Government's time to respond to Plaintiffs' motion for summary judgment pending resolution of the Government's motion to dismiss. ECF No. 40.

5. Plaintiffs opposed the Government's motion to vacate the scheduling order and requested that the Court either (1) strike or deny the government's motion to dismiss without prejudice to the Government incorporating the same arguments in its cross-motion for summary judgment, or (2) set a briefing schedule to permit the parties to brief the motion to dismiss in conjunction with the existing summary judgment schedule. ECF No. 41 at 1, 9–10. Under the existing scheduling order, Plaintiffs' combined opposition to Government's cross-motion for summary judgment and reply in support of Plaintiffs' motion for summary judgment is due October 26.

6. Plaintiffs' current deadline to respond to the Government's motion to dismiss is September 11. Absent an extension of that deadline, Plaintiffs' opposition to the Government's motion to vacate the scheduling order may be rendered moot. *See id.* at 1. The requested extension

will also provide time for Plaintiffs to consult among themselves and to prepare their responses to the various arguments raised in the Government's motion to dismiss.

7. The Government opposes the requested extension. The Government has authorized Plaintiffs to represent the Government's position as follows: "Defendants would consent to the relief requested in Plaintiffs' scheduling motion provided that Plaintiffs join in requesting the relief set forth in Defendants' scheduling motion, ECF No. 40. But because Plaintiffs seek relief only with respect to their own upcoming deadline, while continuing to oppose Defendants' scheduling request, Defendants oppose Plaintiffs' motion." Plaintiffs do not believe that their modest request for a 14-day extension of time pending the Court's resolution of scheduling matters is fairly comparable to the Government's far-reaching request to vacate an agreed summary-judgment briefing schedule in its entirety.

CONCLUSION

For the foregoing reasons, Plaintiffs' request that the Court grant their motion to extend their deadline to respond to the Government's motion to dismiss, to and including September 25, 2023.

DATED: September 8, 2023

/s/ Michael Kolber

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Respectfully submitted,

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