

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ELI LILLY AND COMPANY, and
LILLY USA, LLC

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

No. 1:21-cv-81-SEB-MJD

**JOINT MOTION TO AMEND SCHEDULE FOR FURTHER PROCEEDINGS AND
CHANGE PRELIMINARY-INJUNCTION HEARING DATE**

On May 27, 2021, the Court heard oral argument on Plaintiffs' Motion for a Temporary Restraining Order, ECF No. 94. At that hearing, the Court denied the request for a temporary restraining order, extended Plaintiffs' deadline to respond to HRSA's May 17, 2021 letter, and granted Defendants' request, ECF No. 101, to combine briefing on Plaintiffs' Motion for a Preliminary Injunction with Defendants' Reply in Support of their Motion to Dismiss or for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment, and extending Defendants' deadline to file that brief to June 4, 2021. *See* ECF No. 102, Minute Entry. The Court also gave Plaintiffs leave to file a Second Amended Complaint challenging HRSA's May 17, 2021 letter, which was a basis of Plaintiffs' pending Motion for a Preliminary Injunction. Plaintiffs filed their Second Amended Complaint the same day. *See* ECF No. 103.

In light of these developments, in particular with regard to the allegations set forth in Plaintiffs' Second Amended Complaint, the parties have conferred with the goal of proposing to the Court a schedule that will provide the most efficient manner possible for the Court to decide both Plaintiffs'

Motion for Preliminary Injunction and the parties' dispositive briefing on *all* claims presented in the operative Second Amended Complaint. Specifically, the parties have agreed that Plaintiffs' claims challenging HRSA's May 17, 2021 letter require Defendants to produce an administrative record for that decision. The current schedule, however, requires Defendants to file their opposition to Plaintiffs' Motion for Preliminary Injunction and their final dispositive brief on June 4, 2021, *before* production of the administrative record can occur. The parties agree that is inefficient because it will require duplicative briefing (including supplemental briefing on Plaintiffs' new claims) after the new administrative record for the May 17, 2021 letter is produced. Instead, the parties agree that it would be preferable to allow the Court to review a single round of briefing on all remaining live disputes, to be filed promptly after the new administrative record is produced.

Accordingly, the parties jointly propose that the Court enter the following briefing schedule to supersede the existing briefing schedule (including the combined Defendants' brief that would otherwise be due on June 4, 2021, *see* ECF No. 102, Minute Entry):

- Defendant HRSA will produce the administrative record supporting its May 17, 2021 letter on **June 11, 2021**;
- Defendants will file a combined 60-page brief opposing Plaintiffs' Motion for Preliminary Injunction, moving for summary judgment on Plaintiffs' new allegations challenging HRSA's May 17, 2021 letter, opposing Plaintiffs' pending Motion for Summary Judgment, and replying in support of Defendants' opening brief, on **June 23, 2021**;
- Plaintiffs will file a combined 60-page brief replying in support of their Motion for Preliminary Injunction, moving for summary judgment on their new allegations challenging HRSA's May 17, 2021 letter, and replying in support of their opening brief, on **July 12, 2021**; and
- The parties respectfully request that the Court reschedule the hearing on Plaintiffs' Motion for Preliminary Injunction, currently scheduled for June 16, 2021, at the Court's earliest convenience after all briefing is complete on July 12, 2021.

The parties respectfully suggest that this modified schedule will prove significantly less burdensome for the Court and promote efficiency for the parties and the Court. By allowing the parties to avoid duplicative briefing and combine all arguments on Plaintiffs' claims into one omnibus

brief, and by allowing the Court to address Plaintiff's Motion for a Preliminary Injunction after the parties have adequately briefed that request—including challenges to the May 17, 2021 letter—with the administrative record provided by the agency. The parties respectfully request further that, due to the complexity and breadth of the issues that the parties will need to address in their one remaining brief under this proposal, each side be allowed up to **60 pages** each for their remaining briefs, which will address: (1) the pending summary judgment motion; (2) dispositive motions on the claims asserted on the May 17 letter; and (3) the pending preliminary injunction motion.

Finally, in view of the fact that this is a proceeding under the Administrative Procedure Act, which will be resolved without discovery and trial, as well as this Court's March 29, 2021 order excusing the parties "from compliance with Local Civil Rule 56-1 in that they [were] not required to include statements of material facts in dispute in their summary judgment briefing," ECF No. 85, the parties respectfully request vacatur of the initial pretrial conference scheduled for June 21, 2021, and the related deadlines included in the May 28, 2021 pretrial scheduling order, ECF. No. 105.

The parties appreciate the Court's consideration and respectfully request entry of the attached proposed order.

Dated: June 1, 2021

/s/ John C. O'Quinn

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CERTIFICATE OF SERVICE

I hereby certify that on **June 1, 2021**, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

/s/ John C. O'Quinn
John C. O'Quinn

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PROPOSED ORDER

Upon consideration of the parties' Joint Motion to Amend Schedule for Further Proceedings and Change Preliminary-Injunction Hearing Date, the Court hereby GRANTS the parties' motion and enters the following schedule:

- Defendant HRSA will produce the administrative record supporting its May 17, 2021 violation letter on **June 11, 2021**
- Defendants will file a combined brief opposing Plaintiffs' Motion for Preliminary Injunction, moving for summary judgment on Plaintiffs' new allegations challenging HRSA's May 17, 2021 letter, opposing Plaintiffs' pending Motion for Summary Judgment, and replying in support of Defendants' opening brief, on **June 23, 2021**
- Plaintiffs will file a combined brief replying in support of their Motion for Preliminary Injunction, moving for summary judgment on their new allegations challenging HRSA's May 17, 2021 letter, and replying in support of their Motion for Summary Judgment, on **July 12, 2021**
- The Court will hold a hearing on Plaintiffs' Motion for Preliminary Injunction on _____.
- The parties' remaining briefs shall not exceed 60 pages.
- The initial pretrial conference scheduled for June 21, 2021, and the related deadlines

included in the May 28, 2021 pretrial scheduling order, ECF No. 105, are vacated.

SO ORDERED.

Dated: _____

Signed: _____
The Honorable Sarah Evans Barker

Order served on all counsel of record via ECF