

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 STIPULATION OF BRIEFING SCHEDULE ON DEFENDANTS’
FORTHCOMING MOTION TO DISMISS AND BOTH SIDES’ MOTIONS FOR
SUMMARY JUDGMENT**

The parties in the above-captioned action have conferred and respectfully request that the Court enter a stipulated schedule changing the default response date for Defendants’ response to Plaintiffs’ complaint and setting hearing and briefing dates for further motions to resolve this action.

This Court granted Plaintiff Eli Lilly and Company’s Motion for Preliminary Injunction on March 16, 2021. *See* ECF No. 81. Defendants’ responsive pleading currently is due Monday, March 22, 2021.

Plaintiffs’ complaint includes constitutional challenges and claims under the Administrative Procedure Act (“APA”) regarding two discrete issuances of the U.S. Department of Health and Human Services (“HHS”). The agency has been working diligently to produce the administrative records of these issuances to Plaintiffs in advance of filing Defendants’ forthcoming motion to dismiss or, in the alternative, for summary judgment. Subject to Plaintiffs’ review of the administrative records after they are provided, the parties anticipate that Plaintiffs’ claims should be decided on the basis of the administrative records produced by the agency, and that this action most

efficiently can be decided through cross-motions presenting pure questions of law. Accordingly, the parties have conferred and respectfully request that the Court adopt the following schedule for additional proceedings in this case:

- Defendants will produce the administrative record of HHS's General Counsel's Advisory Opinion on **March 23, 2021**
- Defendants will produce the administrative record of HHS's newly promulgated Administrative Dispute Resolution rule on **April 6, 2021**
- Defendants will move to dismiss for lack of subject-matter jurisdiction and failure to state a claim or, in the alternative, for summary judgment on **April 19, 2021**
- Plaintiffs will oppose Defendants' motion to dismiss and cross-move for summary judgment on **May 10, 2021**
- Defendants will reply in support of their motion to dismiss and oppose Plaintiffs' cross-motion for summary judgment on **May 31, 2021**
- Plaintiffs will reply in support of their motion for summary judgment on **June 14, 2021**
- Hearing on the parties' motions to be held at the Court's convenience thereafter.

The parties respectfully suggest that this schedule will enable them fully to develop and present argument for the Court in the most efficient manner possible on the complex constitutional and administrative-law issues raised by Plaintiffs' complaint. To that end, the parties request two additional, slight modifications to this Court's Local Rules.

First, considering the number and complexity of Plaintiffs' claims, the parties believe that additional pages are required adequately to address the issues presented. The parties thus request that the Court allow each side 60 pages for their opening briefs, and 30 pages for their reply briefs. Second, because this case presents claims which the parties anticipate should be decided as questions of law on the basis of the administrative record produced by the agency, the parties respectfully request that they be excused from providing sections in their summary-judgment briefs outlining statements of material facts in dispute, *see* Local Civ. Rule 56-1, on the ground that the parties are not presently aware of any disputed material facts. Instead, Defendants will provide the Court with

the full administrative records, and the parties will fully cite in their briefs to those portions of the administrative record on which they rely.

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

Dated: March 19, 2021

Respectfully submitted,

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PROPOSED ORDER GRANTING STIPULATED BRIEFING SCHEDULE

In consideration of the parties' request that the Court enter a stipulated schedule for briefing the merits of Plaintiffs' Amended Complaint, good cause having been shown, the Court hereby GRANTS the request and orders:

- Defendants will produce the administrative record of HHS's General Counsel's Advisory Opinion on **March 23, 2021**
- Defendants will produce the administrative record of HHS's newly promulgated Administrative Dispute Resolution rule on **April 6, 2021**
- Defendants will move to dismiss for lack of subject-matter jurisdiction and failure to state a claim or, in the alternative, for summary judgment on **April 19, 2021**
- Plaintiffs will oppose Defendants' motion to dismiss and cross-move for summary judgment on **May 10, 2021**
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- Hearing on the parties' motions to be held at the Court's convenience thereafter.
- Each side shall have 60 pages for their opening brief, and 30 pages for their reply brief

- The parties are excused from compliance with Local Civil Rule 56-1 in that they are not required to include statements of material facts in dispute in their summary-judgment briefing

Dated: _____

Signed: _____
The Honorable Sarah Evans Barker

Order served on all counsel of record via ECF