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September 6, 2024

By ECF

Ann M. Donnelly
United States District Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East, Courtroom 4G
Brooklyn, New York 11201

Re: Letter as Requested by the Court

Haller et. al. v. US Dept. of Health & Human Services et al., 2:21-CV-07208

To the Court:

Nick Wilder, Esq., counsel for plaintiffs, and Anna Lynn Deffebach, Esq., counsel for defendants, herein set forth our letter in response to the Court's September 4, 2024 direction that the parties confer and indicate whether the parties plan to proceed with the schedule outlined in the Court's August 22, 2024 Order.

Plaintiff's Position:

Plaintiffs have decided to file a complaint, consistent with the Court's August 10, 2022, dismissal of the original complaint with prejudice, except for the Due Process claim which was dismissed *without prejudice*. And also consistent with the Second Circuit's March 27, 2024, Order vacating this Court's 2022 Order dismissing, with prejudice, the Article III and Seventh Amendment claims; and remanding with instructions that such claims shall be dismissed *without prejudice* "should they [plaintiffs] wish to replead and to advance such claims before the district court at a later date."

Accordingly, plaintiffs respectfully will not be following the Scheduling Order which plaintiffs and defendants had requested, as plaintiffs will file a complaint as discussed above. The Scheduling Order contained no language stating that failing to abide by it would result in dismissal of the action with prejudice and or on the merits.

Plaintiffs expect to file a Rule 41(a)(i)(a) Notice of voluntary dismissal of the action. The case has not proceeded significantly, at this juncture, discovery has not begun, summary judgment motions have not been filed, et cetera.

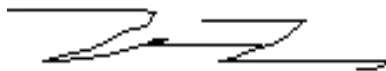
Defendants' Position:

Defendants take no position on, nor do they object to, Plaintiffs' decision to file a new case with a new complaint, rather than to amend as previously set forth in the parties' jointly submitted proposed schedule adopted in the Court's Order. However, Defendants respectfully request that under any schedule entered by the Court in any new case, they shall have 60 days to respond to the complaint, as contemplated by Federal Rules of Civil Procedure 12.

We apologize for any inconvenience and plaintiffs' counsel, in particular, is grateful for the Court's and counsel's patience and courtesies.

Respectfully submitted,

Nick Wilder, Esq.



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/s/ Anna Deffebach

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