

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION AT LONDON**

PHI HEALTH, LLC, and EMPACT MIDWEST LLC,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN  
SERVICES,

XAVIER BECERRA, in his official capacity as  
Secretary of Health and Human Services,

OFFICE OF PERSONNEL MANAGEMENT,

KIRAN AHUJA, in her official capacity as Director of  
the U.S. Office of Personnel Management,

U.S. DEPARTMENT OF LABOR,

MARTIN J. WALSH, in his official capacity as  
Secretary of Labor,

U.S. EMPLOYEE BENEFITS SECURITY  
ADMINISTRATION,

ALI KHAWAR, in his official capacity as the Acting  
Assistance Secretary for the Employee Benefits  
Security Administration,

U.S. DEPARTMENT OF THE TREASURY,

JANET YELLEN, in her official capacity as Secretary  
of Treasury,

INTERNAL REVENUE SERVICE, and

CHARLES RETTIG, in his official capacity as  
Commissioner of Internal Revenue,

Defendants.

**Case 6:22-cv-00095**

**CONSENT MOTION FOR EXTENSION OF DEADLINE TO FILE AN AMENDED COMPLAINT**

Plaintiffs PHI Health, LLC and EMpact Midwest, LLC. (“Plaintiffs”) respectfully request a 90-day extension of the Court’s recent order, ECF 37, which order required Plaintiffs to file their amended complaint on March 29, 2023. Plaintiffs respectfully submit that a 90-day extension is likely to clarify the issues to be litigated in this matter, in light of ongoing litigation in other forums:

- Several of the issues raised by Plaintiffs here are being argued before Judge Kernodle of the Eastern District of Texas on April 19, 2023. *Texas Medical Association v. U.S. Dep’t of Health and Hum. Servs. et al.*, 22-cv-450 (lead case), ECF 23 (Jan. 6, 2023) (“*TMA III*”); *LifeNet, Inc. et al. v. U.S. Dep’t of Health and Hum. Servs. et al.*, 22-cv-453 (consol.) (“*LifeNet III*”).
- Three of the issues raised by Plaintiffs here are pending decision in the *AAMS* case, pending in the District Court for the District of Columbia. *Ass’n of Air Med. Servs. v. U. S. Dep’t of Health and Hum. Servs., et al.*, No. 21-cv-3031-RJL (D.D.C.) (“*AAMS*”).
- One issue raised by Plaintiffs here was decided by Judge Kernodle of the Eastern District of Texas, and the Departments’ deadline to notice an appeal has not yet passed. See Memorandum Opinion and Order, *Texas Medical Association v. U.S. Dep’t of Health and Hum. Servs. et al.*, 22-cv-372, ECF 99 (Feb. 6, 2023) (“*TMA II*”); Fed. R. App. Proc. 4(B).

A 90-day extension will enable Plaintiffs to tailor their amended complaint, guided by the developments in these other forums.

Defendants consent to the requested extension, provided that they be granted 60 days, from the date of the amended complaint, to answer or otherwise respond.

A proposed order is submitted herewith.

Dated: March 23, 2023

Respectfully submitted,

/s/ Chrisandrea L. Turner

Chrisandrea L. Turner  
STITES & HARBISON, PLLC  
250 W. Main St., Ste. 2300  
Lexington, KY 40507  
859-226-2261  
[clturner@stites.com](mailto:clturner@stites.com)  
*Counsel to Plaintiffs*

Stephen Shackelford, Jr.  
Steven Shepard  
Max I. Straus  
J. Craig Smyser  
SUSMAN GODFREY L.L.P.  
1301 Avenue of the Americas, 32<sup>nd</sup> Floor  
New York, NY 10019  
Tel: (212) 336-8330  
Email: [sshepard@susmangodfrey.com](mailto:sshepard@susmangodfrey.com)  
Email: [sshackelford@susmangodfrey.com](mailto:sshackelford@susmangodfrey.com)  
Email: [mstraus@susmangodfrey.com](mailto:mstraus@susmangodfrey.com)  
Email: [csmyser@susmangodfrey.com](mailto:csmyser@susmangodfrey.com)

*Attorneys for Plaintiffs*