

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY**

PHI HEALTH, LLC, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, *et  
al.*,

Defendants.

No. 6:22-cv-00095-REW-EBA

**DEFENDANTS' MOTION TO DEFER THEIR OBLIGATION  
TO RESPOND TO THE COMPLAINT**

The Defendants respectfully request that the Court defer their obligation to answer or otherwise respond to the complaint in this action until thirty (30) days following the Court's disposition of their pending motion to transfer this action to the District of Columbia. A stay of the Defendants' response deadline would serve the interest of judicial economy by permitting the transferee court to address the Defendants' response to the complaint in the first instance. Counsel for the Defendants have conferred with counsel for the Plaintiffs concerning this motion, and counsel for the Plaintiffs report that they oppose this motion. Good cause exists for this request for the following reasons.

1. The Plaintiffs filed their complaint in this action on April 29, 2022. ECF No. 1. The United States Attorney's Office was served with the summons and complaint on May 6, 2022. *See* ECF No. 13.

2. The Defendants have filed a motion to transfer this action to the District of Columbia under the "first-to-file" rule. As the Defendants explain in greater detail in that motion, the lead

Plaintiff here, PHI Health, LLC, is pursuing identical claims here and in a case filed earlier in the District of Columbia. Under the “first-to-file” rule, “when actions involving nearly identical parties and issues have been filed in two different district courts, the court in which the first suit was filed should generally proceed to judgment.” *Baatz v. Columbia Gas Transmission, LLC*, 814 F.3d 785, 789 (6th Cir. 2016).

3. This Court should resolve the motion to transfer before proceeding further with this case. “Although district courts have discretion as to how to handle their dockets, once a party files a transfer motion, disposing of that motion should unquestionably take top priority.” *In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020); *accord*, *In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003) (“disposition of that [transfer] motion should have taken a top priority”). “Judicial economy requires that another district court should not burden itself with the merits of the action until it is decided [whether] a transfer should be effected.” *In re Apple Inc.*, 979 F.3d at 1337 (quoting *McDonnell Douglas Corp. v. Polin*, 429 F.2d 30, 30 (3d Cir. 1970)); *see also B.E. Tech., LLC v. Spark Networks, Inc.*, No. 2:12-cv-02832-JPM-cgc, 2013 WL 12049108, at \*1 (W.D. Tenn. Feb. 14, 2013).

4. The deferral of the Defendants’ obligation to answer or otherwise respond to the complaint in this action would accordingly serve the interest of judicial economy. If this Court grants the Defendants’ motion to transfer, the deferral of the Defendant’s obligation to respond to the complaint would permit the transferee court to decide in the first instance how best to coordinate this action with the first-filed action, as well as any other issues of case management that may arise with respect to the Plaintiffs’ complaint. A deferral would also permit the Defendants to prepare a response to the complaint that would be of the most assistance either to

the transferee court or to this Court, by affording the Defendants the opportunity to prepare a response that accounts for D.C. Circuit or Sixth Circuit case law, as appropriate.

WHEREFORE, the Defendants respectfully request that the Court defer their obligation to answer or otherwise respond to the complaint in this action until thirty (30) days following the Court's disposition of their pending motion to transfer this action to the District of Columbia

Dated: July 1, 2022

Respectfully submitted,

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/s/ Joel McElvain  
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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify on this 1st day of July, 2022, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ Joel McElvain  
JOEL McELVAIN

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**[PROPOSED] ORDER**

Before the Court is the Defendants' Motion to Defer Their Obligation to Respond to the Complaint. Having considered the motion, and finding good cause therefor, the motion is GRANTED, and it is hereby ORDERED that the Defendants shall answer or otherwise respond to the complaint in this action thirty (30) days following the Court's disposition of their pending motion to transfer this action to the District of Columbia.

IT IS SO ORDERED.

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ROBERT E. WEIR  
United States District Judge