

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION,)
DR. ADAM CORLEY, and TYLER RE-)
GIONAL HOSPITAL, LLC,)

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES, OF-)
FICE OF PERSONNEL MANAGEMENT,)
DEPARTMENT OF LABOR, DEPART-)
MENT OF THE TREASURY, XAVIER)
BECERRA *in his official capacity as the Sec-*)
retary of Health and Human Services;)
KIRAN AHUJA *in her official capacity as the*)
Director of the Office of Personnel Manage-)
ment, JANET YELLEN *in her official capac-*)
ity as the Secretary of the Treasury, and)
MARTIN J. WALSH *in his official capacity*)
as the Secretary of Labor)

Civil Action No. 6:22-cv-00450-JDK

Defendants.)

**JOINT MOTION TO CONSOLIDATE AND TO SET A
SUMMARY JUDGMENT BRIEFING SCHEDULE**

The parties to the above-captioned case respectfully submit this joint motion to consolidate this action with *LifeNet, Inc. v. Department of Health & Human Services*, No. 6:22-cv-00453-JDK, and to set a summary judgment briefing schedule. Counsel for the parties in the *LifeNet* action have authorized the parties to represent that they join in the relief sought in this motion.

These two cases challenge aspects of an interim final rule issued by defendants, entitled “Requirements Related to Surprise Billing; Part I,” 86 Fed. Reg. 36,872 (July 13, 2021) (the “July 2021 Rule”), which implements provisions of the federal surprise medical billing law, the No Surprises Act, Pub. L. 116-260, div. BB, tit. I, 1182, 2758–890 (2020) (“NSA”). In particular, while

each case raises some unique claims, both challenge regulations regarding the method by which Qualifying Payment Amounts (“QPAs”) are calculated and the information insurers are required to give providers regarding QPA calculations. Because the cases raise common issues of law, judicial economy would best be served by consolidating them for purposes of briefing and decision. *See* Fed. R. Civ. P. 42(a) (authorizing consolidation where “actions before the court involve a common question of law or fact”). The parties request that this action be designated the lead case, and that all future filings be made in this docket.

The Court recently consolidated two cases involving the same parties which involve challenges to different regulations implementing the NSA. *See* Order, *Texas Medical Association v. Department of Health & Human Services*, No. 6:22-cv-00372, Dkt. 6 (Oct. 4, 2022) (“*TMA I*”). As those cases relate to different regulations and legal issues, the parties do not seek consolidation with those matters. The parties request that the Court consolidate the two cases that are the subject of this motion in the same way it consolidated the plaintiffs’ separate actions in *TMA II*.

The July 2021 Rule impacts QPA calculations for items and services subject to the No Surprises Act. The parties agree that this case can be resolved through motions for summary judgment. Accordingly, the parties jointly move the Court to adopt the following agreed-upon schedule for summary judgment briefing:

- Plaintiffs’ motions for summary judgment – Jan. 17, 2023
- Amicus curiae briefs supporting plaintiffs – Jan. 31, 2023
- Defendants’ opposition/cross-motion for summary judgment – March 3, 2023
- Amicus curiae briefs supporting defendants – March 17, 2023
- Plaintiffs’ oppositions/replies in support of summary judgment – March 24, 2023
- Defendants’ reply in support of summary judgment – April 14, 2023

Under this proposed schedule, plaintiffs' opening briefs would be filed several weeks before defendants' response to the complaints are currently due; in *Texas Medical Association*, defendants' answer deadline is February 6, 2023, *see* Dkt. #10; Fed. R. Civ. P. 12(a)(2), and in *LifeNet*, their answer deadline is February 10, 2023, *see* Dkt. #21; Fed. R. Civ. P. 12(a)(2). While defendants do not believe that expedition is necessary here, given that the challenged rule has been in effect for nearly 18 months, they agree to this proposed schedule on the understanding that it gives them 21 days beyond the latter answer deadline to prepare their opening merits brief, without which time they would be substantially prejudiced in light of the number of claims at issue in this pair of cases and defendants' counsel's obligations in other litigation matters.

For the briefing format, the parties propose a similar briefing format as in *TMA II*. They therefore propose that plaintiffs in each of the two cases be permitted to file (i) separate summary judgment motions of up to 30 pages each and (ii) separate opposition/reply briefs of up to 30 pages each. The parties propose that defendants be permitted to file (i) a single consolidated opposition/cross-motion for summary judgment of up to 60 pages, and (ii) a single consolidated reply brief of up to 30 pages. All parties reserve the right to request additional pages for their opposition and reply briefs, after reviewing the other parties' submissions.

Plaintiffs agree to waive defendants' obligation to answer the complaints, and defendants reserve the right to raise threshold objections to either complaint in their dispositive briefing.

CONCLUSION

For these reasons, the parties respectfully request that the Court consolidate the two actions and enter the proposed briefing schedule and format set out above. Proposed orders are attached.

December 23, 2022

Respectfully submitted,

/s/ Eric D. McArthur

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Counsel for Defendants

CERTIFICATE OF CONFERENCE

Undersigned counsel certifies that counsel for all parties have agreed upon this motion.

/s/ Eric D. McArthur

Eric D. McArthur

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). This document was also served on all counsel via email service, on December 23, 2022.

/s/ Eric D. McArthur

Eric D. McArthur

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION,)
DR. ADAM CORLEY, and TYLER)
REGIONAL HOSPITAL, LLC, and)

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
OFFICE OF PERSONNEL MANAGEMENT,)
DEPARTMENT OF LABOR,)
DEPARTMENT OF THE TREASURY,)
XAVIER BECERRA *in his official capacity*)
as the Secretary of Health and Human)
Services; KIRAN AHUJA in her official)
capacity as the Director of the Office of)
Personnel Management, JANET YELLEN in)
her official capacity as the Secretary of the)
Treasury, and MARTIN J. WALSH in his)
official capacity as the Secretary of Labor,)

Defendants.)

Case No.:
6:22-cv-00450-JDK (lead case)

LIFENET, INC., AIR METHODS)
CORPORATION, ROCKY MOUNTAIN)
HOLDINGS, LLC, and EAST TEXAS AIR)
ONE, LLC,)

Plaintiffs,)

v.)

U.S. DEPARTMENT OF HEALTH AND)
HUMAN SERVICES, U.S. DEPARTMENT)
OF LABOR, U.S. DEPARTMENT OF THE)
TREASURY, OFFICE OF PERSONNEL)
MANAGEMENT, and the CURRENT)

Case No.: 6:22-cv-00453-JDK

HEADS OF THOSE AGENCIES IN THEIR)
OFFICIAL CAPACITIES,)
Defendants.)
)
)
)
)
)
)

[PROPOSED] ORDER GRANTING JOINT MOTION TO CONSOLIDATE

Before the Court is the parties' joint motion to consolidate these two cases. Federal Rule of Civil Procedure 42(a) provides that when actions involving common questions of law or fact are pending before the Court, the Court may order the actions consolidated or conduct a joint hearing or trial. These two cases present common issues of law and fact and should be consolidated for all purposes.

Accordingly, for purposes of judicial economy and efficiency, the Court **GRANTS** the motion. It is **ORDERED** that these two cases are consolidated, with Case No. 6:22-cv-00450 as the lead case. All future docket entries should be made only in the lead case, except for orders reflecting a final disposition.

So **ORDERED** and **SIGNED** this ___ day of _____.

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION, et al.)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No.: 6:22-cv-00450-JDK
)	
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,)	Lead Consolidated Case
)	
<i>Defendants.</i>)	
)	
)	
)	
)	

**[PROPOSED] ORDER GRANTING JOINT MOTION TO SET A SUMMARY
JUDGMENT BRIEFING SCHEDULE**

Before the Court is the parties' Joint Motion to Set a Summary Judgment Briefing Schedule. Being well-advised that the briefing schedule is agreed, and having fully considered the motion, the Court is of the opinion that the motion should be **GRANTED**. It is therefore

ORDERED that the briefing schedule for summary judgment in this matter is as follows:

- Plaintiffs' motions for summary judgment – Jan. 17, 2023
- Amicus curiae briefs supporting plaintiffs – Jan. 31, 2023
- Defendants' opposition/cross-motion for summary judgment – March 3, 2023
- Amicus curiae briefs supporting defendants – March 17, 2023
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Plaintiffs in each of the two consolidated cases may file (i) separate summary judgment motions of up to 30 pages each and (ii) separate opposition/reply briefs of up to 30 pages each.

The parties propose that defendants be permitted to file (i) a single consolidated opposition/cross-

motion for summary judgment of up to 60 pages, and (ii) a single consolidated reply brief of up to 30 pages. Defendants' obligation to answer the complaints in these actions is waived.