

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|--|---|--------------------------|
| UNIVERSITY OF KANSAS HOSPITAL |) | |
| AUTHORITY, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. 19-cv-00132-RMC |
| |) | |
| ALEX M. AZAR II, in his official capacity as |) | |
| Secretary of Health and Human Services, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

PLAINTIFFS’ RESPONSE TO SHOW CAUSE ORDER

The Plaintiff Hospitals respectfully submit their response to this Court’s Order to Show Cause, ECF No. 24 (Aug. 15, 2019). The Plaintiff Hospitals in this action have challenged the same Medicare payment rule that is at issue in *American Hospital Association v. Azar*, No. 18-2841, and have raised further arguments for the invalidation of that rule in addition to the arguments presented by the plaintiffs in the parallel action. In keeping with the principle that, when actions are consolidated, each case “retain[s] its separate character,” *Hall v. Hall*, 138 S. Ct. 1118, 1130 (2018) (internal quotation omitted), the Plaintiff Hospitals do not oppose consolidation of this case with No. 18-2841 for the purposes of decision.

Counsel for the Plaintiff Hospitals stand ready to present argument on the parties’ pending cross-dispositive motions, if the Court desires argument in the consolidated actions. Of the dates listed in the plaintiffs’ response to this Court’s order to show cause in No. 18-2841, however, counsel for the Plaintiff Hospitals respectfully note that they would not be available for oral argument on September 6.

Dated: August 23, 2019

Respectfully submitted,

/s/ Mark D. Polston
Mark D. Polston (Bar No. 431233)
Christopher P. Kenny (Bar No. 991303)
Nikesh Jindal (Bar No. 492008)
Joel McElvain (Bar No. 448431)
KING & SPALDING LLP
1700 Pennsylvania Av., N.W.
Suite 200
Washington, D.C. 20006
202.626.5540 (phone)
202.626.3737 (fax)
MPolston@kslaw.com

Counsel for Plaintiffs