

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Novartis Pharmaceuticals Corporation,

Plaintiff-Appellee,

v.

Carole Johnson, in her official capacity as
Administrator, Health Resources and
Service Administration; Xavier Becerra, in
his official capacity as Secretary, United
States Department of Health and Human
Services,

Defendants-Appellants.

No. 21-5299

United Therapeutics Corporation,

Plaintiff-Appellee,

v.

Carole Johnson, Acting Administrator of
U.S. Health Resources and Services
Administration; U.S. Health Resources and
Services Administration; Xavier Becerra,
Secretary of Health and Human Services;
United States Department of Health and
Human Services,

Defendants-Appellants.

No. 21-5304

JOINT MOTION TO MODIFY THE BRIEFING SCHEDULE

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27, the parties in the above-captioned consolidated cases respectfully submit this joint motion to modify the briefing schedule as follows:

Appellants' brief:	May <u>9</u> , 2022
Appendix:	May <u>9</u> , 2022
Appellees' <u>separate</u> <u>briefs</u> :	June <u>8</u> , 2022
Appellants' reply brief:	<u>July 27</u> , 2022

1. On March 22, 2022, this Court consolidated these appeals and set a briefing schedule as follows: Appellants' brief and Appendix due on May 2, 2022; Appellees' brief due on June 1, 2022; and Appellants' reply brief due on June 22, 2022. *See* 3/22/22 Order. The parties have not previously requested any extensions of time.

2. Appellees Novartis Pharmaceuticals Corporation and United Therapeutics Corporation also move for leave to file separate Appellee briefs. Appellants consent to this request.

3. A modification of the briefing schedule, as set forth above, is warranted so that the parties may engage in necessary coordination between these matters, while maintaining their separate litigating positions. The Appellees – Novartis and United Therapeutics – have different contract pharmacy policies (the subject of the appeal); raised some different arguments below including about the

record as relates to their particular products; and briefed the issues separately below. Separate responsive briefing will allow each of the parties to fully address the different arguments raised in these cases, while being mindful of unnecessary duplication. An extension of the briefing deadlines will further allow counsel time to coordinate briefing to the extent necessary, and is also warranted in light of other appellate deadlines and prescheduled leave of the counsel litigating this matter.

4. The revised briefing schedule will continue to allow for efficient resolution of this case, as an oral argument date has not yet been set and briefing will conclude over the summer before the Court resumes in the fall.

CONCLUSION

For the foregoing reasons, the Court should modify the briefing schedule as set forth in this motion.

Respectfully submitted,

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March 29, 2022

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 317 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman 14-point font.

/s/ Catherine E. Stetson
Catherine E. Stetson

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2022, I caused a copy of the foregoing to be filed by this Court's CM/ECF system, which will serve a copy on all registered users.

/s/ Catherine E. Stetson
Catherine E. Stetson