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*\*pro hac vice application  
forthcoming*

*Attorneys for Plaintiff  
Bristol Myers Squibb Company*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

BRISTOL MYERS SQUIBB :  
COMPANY, : Civil Action No. 23-3335(RK)(JBD)

Plaintiff,

v.

: **STIPULATION AND  
PROPOSED ORDER**

XAVIER BECERRA, U.S. Secretary of :  
Health & Human Services; CHIQUITA :  
BROOKS-LASURE, Administrator of :  
Centers for Medicare & Medicaid Services; :  
U.S. DEPARTMENT OF HEALTH & :  
HUMAN SERVICES; CENTERS FOR :  
MEDICARE & MEDICAID SERVICES, :

Defendants. :

WHEREAS, on June 16, 2023, Plaintiff Bristol Myers Squibb Company (BMS) filed this constitutional challenge to the Medicare “Drug Price Negotiation Program” (the Program) in the Inflation Reduction Act (IRA), which Congress enacted and the President signed last summer. ECF 1. The Complaint alleges that the Program

violates the Fifth Amendment's Takings Clause and the First Amendment. *Id.* ¶¶ 94-101, 103-07. BMS seeks a declaration that the Program is unconstitutional and an injunction preventing the Program's implementation with regard to any BMS drug that may be selected. Prayer for Relief ¶¶ 1-4;

WHEREAS, the parties have met and conferred, and agree this case presents legal questions about the constitutionality of a federal statute that can properly be resolved through dispositive motions, without the need for discovery. The parties accordingly intend to file cross-motions for summary judgment pursuant to Federal Rule of Civil Procedure 56;

WHEREAS, the parties propose the following, agreed-on schedule for those cross-motions:

- BMS will file a motion for summary judgment and supporting memorandum and declaration by July 21, 2023.
- Defendants will file a combined memorandum in support of their own cross-motion for summary judgment, and opposing BMS's motion, by September 22, 2023.
- BMS will file a combined reply in support of its motion and opposition to Defendants' cross-motion by October 27, 2023.
- Defendants will file a reply in support of their cross-motion by December 1, 2023;

WHEREAS, the parties respectfully request that the Court allow each brief described above to exceed this Court's default page limitation by 10 pages, in view of the complexity of this case and the consolidated briefing on two parallel motions;

WHEREAS, because this case concerns the facial constitutionality of a federal statute, the parties further respectfully request that the Court dispense with Local Civil Rule 56.1(a)'s requirement that motions for summary judgment be accompanied by separate statements of material facts. The parties agree that all of the material facts in this matter concern the operation of the statutory regime and are set forth in official government documents. BMS also intends to submit a declaration explaining how the company is affected by the IRA. Accordingly, the parties do not believe separate statements of material facts would assist the Court in deciding this matter;

WHEREAS, for essentially the same reasons, the parties respectfully request that the Court also dispense with Defendants' obligation to file an Answer to the Complaint;

WHEREAS, BMS respectfully requests that the Court schedule oral argument on the cross-motions at its earliest opportunity after the close of briefing on December 1, 2023, in view of the national importance of this case and the impending

harms that BMS alleges it will suffer from the Program. Defendants take no position on BMS's request for oral argument;<sup>1</sup>

IT IS HEREBY STIPULATED, by and between the parties, through their respective undersigned counsel, that:

- 1) The parties will file cross-motions for summary judgment based on the above briefing schedule;
- 2) The parties shall be permitted to exceed this Court's default page limitation by 10 pages for each brief as described above;
- 3) The parties shall be relieved of their obligation to file statements of materials facts with their respective cross-motions for summary judgment; and
- 4) Defendants are relieved of their obligation to file an Answer to the Complaint.

Dated: July 12, 2023

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<sup>1</sup> Another pharmaceutical company previously filed a suit in the U.S. District Court for the District of Columbia raising the same claims presented here. *Merck & Co., Inc. v. Becerra*, No. 1:23-cv-01615 (D.D.C.). For that reason, Defendants are likely to file a motion to transfer this case to the District of Columbia. Counsel for BMS has informed counsel for Defendants that BMS would oppose such a motion, because venue is proper in this case based on BMS's residence in this District. Compl. ¶ 22. Despite their disagreement about the appropriate forum, the parties agree that briefing on any such motion to transfer may proceed on a briefing schedule set by the default Local Rules and Procedures and need not interfere with or disrupt the agreed-on schedule for the parties' cross-motions for summary judgment.

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Respectfully submitted,

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**SO ORDERED:**

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**HON. ROBERT KIRSCH**