

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

MERCK & CO., INC.,

Plaintiff,

v.

XAVIER BECERRA, U.S. Secretary of Health &
Human Services, *et al.*

Defendants.

Civ. No. 1:23-01615 (CKK)

JOINT MOTION TO SET BRIEFING SCHEDULE AND FOR OTHER RELIEF

Plaintiff and Defendants respectfully move jointly to set a briefing schedule governing the parties' forthcoming cross-motions for summary judgment, and for related relief outlined below.

1. On June 6, 2023, Plaintiff filed this action seeking declaratory and injunctive relief. ECF 1. Plaintiff represents that service has been effectuated by certified mail. Per Local Civil Rule 5.3, Plaintiff will file affidavits of service, including certified mail return slips, once all have been received.

2. The parties have met and conferred, and agree that this case presents legal questions about the constitutionality of a federal statute, which 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.

3. The parties propose the following, agreed-on schedule for those cross-motions:
- Plaintiff will file a memorandum in support of its forthcoming motion for summary judgment by July 11, 2023.
 - Defendants will file a combined memorandum in support of their own cross-motion for summary judgment, and opposing Plaintiff's motion, by September 11, 2023.
 - Plaintiff will file a combined reply in support of its motion and opposition to Defendants' cross-motion by October 19, 2023.
 - Defendants will file a reply in support of their cross-motion by November 21, 2023.

4. 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.

5. Because this case involves the facial constitutionality of a federal statute, the parties further respectfully request that the Court dispense with Local Civil Rule 7(h)(1)'s requirement that motions for summary judgment be accompanied by separate statements of material facts. The parties do not believe those statements would serve a useful purpose in this matter.

6. For essentially the same reasons, the parties respectfully request that the Court also dispense with Defendants' obligation to file an Answer to the Complaint.

CONCLUSION

For the foregoing reasons, the Court should (1) order the above agreed-on schedule for briefing on the parties' forthcoming cross-motions for summary judgment; (2) grant the parties' joint request to extend page limits for all briefs identified in that schedule; (3) dispense with the parties' obligation to file statements of material fact with their cross-motions for summary judgment; and (4) dispense with Defendants' obligation to file an Answer to the Complaint.

Dated: June 26, 2023

Respectfully submitted,

/s/ Yaakov M. Roth

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