

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

**Susan Neese, M.D., and James Hurly,
M.D.**, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

Xavier Becerra, in his official capacity as
Secretary of Health and Human
Services; **United States of America**,

Defendants.

Case No. 2:21-cv-00163-Z

MOTION FOR ENTRY OF CLASS-CERTIFICATION ORDER

The Court’s memorandum opinion and order of October 14, 2022 (ECF No. 65) granted the plaintiffs’ motion for class certification. The plaintiffs respectfully ask the Court to enter a class-certification order that complies with the requirements of Rule 23.

The language of Rule 23(c)(1)(B) requires the Court to appoint class counsel in its certification order. *See* Fed. R. Civ. P. 23(c)(1)(B) (“An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).”). The plaintiffs also respectfully ask the Court to include language that explicitly defines the certified class as well as the “class claims, issues, or defenses,” as required by Rule 23(c)(1)(B), to avoid any possible collateral attack on the classwide judgment that will issue. *See, e.g., Lewis v. City of Chicago, Illinois*, 702 F.3d 958, 962 (7th Cir. 2012) (holding that class-certification orders must include all material required by Rule 23(c)(1)(B)).

We have attached a proposed order that includes the language that we believe should be included in the class-certification order under Rule 23(c)(1)(B). The plaintiffs respectfully ask the Court to issue an order that includes this or similar language. We have conferred with counsel for the defendants and they no position at this time but reserve the right to oppose.

Respectfully submitted.

GENE P. HAMILTON
Virginia Bar No. 80434
Vice-President and General Counsel
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
(202) 964-3721 (phone)
gene.hamilton@aflegal.org

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

Dated: November 21, 2022

*Counsel for Plaintiffs and
the Certified Class*

CERTIFICATE OF SERVICE

I certify that on November 21, 2022, I served this document through CM/ECF

upon:

JEREMY S.B. NEWMAN
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street N.W.
Washington, DC 20005
(202) 532-3114 (phone)
(202) 616-8460 (fax)
jeremy.s.newman@usdoj.gov

Counsel for Defendants

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Certified Class*