

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NOVO NORDISK INC., *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No. 3:21-cv-806-FLW-LHG

JOINT SCHEDULING MOTION

The parties in the above-captioned action have conferred and respectfully request that the Court enter a stipulated schedule changing the default response date for Defendants' response to Plaintiffs' complaint and setting briefing deadlines for motions to resolve this action.

On January 15, 2021, Plaintiffs Novo Nordisk Inc. and Novo Nordisk Pharma, Inc. filed their complaint challenging the Department of Health and Human Services' Office of General Counsel's Advisory Opinion 20-06 on Contract Pharmacies under the 340B Program ("Advisory Opinion"). *See* ECF No. 1. Defendants' deadline for filing a responsive pleading is currently April 27, 2021.

The parties agree that Plaintiffs' claims should be decided on the basis of the administrative record produced by the agency, and that this action can be decided most efficiently through cross-motions presenting pure questions of law. Accordingly, the parties have conferred and respectfully request that the Court adopt the following schedule for proceedings in this case:

- Defendants will produce the administrative record of the Advisory Opinion on **April 27, 2021;**

- Defendants will file an opening brief moving to dismiss for lack of subject-matter jurisdiction and failure to state a claim or, in the alternative, for summary judgment on **May 11, 2021**;
- Plaintiff will file an opening brief opposing Defendants' motion and cross-moving for summary judgment on **June 1, 2021**;
- Defendants will file a reply in support of their motion and opposing Plaintiffs' cross-motion for summary judgment on **June 22, 2021**;
- Plaintiff will file a reply in support of its motion for summary judgment on **July 6, 2021**;
- The motion day for the parties' cross-motions will be set for **July 19, 2021**, or at the Court's soonest availability thereafter. *See* L. Civ. R. 7.1(c), (d).

The parties respectfully suggest that this schedule will enable them to fully develop and present argument for the Court in the most efficient manner possible on the constitutional and administrative law issues raised by Plaintiffs' complaint. And mindful of the number of issues presented and their complexity, the parties request two additional, slight modifications to this Court's Local Rules.

First, the parties believe that additional pages are required to adequately address the issues presented. The parties therefore request that the Court allow each side 45 pages in 12-point, proportional font (60 pages in 14-point, proportional font or 12-point, non-proportional font) for their opening briefs, and 20 pages in 12-point, proportional font (27 pages in 14-point, proportional font or 12-point, non-proportional font) for their reply briefs. *See* L. Civ. R. 7.2(b), (d).

Second, because this case presents claims that should be decided as questions of law on the basis of the administrative record produced by the agency, the parties respectfully request that they

be excused from providing a statement of material facts not in dispute, *see* L. Civ. R. 56.1, on the ground that there are no disputed material facts. Instead, Defendants will provide the Court with the administrative record, and the parties will cite in their briefs to those portions of the administrative record on which they rely.

The parties appreciate the Court's consideration and respectfully request entry of the attached proposed order.

Dated: April 16, 2021

Respectfully submitted,

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PROPOSED ORDER

In consideration of the parties' request that the Court enter a stipulated schedule for briefing the merits of Plaintiffs' Complaint, good cause having been shown, the Court hereby GRANTS the request and orders:

- Defendants will produce the administrative record of the Department of Health and Human Services' Office of General Counsel's Advisory Opinion 20-06 on Contract Pharmacies under the 340B Program on **April 27, 2021**.
- Defendants will file an opening brief moving to dismiss for lack of subject-matter jurisdiction and failure to state a claim or, in the alternative, for summary judgment on **May 11, 2021**.
- Plaintiff will file an opening brief opposing Defendants' motion and cross-moving for summary judgment on **June 1, 2021**.
- Defendants will file a reply in support of their motion and opposing Plaintiffs' cross-motion for summary judgment on **June 22, 2021**.
- Plaintiff will file a reply in support of its motion for summary judgment on **July 6, 2021**;

- The motion day for the parties' cross-motions is set for **July 19, 2021**, or at the Court's soonest availability thereafter.
- Each side shall have 45 pages in 12-point, proportional font (60 pages in 14-point, proportional font or 12-point, non-proportional font) for their opening briefs, and 20 pages in 12-point, proportional font (27 pages in 14-point, proportional font or 12-point, non-proportional font) for their reply briefs.
- The parties are excused from compliance with Local Civil Rule 56.1's requirement to include statements of material facts not in dispute in their summary-judgment briefing.

Dated: _____

Signed: _____
The Honorable Freda L. Wolfson