

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ASTELLAS PHARMA US, INC.,

Plaintiff,

v.

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

Defendants.

Civil Action No. 1:23-cv-4578

Hon. Elaine E. Bucklo

**JOINT MOTION TO SET BRIEFING
SCHEDULE ON CROSS MOTIONS FOR
SUMMARY JUDGMENT AND FOR
OTHER MISCELLANEOUS RELIEF**

Plaintiff Astellas Pharma US, Inc. (“Astellas”) and Defendants respectfully ask the Court (a) to enter the below briefing schedule to govern the Parties’ cross-motions for summary judgment in the above-captioned matter, (b) for leave to file oversized briefing as set forth below, (c) to waive the requirements of Local Rule 56.1 regarding statements of undisputed material facts, (d) to waive the requirement to file a Rule 26(f) planning report, (e) to waive the obligation of Defendants to file an answer to the Complaint, and (f) to vacate the scheduling conference set for October 30, 2023.

1. This is an action for declaratory and injunctive relief involving the “Drug Price Negotiation Program,” which was established under the Inflation Reduction Act. Specifically, Astellas has asserted that the Drug Price Negotiation Program is unconstitutional because it violates the Takings Clause, Due Process Clause, and First Amendment.

2. This action was filed on July 14, 2023, and the Parties’ Rule 26(f) planning report is due October 23, 2023. [ECF No. 10] Defendants have not yet responded to the Complaint.

3. Counsel for the Parties have conferred and both parties intend to move for summary judgment without seeking discovery.

4. The Parties have agreed upon the following proposed briefing schedule:

- Astellas's motion for summary judgment due **September 20, 2023**.
- Defendants' opposition and cross-motion due **November 20, 2023**.
- Astellas's reply motion and opposition to cross-motion due **December 22, 2023**.
- Defendants' reply in support of cross-motion due **January 30, 2024**.

5. Given the complexity of the issues presented, the Parties seek leave to file oversized briefing in excess of the Court's standard page limits, as set forth below:

- Astellas's motion for summary judgment: **40 pages**.
- Defendants' opposition and cross-motion: **50 pages**.
- Astellas's reply motion and opposition to cross-motion: **40 pages**.
- Defendants' reply in support of cross-motion: **30 pages**.

6. Given the Parties' agreement to file cross-motions for summary judgment without discovery, the Parties request that the Court waive the requirement of a Rule 26(f) report.

7. Because this case concerns the constitutionality of a federal statute, the Parties also respectfully request that the Court waive the requirements of Local Rule 56.1 relating to statements of material facts and related responses and replies.

8. Because the Parties will be filing cross-motions for summary judgment, the Parties agree that Defendants' obligation to file an answer to the Complaint should be waived.

9. Because the Parties have reached agreement on a summary-judgment briefing schedule, they also respectfully request that the Court vacate the scheduling conference set for October 30, 2023. [ECF No. 10 (Minute Entry (July 28, 2023))]

//

//

WHEREFORE, the Parties respectfully request that the Court enter an order for the relief described above.

Dated: August 25, 2023

/s/ Stephen M. Pezzi

Brian M. Boyton
Principal Deputy Assistant Attorney General

Michelle R. Bennet
Assistant Branch Director

Stephen M. Pezzi (D.C. Bar No. 995500)
Senior Trial Counsel
Christine L. Coogle (D.C. Bar No. 1738913)
Alexander V. Sverdlov (NY Bar 4918793)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20005
(202) 880-0282

alexander.v.sverdlov@usdoj.gov
stephen.pezzi@usdoj.gov
christine.l.cogle@usdoj.gov

Counsel for Defendants

/s/ Paul Olszowka

Paul Olszowka
BARNES & THORNBURG LLP
One N. Wacker Drive
Suite 4400
Chicago, IL 60606-2833
Tel.: (312) 214-5612
Fax: (312) 759-5646
paul.olszowka@btlaw.com

Mark W. Mosier (*pro hac vice*)
Bradley K. Ervin (*pro hac vice*)
Daniel G. Randolph (*pro hac vice*)
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001-4956
Tel.: (202) 662-6000
Fax: (202) 662-6291

mmosier@cov.com
bervin@cov.com
drandolph@cov.com

Counsel for Plaintiff