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November 20, 2023

By CM/ECF

The Chambers of the Honorable Zahid N. Quraishi
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: Filings in *Novartis Pharmaceuticals Corp. v. Becerra et al.*, No. 23-cv-14221

Dear Judge Quraishi:

On behalf of prospective *amici curiae* AARP, AARP Foundation, Public Citizen, Patients for Affordable Drugs Now, Doctors for America, Protect Our Care, Families USA, and 48 law professors and scholars (Law Scholars),¹ we respectfully write to request that you amend your

¹ These 48 Law Scholars are: Professor Aziza Ahmed, Boston University School of Law; Professor Brook K. Baker, Northeastern University School of Law; Professor Yochai Benkler, Harvard Law School; Professor Troyen Brennan, Harvard T. H. Chan School of Public Health; Professor Scott Burris, Temple University Beasley School of Law; Professor Michael A. Carrier, Rutgers Law School; Professor Bernard Chao, University of Denver Sturm College of Law; Professor Jorge L. Contreras, University of Utah College of Law; Professor Nathan Cortez, Southern Methodist University Dedman School of Law; Professor Stacey L. Dogan, Boston University School of Law; Professor Charles Duan, American University Washington College of Law; Professor Samuel F. Ernst, Golden Gate University School of Law; Professor Robert I. Field, Drexel University Kline School of Law & Drexel University Dornsife School of Public Health; Lecturer Sean Flynn, American University Washington College of Law; Professor Lawrence O. Gostin, Georgetown Law; Professor Peter Henderson, Princeton University; Professor Laura Hermer, Mitchell Hamline School of Law; Professor Allison K. Hoffman, University of Pennsylvania Penn Carey Law School; Professor Nicole Huberfeld, Boston University School of Law & Boston University School of Public Health; Professor Peter D. Jacobson, University of Michigan School of Public Health; Professor Timothy S. Jost, Washington and Lee University School of Law; Professor Amy Kapczynski, Yale Law School; Professor Aaron S. Kesselheim, Harvard Medical School; Professor Renee M. Landers, Suffolk University Law School; Professor Stacey M. Lantagne, Western New England University School of Law; Professor Mark A. Lemley, Stanford Law School; Professor Christopher J. Morten, Columbia Law School; Professor Jordan

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Honorable Zahid N. Quraishi

November 20, 2023

Page 2

October 27, 2023, Order (ECF No. 13) to direct the parties to file their summary judgment papers on the docket at the time that those papers are served, rather than after briefing has been completed next March. Plaintiff and Defendants take no position on this request.

Background

Enacted in August 2022, the Inflation Reduction Act (IRA) contains several reforms designed to lower the high cost of prescription drugs and make them more accessible to patients, including seniors enrolled in Medicare. One such reform is the IRA's drug price negotiation program, which provides a pathway to lower the prices for a particular set of high-cost drugs—so-called single-source drugs, for which no generic equivalent is currently on the market.

On September 1, 2023, plaintiff Novartis Pharmaceuticals Corporation filed this lawsuit, alleging that the IRA program is unconstitutional under the Fifth Amendment, Eighth Amendment, and First Amendment. ECF No. 1. Novartis's lawsuit is one of at least nine filed across the country by pharmaceutical companies challenging the IRA program. Indeed, in addition to this *Novartis* case, Your Honor is currently presiding over three other such challenges. See *Bristol Myers Squibb Co. v. Becerra*, No. 23-cv-3335; *Janssen Pharmaceuticals, Inc. v. Becerra*, No. 23-cv-3818; *Novo Nordisk Inc. v. Becerra*, No. 3:23-cv-20814.

On October 27, 2023, this Court set a schedule for the parties' cross-motions for summary judgment. Briefing under that schedule extends from November 22, 2023, to March 6, 2024. See ECF No. 13 at 2–3. Further, this Court ordered that “the parties are to refrain from filing the moving, opposition, and reply papers on the docket; the parties are to instead serve their briefs on

Paradise, Loyola University Chicago School of Law; Professor Wendy E. Parmet, Northeastern University; Professor Srividhya Ragavan, Texas A&M University School of Law; Professor Arti Rai, Duke Law School; Professor Christopher Robertson, Boston University School of Law; Professor Marc A. Rodwin, Suffolk University Law School; Professor Sara Rosenbaum, George Washington University; Professor Ana Santos Rutschman, Villanova University School of Law; Professor Ameet Sarpatwari, Harvard Medical School; Professor Cason Schmit, Texas A&M University; Professor Jason M. Schultz, New York University School of Law; Professor Jessica Silbey, Boston University School of Law; Professor Michael S. Sinha, Saint Louis University School of Law; Lecturer Talha Syed, University of California Berkeley Law; Professor S. Sean Tu, West Virginia University College of Law; Professor Michael R. Ulrich, Boston University School of Law & Boston University School of Public Health; Professor Liza Vertinsky, University of Maryland Francis King Carey School of Law; Professor Sidney Watson, Saint Louis University School of Law; Professor Rebecca Wolitz, The Ohio State University Moritz College of Law; Professor Peter K. Yu, Texas A&M University; and Professor Esther van Zimmeren, University of Antwerp.

Honorable Zahid N. Quraishi

November 20, 2023

Page 3

each other as set forth in the above schedule; and on the same day that briefing is complete, the parties shall file their respective briefs together with any notice of motion.” *Id.* at 3.

Requested action

In light of the significant public interest in this case, we request that the Court require the parties’ summary judgment motions, briefs, and other supporting papers to be filed on the docket at the time that those papers are due to be served.

The public interest in this case is unquestionably substantial, as demonstrated by the numerous news articles that have reported on the lawsuits challenging the IRA program, including this case. *See, e.g.*, Patrick Wingrove, *Novartis sues US government over Medicare drug price regulation*, Reuters (Sept. 1, 2023), <https://www.reuters.com/legal/novartis-sues-us-government-over-medicare-drug-price-regulation-2023-09-01/>; Manas Mishra et al., *Court challenges to Medicare drug price negotiation plan*, Reuters (Oct. 3, 2023), <https://www.reuters.com/legal/court-challenges-medicare-drug-price-negotiation-plan-2023-10-03/> (overview of various lawsuits); Lauren Gardner, *Drugmakers, trade groups push back against Medicare drug price negotiations*, Politico (Aug. 29, 2023), <https://www.politico.com/news/2023/08/29/drugmakers-trade-groups-push-back-against-medicare-drug-price-negotiations-00111936> (same).

In addition, in every lawsuit challenging the IRA program with ongoing summary judgment briefing, a variety of interested individuals and organizations—advocates, professors, experts, U.S. senators, and others—have filed amicus briefs. For example, in the *Bristol Myers Squibb* and *Janssen Pharmaceuticals* cases pending before Your Honor, a total of 76 individuals or organizations sought leave to file eight separate amicus briefs supporting the government in each case. Other cases challenging the IRA program have likewise included significant amici participation, and, in some cases, the parties’ briefing has responded to arguments presented by amici. *See, e.g.*, Combined Opp. to Defs. Mot. for SJ & Reply in Supp. of Pls.’ Mot. for SJ at 16 n.4, *Merck & Co. v. Becerra*, No. 23-cv-1615-CKK (D.D.C. Oct. 19, 2023), ECF No. 52 (responding to Public Citizen’s amicus brief).

If the parties’ summary judgment motions are not filed on the public docket on their due dates, and filing is instead delayed until March, the public access in this high-profile case will be impeded, as will the ability of individuals and organizations to participate as amici.

Honorable Zahid N. Quraishi
November 20, 2023
Page 4

For these reasons, we request that the Court require the parties to file their summary judgment papers at the time of service.

Respectfully submitted,



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cc: Counsel for all parties via CM/ECF

Granted. The Court hereby amends its Order to Set Briefing Schedule (ECF No. 13) so that the parties are to file their papers on the docket at the time that those papers are served; and it is further ordered that in light of the approaching holiday, where Plaintiff's motion for summary judgment should be served on 11/22/2023, its motion may be filed on the docket by 11/28/2023; and it is further ordered that the parties shall file any notice of motion on the same day that the briefing is complete.

So Ordered this 21st day of November 2023.

s/ Zahid N. Quraishi
ZAHID N. QURAISHI
UNITED STATES DISTRICT JUDGE