

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

MANHATTANLIFE INSURANCE AND ANNUITY  
COMPANY, PASCHALL AND ASSOCIATES, INC.,  
and WILLIAM C. PASCHALL,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, DEPARTMENT OF THE  
TREASURY, DEPARTMENT OF LABOR, XAVIER  
BECERRA *in his official capacity as Secretary  
of Health and Human Services*, JANET  
YELLEN *in her official capacity as Secretary  
of the Treasury*, and JULIE A. SU *in her official  
capacity as Acting Secretary of Labor*,

*Defendants.*

Civil Action No. 6:24-cv-00178-JCB

**JOINT MOTION TO SET A SUMMARY JUDGMENT BRIEFING SCHEDULE**

The parties to the above-captioned case respectfully submit this joint motion to set a summary judgment briefing schedule. This action arises under the Administrative Procedure Act and challenges a final rule issued by defendants. Specifically, the Departments’ rule requires that, among other things, the marketing, application, and enrollment materials of fixed indemnity insurance policies include a notice stating, “This is a fixed indemnity policy, NOT health insurance.” 89 Fed. Reg. 23,338, 23,382, 23,389 (Apr. 3, 2024) (the “Notice Rule”). According to the Notice Rule, a policy lacking this disclosure does not qualify as an “excepted benefit” and therefore must comply with certain requirements under federal law. *See, e.g.*, 42 U.S.C. § 300gg-91(c); 89 Fed. Reg. at 23,412–21. The Notice Rule is effective for plan years or coverage periods beginning on or after January 1, 2025. 89 Fed. Reg. at 23,412, 23,415, 23,418, 23,420.

The parties agree that this case can be resolved through motions for summary judgment. Accordingly, the parties jointly move the Court to adopt the following agreed-upon schedule for summary judgment briefing:

- Plaintiffs' motion for summary judgment – July 19, 2024
- Defendants' opposition/cross-motion for summary judgment and filing of administrative record – August 19, 2024
- Plaintiffs' opposition/reply in support of summary judgment – September 9, 2024
- Defendants' reply in support of summary judgment – September 30, 2024

Plaintiffs respectfully request that the Court schedule oral argument on the summary judgment motions as soon as practicable after the completion of briefing, to facilitate the Court issuing a ruling on the motions before the Notice Rule takes effect on January 1, 2025. Defendants neither join nor oppose this request.

For the briefing format, the parties propose: (1) plaintiffs' motion and defendants' opposition/cross-motion be up to 30 pages each; and (2) plaintiffs' opposition/reply and defendants' reply be up to 15 pages each. While the latter exceeds the default page limit under Local Rule CV-7(a)(1), the parties believe that the complex legal issues presented in this case warrant slightly longer reply briefs. All parties reserve the right to request additional pages for their opposition and reply briefs, after reviewing the other parties' submissions, including the administrative record to be filed after plaintiffs' motion for summary judgment.

Plaintiffs agree to waive defendants' obligation to answer the complaint, and defendants reserve the right to raise threshold objections to the complaint in their dispositive briefing.

**CONCLUSION**

For these reasons, the parties respectfully request that the Court enter the proposed briefing schedule and format set out above. A proposed order is attached.

June 18, 2024

Respectfully submitted,

/s/ Eric D. McArthur

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**CERTIFICATE OF CONFERENCE**

Undersigned counsel certifies that counsel for all parties have agreed upon this motion.

*/s/ James Bickford*  
James Bickford

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**[PROPOSED] ORDER GRANTING JOINT MOTION TO SET A SUMMARY  
JUDGMENT BRIEFING SCHEDULE**

Before the Court is the parties' Joint Motion to Set a Summary Judgment Briefing Schedule. Being well-advised that the parties have agreed to the briefing schedule, and having fully considered the motion, the Court is of the opinion that the motion should be **GRANTED**. It is therefore

**ORDERED** that the briefing schedule for summary judgment in this matter is as follows:

- Plaintiffs' motion for summary judgment – July 19, 2024
- Defendants' opposition/cross-motion for summary judgment and filing of administrative record – August 19, 2024
- Plaintiffs' opposition/reply in support of summary judgment – September 9, 2024

- Defendants' reply in support of summary judgment – September 30, 2024

Plaintiffs' motion for summary judgment and defendants' opposition/cross-motion for summary judgment may be up to 30 pages each. Plaintiffs' opposition/reply in support of summary judgment and defendants' reply in support of summary judgment may be up to 15 pages each. Defendants' obligation to answer the complaint in this action is waived, and Defendants may raise any threshold objections to the complaint in their dispositive briefing.