

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

CLOVER INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:25-cv-142
)	
U.S. DEPARTMENT OF HEALTH AND)	
HUMAN SERVICES, ET AL.,)	
)	
Defendants.)	

REPLY IN SUPPORT OF MOTION TO STAY

Permitting civil actions with invalid claims to proceed into discovery and to the summary judgment phase wastes scarce judicial resources and the resources of the litigants. Defendants have filed a Motion to Dismiss, arguing that Plaintiff Clover Insurance’s Complaint should be dismissed due to improper venue. Doc. 21. That Motion remains pending before this Court. Until the Court issues a decision on venue, all discovery and discovery-related deadlines should be stayed.

Clover’s Response does not identify any discovery it requires before this Court rules on the Motion to Dismiss. Indeed, its Response states that it opposes Defendants’ request only “in part” and concedes that “Clover does not anticipate discovery becoming necessary.” Doc. 27 at 1. The parties therefore do not dispute that a stay of discovery is appropriate.

Instead, Clover argues that the parties must conduct a 26(f) conference so they can propose a summary judgment briefing schedule. Doc. 27 at 2–3. This position is mistaken for several reasons.

First, the Federal Rules of Civil Procedure exempt the parties from the requirement of a 26(f) conference in cases which involve an action for review of an administrative record. By its terms, Rule 26(f) applies “[e]xcept in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B).” Fed. R. Civ. P. 26(f)(1). Rule 26(a)(1)(B) includes among its exemptions “an action for review on an administrative record.” *Id.*, 26(a)(1)(B)(i). Clover does not dispute that this case involves review of an administrative record, which it notes Defendants have already produced. Doc. 23, ¶ 3. Therefore, no 26(f) conference is required.

Second, even absent a 26(f) conference, it would also be improper for Clover to seek summary judgment at this stage. Venue is a “threshold legal issue” that should be decided before the merits. *Varga v. Palm Beach Cap. Mgmt., LLC*, No. 09-82398-CIV, 2010 WL 8510622, at *1 (S.D. Fla. Sept. 3, 2010) (granting stay when case-dispositive venue and standing issues were raised). Indeed, consideration of the merits is “improper” prior to resolving venue. *Mheid v. Minchew*, No. 1:22-cv-2225, 2023 WL 12208234, at *1 (N.D. Ga. Sept. 21, 2023). This is not a novel position; numerous courts have concluded that motions for summary judgment while motions to dismiss remain pending (and before the defendant has answered) are premature. *See, e.g., Blumel v. Mylander*, 919 F. Supp. 423, 429 (M.D. Fla. 1996) (calling such motions “blatantly premature”); *Clay v. Toombs Cnty. Sheriff’s Off.*, No. 6:18-cv-92, 2019 WL 4145612, at *5 (S.D. Ga. Aug. 8, 2019) (Cheesbro, Mag. J.) (finding summary judgment motion premature because discovery had not begun), *report and recommendation adopted*, No. 6:18-cv-92, 2019 WL 4147591 (S.D. Ga. Aug. 30, 2019);

see also Stubbe v. PHH Mortg. Corp., No. CV 22-339, 2022 WL 16842075, at *1 (S.D. Ala. Sept. 21, 2022) (denying “blatantly premature” motion for summary judgment filed during pendency of motion to dismiss), *report and recommendation adopted*, 2022 WL 16840317 (S.D. Ala. Nov. 9, 2022). Clover has indicated their intention to file for summary judgment as soon as this week, *see* Doc. 29, but any such motion would still be premature until after this Court rules on the Motion to Dismiss. After all, a decision on the merits of Clover’s underlying claims would amount to an advisory opinion if the Court ultimately dismisses this case for improper venue.

Third, Clover has failed to identify sufficient urgency to justify sidelining consideration of Defendant’s Motion to Dismiss in favor of a new briefing schedule. Clover even suggests that the need for urgency is *Defendants’* fault, indicating that CMS desires a decision in this case by late May 2026. *See* Doc. 27 at 2 (“Defendants have represented that late May is the time period needed for a court to decide summary judgment[.]”). It is difficult to square Clover’s representation of Defendants’ position with Defendants’ Motion to Stay; a party feeling a sense of urgency would not have sought a stay of discovery and discovery-related deadlines. (Clover is the only party to have sought an expedited resolution of the Motion to Dismiss; Defendants explicitly took no position on that issue. *See* Doc. 23 at 2, ¶ 7.)

Clover’s representation that Defendants require an expedited decision is also factually unsupported. Even assuming Clover were to ultimately prevail on the merits, Defendants affirmatively state that CMS does not require such a decision by May 29, 2026, in order to effect appropriate judicial relief. Numerous other district

courts have decided Star Ratings cases after the end of May. *See, e.g., Blue Cross & Blue Shield of Massachusetts, Inc. v. Kennedy*, No. 1:25-cv-693, --- F. Supp. 3d ---, 2025 WL 3062827 (D.D.C. Nov. 3, 2025); *Humana Inc. v. U.S. Dep't of Health & Hum. Servs.*, No. 4:25-cv-779, --- F. Supp. 3d ---, 2025 WL 2909960 (N.D. Tex. Oct. 14, 2025). Further, an adverse decision could lead to an appeal by the affected party, and no appellate decision would be likely before May 2026.

In support of its claim of urgency, Clover also argues that Defendants have identified late May as the relevant deadline in other, similar cases. Doc. 27 at 2. The cited cases are readily distinguishable. None appear to have been filed in a district lacking proper venue; all were filed in the United States District Court for the District of Columbia. *Id.* None involved a motion to dismiss. Finally, not all motions for joint briefing schedules in similar cases reveal a May-specific deadline. *See, e.g., Ex. 1* (joint motion filed May 12, 2025 seeking decision by July 2025).¹

CONCLUSION

The plain language of Rule 26 exempts the parties from a 26(f) conference in this context, and Clover's desire to leapfrog Defendants' potentially dispositive motion into summary judgment briefing should be disregarded. Therefore, all discovery and discovery-related deadlines should be stayed until this Court rules on the Motion to Dismiss.

¹ Even though the parties in this case jointly requested a decision by July 2025, the district court did not issue its decision until November 2025, with no obvious ill effects attributable to the issuance of a decision at that time. *See Blue Cross & Blue Shield of Massachusetts*, 2025 WL 3062827.

Respectfully submitted,

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CLOVER INSURANCE COMPANY,)	
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NOTICE OF FILING OF EXHIBIT

When filing Defendants’ Reply in support of their Motion to Stay, undersigned counsel inadvertently failed to attach one exhibit to the Reply. That exhibit—which was cited at Doc. 31 at 4—is attached to this notice.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

**BLUE CROSS AND BLUE SHIELD OF
MASSACHUSETTS, INC., et al.**

Plaintiffs,

v.

ROBERT F. KENNEDY JR., in his official
capacity as Secretary of Health and Human
Services, U.S. Department of Health and
Human Services, et al.

Defendants.

Civil Action No. 1:25-cv-693 (TNM)

JOINT MOTION FOR EXPEDITED BRIEFING SCHEDULE

In an effort to avoid piecemeal briefing and additional motions practice, Counsel for the parties have met and conferred regarding a proposed expedited briefing schedule. Pursuant to those discussions, the parties respectfully request that the Court enter the joint expedited briefing schedule proposed below.

1. This is an Administrative Procedure Act case that concerns Defendants' calculation of Plaintiffs' 2025 Medicare Advantage Star Ratings. Medicare Advantage Star Ratings are a means by which the Centers for Medicare & Medicaid Services ("CMS") rates the overall quality of Medicare Advantage plans on a scale of 1 to 5 "Stars." CMS calculates Star Ratings by examining data and information relating to individual measures that are intended to assess the overall quality of the plan in several broad categories. A plan's overall Star Rating is a weighted assessment of the individual measures.

2. Star Ratings are used in several ways, including to determine, in part, Medicare Advantage plans' eligibility to receive quality bonus payments and rebates that fund additional benefits for members. Star Ratings also impact the bids that must be submitted by Medicare

Advantage organizations each year by the first Monday in June (which is June 2, 2025 this year). CMS then conducts a “desk review period” that runs until August 2025. This expedited briefing schedule has been designed to allow for a decision by the end of July 2025 to allow for adjustments within this time period.

3. Plaintiffs filed their Complaint on March 7, 2025.

4. The parties have worked together to propose the expedited schedule set forth herein to govern further proceedings. This schedule will allow for expedited summary judgment briefing in advance of CMS’s review and approval of bid data for Medicare Advantage before the close of the desk review period, as this Court’s decision may materially impact that process.

5. The parties request that this Court enter a decision by the end of July 2025.

6. Plaintiffs propose the following briefing schedule:

May 9, 2025	Defendants’ certified index of the Administrative Record and Administrative Record
May 16, 2025	Plaintiffs’ motion for summary judgment
May 30, 2025	Defendants’ cross-motion for summary judgment and opposition to Plaintiffs’ motion for summary judgment
June 12, 2025	Plaintiffs’ opposition to Defendants’ cross-motion for summary judgment and reply in support of Plaintiffs’ motion for summary judgment
June 20, 2025	Defendants’ reply in support of their cross-motion for summary judgment
June 23, 2025	Joint appendix shall be filed

7. Should the Court desire a hearing on the motions, the parties respectfully request that the Court schedule such a hearing during the week of June 30, 2025 or July 7, 2025.

8.

Dated: May 12, 2025

Respectfully submitted,

By: /s/ Lesley C. Reynolds

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

**BLUE CROSS AND BLUE SHIELD OF
MASSACHUSETTS, INC., et al.**

Plaintiffs,

v.

ROBERT F. KENNEDY JR., in his official
capacity as Secretary of Health and Human
Services, U.S. Department of Health and
Human Services, et al.

Defendants.

Civil Action No. 1:25-cv-693 (TNM)

[PROPOSED] ORDER

UPON CONSIDERATION of the joint motion for expedited briefing schedule, and for good cause shown and the entire record herein, it is hereby

ORDERED that the joint motion is GRANTED; it is further

ORDERED that Defendants shall file their certified index of the Administrative Record and Administrative Record by May 9, 2025; Plaintiffs shall file their motion for summary judgment by May 16, 2025; Defendants shall file their cross-motion for summary judgment and opposition to Plaintiffs' motion for summary judgment by May 30, 2025; Plaintiffs shall file their opposition to Defendants' cross-motion and reply in support of Plaintiffs' motion for summary judgment by June 12, 2025; Defendants shall file their reply in support of their cross-motion for summary judgment by June 20, 2025; the joint appendix shall be filed by June 23, 2025.

SO ORDERED:

Dated

TREVOR N. MCFADDEN
United States District Judge

Respectfully submitted,

By: /s/ Lesley C. Reynolds

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