

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

CLOVER INSURANCE COMPANY,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES; CENTERS FOR MEDICARE & MEDICAID SERVICES; ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the United States Department of Health and Human Services; MEHMET OZ, in his official capacity as Administrator, Centers for Medicare & Medicaid Services,

Defendants.

Civil Action No. 2:25-cv-142

**PLAINTIFF’S BRIEF OPPOSING DEFENDANTS’
MOTION TO STAY SUMMARY JUDGMENT**

Defendants’ motion to stay summary judgment is deeply confused. Defendants argue that Plaintiff Clover Insurance Company (“Clover”) is inviting the Court to rule on the ultimate merits of this case on summary judgment, but to *refuse* to rule upon Defendants’ objections to venue. Defendants’ framing is incorrect: Clover’s position is that the Parties need to *expeditiously brief summary judgment, regardless* of whether this case ultimately remains before this Court, or is transferred to the U.S. District Court for the District of Columbia for lack of venue, as Defendants have suggested would be appropriate. Clover agrees this Court would need to rule on venue either prior to or contemporaneous with ruling on summary judgment. But contrary to Defendants’ suggestions, the Federal Rules authorize a party to move for summary judgment, even when a motion to dismiss remains pending, and do not excuse summary judgment briefing deadlines in that circumstance. Fed. R. Civ. P. 56(b) (providing that a party may “file a motion for summary

judgment at any time until 30 days after the close of all discovery”). With Defendants’ erroneous framing corrected, there is no basis to stay the Parties’ deadlines to brief summary judgment.

This case concerns Defendants’ unlawful determination of Clover’s 2026 Medicare Advantage Star Rating in violation of Defendants’ governing statute. Dkt. 1 ¶ 51, 112-273. Defendants’ erroneous decision will cost Clover over \$100 million in federal funding that Congress intended to finance health insurance for seniors, including millions of dollars assigned to thousands of seniors in this District. *Id.* ¶¶ 8, 43, 51.

In its Complaint, Clover requested that the Court expedite resolution of this matter such that the parties receive a decision by May 29, 2026, Dkt. 1 ¶ 43, which is the time period that Defendants have previously identified, in multiple similar Medicare Advantage Star Rating cases, that they may readily update a plan’s Star Rating in response to judicial decision-making and make resulting changes to federal funding for the next calendar year, *see, e.g., Elevance Health, Inc. v. Becerra*, 736 F. Supp. 3d 1, 13 (D.D.C. 2024) (“Both parties have requested expedited consideration of their competing motions for summary judgment in light of Plaintiffs’ impending deadline to submit their bids to CMS for the upcoming contract year.”); Joint Motion for Briefing Schedule at 1, *SCAN Health Plan v. Dep’t of Health & Human Servs.*, No. 1:23-cv-03910-CJN (D.D.C. Feb. 23, 2024), ECF No. 19 (“The parties have developed this scheduling proposal to allow for expedited summary judgment briefing in advance of the June 3, 2024 deadline for Medicare Advantage bids and to avoid motions practice that would ensue if Plaintiff were to move for preliminary injunctive relief.”); Notice of Joint Proposed Briefing Schedule at 4, *Clover Insurance Company v. Becerra* (“*Clover I*”), 1:24-cv-01385-BAH (D.D.C. June 7, 2024), ECF No. 12 (“Because the Star Ratings are critical inputs for the bids that [Medicare Advantage plans] must submit in early June each year, those plaintiffs sought—and Defendant agreed—to expedited

brief of dispositive motions, which the parties completed on April 16, 2024.”). That is, Defendants have represented that late May is the time period needed for a court to decide summary judgment for CMS to in turn readily effectuate judicial relief, because that is the period in which Medicare Advantage plans must submit their annual “bids” for the next year to CMS; a plan’s Star Rating is a necessary input into that bid; and there are significant complexities in “re-opening” bidding materially beyond that time. *E.g., Elevance Health*, 736 F. Supp. 3d at 13.

To enable a timely judicial decision by May 29, 2026, the Parties need to complete briefing by March or early April. That requires the Parties to continue briefing summary judgment on the schedule the Court has already ordered, Dkt. 34, with Defendants responding by February 23, 2026, and Clover to reply by March 9, 2026. A materially later schedule would put the Court in a position of deciding summary judgment across multiple claims and theories of relief in a few days or weeks. *Supra* at 2 (describing cases in which Defendants stipulated to expedited summary judgment). And Defendants’ position, to defer briefing *indefinitely* until after venue is decided, may not allow even that much time, depending on when the Court decides the venue issue.

In suggesting a stay is nonetheless appropriate, Defendants have recently tried to walk back their prior representations in *Elevance*, *SCAN*, and *Clover I* that a decision is needed by late May to effectuate relief in an orderly manner. Dkt. 31 at 3 (stating that “CMS does not require such a decision by May 29, 2026, in order to effect appropriate judicial relief”); Email from W. Leithart to N. Schlossman (Jan. 30, 2026) (“And the government will of course comply with any court order, regardless of what month it may be issued.”). But those late-breaking representations remain unclear *until when* Defendants contend they *could* facilitate orderly judicial relief. And those newfound representations are difficult to square with Defendants’ prior representations in *Elevance*, *SCAN*, and *Clover I*, that CMS’s processes and systems would make it difficult to

modify payments to plans if a decision issued beyond the annual June bid deadline. Clover attempted to confer with Defendants' counsel on these new representations, seeking to determine until what date CMS's systems could process a change in Clover's Star Rating (resulting in increased payments to Clover), and the scheduling of summary judgment. Defendants' counsel declined Clover's request for a telephonic conference to discuss these scheduling issues.

To be sure, if Defendants want to come out and represent that they will update Clover's 2026 Star Rating to 4 Stars (assuming summary judgment in Clover's favor), will reopen bidding at any time after June 1, 2026 and allow Clover to bid as a 4-Star plan, and will pay Clover the over \$100 million in additional payments that the statute requires in those circumstances *regardless* of when a decision issues—even if it is in late 2026 or 2027—that would potentially narrow this case scheduling dispute. But again, it is unclear how such representations could be reconciled with Defendants' representations in *Elevance*, *SCAN*, and *Clover I* that Defendants (*and plans*) need a decision in advance of the annual June bidding deadline, and Defendants have refused to confer to explain how a less expedited schedule could be workable as a practical matter.

So that leaves us where we began: Defendants want to punt summary judgment briefing indefinitely, but doing so would risk this Court (or the U.S. District Court for the District of Columbia, in the event of a transfer) being deprived of the ability to award orderly relief. The Parties need to brief summary judgment, *regardless* of the forum in which summary judgment is decided. There is no basis for staying summary judgment *briefing* deadlines.

Defendants' contrary arguments are unavailing. Defendants argue that Clover's motion for summary judgment was filed prematurely, before venue was decided. But Federal Rule of Civil Procedure 56(b) allows a party to “file a motion for summary judgment at any time until 30 days after the close of all discovery.” Fed. R. Civ. P. 56(b). Thus, a party may move for summary

judgment “at any stage where all of the relevant facts are within the control of the parties and the record on the subject is fully developed.” *Great Am. All. Ins. Co. v. Hensley*, No. CV 114-112, 2014 WL 4675006, at *2 (S.D. Ga. Sept. 18, 2014). Here, this has already occurred, a point no one disputes: Because this action is brought under the Administrative Procedure Act (“APA”), the Court resolves the case *without* discovery on summary judgment in light of the administrative record which Defendants *already produced* in December 2025. *See Pres. Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Engineers*, 87 F.3d 1242, 1246 (11th Cir. 1996). Unlike a non-APA civil case, there is no need to await discovery to brief summary judgment in an APA case.

Unsurprisingly, courts have repeatedly recognized that the pendency of a motion to dismiss does not preclude simultaneous briefing of summary judgment, and such contemporaneous motions are utterly routine in APA cases, and *particularly* when the government asserts a threshold defense like venue or standing. *See, e.g., Meister v. Scott*, No. 206-CV-444, 2008 WL 11337350, at *2 (M.D. Fla. July 24, 2008) (given the scope of Rule 56(b), motions for summary judgment were not premature even though motions to dismiss were still pending); *Walde v. Meurer*, No. 1:21-cv-123, 2023 WL 2167440, at *5 (N.D. Fl. Feb. 2, 2023) (considering motion for summary judgment even though motion was filed “[w]hile the motion to dismiss was still pending”); Min. Order, *Alstom Transp. Inc. v. Federal R.R. Admin.*, 1:24-cv-02098 (D.D.C. Aug. 15, 2024) (concluding that the government’s motion to stay summary judgment pending resolution of a motion to dismiss would not “serve the orderly disposition of this case” because, in an action brought under the APA, “early summary judgment motions are often appropriate”); *R.J. Reynolds Tobacco Co. v. U.S. Food & Drug Admin.*, No. 6:20-CV-00176, 2022 WL 17489170, at *8 (E.D. Tex. Dec. 7, 2022) (simultaneously denying motion to dismiss for lack of venue and granting

motion for summary judgment), *rev'd in unrelated part*, 96 F.4th 863 (5th Cir. 2024).

Defendants' cited cases are inapposite. Dkt. 37 at 2. These cases considered motions for summary judgment that were filed not only where a motion to dismiss was pending, but also where there was "inadequate time for discovery." *Blumel v. Mylander*, 919 F. Supp. 423, 429 (M.D. Fl. 1996); *Stubbe v. PHH Mortgage Corp.*, No. 22-00339, 2022 WL 16842075, at *1 (S.D. Ala. Sept. 21, 2022) (summary judgment motion premature where it was filed "prior to the commencement of discovery"). But again, this is an APA case, and there will be no discovery. *Supra* at 4-5.

Finally, Clover notes that despite its motion for summary judgment being on file since February 2, 2026, and the Court setting a February 23, 2026 response deadline, Defendants waited until 2 business days prior to that deadline to move for a stay. That is hardly conduct reflecting any urgent need for a stay. And in light of that delay, Clover has serious concerns that Defendants intend to engage in "self help" by refusing to comply with the Court-ordered summary judgment response deadline of February 23, 2026, as they have already done in analogous circumstances.¹ A late-filed motion to stay is not "self executing," as Defendants have suggested, such that the *filing* of the motion *in of itself* relieves a party from case deadlines. *E.g.*, *Turner v. Rosen Hotels & Resorts, Inc.*, No. 6:21-cv-161, at *2 (M.D. Fla. Dec. 20, 2021) (asserting that the "mere fact" that a motion to stay was filed "cannot be used to excuse compliance from the court's orders and judgments until and unless the Court grants a timely-filed motion"); *Molina v. SMI Sec. Management, Inc.*, No. 11-24245, 2013 WL 12092210, at *1 n.1 (S.D. Fla. Oct. 23, 2013) ("[T]he

¹ After moving to stay discovery, Defendants refused to meet and confer with Clover as required by this Court's order requiring a Rule 26(f) conference and report, *see* Dkt. 4, with Defendants taking the position that the *filing* of a stay motion relieved them of their obligation to confer under Rule 26(f). *But see Delphi Connection v. Parisot-Potter*, No. 2:24-CV-789-KCD-NPM, 2025 WL 3012648, at *1 (M.D. Fla. Oct. 28, 2025) (noting that parties conducted 26(f) conference during pendency of motion to dismiss and admonishing that "without an order granting a stay—a motion to dismiss does not supply grounds for deferring discovery").

filing of a motion to stay does not relieve a party of its obligation to timely respond or object to pending motions.”). If Defendants choose to default their February 23, 2026 response deadline, the Court should hold Defendants’ right to a response to be forfeited and decide the summary judgment motion on the existing papers. *E.g., Tyson v. State Farm Fire & Casualty Co.*, No. 5:24-cv-71, 2025 WL 3252569, at *1 (S.D. Ga. Nov. 21, 2025) (Wood, J.) (granting motion for partial summary judgment where “Plaintiff has filed no response to the motion, and the time for doing so has passed”); *United States v. Ragen*, 4:23-cv-306, 2025 WL 1250532, at *1 (S.D. Ga. Apr. 30, 2025) (Wood, J.) (similar).

Accordingly, Clover requests that the Court deny Defendants’ motion for a stay.

Dated: February 20, 2026

Respectfully submitted,

/s/ James B. Durham

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CERTIFICATE OF SERVICE

On February 20, 2026, I caused a copy of the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF filing system, which will send notification of such filing to all registered participants.

/s/ James B. Durham
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