

**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 RESPONSE TO MOTION FOR BRIEFING SCHEDULE**

Defendants’ motion to “set a briefing schedule” for summary judgment is inconsistent with the history of these proceedings. This Court *already set* February 23, 2026 as the deadline for Defendants to respond to Clover’s summary judgment motion, which Defendants chose to default. While framed as an uncontroversial motion to set a briefing schedule, Defendants seek to *sub silentio* unwind the consequences of their default. The Court should reject that effort. But if the Court were to nevertheless permit Defendants to file an untimely response, the Court should set an accelerated briefing schedule consistent with the expedited nature of this proceeding, which needs a decision by the end of May for the Court to provide efficient relief. Dkt. 40 at 39-40, Dkt. 42 at 6 (explaining need for expedition in light of June 1, 2026 Medicare Advantage bid deadline).

Clover filed its summary judgment motion on its Administrative Procedure Act claims on February 2, 2026. Dkt. 34. That day, the Court issued a Notice setting the response deadline:

“Unless you [Defendants] file for *and are granted* an extension of time to respond, all pleadings, affidavits, and other evidence in opposition to this motion for summary judgment MUST be filed with the Clerk’s office **ON OR BEFORE 02/23/26** (21 days).” Dkt. 36 (emphasis added). Defendants moved to stay that response deadline in light of their motion to dismiss on February 19, 2026, two business days before their response was due, but the Court did not rule on their belated motion to stay. That stay motion was rendered moot by the Court’s decision denying Defendants’ motion to dismiss. Dkt. 40. And this Court has explained that, absent a stay, the summary judgment response deadline remained binding. Dkt. 39 at 5 (“Plaintiff filed a motion for expedited summary judgment on February 2, 2026, see doc. 34, and . . . this Court’s Local Rules require parties opposing summary judgment motions to file a response within 21 days after service of a motion for summary judgment. Local R. 7.5. *Granting this Motion [to stay discovery] thus does not delay summary judgment briefing.*” (emphasis added)). Accordingly, Clover’s summary judgment motion should be treated as both ripe for the Court’s decision, and unopposed by Defendants. *See Jones v. Wells Fargo Principal Lending, LLC*, No. CV 616-129, 2018 WL 1913527, at \*1 (S.D. Ga. Apr. 23, 2018) (summary judgment motion “ripe for consideration” and “unopposed” in this circumstance); *Joe Hand Prods., Inc. v. Dubois*, No. 18-496, 2020 WL 4342216, at \*1 (S.D. Ala. July 27, 2020) (same); *Simon v. Kroger Co.*, 743 F.2d 1544, 1546-47 (11th Cir. 1984) (similar).

Alternatively, even if the Court were to permit Defendants to file a response, Defendants do not need *74 days* to respond to a summary judgment motion filed on February 2, 2026, as they have now requested. That is doubly so in this case, where time is of the essence to reach a decision on summary judgment by the end of May. *See* Dkt. 40 at 39 (explaining that “perhaps most importantly, Clover alleges in its separate motion to expedite that the parties are operating on an

expedited schedule due to the timeframe for Defendants to make changes to bonus payments to plans pursuant to judicial decisionmaking and the deadline for Clover to submit its annual ‘bid’ to participate in the Medicare Advantage Program”); Dkt. 42 at 6 (explaining need for expedition). Indeed, Defendants previously acknowledged that they could respond much more quickly: Defendants’ motion to stay their summary judgment response deadline requested a deadline to oppose summary judgment “21 days following a determination on Defendants’ pending Motion to Dismiss.” Dkt. 37 at 4. The Court decided the motion to dismiss on March 18, 2026. Dkt. 40. Thus, under Defendants’ own view of needing 21 days to respond, they should oppose summary judgment by April 8, 2026, which is the 21 days they previously requested.<sup>1</sup>

If the Court allows Defendants to file a response despite their default, Clover respectfully requests that the Court enter the following schedule:

April 8, 2026	Deadline for Defendants to respond to Clover’s Motion for Summary Judgment and file any Cross Motion for Summary Judgment.
April 29, 2026	Deadline for Clover to file its reply in support of Clover’s Motion for Summary Judgment and response to Defendants’ Cross Motion for Summary Judgment.
May 8, 2026	Deadline for Defendants to file any reply in support of Defendants’ Cross Motion for Summary Judgment.
May 20, 2026, or as soon thereafter as the matter may be heard	Any hearing of Motion for Summary Judgment that the Court deems necessary. <sup>2</sup>

Finally, to the extent that it would be helpful to this Court’s consideration of these matters,

---

<sup>1</sup> Also pending before the Court is the question, which the Court raised *sua sponte*, of whether *discretionary* transfer is warranted under 28 U.S.C. § 1404(a), notwithstanding that venue is proper before this Court. Dkt. 40 at 40. Tellingly, Defendants filed only a 1.5-page response on that discretionary transfer issue, Dkt. 41, leaving unrebutted Clover’s overwhelming showing that transfer is not warranted in light of Defendants’ decision’s primary effects in this District, Dkt. 42. Unsurprisingly, Defendants now recognize the need to proceed with summary judgment briefing before this Court, and have themselves proposed a briefing schedule to do so, Dkt. 45.

<sup>2</sup> Clover is willing to waive a hearing of the motion for summary judgment.

Clover is available to participate in a scheduling conference at the Court's convenience.

Dated: April 2, 2026

Respectfully submitted,

/s/ James B. Durham

James B. Durham  
Hall Booth Smith, P.C.  
3528 Darien Highway, Suite 300  
Brunswick, GA 31525  
Tel: (912) 554-0093  
Email: JDurham@hallboothsmith.com

Andrew D. Prins\*  
Rachael L. Westmoreland\*  
LATHAM & WATKINS LLP  
555 Eleventh Street NW, Suite 1000  
Washington, DC 20004  
Tel: (202) 637-2200  
Fax: (202) 637-2201  
Email: andrew.prins@lw.com  
rachael.westmoreland@lw.com

Nicholas L. Schlossman\*  
LATHAM & WATKINS LLP  
300 Colorado Street, Suite 2400  
Austin, TX 78701  
Tel: (737) 910-7300  
Fax: (737) 910-7301  
Email: nicholas.schlossman@lw.com

\* *pro hac vice*

*Attorneys for Plaintiff Clover Insurance  
Company*

**CERTIFICATE OF SERVICE**

On April 2, 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  
James B. Durham