

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

HUMANA INC., and AMERICANS FOR
BENEFICIARY CHOICE,

Plaintiffs,

v.

Civil Action No. 4:24-cv-01004-O

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES; CENTERS FOR
MEDICARE & MEDICAID SERVICES;
DOROTHY FINK, in her official capacity
as Secretary of Health and Human
Services; and STEPHANIE CARLTON, in
her official capacity as Administrator of the
Centers for Medicare and Medicaid
Services,

Defendants.¹

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION REQUESTING ORAL ARGUMENT**

Defendants U.S. Department of Health and Human Services et al. file this response to Plaintiffs' Combined Motion and Brief Requesting Oral Argument on the Pending Cross-Motions for Summary Judgment ("Plaintiffs' Motion"), ECF No. 43.

Plaintiffs' motion is both improper and unnecessary. It's improper because the motion (filed without leave from the Court) contains argument in support of Plaintiffs'

¹ Xavier Becerra has been substituted with Dorothy Fink as Acting Secretary of the United States Department of Health and Human Services, and Chiquita Brooks-LaSure has been substituted with Stephanie Carlton as Acting Administrator of the Centers for Medicare & Medicaid Services, pursuant to Federal Rule of Civil Procedure 25(d).

already-fully-briefed motion for summary judgment in violation of Local Rule 56.7, which prohibits a party from filing a sur-reply. Rule 56.7 states, “[e]xcept for the motions, responses, replies, briefs, and appendices required by these rules, a party may not, without the permission of the presiding judge, file supplemental pleadings, briefs, authorities, or evidence.”

This Court has enforced that rule in similar situations. For example, in *Ybarra v. Dish Network LLC*, the Court struck the plaintiff’s notice of supplemental authority because, “[p]ursuant to Local Rule 56.7, a party may not file supplemental authorities without leave of Court, and no such leave was granted here.” *Ybarra v. Dish Network LLC*, No. 4:13-CV-963-O, 2014 WL 6085292, at *5 (N.D. Tex. Nov. 14, 2014), *rev’d in part on other grounds*, 807 F.3d 635 (5th Cir. 2015).

Although Plaintiffs’ Motion is titled as a request for oral argument, its contents reveal it is, in fact, a sur-reply filed without leave. Throughout the Motion, Plaintiffs cite to Defendants’ summary-judgment reply brief and, each time, Plaintiffs provide substantive argument in response to Defendant’s reply brief. *See* Plaintiff’s Motion, ¶¶ 1, 2, and 3.

Plaintiffs’ Motion is also unnecessary. Local Rule 7.1(g) already addresses when oral argument will be scheduled. It states: “**No Oral Argument.** Unless otherwise directed by the presiding judge, oral argument on a motion will not be held.” That rule recognizes that the Court is in the best position to determine whether it would benefit from oral argument. The parties recognized as much when filing their Joint Motion to Amend Briefing Schedule, ECF No. 30. In that motion, the parties acknowledged that the

decision about whether to schedule a hearing on the summary-judgment motions was up to the Court and provided their availability “[s]hould the Court wish to schedule a hearing on the motion.” Joint Mot. to Amend Briefing Schedule 2.

Because Plaintiffs’ motion is improper and unnecessary, Defendants respectfully request that the Court strike it from the record and not consider it when ruling on the motions for summary judgment.

Respectfully submitted,

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/s/ Andrea Hyatt

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Certificate of Service

On March 12, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Andrea Hyatt _____
Andrea Hyatt
Assistant United States Attorney