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

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| CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, AMERICAN INVESTMENT COUNCIL, and LONGVIEW CHAMBER OF COMMERCE,<br><br>*Plaintiffs*,<br><br>v.<br><br>FEDERAL TRADE COMMISSION and ANDREW N. FERGUSON, in his official capacity,<br><br>*Defendants*. | Case No. 6:25-cv-00009-JDK |

**PLAINTIFFS' OPPOSITION TO MOTION FOR EXTENSION OF TIME AND EXTENSION OF PAGE LIMITS, AND RESPONSE TO MOTION TO RESCHEDULE ORAL ARGUMENT**

Plaintiffs Chamber of Commerce of the United States of America, Business Roundtable, American Investment Council, and Longview Chamber of Commerce respectfully oppose the FTC's request for a 21-day extension of time to file its summary-judgment opposition (which the FTC intends to combine with its own cross-motion) and the FTC's separate request for 10 additional pages. Plaintiffs do not oppose the FTC's request to reschedule oral argument for a date other than October 1-10.

1. Plaintiffs filed the initial complaint in this case on January 10, 2025. Dkt. 1. That 104-page complaint set forth in great detail the legal arguments Plaintiffs would make in support of their claims that the FTC Rule at issue violates the Administrative Procedure

Act. On May 27—after delays attributable to multiple consent extensions, a motion to dismiss, an amended complaint to address the FTC's jurisdictional arguments, and another motion to dismiss—Plaintiffs moved to establish a "consolidated briefing schedule for Defendants' motion to dismiss, Plaintiffs' forthcoming motion for summary judgment, and any cross-motion for summary judgment Defendants may choose to file." Dkt. 31. Plaintiffs explained that the challenged Rule, which went into effect on February 10, 2025, was causing "immediate and ongoing harms to their members," and that they had intended from the outset to move for summary judgment as soon as possible "to expedite a merits decision." *Id.* at 2. A combined briefing schedule on summary judgment and the FTC's second motion to dismiss, Plaintiffs explained, "would facilitate the most orderly and efficient resolution of this case." *Id.* at 3. Plaintiffs' proposed schedule would have given the FTC until July 10 to file a combined summary-judgment opposition and cross-motion for summary judgment. *Id.* at 5.

The FTC opposed Plaintiffs' proposal for a joint briefing schedule. The FTC argued that it needed discovery into Article III standing before summary-judgment briefing could begin. Dkt. 33 at 6. On June 5, 2025, the Court denied Plaintiffs' motion for a briefing schedule and ordered the parties to "meet and confer to discuss appropriate deadlines for limited discovery and summary judgment briefing." Dkt. 34 at 1.

Over the next five weeks, the parties were unable to agree on such deadlines. The FTC maintained that the Court's June 5 Order had already determined that the FTC was entitled to seek whatever discovery it wanted before Plaintiffs would be permitted to move for summary judgment. *See* Dkt. 41 at 6 (recounting the parties' discussions). Plaintiffs disagreed with that reading of the June 5 Order. The parties presented their dispute to the Court in status reports filed on July 11. *See* Dkts. 41, 42. On July 14, the Court rejected the FTC's arguments and ordered that Plaintiffs were entitled to "proceed with filing a motion for summary judgment no later than **August 1, 2025**," and that "[a]ny responsive briefing [would] be governed by the Court's local rules and the Federal Rules of Civil Procedure." Dkt. 43.

Plaintiffs complied with the Court's Order and filed their 30-page summary judgment motion on August 1. *See* Dkt. 43. The FTC did not approach counsel for Plaintiffs about seeking an extension of their 21-day response deadline and enlargement of the 30-page limit afforded to dispositive motions under L.R. CV-7 until August 11. The FTC first mentioned the possibility of its filing a cross-motion for summary judgment on August 12.

2. Under these circumstances, Plaintiffs cannot consent to additional time for the FTC to prepare its first merits brief addressing arguments it has known about since January. Plaintiffs have previously consented to multiple requests for additional time in the interests of professional courtesy. *See* Dkts. 15, 18. But because the Rule has been inflicting significant harm on Plaintiffs, their members, and all affected parties for more than six months now, Plaintiffs cannot agree to further delay the resolution of this case. As noted above, Plaintiffs proposed to the FTC months ago (in May) a schedule that would have provided plenty of time to prepare a combined opposition and cross-motion for summary judgment. The FTC declined that proposal and insisted that the Court's June 5 Order compelled the parties to engage in discovery. The Court rejected that argument on July 14, moved this case into the summary-judgment phase, and ordered the parties to

follow the deadlines and page limits set forth in the Local Rules. Even then, the FTC did not say anything about shifting the deadlines or filing its own motion until nearly one month later, well after Plaintiffs had complied with the Court's Order and filed their motion and accompanying 30-page brief. The FTC should not now be permitted *twice* the standard 21 days or 33% more pages for its responsive brief, especially after having (i) rejected a similar schedule when Plaintiffs proposed it three months ago and (ii) said nothing while Plaintiffs prepared their summary-judgment brief in accordance with the Court's Order and the Local Rules.

The fact that the FTC now apparently intends to cross-move for summary judgment should not add weeks to the merits briefing schedule or allow the FTC to claim that giving it 10 additional pages actually "save[s] 20 pages." Dkt. 52 at 4. "APA cases, like most civil litigation, can be resolved on a single motion for summary judgment if filed by the movant having the burden of proof and persuasion"—Plaintiffs here—and "dueling motions" often "create[] an unnecessary dispute over elementary briefing and scheduling questions." *Kentucky* v. *Fed. Highway Admin.*, 728 F. Supp. 3d 501, 511 n.7 (W.D. Ky. 2024). This APA case will be decided on the administrative record, and will rise or fall based on Plaintiffs' legal arguments for why the Rule is unlawful. If the Court agrees with those arguments, it should vacate the Rule; if the Court disagrees, the Rule will stand. There is no additional showing the FTC will need to make in support of its "cross-motion." If it successfully rebuts Plaintiffs' arguments, then the only thing left to do will be to grant summary judgment to the FTC. At least in the circumstances here, the FTC's cross-motion should not be a procedural way to gain more time and pages.

The FTC notes that in its summary-judgment papers it intends to address not only standing, but also "venue [and] remedies," issues not addressed in Plaintiffs' summary-judgment motion. Dkt. 52 at 4. But the FTC, like Plaintiffs, has already laid out its legal arguments on standing and venue in its pending motion to dismiss, *see* Dkt. 30, and the Court will take those up at the same hearing as Plaintiffs' summary-judgment motion. And there is no need for separate briefing on remedies until (and unless) the Court rules on the merits for Plaintiffs, at which point the FTC can raise any remedial objections it wishes.

The FTC has already succeeded at substantially delaying this litigation. It is time for the agency to engage on the merits. Accordingly, the Court should deny the FTC's request for additional time and pages to brief the merits of this case, and continue to require the parties to complete briefing according to the Local Rules. If the Court grants the FTC additional pages and time, Plaintiffs respectfully request commensurate increases for their reply brief and (if needed) opposition to the FTC's cross-motion for summary judgment.

3. Plaintiffs do not oppose rescheduling oral argument to accommodate the religious holiday and counsel's travel limitations. But Plaintiffs respectfully request that the Court schedule oral argument for the earliest possible date. Counsel for Plaintiffs can be available for a date earlier than October 1, should the Court be available.

August 18, 2025

Respectfully submitted,

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**ORDER DENYING DEFENDANTS' PARTIALLY OPPOSED MOTION FOR EXTENSION OF TIME, EXTENSION OF PAGE LIMITS, AND RESCHEDULING OF ORAL ARGUMENT**

Before the Court is Defendants' Partially Opposed Motion for Extension of Time, Extension of Page Limits, and Rescheduling of Oral Argument and Plaintiffs' Opposition to same. After consideration of said Motion, IT IS ORDERED that Defendants' request for a 21-day extension of time to file its summary-judgment opposition (combined with its own cross-motion) and request for 10 additional pages is hereby DENIED.

IT IS FURTHER ORDERED that Defendants' unopposed request to reschedule oral argument is GRANTED. The Court's prior order setting oral argument for October 2, *see* Dkt. 51, is VACATED. The Court will issue a separate order setting a new date.