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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

AMERICA'S FRONTLINE DOCTORS, *et al.*, Plaintiffs, v. XAVIER BECERRA, *et al.*, Defendants.	CIVIL ACTION NO. 2:21-CV-702-CLM **UNOPPOSED**

JOINT MOTION TO SET A BRIEFING SCHEDULE

The U.S. Department of Health and Human Services; the Food and Drug Administration; the Centers for Disease Control and Prevention; the National Institutes of Health; the National Institute of Allergy and Infectious Diseases; and, in their official capacities, Xavier Becerra, Secretary of Health and Human Services; Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases; and Dr. Janet Woodcock, Acting Commissioner of Food and Drugs (collectively, "HHS") and Plaintiffs jointly request that the Court enter the briefing schedule described below, which provides for consolidated briefing for Plaintiffs' motion for a preliminary injunction and HHS's anticipated motion to dismiss. Secretary Becerra, Dr. Fauci, and Dr. Woodcock in their individual capacities (collectively, the "Individual Defendants") do not oppose this motion.

On June 10, 2021, Plaintiffs filed their 110-page Complaint, which generally challenges the Emergency Use Authorizations issued for COVID-19 vaccines manufactured by Pfizer-BioNTech, Moderna, and Johnson & Johnson (Janssen). *See* Compl., ECF No. 10. Plaintiffs allege six claims against HHS. *See* Compl. ¶¶ 257–85. Plaintiffs also allege a seventh claim, which seeks money damages, against the Individual Defendants. *See id.* ¶¶ 286–96.

On June 28, 2021, Plaintiffs effected service on HHS. *See* Partial Return of Service, ECF No. 17. HHS's deadline to respond to the Complaint is August 27, 2021. *See* Fed. R. Civ. P. 12(a)(2).

On July 19, 2021, Plaintiffs filed a 66-page motion for a preliminary injunction with 12 exhibits. Pls.' PI Mot., ECF No. 15. On July 22, 2021, the Court declined to "enter a briefing schedule for the motion for preliminary injunction [15] until after all parties have been served and appear." Text Order, ECF No. 16. On August 18, 2021, Plaintiffs effected service on the Individual Defendants. The Individual Defendants' deadline to respond to the Complaint is October 18, 2021. *See* Fed. R. Civ. P. 12(a)(3).

HHS has informed Plaintiffs that it intends to move to dismiss the Complaint under Federal Rules of Civil Procedure 12(b)(1), 12(b)(3), and 12(b)(6). For these

grounds and others, HHS also intends to oppose Plaintiffs' motion for a preliminary injunction.

In light of the overlapping issues presented by Plaintiffs' pending motion for a preliminary injunction and HHS's intended motion to dismiss, Plaintiffs and HHS believe it would be most efficient to consolidate the briefing on those two motions. Therefore, Plaintiffs and HHS now jointly move the Court to enter the following briefing schedule:

Date	Event
September 16, 2021	HHS shall file a consolidated motion to dismiss and opposition to Plaintiffs' motion for a preliminary injunction (not to exceed 45 pages)
30 days after HHS files its consolidated motion to dismiss and opposition to Plaintiffs' motion for a preliminary injunction	Plaintiffs shall file a consolidated opposition to HHS's motion to dismiss and reply in support of Plaintiffs' motion for a preliminary injunction (not to exceed 45 pages)
21 days after Plaintiffs file their consolidated opposition to HHS's motion to dismiss and reply in support of Plaintiffs' motion for a preliminary injunction	HHS shall file a reply in support of its motion to dismiss (not to exceed 25 pages)

Consistent with the Court's sample Initial Order, Plaintiffs' and HHS's briefs shall use 14-point, Times New Roman font in the body and 12-point, Times New Roman font in footnotes. The text of briefs shall be double-spaced, except for

quotations exceeding 50 words, which may be block indented from the left and right margins and single-spaced.

Plaintiffs reserve their right to file an amended complaint pursuant to Federal Rule of Civil Procedure 15. If Plaintiffs file an amended complaint, Defendants agree that they may withdraw their motion for a preliminary injunction without prejudice and file a new one concurrently with the amended complaint that conforms to the changes therein, and the parties will request that the Court enter a new briefing schedule.

For good cause shown, Plaintiffs and HHS jointly request that the Court enter this briefing schedule.

Dated: August 20, 2021

Respectfully submitted,

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