



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

March 23, 2018

By ECF and Electronic Mail

Honorable Richard J. Sullivan  
United States District Judge  
United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *State of New York and State of Minnesota v. U.S. Department of Health and Human Services, et al.*, 18 Civ. 683 (RJS)

Dear Judge Sullivan:

This Office represents defendants United States Department of Health and Human Services (“HHS”) and Alex M. Azar II in his official capacity as Secretary of HHS (collectively, the “Defendants”) in the above-referenced matter, in which plaintiffs assert causes of action pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*<sup>1</sup> We write respectfully to request an extension of Defendants’ March 27, 2018 deadline to answer the complaint, and a three-week adjournment of both the parties’ April 5, 2018 deadline to submit a pre-conference letter and proposed case management plan and the April 13, 2018 initial pretrial conference.

The parties are engaged in negotiations to address the allegations in plaintiffs’ complaint; if successful, these discussions potentially could resolve, or substantially alter, the matters in dispute in this action. To allow the parties to focus their efforts on the negotiations, and to obviate the need to respond to a pleading that may be fundamentally changed by these ongoing developments, Defendants respectfully request that their deadline to answer the complaint be extended until April 20, 2018.

Similarly, a three-week adjournment of the pre-conference submission requirements and the initial pretrial conference would facilitate the parties’ negotiations, and would ensure that the status letter to the Court reflects a complete and up-to-date report regarding the litigation. In addition, the undersigned counsel for Defendants is scheduled to be out of the office on vacation from April 2 through April 6, 2018, which also makes the April 5, 2018 pre-conference submission deadline difficult. If the parties are able to reach an agreement before the rescheduled deadline and conference date, it is likely that they will seek further adjournments; if the negotiations are unsuccessful, these brief adjournments will not unduly delay the progress of plaintiffs’ lawsuit. Should the Court grant the request to adjourn the initial pretrial conference,

---

<sup>1</sup> The complaint originally named as a defendant Eric D. Hargan, who was, at the time of filing, the Acting Secretary of HHS. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Secretary Azar is now the proper defendant and should be automatically substituted as a party.

the parties note, for scheduling purposes, that all counsel would be available for a conference on May 3, 2018.

This is Defendants' first request for an extension of their answer deadline, and first request for an adjournment of the pre-conference submission deadline and the initial pretrial conference. Counsel for plaintiffs do not object to the requests.

We thank the Court for its consideration of this matter.

Respectfully submitted,

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York

By: /s/ Andrew E. Krause  
ANDREW E. KRAUSE  
Assistant United States Attorney  
Telephone: 212-637-2769  
Facsimile: 212-637-2786  
E-mail: [andrew.krause@usdoj.gov](mailto:andrew.krause@usdoj.gov)

cc: All counsel of record via ECF