

September 3, 2019

The Honorable Paul A. Engelmayer
United States District Court for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 2201
New York, NY 10007

RE: Plaintiffs' letter-motion to forgo compliance with Local Civil Rule 56.1 in *State of New York, et al. v. U.S. Dep't of Health & Human Servs., et al.*, 19 Civ. 4676 (PAE) (consolidated with 19 Civ. 5433 (PAE) and 19 Civ. 5435 (PAE)).

Dear Judge Engelmayer,

Pursuant to Rule 3(I) of the Court's Individual Rules and Practices, Plaintiffs file this letter-motion seeking permission to forgo compliance with Local Civil Rule 56.1 ("Rule 56.1") in connection with their cross-motions for summary judgment to be filed on September 5, 2019.

On September 5, 2019, per the Court's scheduling order (Dkt. 121), Plaintiffs will file their cross-motions for summary judgment, oppositions to summary judgment, and replies in support of their motions for preliminary injunction. With respect to Plaintiffs' cross-motions for summary judgment, Rule 56.1 requires a "separate, short and concise statement . . . of the material facts as to which the moving party contends there is no genuine issue to be tried." Because of the nature of the issues to be briefed in this case, the evidence that Plaintiffs intend to submit to the Court in connection with their filings, and the purpose of the Rule 56.1 Statement, Plaintiffs respectfully request permission to forgo the Rule 56.1 requirement.

Plaintiffs' complaints assert that the final rule issued by the U.S. Department of Health and Human Services on May 21, 2019 violates the Administrative Procedure Act ("APA"), the constitutional separation of powers, and the Spending and Establishment Clauses of the United States Constitution. *See* Compl. ¶¶ 159-201 (Dkt. 3); NFPRHA Compl. ¶¶ 143-170, 19-cv-5435 (PAE), Dkt. 1; PPFA Compl. ¶¶ 128-152, 19-cv-5433 (PAE), Dkt. 1. With respect to all of Plaintiffs' claims, including their APA claims, Plaintiffs intend to submit to the Court the portions of the administrative record cited or relied on throughout their memoranda of law. Accordingly, Plaintiffs believe that a Rule 56.1 Statement will not further aid the Court's review of those portions of the administrative record on which they rely. *See Glara Fashion, Inc. v. Holder*, No. 11-cv-889 (PAE), 2012 WL 352309, at *1 n. 1 (S.D.N.Y. Feb. 3, 2012) (holding that no Rule 56.1 Statement was necessary where the case "arises under the APA").

With respect to Plaintiffs' constitutional claims, Plaintiffs intend to direct the Court to citations to the administrative record, evidence already present in the record of this action, and facts that may be judicially noticed. Because this information will be clearly identified in Plaintiffs' memoranda of law with citations to the corresponding authorities, Plaintiffs believe that a Rule 56.1 Statement will not further aid the Court's review. *See Holtz v. Rockefeller & Co.*, 258 F.3d 62, 73 (2d Cir. 2001) ("The purpose of Local Rule 56.1 is to streamline consideration of summary judgment motions by freeing district courts from the need to hunt through voluminous records without guidance from the parties."); *NAACP Legal Def. & Educ.*

Fund, Inc. v. U.S. Dep't of Hous. & Urban Dev., No. 07-cv-3378 (GEL), 2007 WL 4233008, at *1 n.1 (S.D.N.Y. Nov. 30, 2007) (“[T]he purpose of Rule 56.1 statements is to identify the relevant evidence supporting the material facts, and to assist the court in determining which facts are genuinely undisputed.”); *see also id.* (no Rule 56.1 Statement necessary where the relevant facts had “already been identified by plaintiff in its Rule 56.1 Statement and by defendant in its supporting affidavits”).

Respectfully submitted,

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Filed on behalf of all Plaintiffs with permission