

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

Christian Employers Alliance,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:21-cv-195-MDT-CRH
)	
United States Equal Employment)	
Opportunity Commission, <i>et al.</i>)	
)	
<i>Defendants.</i>)	
)	

JOINT PROPOSAL REGARDING SCHEDULING

Pursuant to the Court’s order of January 7, 2022 (ECF No. 34), the parties submit this joint proposal regarding scheduling for Defendants’ response to the Complaint and dispositive motion briefing.

1. This Court entered an Order Granting Motion for Preliminary Injunction (“Injunction Order”) (ECF No. 39) on May 16, 2022. Pursuant to FED. R. APP. P. 4(a)(1)(B), Defendants current deadline to appeal the Injunction Order is July 15, 2022, that being 60 days after the entry of the Injunction Order.

2. Defendants intend to file a motion, pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, to modify the Court’s Injunction Order. Defendants will propose that the Court add language to the injunction similar to language that Judge Welte added in *Religious Sisters of Mercy v. Cochran*, Case No. 3:16-cv-00386, Case No. 3:16-cv-00432,

2021 WL 1574628 (D.N.D. Feb. 19, 2021).¹ Defendants intend to file this motion on or before Monday, June 6, 2022.

¹ When Judge Welte entered final judgment, he added the following language that was not contained in his initial injunction order:

Neither HHS nor the EEOC violates this order by taking any of the above-described actions against any CBA [Catholic Benefits Association] member, anyone acting in concert or participation with a CBA member, or a CBA member's health plans and any insurers or TPAs [third-party administrators] in connection with such health plans if the agency officials directly responsible for taking these actions are unaware of that entity's status as a CBA member or relevant relationship to a CBA member.

However, if either agency, unaware of an entity's status as a CBA member or relevant relationship to a CBA member, takes any of the above-described actions, the CBA member and the CBA may promptly notify a directly responsible agency official of the fact of the member's membership in the CBA (and the CBA member's satisfaction of the (a)-(d) criteria, described above) or the entity's relevant relationship to a CBA member and its protection under this order. Once such an official receives such notice from the CBA member and verification of the same by the CBA, the agency shall promptly comply with this order with respect to such member or related entity.

Nothing in this order shall prevent the EEOC from:

- (1) taking any action in connection with the acceptance of a charge for filing regardless of the source, including receiving an online inquiry via the agency's Public Portal or requesting or receiving a questionnaire or other correspondence from the charging party, when the charge concerns an allegation against a CBA member concerning the exclusion of gender-transition procedures from its insurance coverage;
- (2) accepting a charge alleging that a CBA member does not provide insurance coverage for gender-transition procedures, and from entering the charge into the EEOC's computer systems;
- (3) serving a notice of the charge upon a CBA member within ten days as required by 42 U.S.C. § 2000e-5(b); or
- (4) issuing a right-to-sue notice to a charging party who has filed a charge against a CBA member concerning the exclusion of gender-transition procedures from its insurance plan in accordance with the requirements and procedures set forth in 42 U.S.C. § 2000e-5(b) & (f)(1) and 29 C.F.R. § 1601.28(a)(1) & (2).

3. The parties propose to hold in abeyance Defendants' deadline to respond to the Complaint pending Defendants' decision whether to appeal the Injunction Order (and/or the Court's disposition of Defendants' forthcoming motion to modify).²

4. The parties propose that within 14 days after the deadline for Defendants to appeal the Injunction Order or the Court's ruling on Defendants' forthcoming motion to modify, the parties shall submit a proposed schedule for dispositive motion briefing, including a deadline for Defendants' response to the Complaint under Fed. R. Civ. P. 12 as necessary.

5. Concurrently with this proposal, the parties are submitting a Proposed Order concerning scheduling, consistent with this proposal.

CONCLUSION

The parties request the Court adopt and enter their Proposed Order concerning scheduling.

Id. at *2. Defendants intend to ask this Court to add language to the Court's Injunction Order that is substantively identical to the above language, but referring to Christian Employers Alliance rather than Catholic Benefits Association.

² Defendants take the position that their appeal deadline will be tolled until the Court issues a decision on its forthcoming Motion to Modify the Injunction Order, which will start a new 60 day appeal window. *See* FED. R. APP. P. 4(a)(4)(A). Plaintiff agrees to hold Defendants' deadline to respond to the Complaint in abeyance pending that appeal window; however, Plaintiff does not concede that merely styling the Motion to Modify under Rule 59(e) or 60(b) automatically tolls the appeal deadline under FED. R. APP. P. 4(a)(4)(A).

Dated: May 31, 2022

Respectfully submitted,

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