

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TEXO ABC/AGC, INC.; ASSOCIATED BUILDERS AND CONTRACTORS, INC.; NATIONAL ASSOCIATION OF MANUFACTURERS; AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS; GREAT AMERICAN INSURANCE COMPANY; ATLANTIC PRECAST CONCRETE, INC.; OWEN STEEL COMPANY; and OXFORD PROPERTY MANAGEMENT, LLC;

Plaintiffs,

v.

EDWARD C. HUGLER, Acting Secretary of Labor, United States Department of Labor; DOROTHY DOUGHERTY, Deputy Assistant Secretary of Labor, Occupational Safety and Health Administration; and OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, United States Department of Labor,

Defendants.¹

Civil Action No. 3:16-cv-1998

**JOINT MOTION FOR LEAVE TO FILE A PROPOSED SUMMARY JUDGMENT
BRIEFING SCHEDULE AND FOR AN EXTENSION OF TIME
TO RESPOND TO THE AMENDED COMPLAINT**

The parties respectfully move the Court for leave to jointly file a proposed summary judgment briefing schedule in the above-captioned matter on or before March 20, 2017. The

¹ Edward C. Hugler, Acting Secretary of Labor, has been substituted for Thomas E. Perez as a defendant in this case, and Dorothy Dougherty, Deputy Assistant Secretary of Labor for Occupational Safety and Health, has been substituted for David Michaels as a defendant, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

parties also request that the Court extend the deadline for the Government to respond to Plaintiffs' Amended Complaint until fourteen days after a decision on the forthcoming dispositive motions.

On February 8, 2017, Plaintiffs filed an Amended Complaint. *See* ECF No. 48. The Amended Complaint raises additional challenges to the Occupational Safety and Health Administration ("OSHA") rule at issue in this case. *See generally* Improve Tracking of Workplace Injuries and Illnesses, 81 Fed. Reg. 29,624 (May 12, 2016), as revised at 81 Fed. Reg. 31,854 (May 20, 2016). The Government's response to the Amended Complaint is currently due on February 22, 2017.

Prior to Plaintiffs' filing the Amended Complaint, the Government had filed a motion to dismiss or, in the alternative, for summary judgment, which was awaiting full briefing. *See* ECF No. 43. Along with that motion, the Government filed an index of the administrative record. *See* ECF No. 42. The parties agree that the Amended Complaint supersedes the original Complaint and renders moot the Government's motion. At the same time, the parties agree that the new allegations in the Amended Complaint do not require any changes to the administrative record. Accordingly, the parties believe that this case—which raises only questions of statutory and constitutional law—is best resolved on newly filed cross-motions for summary judgment. The parties therefore request that the Court grant them leave to jointly file a proposed summary judgment briefing schedule on or before March 20, 2017, which will afford the parties adequate time to discuss, with each other and with the appropriate Government stakeholders, the sequencing and timing of the forthcoming motions. In the interest of conserving the resources of both the parties and the Court, the parties also request that the Court extend the deadline for the Government to answer the Amended Complaint until fourteen days after the resolution of the forthcoming

dispositive motions. *See* Fed. R. Civ. P. 12(a)(4) (extending the time to file an answer if a motion is filed under Rule 12, but making no mention of a motion under Rule 56).

Based on the foregoing, the parties respectfully request that the Court grant their joint motion.

Dated: February 17, 2017

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Respectfully submitted,

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