

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

FARM-TO-CONSUMER LEGAL)	
DEFENSE FUND, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. CV-10-4018-MWB
)	
KATHLEEN SEBELIUS, Secretary,)	
United States Department of Health)	
and Human Services, et al.,)	
)	
Defendants.)	

DEFENDANTS' STATUS REPORT OF MARCH 16, 2011

Pursuant to the Court's Order of September 17, 2010, (DR¹ 29) (the "Order") defendants hereby submit their Status Report advising the Court of further proceedings defendants contend are necessary and appropriate in this case. Attached herewith is the Food and Drug Administration's ("FDA") administrative determination on the three questions referred to it by the Court in the Order. See Ex. A.

In its Memorandum and Opinion Order Regarding Defendants' Motion to Dismiss, (DR 27) (the "Opinion") the Court denied without prejudice defendants' challenges to subject matter jurisdiction, denied defendants' administrative exhaustion claims, and reserved ruling on whether plaintiffs' complaint failed to state a claim upon which relief can be granted. Opinion at 25. The Court stayed further proceedings pending an administrative determination by FDA. Order at 3.

¹ "DR" refers to the docket report.

Defendants suggest the most economical and expeditious way to reach a final disposition of the case would be for the parties to file supplemental motions and briefs as to defendants' Motion to Dismiss. Through such supplemental briefing, the outstanding issues from the Motion to Dismiss may be resolved. Furthermore, defendants propose to file the administrative record with respect to the adoption of 21 C.F.R. § 1240.61 and § 131.110 by April 18, 2010, which would allow defendants to move, in the alternative, for summary judgment regarding the merits of plaintiffs' pre-enforcement challenges to those regulations under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and to present any affirmative defenses.

Defendants expect to be ready to file their supplemental brief and motion by May 11, 2011, and, unless otherwise agreed to by the parties, would propose that plaintiffs submit their supplemental resistance on June 10, 2011, with defendants filing their reply on July 1, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically served a copy of the foregoing document to which this certificate is attached to the parties or attorneys of record, shown below, on March 16, 2011.

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BY: s/ Roger Gural

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