

BENJAMIN B. WAGNER
United States Attorney
YOSHINORI H. T. HIMEL #66194
Assistant U. S. Attorney
501 I Street, Suite 10-100
Sacramento, California 95814
Telephone: (916) 554-2760
Facsimile: (916) 554-2900
Email: yoshinori.himel@usdoj.gov

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

C. BROOKS CUTTER,

Plaintiff,

v.

FOOD AND DRUG ADMINISTRATION and
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

No. 1:09-cv-00107-LJO-DLB

**PARTIES' STIPULATION TO EXTEND
PROTEST DATE AND RESET STATUS
CONFERENCE**

Defendants, the United States Food and Drug Administration ("FDA") and Department of Health and Human Services, by and through their attorneys, Benjamin B. Wagner, United States Attorney, and Yoshinori H. T. Himel, Assistant United States Attorney; and Plaintiff, C. Brooks Cutter, respectfully request that this Court modify the schedule set forth in the Court's Order dated February 19, 2010.

In the "Parties' Stipulation to Extend Protest Date, and Reset Status Conference" approved February 19, 2010, the Court extended the time in which the Plaintiff may challenge FDA's withholdings until April 13, 2010.

In the time since the Court's February 19th Order, the parties have made significant progress in narrowing the remaining issues and moving toward a resolution of this case. On March 25, 2010, Plaintiff sent FDA a list of about one thousand specific withholdings from FDA's November 2009

1 document production about which he had concerns. A list this specific gives the parties a useful tool
2 to find out what is and is not at issue. FDA is reviewing the list and intends to restore some of the
3 information that Plaintiff requested.

4 FDA estimates that it will take approximately two months to restore the information and to
5 produce the revised versions of those documents to Plaintiff. FDA has agreed to produce the revised
6 versions of the documents to Plaintiff on or before June 14, 2010. The parties have agreed that
7 Plaintiff will have thirty days, until July 14, 2010, to review the revised documents and to determine
8 whether to formally challenge FDA's withholdings. Should Plaintiff decide not to challenge the
9 withholdings, there would be nothing left to litigate, and the parties should be able to stipulate
10 dismissal. If Plaintiff decides to challenge FDA's withholdings, the issues remaining for the Court to
11 resolve would likely be narrowed.

12 The parties will not know the case status until July 14, 2010, which is after the status
13 conference set for May 19, 2010, at 9:30 a.m., before Judge Beck. To serve judicial efficiency,
14 the parties request that the status conference be continued until August 11, 2010, at 9:30 a.m. before
15 Judge Beck.

16 The parties previously agreed that FDA will not prepare a Vaughn index of redacted
17 information at this time. If Plaintiff decides to challenge FDA's withholdings, FDA agrees to produce
18 a Vaughn index within thirty (30) calendar days after Plaintiff gives defense counsel of record and
19 FDA counsel a notice of his intent to challenge the withholdings.

20 The time period for Plaintiff's deadline to challenge Defendants' withholdings has already
21 been extended a total of two hundred and thirty-one (231) days, from August 25, 2009, to allow the
22 parties to continue their ongoing efforts to reach a mutually agreeable resolution to this matter.

23 Based upon the foregoing, the parties move this Court to enter an order granting Plaintiff until
24 July 14, 2010, to challenge Defendants' withholdings, consistent with the terms set forth in this
25 stipulation, and to reset the status conference currently scheduled for May 19, 2010 at 9:30 am to
26 August 11, 2010, at 9:30 a.m. before Judge Beck.

1
2 Dated: April 12, 2010

/s/ C. Brooks Cutter
C. BROOKS CUTTER

3
4 Dated: April 13, 2010

BENJAMIN B. WAGNER
United States Attorney

5
6 By: /s/ Y H T Himel
YOSHINORI H. T. HIMEL
Assistant U.S. Attorney

7
8 Of Counsel:

9 DAVID S. CADE
10 Acting General Counsel
RALPH S. TYLER
11 Associate General Counsel
Food and Drug Division
12 ERIC M. BLUMBERG
Deputy Chief Counsel, Litigation
13 MICHAEL HELBING
Assistant Chief Counsel, Litigation
14 U.S. Dept. of Health & Human Services
Office of the General Counsel
15 5600 Fishers Lane
Rockville, MD 20857
16
17

18 ORDER

19 Good cause appearing, Plaintiff's deadline for challenging Defendant's withholdings is
20 extended until July 14, 2010. The status conference presently set for 9:30 a.m. on May 19, 2010, is
21 CONTINUED until 9:30 a.m. on August 11, 2010, before Judge Beck.

22 IT IS SO ORDERED.

23 Dated: April 13, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE