BEFORE THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Farm-to-Consumer Legal Defense Fund, et al.	:	**Civil Action No. 08-01546 (RMC)**
Plaintiffs	:	**Judge Rosemary M. Collyer**
v.	:	
U.S. Department of Agriculture, et al.	:	
Defendants	:	

PLAINTIFFS' MOTION FOR RECONSIDERATION

Plaintiffs, through their attorney David G. Cox, move pursuant to Fed. R. Civ. P. 59(e) for Reconsideration of this Court's Memorandum Opinion and Order dated July 23, 2009 dismissing Plaintiff's First Amended Complaint in its entirety against the U.S. Department of Agriculture ("USDA") and the Michigan Department of Agriculture ("MDA"). The Court made its decision prior to any discovery being conducted in this case and after considering both Defendants' Motions to Dismiss (or for Summary Judgment), Plaintiffs' Opposition briefs, Defendant's Replies, and Plaintiffs' Sur-reply to the USDA.

In making its decision to grant summary judgment, the Court determined that, as to the counts against USDA, the Plaintiffs lacked standing to bring the action. As to its claims against MDA, the Court found, *inter alia,* that (1) the cause of Plaintiffs injuries were independent Orders issued by MDA and thus the Court lacked jurisdiction of those claims as they allegedly related to a state actor only implementing state law, or (2) the Eleventh Amendment provided a bar to the Plaintiffs' complaint.

Plaintiffs respectfully submit that the Court failed to give the Plaintiffs' allegations the sufficient weight and inferences that are accorded a nonmoving party when considering whether to grant a motion for summary judgment or a motion for dismissal. This is particularly true given the fact that the interactions between federal and state agencies are often conducted in non-public communications.

Specifically, the Court failed to recognize the facts that relate to Plaintiffs' allegations that MDA's alleged "state actions" were taken at the direction of, and as a surrogate for, federal action by USDA. The evidence contained in the administrative record and in the exhibits attached to papers filed with the Court demonstrates that USDA took key steps to implement its allegedly "voluntary" National Animal Identification System (NAIS) as a mandatory program through its interactions with MDA. Plaintiffs alleged that it was USDA's actions that directly influenced the decision and actions of MDA, the state regulatory agency.

In addition, the Court allowed MDA to present evidence outside the pleadings in this case that went to the merits of Plaintiffs' claims. However, the Court did not allow the Plaintiffs adequate time and opportunity to conduct the requisite discovery to appropriately support and further develop the allegations in Plaintiffs' complaint as it relates to the merits of their claims, which were based only upon the limited public information produced and obtained outside of this litigation by Plaintiffs.

Plaintiffs' Brief in Support of its Motion for Reconsideration is attached and incorporated as if rewritten herein.

Concurrence for this motion was sought from Defendants' counsel on August 4, 2009 but was not obtained.

Dated: August 6, 2009

Respectfully submitted,

/s/ David G. Cox
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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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