

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

R.J. REYNOLDS TOBACCO COMPANY,
LORILLARD TOBACCO COMPANY,
COMMONWEALTH BRANDS, INC.,
LIGGETT GROUP LLC, and SANTA FE
NATURAL TOBACCO COMPANY, INC.,

Civil Action No. 11-01482 (RCL)

Plaintiffs,

v.

UNITED STATES FOOD AND DRUG
ADMINISTRATION, MARGARET
HAMBURG, Commissioner of the United
States Food and Drug Administration, and
KATHLEEN SEBELIUS, Secretary of the
United States Department of Health and
Human Services,

Defendants.

**PLAINTIFFS' MOTION FOR EXPEDITED REVIEW
OF THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT**

On November 29, 2011, Defendants in this action filed an interlocutory appeal of this Court's November 7, 2011 order granting Plaintiffs' request for a preliminary injunction ("PI Order"). *See* Dkt. No. 45. As this Court recognized in its scheduling hearing of August 23, 2011, the Court's decision on summary judgment regarding the validity of the Rule will inevitably be appealed as well. Plaintiffs therefore respectfully request that this Court grant expedited review of the parties' cross-motions for summary judgment.

Granting Plaintiffs' motion would further judicial economy. Because this Court addressed the merits of the parties' claims in great detail in its preliminary injunction ruling, Plaintiffs believe that this Court could rule on the summary judgment cross-motions expeditiously. A prompt ruling would, moreover, (a) provide the Court of Appeals with the

benefit of this Court's resolution of the merits of this case and (b) give the Court of Appeals the opportunity to consolidate the summary judgment appeal with the Government's current appeal of the PI Order. Perhaps most importantly, resolution of the merits of this dispute would provide the Court of Appeals and, potentially, the Supreme Court, with a clean vehicle to address the merits of Plaintiffs' challenge to the new graphic warnings. All parties, of course, have a strong interest in such a prompt and efficient resolution of this case.

As the argument at the preliminary injunction hearing on September 21, 2011 addressed in large part the merits of Plaintiffs' challenge to the Rule, and as the Court has had the benefit of extensive briefing on summary judgment, Plaintiffs submit that a further hearing on summary judgment is not necessary. However, should the Court conclude otherwise, Plaintiffs are available for such a hearing at the Court's earliest convenience.

Accordingly, Plaintiffs request that this Court grant their Motion for Expedited Review.

A draft order is attached hereto. Plaintiffs have conferred with Defendants, and they have informed Plaintiffs that they take no position on the motion, but will file a brief response.

Respectfully Submitted,

Dated: December 12, 2011

/s/ Noel J. Francisco

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