

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ **SEP 27 2017** ★

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GRAHAM FORSHER, on behalf of himself
and all others similarly situated,

BROOKLYN OFFICE

Plaintiff,

MEMORANDUM & ORDER

- against -

15 CV 7180 (RJD) (MDG)

THE J.M. SMUCKER CO.,

Defendant.
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DEARIE, District Judge:

The Court has reviewed and considered the parties' correspondence addressing plaintiff's renewed request that I now vacate the stay of these proceedings in favor of agency action given the presumed expertise of those authorized to make informed judgments about the subject matter at hand. I certainly understand plaintiff's frustration, particularly when there is no assurance that the FDA will act and no proposed schedule that might suggest that this unfortunate delay will not be in vain. And defense counsel's observations that the FDA "is presumably reviewing and considering the 7,600 comments," and that comments by Congress "suggest that the agency is actively engaged in the rulemaking process," hardly inform the discussion or this Court. Despite such "developments," as defense counsel chooses to characterize them, the Court is not optimistic that a resolution by the FDA is imminent.

Judicial deference to administrative expertise is a prudent concept assuming the relevant agency or department acts with reasonable dispatch. Agency inaction, particularly when coupled with silence from the agency on the progress of its determination without commitment to act eventually, does not provide comfort to the Court that agency deference is working other than to freeze the Court from addressing as best it can the issues that are properly before it.

That said, and with increasing discomfort, we will continue to wait, hopeful that the agency will act or at a minimum assure us that responsive agency action is forthcoming.

SO ORDERED.

Dated: Brooklyn, New York
September 27, 2017

s/ RJD


RAYMOND J. DEARIE
United States District Judge