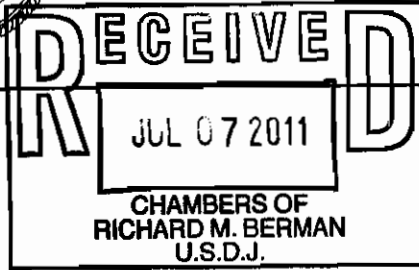




United States Attorney
Southern District of New York



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USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 7/8/11

July 6, 2011

BY HAND

The Honorable Richard M. Berman
United States District Judge
United States District Courthouse
500 Pearl Street, Room 650
New York, NY 10007

MEMO ENDORSED
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Re: *NRDC et al. v. US FDA et al.*, 11 Civ. 3562 (RMB)
(THK)

Dear Judge Berman:

This Office represents the defendants (collectively, the "Government") in this Administrative Procedures Act ("APA"), 5 U.S.C. §§ 701-706, action, in which plaintiffs allege that the Government has delayed unreasonably and failed to take certain action with respect to certain uses of antibiotics in livestock pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.*, and the regulations promulgated thereunder. I am writing on behalf of the Government to request an adjournment of the initial pre-trial conference currently scheduled for next Monday, July 11, 2011, at 9:30 a.m., and to request a 60-day extension of time to answer the complaint. Plaintiffs consent to both of the Government's requests, and with such an extension to answer the complaint, the Government's answer would be due on September 23, 2011.

This Office received a copy of the complaint on May 25, 2011, and the Government's response to the complaint is therefore due on or before July 25, 2011. *See* Fed. R. Civ. P. 12(a)(3). Because the initial pre-trial conference currently scheduled for July 11, 2011 is two weeks before the Government's response to the complaint is due, the Government will not be prepared to discuss the factual and legal bases for their defenses in this action on July 11, 2011. Accordingly, it appears that holding a conference on July 11, 2011 would be an inefficient use of the Courts' resources, and with plaintiffs' consent, the Government requests an adjournment of the conference until after the Government has answered the complaint.

The Government also requests a 60-day extension to file an answer to the complaint in the hopes that such an extension will provide the Government with the

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opportunity to take action that will resolve some or all of plaintiffs' claims in this action without the need for further involvement from the Court. This is the Government's first request for an extension of time to answer the complaint. Plaintiffs consent to the Government's request on the condition that, if the Government is not able to take action that resolves plaintiffs' claims in this action by September 23, 2011, the Government agrees to an expeditious briefing schedule. Accordingly, the parties jointly propose the following briefing schedule: (1) plaintiffs will move for summary judgment on October 7, 2011, (2) the Government will oppose plaintiffs' motion and cross-move for summary judgment on November 8, 2011, (3) plaintiffs will oppose the Government's motion and file a reply in support of their motion on December 2, 2011, and (4) the Government will file a reply in support of its motion on December 16, 2011.

Finally, on behalf of all parties, we note that pursuant to Rule 2(A) of the Court's Individual Practices, a pre-motion conference is required before a briefing schedule is set in connection with a proposed motion. Although the parties are not currently in a position to submit pre-motion conference letters in connection with the proposed briefing, we do anticipate being in a position to file substantive briefs addressing our claims and defenses in this action in accordance with the briefing schedule set forth above. Accordingly, we respectfully request that the parties' proposed cross-motions for summary judgment be discussed at the initial pre-trial conference after the Government has answered complaint. The parties are available for such an initial pre-trial conference the week of September 26, 2011.

Thank you for your consideration of this matter.

Respectfully,

PREET BHARARA
United States Attorney

By:



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Richard M. Berman, U.S.D.J.

cc: Mitchell S. Bernard, Esq. counsel for plaintiffs (by electronic mail)

Jen Sorenson, Esq. counsel for plaintiffs (by electronic mail)

The Government's time to
move answer the complaint
is extended to 9/6/11. The
initial pre-trial conference on
7/11/11 is adjourned to 9/17/11
at 9:30. We can discuss the
parties' proposed briefing schedule
at that conference.

SO ORDERED:
Date: 7/7/11

Richard M. Berman
Richard M. Berman, U.S.D.J.

parties to
engage in good faith settlement
negotiations prior to the conference