



NATURAL RESOURCES DEFENSE COUNCIL

September 13, 2011

The proposed briefing schedule is acceptable.

BY HAND

The Honorable Theodore H. Katz
 United States Magistrate Judge
 Daniel Patrick Moynihan United States Courthouse
 500 Pearl Street
 New York, NY 10007-1312

SO ORDERED

9/14/11 Theodore H. Katz

**THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE**

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

Dear Judge Katz:

Along with my colleagues Mitch Bernard and Avinash Kar, I represent the plaintiffs (collectively, the Natural Resources Defense Council or NRDC) in this action. NRDC alleges that, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, the defendants (collectively, the U.S. Food & Drug Administration or FDA) have unlawfully withheld agency action by failing to withdraw approval for certain uses of antibiotics in livestock. NRDC further alleges that FDA has unreasonably delayed ruling on citizen petitions filed by several of the plaintiffs. On behalf of all parties, I write to request that this Court order a briefing schedule for cross-motions for summary judgment.

NRDC filed its complaint on May 25, 2011, and filed an amended complaint on July 7, 2011. On July 7, 2011, FDA requested an extension of sixty days to answer the complaint. NRDC consented to FDA's request, on the condition that FDA agree to an expeditious briefing schedule following its answer. Accordingly, the parties jointly proposed the following briefing schedule to Judge Berman: (1) NRDC would move for summary judgment on October 7, 2011; (2) FDA would oppose NRDC's motion and cross-move for summary judgment on November 8, 2011; (3) NRDC would oppose FDA's motion and file a reply in support of its motion on December 2, 2011; and (4) FDA would file a reply in support of its motion on December 16, 2011.

Judge Berman granted FDA an extension of time until September 6, 2011, to respond to the complaint and set a pretrial conference for September 7, 2011. FDA filed its answer on September 6, 2011. On September 7, all parties consented to proceed before Your Honor for all purposes. Judge Berman signed the case referral order and entered a Case Management Plan, but did not order a briefing schedule.

All parties remain committed to the briefing schedule proposed to Judge Berman. Accordingly, on behalf of all parties, I respectfully request that this Court order the briefing schedule set forth above. Additionally, on behalf of NRDC, I respectfully request that the Court grant NRDC five additional pages for its memorandum in support of its motion for summary judgment.

Granted

judgment, for a total of thirty pages. NRDC represents that it will use only as many pages as it needs, and FDA consents to NRDC's request with the understanding that FDA may seek a similar extension in the future.

We are available at the Court's convenience to confer, in person or by telephone, concerning any issue raised in this letter. Thank you for your consideration.

Respectfully,



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