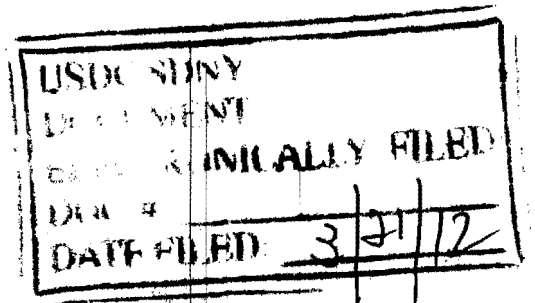


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, INC.; CENTER FOR SCIENCE
IN THE PUBLIC INTEREST; FOOD
ANIMAL CONCERNS TRUST; PUBLIC
CITIZEN, INC.; and UNION OF
CONCERNED SCIENTISTS, INC.,

Plaintiffs,

v.

UNITED STATES FOOD AND DRUG
ADMINISTRATION; MARGARET
HAMBURG, in her official capacity as
Commissioner, United States Food and Drug
Administration; CENTER FOR
VETERINARY MEDICINE;
BERNADETTE DUNHAM, in her official
capacity as Director, Center for Veterinary
Medicine; UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; and KATHLEEN
SEBELIUS, in her official capacity as
Secretary, United States Department of
Health and Human Services,

Defendants.

11 Civ. 3562 (THK)
ECF Case

STIPULATION AND ORDER

WHEREAS on May 25, 2011, plaintiffs Natural Resources Defense Council, Inc., Center for Science in the Public Interest, Food Animal Concerns Trust, Public Citizen, Inc. and Union of Concerned Scientists (collectively, "Plaintiffs") commenced this action against defendants the

United States Food and Drug Administration; Margaret Hamburg, in her official capacity as Commissioner of Food and Drug; Center for Veterinary Medicine; Bernadette Dunham, in her official capacity as Director, Center for Veterinary Medicine; United States Department of Health and Human Services; and Kathleen Sebelius, in her official capacity as Secretary, United States Department of Health and Human Services (collectively, the "Government").

WHEREAS on February 2, 2012, Plaintiffs filed the First Supplemental Complaint (the "Supplemental Complaint");

WHEREAS the First Supplemental Complaint challenges Government's November 7, 2011 responses to two citizen petitions filed by several of the plaintiffs in 1999 and 2005 that requested that the Government withdraw approval for certain uses of certain antibiotics in livestock (the "Petition Responses");

WHEREAS the Government's motion in support of its motion for summary judgment on the claim brought in the Supplemental Complaint and the administrative record for the Petition Responses is due on March 21, 2012;

WHEREAS the administrative record for the Petition Responses includes more than 17,000 public comments to the two citizen petitions that are the subject of the Petition Responses (the "Comments");

WHEREAS the Government believes that the Comments are not material to any issue in the litigation;

WHEREAS some of the information contained in the Comments (such as personal medical history and other private information) may be protected by the Privacy Act of 1974, 5 U.S.C. § 552a, or other federal law;

WHEREAS, it appears that the disclosure of such Comments is in the interests of justice;
and

WHEREAS pursuant to 21 C.F.R. § 20.86 the Food and Drug Administration is required to take appropriate measures to reduce disclosure of certain information contained in the Comments,

IT IS HEREBY ORDERED THAT:

1. Any objection to the production and use of the Comments in connection with this litigation on the ground that they are protected by the Privacy Act of 1974, 5 U.S.C. § 552a, is overruled. *See* 5 U.S.C. § 552a(b)(11).

2. The Government will not include the Comments in the administrative record for the Petition Response that it files with the Court on March 21, 2012.

3. The Government will serve Plaintiffs with a copy of the Comments on March 21, 2012.

4. If Plaintiffs wish to rely on any of the Comments in support of their motion for summary judgment regarding their claim brought in the Supplemental Complaint or in opposition to the Government's motion for summary judgment on that same claim, they will notify the Government, at least 3 business days in advance of a court filing, of their intent to rely on such Comments. Prior to Plaintiffs' filing, the Government will redact from those Comments on which Plaintiffs intend to rely any non-releasable private information.

5. If the Government does not timely redact private information from the Comments on which Plaintiffs wish to rely, or if there is any dispute over the extent of a proposed redaction, Plaintiffs may file the unredacted Comments under seal.

6. Plaintiffs will use the Comments only in connection with this litigation.


7. In the event that Plaintiffs do rely on any of the Comments in support of their motion for summary judgment regarding their claim brought in the Supplemental Complaint or in opposition to the Government's motion for summary judgment on that same claim, the Government reserves the right to respond by filing with the Court and relying on other portions of the Comments in connection with its reply brief in support of its motion for summary judgment.

8. Any part of the Comments not filed with the Court in connection with the parties' motions for summary judgment regarding the claims brought in the Supplemental Complaint will not be considered part of the record before the Court.

9. The parties to this action consent to entry of this Order.

Dated: New York, New York
March 20, 2012

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SO ORDERED:



THE HONORABLE THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE