

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CARETOLIVE,
a not-for-profit corp.,
Plaintiff,

Civil No. 2:08-CV-00005

JUDGE FROST

v.

MAGISTRATE JUDGE KING

U.S. FOOD and DRUG
ADMINISTRATION,
Defendant.

**PLAINTIFF'S MOTION REQUESTING THE COURT DENY
DEFENDANT A CONTINUED STAY OF THIS MATTER**

Now comes Plaintiff and moves this Court to deny or require further specificity of the affidavit filed by the Defendant on December 1, 2008 as it falls short of the specifics requested by this Court as more fully set forth in the attached memorandum.

Respectfully submitted,

s/Kerry M. Donahue

Kerry M. Donahue (Trial Counsel)
6295 Emerald Parkway
Dublin, Ohio 43016

MEMORANDUM

This Court ordered in part:

Stay. (Doc. # 10.) Specifically:

1. This case is STAYED until December 1, 2008 (ten months).
2. On December 1, 2008, the FDA shall file by affidavit, an accurate estimate of the amount of time remaining before it will be able to respond to Plaintiff's FOIA request.
3. Once the December 1, 2008 estimate is filed, the Court will order the stay continued in accordance with that more accurate estimate.
4. Defendant is placed on notice that the Court will not grant a stay that extends the period for compliance more than 15 months (May 18, 2009).

IT IS SO ORDERED.

The affidavit filed by Defendant does not fully comply with the order of this Court. The affidavit essentially sets forth that it's in the pile and the CDER division of the FDA would ordinarily get to it in October 2009 just as we told the Court before and that it takes so long because the FOIA request is complex.

First the determination that the FOIA request is "complex" has never been adequately and specifically set forth or otherwise explained by the FDA. There is no reason why a very simple request for a small number of documents that are on

site and specifically on one computer at the FDA headquarters in Rockville is a complex request.

The request is merely for some correspondence from and to Richard Pazdur at the FDA during a brief time period. The same request to the Commissioner yielded 13 pages. It is expected that the CDER response would involve less than 50 pages and would all be found on site, on one computer.

While Plaintiff continues to seek at least some accountability and transparency from the FDA related to the Provenge due process denial by the FDA, the Defendants continue to employ stonewalling tactics to avoid disclosure of the evidence of same.

This Court should at least require further specificity regarding why the FDA deems it a complex FOIA request. Plaintiff continues to believe that the documents have already been compiled and reviewed by way of an internal HHS/FDA investigation that occurred due to widespread condemnation of the FDA's handling of this matter and the inquiries from Congress regarding same.

WHEREFORE this Court should deem the affidavit filed by Defendant to be insufficient and require further specificity from the FDA before it stays this case another 6 months.

Respectfully submitted,

s/Kerry M. Donahue

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6295 Emerald Parkway
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CERTIFICATE OF SERVICE

This motion for leave has been e-filed and thus sent to all parties of record by the Clerk's e-filing system.

Kerry M. Donahue

