

Not For Publication

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANNIE TUMMINO, et al.,	:	05 CV 366 (ERK) (VVP)
	:	
Plaintiffs,	:	<u>MEMORANDUM &</u>
v.	:	<u>ORDER</u>
	:	
ANDREW C. VON ESCHENBACH, in his official	:	
capacity as Commissioner of the Food and Drug	:	
Administration,	:	
	:	
Defendant.	:	
	:	
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KORMAN, C.J.

Upon consideration of the defendant’s objection to the Magistrate Judge’s decision and order of November 6, 2006, the defendant’s motion for a protective order is granted, subject to the following exceptions:

1. The plaintiffs may depose Dr. Sandra Kweder, such deposition to take place within 30 days.
2. I affirm Magistrate Judge Pohorelsky’s order that the Government must produce to the plaintiffs all documents in Appendix A (those falling outside the scope of the deliberative process privilege) within 10 days.
3. I affirm Magistrate Judge Pohorelsky’s order that the Government must supplement its current privilege log within 20 days.
4. I affirm Magistrate Judge Pohorelsky’s order that as to all those documents withheld by the defendant but which have not yet been submitted for in camera review, the Government must review all such documents in light of his decision and order and produce such documents and portions of documents that are not privileged within 30 days. The remaining documents and an appropriate privilege log are then to be submitted to Magistrate Pohorelsky for in camera review within 45 days.

I reserve judgment as to Section II.C.2 of the Magistrate Judge's decision, which concerns the documents, listed in Appendix B, that evidence the FDA's bad faith or "reflect viewpoints within the FDA opposed to an age-restricted Plan B OTC-distribution plan." Decision and Order at 19. If, pending my review of the dispositive motions in this case, I determine that further discovery would be warranted, I may then lift the stay in order to permit the plaintiffs to seek discovery from the White House and/or decide the questions raised by Section II.C.2 of the Magistrate Judge's decision.

SO ORDERED.

Brooklyn, New York
February 12, 2007

Edward R. Korman

Edward R. Korman
United States Chief District Judge