

**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 FOR LEAVE TO SUBMIT TWENTY
INTERROGATORIES TO DEFENDANT FDA**

Now comes Plaintiff and moves this Court for leave to conduct limited discovery by allowing the submission of twenty (20) interrogatories, twelve (12) to affiant Nancy B. Sager and eight (8) to employee Richard Pazdur as more fully set forth in the attached memorandum.

Respectfully submitted,

s/Kerry M. Donahue

Kerry M. Donahue
6295 Emerald Parkway
Dublin, Ohio 43016

MEMORANDUM

On December 1, 2008 the FDA's Nancy Sager filed an affidavit with this court contending that more time is needed to respond to the Plaintiff's FOIA request. In order to justify the 2 year response time as initially requested by them they proclaim the request is "complex" which it clearly is not. The FDA Defendant is not being forthright with this Court. The submission of twenty interrogatories would unveil the FDA's lack of truthfulness in this matter.

First the FDA in order to buy time from this Court and avoid having to release some very embarrassing documents that would be demonstrative of the lack of Due Process afforded the BLA for Provenge has designated Plaintiff's request as "complex". However, the Plaintiff's FOIA request essentially seeks only specific communications from, or to, Richard Pazdur at the FDA over a very short period of time. These communications are all easily obtained from his single computer at the main FDA office in Rockville, Maryland. There is nothing complex about the request. In fact similar requested documents were not classified as "complex" and were produced within 90 days by both the CBER division of the FDA and the Commissioner's Office. CDER has proclaimed that it will take 2 years to get copies of documents that probably number less than 50 pages and in no manner can be considered complex as they are located on site on a single computer. The whole process for providing these documents would take one

person less than 2 hours (less than the time to prepare and submit two affidavits to this Court). These facts could be easily proven to this Court by a few interrogatories.

In addition the FDA will not acknowledge that this case is different from others, in that in this case, three (3) members of Congress called for an investigation of the matter (joined later by a dozen more) and upwards of 20 members of Congress have inquired of the FDA on this matter. It has also received worldwide attention and publicity. Point being is that there is no doubt that an HHS/FDA internal investigation of the matter has been conducted although no findings will be released from the unnecessarily secretive FDA. In other words the simple and few documents requested by the Plaintiff have already been reviewed and assembled by internal investigators at the FDA. So it is a fairly simple matter to copy the documents and send them to Plaintiff. If the simple interrogatories are allowed the Plaintiff will prove those facts to be true and thus the Court will understand the false light that the FDA has placed on the very simple and straight forward FOIA request.

More than 80 men a day die while the FDA continues to stonewall the efforts of Plaintiff to obtain some transparency and accountability on behalf of these late stage cancer patients, who continue to wait for a treatment that in

October 2008 was confirmed by an Independent Data Monitoring Company (IDMC) to be safe and effective.

The FDA also refuses to properly respond to the Plaintiff's Citizen Petition filed with the agency in July 2007.

Wherefore the Plaintiff requests that this Court grant leave to allow the Plaintiff to serve twenty (20) interrogatories to the FDA regarding the FOIA requests to the FDA.

Respectfully submitted,

s/Kerry M. Donahue

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Dublin, Ohio 43016

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

