

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

CareToLive, a not for profit corporation,

Plaintiff,

Case No. 2:07 CV 729

vs.

Judge Frost

Andrew von Eschenbach,
in his capacity as Commissioner of the FDA et al.,

Magistrate Judge King

Defendants.

MOTION FOR ORDER TO PRESERVE EVIDENCE

Now comes Plaintiff and hereby moves this court for an order to Defendants and Defendant FDA employees to preserve and other wise protect documents relative to this matter as set forth in the attached memorandum of law.

Respectfully submitted,

s/Kerry M. Donahue

Kerry M. Donahue, Trial Counsel
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MEMORANDUM

Due to the unique nature and circumstances of this case, Plaintiffs have specific cause to fear that Defendants and Defendant's employees will obliterate and destroy documents that are in the possession of employees, witnesses, and others, that are relative to this case. Evidence very recently uncovered by Plaintiffs give them even more cause than would normally be present in such a case to feel the need to express concern to this court that some document destruction could occur within and outside the FDA.

In addition many government agencies have policies concerning the regular and routine destruction of documents as certain time frames pass. Sometimes e-mails and other correspondence automatically delete at the end of certain time frames and these documents need to be proactively protected. Plaintiffs' wish there to be no misunderstandings by any of the Defendants or its employees regarding the law in this respect and their need to protect evidence related to the claims made by Plaintiff in their complaint.

It is requested that this court issue an order that can be distributed among the Defendants and their employees that advises them that destroying documents related to pending litigation is an illegal action and they are specifically ordered to protect and preserve all documents that might be evidence in this case.

This request is meant to cover all computer hard drive records, e-mails, letters, any correspondence (all drafts), telephone logs, message recording devices and any other evidence be it tangible or intangible that might be related in any way to the processing and handling of the Provenge BLA and the pre and post non-approval events that occurred within the FDA.

WHEREFORE, Plaintiff's request this court order that the Defendants and its employees are restrained from destroying any records and that the FDA and other Defendants act reasonably so as to proactively preserve any evidence that might be destroyed by virtue of the passage of time.

Respectfully submitted,

s/Kerry M. Donahue

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of this motion was sent to the following Defendants by regular US mail postage prepaid this 1st day of August 2007:

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s/Kerry M. Donahue

Kerry M. Donahue

