

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AUG 30 2016

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In re: BREAST CANCER FUND; et al.

No. 16-70878

BREAST CANCER FUND; et al.,

Petitioners,

ORDER

v.

U.S. FOOD & DRUG  
ADMINISTRATION,

Respondent.

The joint motion to stay appellate proceedings and modify the briefing schedule (Docket Entry No. 10) is granted. The petition is stayed until March 31, 2017.

Within 7 days after expiration of the stay, respondent shall submit a status report regarding the status of the administrative petition. Petitioners' optional reply in support of the petition for writ of mandamus is due within 14 days of the filing of the status report.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Emily L. Fedman  
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

IN RE BREAST CANCER FUND,

CENTER FOR ENVIRONMENTAL  
HEALTH, CENTER FOR FOOD SAFETY,  
CENTER FOR SCIENCE IN THE PUBLIC  
INTEREST, ENVIRONMENTAL  
WORKING GROUP, and NATURAL  
RESOURCES DEFENSE COUNCIL,

Petitioners,

v.

U.S. FOOD AND DRUG  
ADMINISTRATION,

Respondent.

No. 16-70878

**JOINT MOTION TO MODIFY BRIEFING SCHEDULE AND STAY  
PROCEEDINGS**

Pursuant to Fed. R. App. P. 27, the parties to this action jointly move to modify the briefing schedule and to stay proceedings until March 31, 2017. The reasons for the motion are set out below.

1. Petitioners filed a petition for a writ of mandamus on March 31, 2016. The petition seeks to require the FDA to act by a date certain on an administrative petition that Petitioners and several other organizations submitted to the FDA.

2. On June 10, 2016, this Court issued an order requiring the FDA to respond to the petition for mandamus. The FDA filed its opposition on July 8, 2016. In its response, FDA explained that it aims to reach final decisions on the issues raised in the administrative petition by March 2017. *See* Keefe Decl. ¶ 17 (explaining that FDA hopes to complete its review by March 2017, but acknowledging that arriving at a thoroughly considered final decision on the three requests in the administrative petition may take longer, especially if new information comes to light or new analysis is necessary).

3. Because this matter will become moot when FDA takes final action on the three requests in the administrative petition, the parties agree that it would be in the interests of judicial economy to stay the Court's consideration of the petition for mandamus until March 31, 2017.

4. Under the current briefing schedule, Petitioners' reply to the FDA's opposition to the mandamus petition would be due on August 2, 2016.

For the foregoing reasons, the parties jointly request that the August 2, 2016 deadline for Petitioners' reply brief be vacated, and propose the following schedule:

On or before **March 31, 2017**, the FDA will file a status report informing the Court of the status of the administrative petition, including whether the FDA has taken final action on the three requests therein.

Within **fourteen days** of the filing of the status report, Petitioners may file a reply brief in support of their petition for a writ of mandamus.

Respectfully submitted,

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JULY 2016

## CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2016, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Carleen M. Zubrzycki  
Carleen M. Zubrzycki