

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

HON. JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHARMACEUTICAL RESEARCH AND
MANUFACTURERS OF AMERICA;
GENERIC PHARMACEUTICAL
ASSOCIATION; BIOTECHNOLOGY
INDUSTRY ORGANIZATION; and
CONSUMER HEALTHCARE
PRODUCTS ASSOCIATION,

Plaintiffs,

v.

KING COUNTY, WASHINGTON; KING
COUNTY DEPARTMENT OF PUBLIC
HEALTH; and DIRECTOR OF THE KING
COUNTY DEPARTMENT OF PUBLIC
HEALTH,

Defendants.

No. 2:13-cv-02151-JLR

STIPULATED MOTION TO STAY
PROCEEDINGS AND SUBJOINED
ORDER ~~[PROPOSED]~~

**NOTE ON MOTION CALENDAR:
Monday, February 10, 2014**

WITHOUT ORAL ARGUMENT

Plaintiffs and Defendants hereby stipulate to and move for an order staying this litigation on the terms and for the reasons set forth below.

I. STIPULATION

1. On November 27, 2013, Plaintiffs (four pharmaceutical trade associations) filed this action challenging the constitutionality of King County’s Secure Medicine Return Rule & Regulation (the “Rule & Regulation”), King County Board of Health Code (“BOH”) ch. 11.50, under the Commerce Clause of the United States Constitution.

1 2. The Rule & Regulation, which was adopted by the King County Board of
2 Health on June 20, 2013, requires drug producers selling medicines in or into King
3 County for residential use to finance and operate a county-wide secure medicine return
4 program pursuant to a stewardship plan approved by Defendant Director of the King
5 County Department of Public Health.

6 3. Among other things, covered drug producers are required to submit
7 proposed stewardship plans to the Director by one year after adoption of the Rule &
8 Regulation, *i.e.*, by June 20, 2014, *see* BOH §§ 11.50.040(D)(3) & 11.50.120(A), and to
9 operate or participate in a stewardship plan within three months after the Director's
10 approval of the stewardship plan, *see id.* § 11.50.040(A) & (D)(4). The Rule &
11 Regulation contains other interim deadlines for covered drug producers, including a
12 requirement that, by nine months after adoption of the Rule & Regulation, *i.e.*, by March
13 20, 2014, covered drug producers identify a plan operator, notify all retail pharmacies and
14 law enforcement agencies in the County of the opportunity to participate as a drop-off site,
15 and provide a process for forming an agreement between the plan and interested
16 collectors, *see id.* § 11.50.040(D)(1)–(2).

17 4. Three of the four plaintiffs in this action have brought a similar
18 constitutional challenge to a similar drug-collection measure adopted in 2012 by Alameda
19 County, California. That case is currently pending in the United States Court of Appeals
20 for the Ninth Circuit following the district court's adjudication of cross-motions for
21 summary judgment in favor of Alameda County. *See Pharm. Research & Mfrs. of Am. v.*
22 *Alameda Cnty.*, No. 13–16833 (9th Cir.) ("*Alameda County*"). Briefing in *Alameda*
23 *County* was recently completed, and the Ninth Circuit has placed the case on its April
24 2014 argument calendar.

25 5. The parties to this action anticipate that the Ninth Circuit's decision in
26 *Alameda County* will likely resolve the disputed issues in this litigation, and respectfully

1 submit that staying this matter until the Ninth Circuit has rendered a decision in *Alameda*
2 *County* would conserve judicial resources and avoid the unnecessary expenditure of time
3 and expense by the parties. The parties further submit that it is likewise appropriate to
4 delay Defendants' implementation of the Rule & Regulation pending a decision in
5 *Alameda County* so as not to prejudice the rights of Plaintiffs and their members during
6 the stay of the litigation.

7 6. Therefore, in exchange for Plaintiffs' agreement to stay this matter and
8 forgo their right to seek immediate relief from this Court, Defendants stipulate and agree
9 that the implementation deadlines set forth in the Rule & Regulation shall be modified as
10 follows:

11 a. The deadline set forth in BOH §§ 11.50.040(D)(3) & 11.50.120(A)
12 for covered drug producers to submit proposed stewardship plans to the Director of the
13 King County Department of Public Health, currently set for June 20, 2014, is extended
14 until one hundred thirty-five (135) days after the issuance of the Ninth Circuit panel
15 decision in *Alameda County*.

16 b. The deadline set forth in BOH § 11.50.040(D)(1)–(2) for covered
17 drug producers to identify a plan operator, notify all retail pharmacies and law
18 enforcement agencies in the County of the opportunity to participate as a drop-off site, and
19 provide a process for forming an agreement between the plan and interested collectors,
20 currently set for March 20, 2014, is extended until forty-five (45) days after the issuance
21 of the Ninth Circuit panel decision in *Alameda County*.

22 7. Based on the foregoing, the parties stipulate to, and respectfully request
23 that the Court enter, a stay of this litigation until such time as the Ninth Circuit panel
24 issues its decision in *Alameda County*. Following the panel decision in *Alameda County*,
25 the parties will confer and will advise this Court within thirty days of the decision how
26 they wish to proceed in this matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 10th day of February, 2014.

McNAUL EBEL NAWROT & HELGREN
PLLC

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: s/ Gregory J. Hollon
Gregory J. Hollon, WSBA No. 26311
600 University Street, Suite 2700
Seattle, Washington 98101
Phone: (206) 467-1816
Fax: (206) 624-5128
Email: ghollon@mcnaul.com

By: s/ Amy Eiden
By: s/ Howard Schneiderman
Amy Eiden, WSBA #35105
Howard Schneiderman, WSBA #19252
W400 King County Courthouse
516 3rd Avenue, Seattle, WA 98104
Phone: (206) 477-1120
Fax: (206) 296-0191
E-Mail: amy.eiden@kingcounty.gov
howard.schneiderman@kingcounty.gov

Attorneys for Plaintiffs

Attorneys for King County

JONES DAY

By: s/ Michael A. Carvin
By: s/ Christian G. Vergonis
By: s/ Richard M. Re
Michael A. Carvin, *Pro Hac Vice*
Christian G. Vergonis, *Pro Hac Vice*
Richard M. Re, *Pro Hac Vice*
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Phone: (202) 879-3939
Fax: (202) 626-1700
Email: macarvin@jonesday.com
cvergonis@jonesday.com
rre@jonesday.com

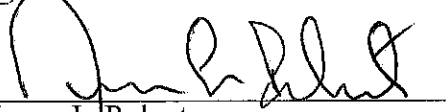
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. ORDER

Based on the above Stipulation, it is SO ORDERED, and the instant matter is hereby stayed until such time as the Ninth Circuit issues a panel decision in *Pharmaceutical Research & Manufacturers of America v. Alameda County*, No. 13-16833 (9th Cir.).

DATED this th 13 day of February, 2014.



Hon. James L. Robart
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Amy Kathleen Eiden: amy.eiden@kingcounty.gov
Attorney for Defendants

Christian G Vergonis: cvergonis@jonesday.com
Attorney for Plaintiffs

Michael A Carvin: macarvin@jonesday.com
Attorney for Plaintiffs

Richard M Re: rre@jonesday.com
Attorney for Plaintiffs

DATED this 10th day of February, 2014.

By: /s/ Gregory J. Hollon
Gregory J. Hollon, WSBA No. 26311