

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

INFORMED CONSENT ACTION NETWORK,

Plaintiffs,

-against-

UNITED STATES FOOD AND DRUG
ADMINISTRATION,

Defendant.

STIPULATION & ORDER

19 Civ. 10235 (JGK)

WHEREAS, on September 10, 2018, plaintiff Informed Consent Action Network (“ICAN” or “Plaintiff”) made a Freedom of Information Act request (the “Request”) to the United States Food and Drug Administration (the “FDA” or “government”) seeking “[a] copy of the clinical study report for each clinical trial relied upon by the FDA” when it approved the vaccine for varicella (chicken pox) in 1995;

WHEREAS, on September 12, 2018, the FDA sent Plaintiff a letter acknowledging receipt of the Request;

WHEREAS, FDA did not otherwise respond to the Request prior to the commencement of this action;

WHEREAS, on November 4, 2019, ICAN commenced this action in the United States District Court for the Southern District of New York against the FDA demanding that it produce documents responsive to the Request;

WHEREAS, after this action was filed, the parties discussed FDA’s search for and processing of records responsive to the Request, and the parties agreed on a schedule of productions as stated in a January 28, 2020 letter, Dkt. No. 8;

WHEREAS, the FDA made productions of responsive records, subject to redactions for asserted FOIA exemptions, pursuant to the agreed schedule;

WHEREAS, after reviewing the produced records, Plaintiff raised a potential issue with certain asserted exemptions, and the FDA agreed to reprocess a set of records, as stated in a February 8, 2021 letter, Dkt. No. 19;

WHEREAS, FDA timely completed its reprocessing and lifted a majority of the challenged redactions;

WHEREAS, the parties now wish to resolve this action without further litigation;

IT IS HEREBY STIPULATED AND AGREED, by and between the parties by and through their respective counsel that:

1. Pursuant to the FDA's representations that (a) the FDA has completed processing (and re-processing, as applicable) all records identified in the parties' letters to the Court, dated January 28, 2020 (Dkt. No. 8) and dated February 8, 2021 (Dkt. No. 19), and that (b) the FDA engaged in an adequate search, the above-captioned action is voluntarily dismissed, with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), each side to bear its own costs, attorneys' fees, and expenses;
2. ICAN reserves all rights to seek additional documents, whether or not related to this Request, through pending or future FOIA requests to the FDA or any other governmental agency as appropriate and nothing herein shall restrict such right; and

3. This stipulation may be signed in counterparts and electronic (PDF) or fax signatures may be deemed originals for all purposes.

Dated: April 29, 2021
New York, New York


Dated: April 29, 2021
New York, New York

SIRI & GLIMSTAD LLP
Attorney for Plaintiffs

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SO ORDERED:

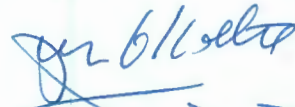


Hon. John G. Koeltl, U.S.D.J.

Dated: New York, New York
4/30, 2021

The Clerk is directed to close this case.

So ordered.



4/30/21 *u. s. d. j.*