

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL ASSOCIATION OF CHAIN)	
DRUG STORES <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Civil Action No. 1:07cv02017 (RCL)
v.)	
)	
MICHAEL O. LEAVITT, SECRETARY OF)	
HEALTH AND HUMAN SERVICES <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS’ REPLY IN SUPPORT OF MOTION FOR LEAVE TO AMEND THEIR
OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION
AND REQUEST FOR EXPEDITED HEARING**

In their opposition to Defendants’ Motion for Leave to Amend, Plaintiffs state that this Court yesterday denied Defendants’ motion for leave to file an amended brief. Defendants do not construe the Order Plaintiffs reference as a denial of Defendants’ motion for leave to amend but as a denial of their motion to extend the briefing schedule in response to the amended brief they now seek to file.

Defendants have submitted an amended brief – accompanied by a motion explaining their error – because they believe they have a professional duty to identify and correct representations of fact they believe to be incorrect. Defendants have already acknowledged that the brief they filed on December 6 contained errors that they sincerely regret. The filing of an amended brief is necessary to correct the prior erroneous statements and to eliminate any arguments based on those statements. Defendants believe it is in the Court’s and the parties’ best interests for the Court to be able to review a corrected brief rather than to require the Court to attempt to ascertain which portions of the previously filed brief remain and which do not.

Respectfully submitted,

JEFFREY S. BUCHOLTZ

Acting Assistant Attorney General

SHEILA M. LIEBER
Deputy Director
Federal Programs Branch

s/ Wendy M. Ertmer
WENDY M. ERTMER
DC Bar No. 490228
Trial Attorney
Federal Programs Branch
U.S. Department of Justice, Civil Division
20 Massachusetts Avenue NW, Room 7218
Washington, DC 20530
Telephone: (202) 616-7420
Fax: (202) 616-8470
Email: wendy.ertmer@usdoj.gov

Counsel for Defendants

Dated: December 11, 2007

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2007, a copy of the foregoing pleading was filed electronically via the Court's ECF system, through which a notice of the filing will be sent to:

Christopher W. Mahoney cmahoney@duanemorris.com

and was sent by electronic mail to:

Frederick R. Ball frball@duanemorris.com
Don L. Bell II dbell@nacds.org
Mary Ellen Kleiman mkleiman@nacds.org
Nicholas J. Lynn njlynn@duanemorris.com
John M. Rector john.rector@ncpanet.org

s/ Wendy M. Ertmer

WENDY M. ERTMER