



## FDA ConneKTion

### Menu Labeling Litigation Between the FDA and Public Interest Groups May Be On Hold By: [Alyson L. Wooten, Pharm.D.](#)

Following the announcement that the Food and Drug Administration (FDA or Agency) had decided to delay the compliance deadline for the menu labeling regulations (see our previous blog post [here](#)), two public interests groups sued the FDA over the decision seeking to have the delay vacated and an immediate compliance date ordered. Both of these groups, the Center for Science in the Public Interest (CSPI) and the National Consumers League (NCL), have agreed to stay the litigation if FDA will issue additional guidance before the end of the year and confirm that it will not provide another extension to the deadline.

CSPI and NCL sued FDA in June shortly after FDA extended the deadline for compliance asserting that the extension of time was unlawful because the Agency did not provide a rational explanation for the delay or provide for public comments before the delay took effect. In August, the government filed a motion to dismiss for lack of jurisdiction. A few days later, on August 25, the Agency issued a [statement](#) that they would issue “additional guidance” about menu labeling before the end of the year and that the new guidance “should allow covered establishments to implement the requirements by next year’s compliance date.”

On September 15, prior to the deadline for Plaintiffs to file an opposition to Defendant’s motion to dismiss, the parties (CSPI, NCL and FDA) filed a joint motion to stay the case. If granted by the court, the case will be stayed until May 7, 2018, as long as the FDA issued new their guidance by the end of the year and confirmed a compliance date with the Menu Labeling Rule by no later than May 7, 2018. If FDA does not confirm May 7, 2018 as the compliance date, gives any indication that the compliance deadline could be or will be extended beyond May 7, 2018, or fails to publish the additional guidance before the end of the year, the stay may be lifted and the litigation will proceed with “expedited consideration.” However, the parties agree that if the compliance date goes into effect on May 7, 2018, the parties will dismiss the case.