

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

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R.J. REYNOLDS TOBACCO COMPANY,  
LORILLARD TOBACCO COMPANY,  
COMMONWEALTH BRANDS, INC.,  
LIGGETT GROUP LLC, and SANTA FE  
NATURAL TOBACCO COMPANY, INC.,

Civil Action No. 11-01482 (RCL)

Plaintiffs,

v.

UNITED STATES FOOD AND DRUG  
ADMINISTRATION, MARGARET  
HAMBURG, Commissioner of the United  
States Food and Drug Administration, and  
KATHLEEN SEBELIUS, Secretary of the  
United States Department of Health and  
Human Services,

Defendants.

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**PLAINTIFFS' MOTION FOR EXPEDITED REVIEW  
OF THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT**

On November 29, 2011, Defendants in this action filed an interlocutory appeal of this Court's November 7, 2011 order granting Plaintiffs' request for a preliminary injunction ("PI Order"). *See* Dkt. No. 45. As this Court recognized in its scheduling hearing of August 23, 2011, the Court's decision on summary judgment regarding the validity of the Rule will inevitably be appealed as well. Plaintiffs therefore respectfully request that this Court grant expedited review of the parties' cross-motions for summary judgment.

Granting Plaintiffs' motion would further judicial economy. Because this Court addressed the merits of the parties' claims in great detail in its preliminary injunction ruling, Plaintiffs believe that this Court could rule on the summary judgment cross-motions expeditiously. A prompt ruling would, moreover, (a) provide the Court of Appeals with the

benefit of this Court's resolution of the merits of this case and (b) give the Court of Appeals the opportunity to consolidate the summary judgment appeal with the Government's current appeal of the PI Order. Perhaps most importantly, resolution of the merits of this dispute would provide the Court of Appeals and, potentially, the Supreme Court, with a clean vehicle to address the merits of Plaintiffs' challenge to the new graphic warnings. All parties, of course, have a strong interest in such a prompt and efficient resolution of this case.

As the argument at the preliminary injunction hearing on September 21, 2011 addressed in large part the merits of Plaintiffs' challenge to the Rule, and as the Court has had the benefit of extensive briefing on summary judgment, Plaintiffs submit that a further hearing on summary judgment is not necessary. However, should the Court conclude otherwise, Plaintiffs are available for such a hearing at the Court's earliest convenience.

Accordingly, Plaintiffs request that this Court grant their Motion for Expedited Review.

A draft order is attached hereto. Plaintiffs have conferred with Defendants, and they have informed Plaintiffs that they take no position on the motion, but will file a brief response.

Respectfully Submitted,

Dated: December 12, 2011

/s/ Noel J. Francisco

Noel J. Francisco (D.C. Bar No. 464752)  
Geoffrey K. Beach (D.C. Bar No. 439763)  
Warren Postman (D.C. Bar No. 995083)

Floyd Abrams (admitted *pro hac vice*)  
Joel Kurtzberg (admitted *pro hac vice*)  
Kayvan Sadeghi (admitted *pro hac vice*)

JONES DAY  
51 Louisiana Avenue, NW  
Washington, D.C. 20001-2113  
Telephone: (202) 879-3939  
Facsimile: (202) 626-1700  
njfrancisco@jonesday.com  
gkbeach@jonesday.com  
wpostman@jonesday.com

CAHILL GORDON & REINDEL LLP  
80 Pine Street  
New York, NY 10005-1702  
Telephone: (212) 701-3000  
Facsimile: (212) 269-5420  
fabrams@cahill.com  
jkurtzberg@cahill.com  
ksadeghi@cahill.com

**Counsel for Plaintiff R.J. Reynolds and  
Santa Fe Natural Tobacco Company**

-and-

Philip J. Perry (D.C. Bar No. 434278)

LATHAM & WATKINS LLP  
555 11th Street, NW, Suite 1000  
Washington DC 20004-1304  
Telephone:(202) 637-2200  
Facsimile: (202) 637-2201  
phil.perry@lw.com

**Counsel for Plaintiff Commonwealth  
Brands, Inc.**

Jonathan D. Hacker (D.C. Bar No. 456553)

O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006-4061  
Telephone: (202) 383-5300  
Facsimile: (202) 383-5414  
jhacker@omm.com

**Counsel for Plaintiff Liggett Group LLC**

Patricia A. Barald (D.C. Bar No. 218016)  
Scott D. Danzis (D.C. Bar No. 481426)

COVINGTON & BURLING LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401  
Telephone: 202.662.6000  
Facsimile: 202.662.6291  
pbarald@cov.com  
sdanzis@cov.com

**Counsel for Plaintiff Lorillard  
Tobacco Company**

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**[PPROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR EXPEDITED REVIEW**

For the reasons set forth in Plaintiffs' Motion for Expedited Review, it is hereby:

1. ORDERED that Plaintiffs' Motion for Expedited Review is GRANTED;

[2. In light of the prior hearing held in this matter on September 21, 2011, and the Court's consideration of the extensive additional briefing filed by the parties, further oral argument on the parties' motions for summary judgment will not be required.]

[2. Oral Argument is set for \_\_\_\_\_.]

It is SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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Hon. Richard J. Leon  
United States District Judge