

# Exhibit 38

USDC SDNY

ICAN v. US Department of Health and Human  
Services

STIPULATION that no reports from the  
Pharmaceutical Industry nor HHS were provided  
to the US Congress as required to maintain  
immunity from liability

**USDC SDNY**  
**DOCUMENT**  
**ELECTRONICALLY FILED**  
DOC #:  
**DATE FILED: 07/09/2018**

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

INFORMED CONSENT ACTION NETWORK,

Plaintiff,

-against-

UNITED STATES DEPARTMENT OF HEALTH  
AND HUMAN SERVICES

Defendant.

**STIPULATION**

18-cv-03215 (JMF)

WHEREAS, 42 U.S.C. § 300aa-27, entitled “Mandate for safer childhood vaccines,”

provides as follows:

(a) General rule

In the administration of this part and other pertinent laws under the jurisdiction of the Secretary [of the Department of Health and Human Services], the Secretary shall—

(1) promote the development of childhood vaccines that result in fewer and less serious adverse reactions than those vaccines on the market on December 22, 1987, and promote the refinement of such vaccines, and

(2) make or assure improvements in, and otherwise use the authorities of the Secretary with respect to, the licensing, manufacturing, processing, testing, labeling, warning, use instructions, distribution, storage, administration, field surveillance, adverse reaction reporting, and recall of reactogenic lots or batches, of vaccines, and research on vaccines, in order to reduce the risks of adverse reactions to vaccines.

...

(c) Report

Within 2 years after December 22, 1987, and periodically thereafter, the Secretary shall prepare and transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the

actions taken pursuant to subsection (a) of this section during the preceding 2-year period.

WHEREAS, on August 25, 2017, Informed Consent Action Network (“ICAN”) submitted a Freedom of Information Act request (the “FOIA Request”) to the Department of Health and Human Services (“HHS” or the “Department”), which was assigned control number 2017-01119-FOIA-OS, that sought the following records:

**Any and all reports transmitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate by the Secretary of HHS pursuant to 42 U.S.C. §300aa-27(c).**

WHEREAS, on April 12, 2018, ICAN filed a Complaint for Declaratory and Injunctive Relief in the United States District Court, Southern District of New York against HHS seeking records, if any, responsive to the FOIA Request;

WHEREAS, the HHS Immediate Office of the Secretary (“IOS”) maintains the official correspondence file of the Secretary of HHS, including reports to Congress by the Secretary of HHS, and therefore those files were most likely to contain records responsive to the FOIA Request;

WHEREAS, on June 27, 2018, HHS sent ICAN the following response to the FOIA Request:

The [Department]’s searches for records did not locate any records responsive to your request. The Department of Health and Human Services (HHS) Immediate Office of the Secretary (IOS) conducted a thorough search of its document tracking systems. The Department also conducted a comprehensive review of all relevant indexes of HHS Secretarial Correspondence records maintained at Federal Records Centers that remain in the custody of HHS. These searches did not locate records responsive to your request, or indications that records responsive to your request and in the custody of HHS are located at Federal Records Centers.

WHEREAS, ICAN believes the foregoing response from HHS now resolves all claims asserted in this action;

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

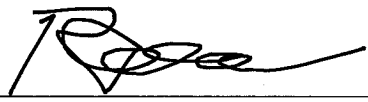
1. That the above-captioned action is voluntarily dismissed, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), each side to bear its own costs, attorney fees, and expenses; and

2. That this stipulation may be signed in counterparts, and that electronic (PDF) signatures may be deemed originals for all purposes.

Dated: July 6, 2018  
New York, New York

KENNEDY & MODONNA LLP  
*Attorney for Plaintiff*


By:

  
Robert F. Kennedy, Jr.  
48 Dewitt Mills Road  
Hurley, NY 12443  
(845) 481-2622


Dated: July 6, 2018  
New York, New York

GEOFFREY S. BERMAN  
United States Attorney  
*Attorney for Defendant*

By:

  
ANTHONY J. SUN  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
(212) 637-2810  
anthony.sun@usdoj.gov

SO ORDERED:

  
HON. JESSE M. FURMAN, U.S.D.J.

Dated: New York, New York  
July 6, 2018

Any pending motions are moot. All conferences are vacated. The Clerk of Court is directed to close the case.