

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

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**FARM-TO-CONSUMER LEGAL  
DEFENSE FUND, et al.,**

**Plaintiffs,**

v.

**ED SCHAFFER, Secretary, U.S.  
Department of Agriculture, et al.,**

**Defendants.**

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**Civil Action No. 08-1546 (RMC)**

**ORDER**

On September 8, 2008, Plaintiffs filed their Complaint seeking to enjoin Defendants from implementing and enforcing the National Animal Identification System. *See* Dkt. # 1. Defendants filed motions to dismiss and/or for summary judgment. *See* Dkt. ## 12 & 13. On November 19, 2008, Plaintiffs moved for an extension of time until January 2, 2009 to file their oppositions to the motions. *See* Dkt. # 14. By Minute Order dated November 21, 2008, the Court granted Plaintiffs' motion. *See* 11/21/08 Minute Order. However, Plaintiffs failed to timely file their oppositions because counsel inadvertently read the Court's Minute Order as extending the time to file oppositions to January 12, 2009. *See* Pls.' Mem. in Supp. of Mot. for Leave to File at 2.

Before the Court is Plaintiffs' Motion for Leave to File First Amended Complaint, which was filed on January 10, 2009. *See* Dkt. # 20. Defendants oppose the motion because the Court's November 21, 2008 Minute Order did not give Plaintiffs permission to file an amended complaint, the proposed amended complaint allegedly violates the Federal Rules of Civil Procedure,

and the proposed amended complaint does not cure the asserted defects in the Complaint. *See* Dkt. ## 21 & 23. Defendants do not dispute that Rule 15 of the Federal Rules of Civil Procedure “guarantee[s] a plaintiff an absolute right to amend its complaint once at any time before the defendant has filed a responsive pleading.” *James V. Hurson Assocs., Inc. v. Glickman*, 229 F.3d 277, 282-83 (D.C. Cir. 2000). Nor do Defendants dispute that no responsive pleading has been filed in this case. *See id.* at 283 (“a motion to dismiss is not a responsive pleading for purposes of Rule 15”). Therefore, the Court finds that Plaintiffs are “entitled as a matter of right to amend [their] complaint . . . .” *Id.* The Court will address any arguments that the amended complaint is defective and/or violates the Federal Rules of Civil Procedure if and when Defendants file motions to dismiss the amended complaint on those bases. Accordingly, it is hereby

**ORDERED** that Plaintiffs’ Motion for Leave to File First Amended Complaint [Dkt. # 20] is **GRANTED**; and it is

**FURTHER ORDERED** that Defendants’ motions to dismiss and/or for summary judgment [Dkt. ## 12 & 13] are **DENIED AS MOOT**.

**SO ORDERED.**

Date: January 22, 2009

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/s/  
ROSEMARY M. COLLYER  
United States District Judge