

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

FARM-TO-CONSUMER LEGAL	)	
DEFENSE FUND, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. C 10-4018-MWB
	)	
KATHLEEN SEBELIUS, Secretary,	)	
United States Department of Health	)	
and Human Services, et al.,	)	
	)	
Defendants.	)	

**UNITED STATES' MOTION TO DISMISS  
PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW the United States of America, on behalf of the United States Department of Health and Human Services ("HHS"), Kathleen Sebelius, in her official capacity as Secretary of HHS, and Margaret Hamburg, in her official capacity as Commissioner of Food and Drugs, United States Food and Drug Administration ("FDA") (collectively, "Defendants"), pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and Local Rule 7, moves for dismissal of Plaintiffs' Amended Complaint as follows:

1. Pursuant to Federal Rule of Civil Procedure 12(b)(1), this Court lacks subject matter jurisdiction over this action because plaintiffs do not have standing and their claims are not ripe for review.
2. Declaratory and injunctive relief barring the government from applying FDA's regulations to them is foreclosed by the Supreme Court's holding in *Ewing v.*

*Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950).

3. Pursuant to Federal Rule of Civil Procedure 12(b)(6), as a matter of law, plaintiffs have failed to state a claim upon which relief can be granted, both because they have failed to exhaust their administrative remedies and because their substantive arguments are without merit.

WHEREFORE, the United States respectfully requests that the Court grant its Motion to Dismiss Plaintiffs' Amended Complaint, and that this Court grant such further relief as it deems proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically served a copy of the foregoing document to which this certificate is attached to the parties or attorneys of record, shown below, on April 26, 2010.

UNITED STATES ATTORNEY

BY: s/ Michelle Schwebach

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