



9450 SW Gemini Drive
PMB 44671
Beaverton, OR 97008

January 10, 2025

BY EMAIL

Scott Kennedy, Counsel for Defendants
US Department of Justice
scott.p.kennedy@usdoj.gov

Re: Denial of Request for Interrogatories Set 1 – Case No. 2:24-cv-02558-DC-SCR (E.D. Cal.)

Dear Scott Kennedy,

I am in receipt of your letter dated January 10, 2025, denying my request for discovery information via INTERROGATORIES TO DEFENDANT FDA SET 1 and INTERROGATORIES TO DEFENDANT NHTSA SET 1. Your letter restated the Defendants' position that discovery is improper at this time because the Court is only authorized to review the administrative record already in existence. The difficulty with the Defendants' line of reasoning is that the Defendant acted dishonestly, and in bad faith, by withholding from the Court crucial documents that form the administrative record.

Two of the most obvious examples are that the Defendant withheld from the Court the 2016 Transcript of the TEPRSSC meeting which clearly states that the FDA is considering performance standards for LED products, and the 2022 TEPRSSC Charter which clearly states that TEPPSSC should meet every other year. These two administrative record documents that the Defendant withheld from the Court directly contract the Defendants' position in their Motion to Dismiss that the FDA is not considering any performance standards for LED products and that TEPRSSC is free to meet once every 21 years, if ever.

By withholding crucial administrative record documents from the Court, Defendant's have triggered the "strong showing of bad faith or improper behavior" necessary for the Court to be provided with extra-record documents, if the withheld documents can even be considered "extra-record" when they were dishonestly and in bad faith withheld from the Court for the Court's review. Review under the Administrative Procedure Act depends on the good faith of the agency preparing its record." The withholding of crucial documents from the Court by the Defendants is not acting in good faith.

Once a Defendant has been shown to be acting in bad faith and with improper behavior, as is the situation here, Defendant must produce the full set of administrative record documents to ensure that the Court has the information necessary to determine whether the Motion to Dismiss can succeed. As you know, I have filed a Writ of Mandate requesting that the Court find that the Defendant has acted in bad faith and to order the full discovery.

Sincerely,

/s/ Mark Baker
President
Soft Lights Foundation
mbaker@softlights.org