

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

WHOLE WOMAN'S HEALTH
ALLIANCE, *et al.*,

Plaintiffs,

v.

FOOD AND DRUG ADMIN., *et al.*,

Defendants.

Case No. 3:23-cv-00019-RSB

JOINT STATUS REPORT

On July 23, 2026, this Court granted summary judgment to Plaintiffs on Count II of their Complaint, which alleges that the 2023 REMS Modification was arbitrary and capricious. ECF No. 96, at 1. In the same Order, the court granted summary judgment to Defendants on Count I, which alleges that FDA exceeded its statutory authority, and denied their motion as to Counts II, III and IV. *Id.* The Court held that Plaintiffs' remaining claims for relief (Counts III and IV) "appear to be coextensive with their successful APA challenge to the 2023 REMS" but because Plaintiffs had not sought summary judgment on those claims, the Court directed the parties to file a joint status report setting forth their positions on future proceedings. *Id.* at 1-2; *see also* ECF No. 98 (extending deadline to file joint status report to August 28, 2026).

Having conferred, the parties report as follows:

1. Plaintiffs ask the Court to dismiss Counts III and IV without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Defendants do not oppose this request.

2. The parties agree that, upon dismissal of Counts III and IV, the matter may be remanded to FDA for further proceedings consistent with the Court's July 23 Memorandum Opinion.

3. The parties disagree on whether the Court should retain jurisdiction during the remand and request the opportunity to submit short supplemental briefs on that question. The parties propose the following schedule and page limits:

- a. Plaintiffs file a brief not to exceed five (5) pages no later than September 18, 2026;
- b. Defendants file a brief in response not to exceed five (5) pages no later than October 2, 2026;
- c. Plaintiffs file a reply not to exceed two (2) pages no later than October 9, 2026.

Dated: August 28, 2026

/s/ Linda C. Goldstein

GAIL M. DEADY

Virginia Bar Number: 82035

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Respectfully submitted,

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Certificate of Service

I certify that the foregoing was served on all counsel of record via ECF on
August 28, 2026.

/s/ Noah T. Katzen
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