

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official
capacity as SECRETARY OF THE U.S.
DEPARTMENT OF HEALTH & HUMAN
SERVICES, et al.,

Defendants.

Civil Action No. 1:25-cv-00196

DEFENDANTS' NOTICE OF FACTUAL DEVELOPMENTS
RELEVANT TO PLAINTIFFS' CLAIMS

Defendants respectfully inform the Court of two developments relevant to the pending litigation: (1) the rescission of all remaining reduction in force (RIF) notices issued to employees in the Center for Tobacco Products (CTP) within the Food and Drug Administration (FDA) after the March 27, 2025, announcement and (2) the rescission of all remaining RIF notices issued to employees in the Division of Data and Technical Analysis (DDTA) within the Office of the Assistant Secretary for Planning and Evaluation after the same announcement. The attached declarations of Melanie M. Keller and Cynthia Goss provide additional information regarding those rescissions.

The allegations in the Amended Complaint regarding FDA and ASPE stem from the RIF notices issued to CTP and DDTA employees, respectively. *See* Am. Compl. ¶¶ 257–72, 313–14, 317–19. Defendants have moved to dismiss those allegations on multiple grounds and reserve the right to file a supplemental motion to dismiss on mootness grounds all claims and theories regarding FDA and ASPE.

Dated: March 27, 2026

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

ERIC J. HAMILTON
Deputy Assistant Attorney General
Civil Division, Federal Programs Branch

CHRISTOPHER R. HALL
Assistant Branch Director
Civil Division, Federal Programs Branch

ELIZABETH HEDGES
Counsel to the Assistant Attorney General
Civil Division

/s/ Christian Dibblee
CHRISTIAN DIBBLEE
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20530
Telephone: (202) 353-5980
Email: Christian.R.Dibblee@usdoj.gov

Counsel for Defendants

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DECLARATION OF MELANIE M. KELLER

I, Melanie M. Keller, declare as follows:

1. I am the Deputy Associate Commissioner for Operations and Deputy Chief Operating Officer, Office of the Commissioner, United States Food and Drug Administration (“FDA” or “the agency”). I have been in this role since April 2025.

2. Prior to this position, I was the Chief Talent Officer from approximately July 2017 to April 2025. Prior to that I was the Associate Director for Management, Center for Drug Evaluation & Research from December 2010 to July 2017, and led operations and management functions that support drug evaluation and research activities.

3. In my current role, I directly support the Chief Operating Officer to lead management and business programs and operations across the global FDA enterprise of 17,000 world-class scientific, technical, and professional experts dedicated to promoting and protecting the public health of all Americans.

4. I am making this declaration in support of Defendants’ Notice of Factual Developments Relevant to Plaintiffs’ Claims.

5. The statements made in this declaration are based upon my own personal knowledge and information about which I have become knowledgeable through my access and review of official FDA records in the course of my official duties.

6. On March 31, 2025, April 1, 2025, and May 2, 2025, reduction in force (“RIF”) notices were issued to 229 employees within the Center for Tobacco Products (“CTP”).

7. On May 1, 2025, the rescission of RIF notices was approved as to twenty-one (21) employees in CTP’s Office of Health Communication and Education, some of whom are responsible for responding to FOIA requests.

8. On May 5, 2025, the rescission of RIF notices was approved as to fifty (50) employees in CTP’s Division of Business Operations within the Office of Compliance and Enforcement, some of whom are responsible for managing state contracts for compliance checks while others are responsible for functions related to civil money penalties.

9. On May 14, 2025, the rescission of RIF notices was approved as to eighteen (18) employees in CTP’s Division of Financial Management within the Office of Management, some of whom administer tobacco user fees.

10. On June 6, 2025, the rescission of RIF notices was approved as to twenty-four (24) employees in CTP’s Office of Regulations.

11. On September 12, 2025, the rescission of RIF notices was approved as to ten (10) employees in CTP’s Division of Public Health Education within the Office of Health Communication and Education, some of whom are responsible for managing “The Real Cost” youth tobacco prevention campaign.

12. On February 3, 2026, the rescission of RIF notices was approved as to all remaining CTP employees described in Paragraph 6, except for the eight (8) employees described in Paragraph 13 below, including:

a. Twenty-three (23) employees in CTP's Division of External Programs and Resource Management within the Office of Compliance and Enforcement, some of whom are responsible for managing and investigating complaints and inquiries from the public related to tobacco products and regulated industry, providing small business assistance, providing business process management support for IT systems, and providing outreach and training for industry on complying with the law.

b. Seventy-five (75) employees in CTP's Office of Management, including thirteen (13) employees on CTP's Acquisitions and Assistance Team within the Office of Management, many of whom are responsible for managing contracts, intra-agency agreements, blanket purchase agreements, and grants.

13. Eight (8) employees who had previously received RIF notices accepted a position in different CTP divisions after receiving their RIF notices.

14. Following the rescission of RIF notices and other actions described in Paragraphs 7 to 13, *supra*, none of the CTP employees described in Paragraph 6 remain on administrative leave.

15. In addition to the RIF notices discussed above, two leaders in CTP's Office of Science received notices of proposed reassignment and were placed on administrative leave on April 1, 2025. By November 6, 2025, both had returned to the Office of Science from their leave.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2026

MELANIE M. KELLER -S Digitally signed by
MELANIE M. KELLER -S
Date: 2026.03.24
15:42:09 -04'00'

Melanie M. Keller
Deputy Associate Commissioner for Operations and
Deputy Chief Operating Officer
Office of the Commissioner
Food and Drug Administration
U.S. Department of Health and Human Services

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DECLARATION OF CYNTHIA GOSS

I, Cynthia Goss, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the Deputy Assistant Secretary for Planning and Evaluation, and I perform the Delegable Duties of the Assistant Secretary for Planning and Evaluation (ASPE). ASPE serves as the principal policy advisor to the Secretary of the U.S. Department of Health and Human Services (HHS) on matters related to health, human services, disability, aging, long-term care, science, data, and economics. In my role, I lead strategic planning, policy analysis, and legislative and regulatory development, and I oversee research and evaluation activities.

2. ASPE carries out its mission through the Immediate Office and four policy divisions: the Office of Health Policy; the Office of Human Services Policy; the Office of Behavioral Health, Disability, and Aging Policy; and the Office of Science and Data Policy. Together, these units provide the analytical and operational capacity needed to coordinate, assess, and support departmental priorities and initiatives.

3. I make this declaration based on personal knowledge and information provided to me in the course of my official duties.

4. On or about April 1, 2025, and May 1, 2025, HHS issued Reduction in Force (RIF) notices to select employees and placed most of those employees on administrative leave. Of the employees who received RIF notices, ten (10) were employees of the Division of Data and Technical Analysis (DDTA) (admin code AES3) within the Office of Human Services Policy in ASPE. These employees are responsible for, among other things, publishing the annual update of the federal poverty guidelines, pursuant to 42 U.S.C. § 9902, and publishing the annual report on welfare indicators, pursuant to 42 U.S.C. § 1314a.

5. On February 26, 2026, HHS rescinded the seven (7) remaining RIF notices to these DDTA employees. The other three (3) DDTA employees who had received RIF notices voluntarily separated from HHS before their RIF notices were rescinded. Following the rescission of these RIF notices, no DDTA employees remain on administrative leave.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on March 25, 2026.

CYNTHIA L. GOSS -S Digitally signed by CYNTHIA L. GOSS -S
Date: 2026.03.25 17:54:28 -04'00'

Cynthia Goss
Deputy Assistant Secretary for Planning and Evaluation
Assistant Secretary for Planning and Evaluation
U.S. Department of Health and Human Services