

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MISSOURI, KANSAS, and IDAHO,
Intervenor-Plaintiffs,

v.

U.S. FOOD AND DRUG ADMINISTRATION, *et al.*,
Defendants,

and

DANCO LABORATORIES, LLC,
Intervenor-Defendant.

Case No. 4:25-cv-01580-CMS

**DANCO LABORATORIES, LLC’S RESPONSE TO PLAINTIFFS’
SECOND NOTICE OF SUPPLEMENTAL AUTHORITY**

Danco Laboratories, LLC (Danco) submits this response to the Plaintiff States’ second notice of supplemental authority to advise this Court of further developments related to the Fifth Circuit’s decision in *Louisiana v. FDA*, No. 26-30203 (5th Cir. May 1, 2026). *See* ECF No. 326. In an earlier response to the Plaintiff States’ notice, Intervenor-Defendant GenBioPro noted that the Fifth Circuit ruling had been administratively stayed by the Supreme Court of the United States and explained (among other points) that the Fifth Circuit’s ruling is contrary to recent Supreme Court and Ninth Circuit decisions, not applicable given differences in Louisiana law and Missouri and Kansas law, not applicable to several of FDA decisions that the Plaintiff States challenge, and based on a different evidentiary record and different governing circuit standard for exhaustion. *See* ECF No. 327. Danco agrees with GenBioPro on those issues. Danco writes separately to draw this Court’s attention to the Supreme Court’s ruling yesterday granting Danco and GenBioPro’s emergency applications for a stay of the Fifth Circuit ruling.

The Fifth Circuit’s ruling is “stayed pending disposition of the appeal in the United States

Court of Appeals for the Fifth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought.” Order Granting Stay, *Danco Lab’ys LLC v. Louisiana*, No. 25A1207 (May 14, 2026) & *GenBioPro, Inc. v. Louisiana*, No. 25A1208 (May 14, 2026). A grant of relief sought in an emergency application indicates at least “a fair prospect” that the moving party will succeed on the merits. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); cf. *NIH v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J., concurring in part and dissenting in part) (a decision by the Supreme Court granting a stay “constitutes a precedent that commands respect in lower courts”).

The Supreme Court’s Order is thus a further reason that this Court should conclude the Plaintiff States lack standing. See ECF Nos. 293-1 at 9-14; 295 at 4-13; 297-1 at 2-6.

Dated: May 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 15, 2026, I electronically filed the foregoing using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record.

/s/ Kurt S. Odenwald
Kurt S. Odenwald