

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

UNITED STATES,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 6:22-cv-28-NKM
)	
ENVIGO RMS, LLC,)	
)	
Defendant.)	
)	
)	
)	

**ENVIGO’S MOTION FOR CONSENT OF THE COURT TO PROCEED WITH
FULFILLING EXISTING CUSTOMER ORDERS**

Envigo RMS, LLC (“Envigo”) moves for consent of the Court to proceed with fulfilling existing customer orders as it is permitted to do under the Court’s June 17, 2022 Order (“Order”) for the following reasons:

1. In its Order, the Court allowed Envigo to resume transferring beagles from its Cumberland, Virginia facility (“Cumberland Virginia”) to fulfill existing customer orders, which it defined as contracts “(1) executed prior to the date the Court’s TRO was issued (May 21, 2022) and (2) for animals bred in the Cumberland facility.” ECF 21 at 8.

2. On June 18, 2022, the day after the Court’s Order was issued, Envigo provided to counsel for the United States approximately 90 purchase orders for beagles bred at the Cumberland Facility that were executed prior to May 21, 2022. Declaration of Michael C. Garrett, dated June 23, 2022 (“Garrett Decl.”) ¶ 11. The documents provided to counsel for the United States are true and correct copies of purchase orders predating May 21, 2022 that were identified through Envigo’s accounting system. *Id.* ¶¶ 9-10. Under the purchase orders provided

to the United States, 575 dogs were scheduled for shipment within 30 days of the preliminary injunction hearing held in this matter on June 13, 2022. These purchase orders also cover additional beagles for delivery to be delivered in the future.

3. When these documents were provided on Saturday, June 18, 2022, Envigo asked counsel for the United States to contact Envigo by noon on Monday, June 20, 2022 with any questions or concerns about these orders or Envigo's plans to fulfill them.

4. The approximately 90 purchase orders provided to the United States were from over a dozen Envigo customers located across the United States and overseas. Garrett Decl. ¶¶ 3, 10. Envigo is prepared to ship beagles pursuant to several of these orders almost immediately. *Id.* ¶ 12.

5. On June 20, 2022, counsel for the United States responded to Envigo's production of customer orders for authentication. In its response, counsel for the United States stated that it had not yet begun the process of authenticating Envigo's contracts, as required by the Court's order, because of the federal holiday.

6. On June 21, 2022, Envigo again expressed its desire to fulfill orders as soon as possible and asked counsel for the United States to inform Envigo by noon the following day if there were any issues with authenticating the purchase orders provided on June 18, 2022.

7. Counsel for the United States responded to the request the next day, stating that while they "appreciate the time-sensitive nature of Envigo's desire to fulfill contracts," to authenticate the documents, the United States was seeking an affidavit from Envigo attesting that the contracts were in compliance with the Court's Order.

8. In addition, for each of the purchase orders provided, counsel for the United States requested—for the first time—"an affidavit from [the] customer attesting that the contract

was ‘(1) executed prior to the date the Court’s TRO was issued (May 21, 2022) and (2) for animals bred in the Cumberland facility.’” Each customer was required to “provide the affidavits to DOJ directly via email or first class mail.”

9. Envigo responded that requiring its customers to submit sworn affidavits to the United States Department of Justice in order to have their existing orders filled, would impose “undue and harassing burden o[n] Envigo’s customers.” It would also further delay Envigo’s shipments to customers and those customers’ receipt of their orders.

10. Late on June 23, 2022, counsel for the United States requested, in lieu of customer affidavits, “one affidavit, from Envigo’s CEO, stating that the documents provided are all existing contracts that Envigo (1) executed prior to the date the Court’s TRO was issued (May 21, 2022) and (2) that the dogs referred to in the documents are the beagles bred in the Cumberland Facility.” The declaration from Inotiv’s Chief Commercial Officer, Michael C. Garrett, which is being filed along with this motion, provides precisely this information, rendering this new request from the United States unnecessary.

11. In addition, five days after the purchase orders were provided, counsel for the United States purported to articulate for the first time various “concerns regarding the contracts . . . , including that many of the documents contain no signatures.” In the regular course of business, Envigo’s customer orders do not contain signatures. Envigo’s customers purchase research animals by placing orders via phone, mail, or email that are processed through Envigo’s accounting system. Garrett Decl. ¶ 4.¹ There is no signature requirement under the Court’s Order or the regular practice of business in this industry.

¹ An example of one of Envigo’s purchase orders is attached as Exhibit A to the Garrett Declaration. The document shows the type of detail and information that is typically included on

12. Envigo now moves the Court for consent to proceed with fulfilling the approximately 90 existing customer orders provided to counsel for the United States on Saturday, June 18, 2022. In the five days since Envigo provided contracts for authentication, the United States has sought to impose a variety of additional lawyer-created demands that are not present in the Court's Order. Imposing such burdens would have a chilling effect on Envigo's ability to fulfill existing orders.

13. The research animals bred at the Cumberland Facility are "exceedingly important to domestic pharmaceutical discovery and development." ECF 21 at 6. "[F]or every animal that leaves the facility, whether it be by sale or adoption, there is one fewer animal that can be harmed by the facility's AWA violations." *Id.* at 5. Allowing Envigo to proceed with fulfill existing customer orders without undue delay and burden on Envigo and its customers would serve those important public interests and expedite the wind-down of the Cumberland Facility.

the orders Envigo receives. Garrett Decl. ¶ 5. The customer name, price, and other competitively sensitive information have been redacted from the example order.

CONCLUSION

For the reasons stated above, Envigo respectfully requests consent of the Court to proceed with fulfilling existing customer orders.

Dated: June 24, 2022

Respectfully submitted,

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