

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SCOOTER UNLIMITED AND DME INC.,	§	
<i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
v.	§	No. 3:08-CV-0098-M
	§	(ECF)
MICHAEL O. LEAVITT, <i>et al.</i> ,	§	
	§	
Defendants,	§	

DEFENDANTS’ NOTICE OF AUTHORITY

1. On Friday, June 20, 2008, plaintiffs filed an application for temporary restraining order (TRO) against Michael O. Leavitt, Secretary, United States Department of Health and Human Services, and Kerry N. Weems, Acting Administrator, Centers for Medicare and Medicaid Services (Defendants), to prevent the implementation of certain provisions of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. The provisions plaintiffs seek to enjoin is a competitive bidding program - promulgated by public notice and comment on April 10, 2007, 72 FED. REG. 17991-18090, and effective July 1, 2008 - regulating the ability of durable medical equipment suppliers to furnish items to Medicare beneficiaries.

2. On Monday, June 23, 2008, Defendants learned the Court had set a hearing on plaintiffs’ TRO application for Thursday, June 26, 2008, at 8:00 a.m.

3. Defendants intend to fully address plaintiffs' allegations during the June 26 hearing and demonstrate to the Court that there is no basis for enjoining - under any factual or legal theory - Defendants' regulations, nor is there subject matter jurisdiction to even hear plaintiffs' contentions. To assist the Court with defendants' anticipated arguments during the hearing, Defendants have included as an attachment to this pleading a recent decision by the District Court for the District of Columbia rejecting some of the assertions made by plaintiffs in this litigation. *See Carolina Med. Sales, Inc. v. Leavitt*; No. 07-1298, slip op. (D.D.C. June 19, 2008) (attached hereto). Defendants will address plaintiffs' remaining contentions at the hearing.

4. Defendants intend to file a motion to dismiss this civil action as soon as practicable. Should the Court wish any additional briefing after the hearing, Defendants are prepared to submit whatever is requested by the Court.

Respectfully submitted,

GREGORY G. KATSAS
ACTING ASSISTANT ATTORNEY GENERAL

RICHARD B. ROPER
UNITED STATES ATTORNEY

 /s/ Sean R. McKenna
Sean R. McKenna
Assistant United States Attorney
Texas State Bar No. 24007652
1100 Commerce Street, 3rd Floor
Dallas, Texas 75242-1699
Telephone: 214.659.8600
Facsimile: 214.767.2916
E-mail: sean.mckenna@usdoj.gov

SHEILA LIEBER
Assistant Director
Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20530
Telephone: 202.514.3786
Facsimile: 202.616.8470
E-mail: sheila.lieber@usdoj.gov

STEPHEN BUCKINGHAM
Trial Attorney
Department of Justice
20 Massachusetts Avenue, NW
Washington, DC 20530
Telephone: 202.514.3330
Facsimile: 202.616.8470
E-mail: stephen.buckingham@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2008, a true and correct copy of the foregoing pleading was served by ECF on the following persons:

Matthew H. Hand, Esq.
Jeffrey S. Baird, Esq.
Brown & Fortunato
905 S. Fillmore, Suite 400
Amarillo, Texas 79101

Counsel for plaintiffs Scooter Unlimited and DME, Inc., *et al.*

 /s/ Sean R. McKenna
Sean R. McKenna
Assistant U.S. Attorney