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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 KING MOUNTAIN TOBACCO
COMPANY, INC.,

11 Defendant.

NO: 1:14-CV-3162-RMP

ORDER GRANTING UNITED
STATES' MOTION FOR SUMMARY
JUDGMENT

12
13 BEFORE THE COURT is the United States' Motion for Summary
14 Judgment, ECF No. 60, renewing its prior motion for summary judgment. Trial
15 Attorney Kenneth Sealls represents the United States, and Justin Solimon
16 represents King Mountain. The Court has reviewed the motions, the entire record
17 in this case, considered the parties' arguments, and is fully informed.

18 **BACKGROUND**

19 The Court incorporates by reference its prior orders, ECF No. 46 and 50,
20 regarding the parties' associated motions in which the Court recounts the
21 procedural and factual background of this case as well as the legal analysis and

ORDER GRANTING UNITED STATES' MOTION FOR SUMMARY
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1 findings and conclusions relevant to the current motion for summary judgment.
2 The Court previously denied the United States' Motion for Summary Judgment,
3 ECF No. 15, but granted leave to renew, which the United States has done with its
4 current motion, ECF No. 60, incorporating its prior briefing submitted in
5 conjunction with ECF No. 15.

6 The United States argues that King Mountain is a tobacco manufacturer
7 subject to FETRA, 7 U.S.C. § 518d(b)(1). ECF No. 15 at 6. Further, the United
8 States contends that King Mountain has failed to make its required payments for
9 FETRA assessments which total over six million dollars. ECF No. 15 at 7. King
10 Mountain raised a number of legal defenses, claims, and counter claims to the
11 FETRA assessments, all of which this Court previously has denied. *See* ECF No.
12 46, 50. King Mountain also repeatedly requested an opportunity for discovery,
13 which this Court also denied. *See* ECF No. 46.

14 In the Order Denying King Mountain's Motion for Summary Judgment, the
15 Court remanded this case to the Commodity Credit Corporation ("CCC") of the
16 United States Department of Agriculture "**only** for a hearing and determination
17 regarding the accuracy of the FETRA assessments imposed against King
18 Mountain, consistent with this Court's Order, ECF No. 46." ECF No. 50 at 17-18.
19 A telephonic hearing with the CCC hearing officer was held on February 17, 2016.
20 ECF No. 60-1, Soto Decl. ¶11. The United States now moves for summary
21 judgment for the amount of FETRA assessments that were conceded by King

1 Mountain during the telephonic hearing with the CCC hearing officer. ECF No.
2 60-1, Soto Decl. ¶12.

3 DISCUSSION

4 FETRA requires courts to uphold a final assessment determination of the
5 Secretary if it is supported by “a preponderance of the information available to the
6 Secretary.” 7 U.S.C. § 518d(j)(3). The court determines whether the evidence in
7 the administrative record supports the agency’s decision. *See Sierra Club v. U.S.*
8 *Army Corps of Eng’rs*, 772 F.2d 1043, 1051 (2d Cir. 1985); see also *Fla. Power &*
9 *Light Co. v. Lorion*, 470 U.S. 729, 744 (1985).

10 The moving party is entitled to summary judgment when there are no
11 disputed issues of material fact when all inferences are resolved in favor of the
12 non-moving party. *Northwest Motorcycle Ass’n v. United States Dep’t of Agric.*,
13 18 F.3d 1467, 1471 (9th Cir. 1994); FED. R. CIV. P. 56(c). At the summary
14 judgment stage, the Court does not weigh the evidence presented, but instead
15 assumes its validity and determines whether it supports a necessary element of the
16 claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To prevail at the
17 summary judgment stage, a party must establish that a fact cannot be genuinely
18 disputed and that the adverse party cannot produce admissible evidence to the
19 contrary. FED. R. CIV. P. 56(c). Once the moving party has met their burden, the
20 non-moving party must demonstrate that there is probative evidence that would
21

1 allow a reasonable jury to find in their favor. *See Anderson v. Liberty Lobby*, 477
2 U.S. 242, 251 (1986).

3 In the United States’ renewed motion for summary judgment, the United
4 States submitted evidence establishing that King Mountain owes FETRA
5 assessments in an amount exceeding six million dollars. ECF No. 60-1, Soto Decl.
6 ¶8. The United States also submitted evidence that during the telephonic hearing
7 with the CCC hearing officer on remand, Mr. Solimon, who was representing King
8 Mountain, had no questions regarding either the documentation or explanation of
9 the accounting and that “[t]he hearing officer determined that because Mr. Solimon
10 [representing King Mountain] and the CCC agreed on the accuracy of the FETRA
11 assessments imposed in or after February 2012, the matter before him was moot.”
12 ECF No. 60-1, Soto Decl. ¶12.

13 In response to the United States’ renewed motion for summary judgment,
14 King Mountain now argues that King Mountain could not adequately identify any
15 errors in the assessment amounts because it has been deprived of the opportunity to
16 conduct discovery. ECF No. 63 at 2-3. King Mountain argues that it has been
17 deprived due process because of the denial by the CCC to conduct discovery and
18 as a result appears to dispute that it owes any FETRA assessments. ECF No. 63 at
19 6. King Mountain does not support their contention with any evidence or legal
20 authority, but rather appears to be resurrecting their previous arguments regarding
21 due process and discovery that this Court previously rejected. ECF No. 64 at 5.

1 After reviewing the pleadings, the Court finds that the United States has
2 submitted sufficient evidence to support its claims that King Mountain owed
3 FETRA assessments in an amount of \$6,425,683.23¹ at the time of the United
4 States' Motion for Summary Judgment. King Mountain has not submitted any
5 evidence to refute that amount, and apparently conceded the accuracy of that
6 amount during the CCC telephonic hearing on February 17, 2016. *See* ECF No.
7 60-1, Soto Decl. ¶12.

8 In its prior orders, the Court fully analyzed the parties' arguments and legal
9 authority and found that King Mountain failed to establish any exemption, legal
10 defense, claim, or counter claim involving the FETRA assessments. *See* ECF No.
11 46, 50. In response to the current motion for summary judgment, King Mountain
12 has not submitted any evidence or legal authority to raise a genuine issue of
13 material fact as to whether the United States is entitled to the \$6,425,683.23 in
14 FETRA assessments that it claims. Therefore, the Court finds that summary
15 judgment for the United States is appropriate in this matter.

16
17 _____
18 ¹ This was the amount that was noted at the time that Ms. Soto's declaration was
19 submitted. The Court is aware that additional penalties or interest may have
20 accrued in the lapsed time and that the final judgment amount may need to be
21 adjusted accordingly.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The United States' Motion for Summary Judgment, **ECF No. 60**, is

3 **GRANTED.**

4 2. Judgment shall be entered in favor of the United States in the amount of

5 \$6,425,683.23, plus any additional interest that may have accrued since

6 August 16, 2016.

7 The District Court Clerk is directed to enter this Order, enter Judgment as
8 outlined above, provide copies of this Order to counsel, and **close this case.**

9 **DATED** this 7th day of November 2016.

10 *s/ Rosanna Malouf Peterson*

11 ROSANNA MALOUF PETERSON

12 United States District Judge