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3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
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6 **GERALD CARLIN, JOHN RAHM, PAUL**
7 **ROZWADOWSKI and DIANA WOLFE,**
8 **individually and on behalf of themselves and**
9 **all others similarly situated,**

10 **Plaintiffs,**

11 **v.**

12 **DAIRYAMERICA, INC., and**
13 **CALIFORNIA DAIRIES, INC.,**

14 **Defendants.**

CASE NO. 1:09-CV-00430 AWI EPG

ORDER ON PLAINTIFFS' *EX PARTE*
APPLICATION TO SHORTEN TIME
FOR MOTION TO STRIKE

(Doc. No. 398)

15
16 Plaintiffs filed an *ex parte* application to shorten time (“*Ex Parte* Application”) for their
17 motion to strike, and for the reasons that follow, the Court will grant the *Ex Parte* Application.

18 On April 14, 2017, Plaintiffs filed their reply to Defendants’ opposition to Plaintiffs’
19 motion for leave to file a fourth amended complaint (“Motion to Amend”). The Motion to Amend
20 is currently set for hearing on April 24, 2017. Along with their reply, Plaintiffs filed a three page
21 motion to strike an expert report (“Motion to Strike”) that Defendant DairyAmerica, Inc.
22 (“DairyAmerica”) submitted with its opposition to the Motion to Amend. Plaintiffs set the date
23 for the hearing on their Motion to Strike as April 24, 2017.

24 Plaintiffs filed an *Ex Parte* Application seeking to shorten time for their Motion to Strike
25 since they wish the Court to decide the Motion to Strike before deciding the Motion to Amend. In
26 their Motion to Strike, Plaintiffs argue, *inter alia*, that they have been sandbagged by
27 DairyAmerica’s reliance on an undisclosed expert report, in violation of Fed. R. Civ. P. 26(a)(2).
28 Plaintiffs met and conferred with DairyAmerica, and attempted to meet and confer with Defendant

1 California Dairies, Inc. (“CDI”) before filing their *Ex Parte* Application. While Plaintiffs ask the
2 Court to shorten time, they do not propose any particular briefing schedule to the Court. Plaintiffs
3 originally asked DairyAmerica to stipulate to seven days to file an opposition to Plaintiffs’ Motion
4 to Strike, and Plaintiffs would have three days to file a reply. This schedule would make
5 Plaintiffs’ reply due on April 24, 2017, the same day as the hearing.

6 On April 17, 2017, DairyAmerica filed an opposition to Plaintiffs’ *Ex Parte* Application,
7 requesting that if the Court grants the *Ex Parte* Application, that DairyAmerica be allowed the
8 opportunity to submit its opposition to the motion to strike by April 28, 2017. While
9 DairyAmerica opposes Plaintiffs’ *Ex Parte* Application, notably DairyAmerica does not dispute
10 that the first time it provided Plaintiffs with the expert report at issue was the date DairyAmerica
11 filed its opposition to the Motion to Amend: March 17, 2017.

12 The Court will move the hearing on the Motion to Amend, which is currently scheduled
13 for April 24, 2017, by two weeks, to May 8, 2017. The Court will set the briefing schedule to
14 allow Defendants¹ two weeks to file an opposition or statement of non-opposition and Plaintiffs
15 will have five days to file a reply.

16
17 **ORDER**

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Defendants’ opposition or statement of non-opposition to Plaintiffs’ Motion to
20 Strike is due April 28, 2017;
21 2. Plaintiffs’ reply to Defendants’ opposition is due May 3, 2017; and
22 3. The hearing on Plaintiffs’ Motion to Amend and Motion to Strike is set for May 8,
23 2017.

24
25 IT IS SO ORDERED.

26 Dated: April 18, 2017


27 _____
28 SENIOR DISTRICT JUDGE

¹ Based on the information before the Court, Defendant CDI also retained the expert who prepared the report at issue.

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