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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLORIA AVILA, et al.,

Plaintiffs,

No. CIV 08-2488 JAM KJM

vs.

OLIVERA EGG RANCH,

Defendant.

ORDER

_____ /

Plaintiffs’ motion for sanctions came on regularly for hearing September 2, 2009. Peter Brandt, Joshua Watts and Nicole Roth appeared for plaintiffs. Jared Mueller and Russ Wunderli appeared for defendant. During the hearing, counsel for both parties agreed that plaintiffs’ inspection of defendant’s facility will be completed by September 30, 2009. Upon review of the documents in support and opposition of the pending dispute, upon hearing the arguments of counsel, and good cause appearing therefor, THE COURT FINDS AND ORDERS AS FOLLOWS:

Plaintiffs seeks terminating sanctions, or in the alternative, evidentiary sanctions against defendant for alleged spoliation of evidence. Plaintiffs contend that defendant has destroyed evidence material to the allegations raised in the complaint by excavating and removing sludge and grit from a manure lagoon on defendant’s property. Plaintiffs submit

1 affidavits from its expert pertaining to the effect of the excavation on ammonia emissions;
2 defendant in opposition submits competing affidavits from its expert. Given the present state of
3 the evidentiary record, opposite conclusions could be drawn by the trier of fact as to whether any
4 evidence has been destroyed. Under these circumstances, the court finds discovery sanctions are
5 not warranted.

6 Accordingly, IT IS HEREBY ORDERED that plaintiffs' motion is denied. This
7 order is without prejudice to plaintiffs moving at trial for evidentiary sanctions.

8 DATED: September 10, 2009.

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12 U.S. MAGISTRATE JUDGE