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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 EZELL ANDERSON, JR., Doing Business As,)
Mom’s Choice Meats,) Case No. 2:14-cv-02307 JAM/CKD
11)
Plaintiff,) EX PARTE REQUEST TO EXTEND
12) DEADLINE FOR FILING REPLY TO
v.) OPPOSITION TO MOTION FOR
13) SUMMARY JUDGMENT; ORDER
UNITED STATES OF AMERICA; KEVIN)
14 CONCANNON, Undersecretary for Food,)
Nutrition and Consumer Services; UNITED)
15 STATES DEPARTMENT OF)
AGRICULTURE; JOCELYN KEH, Section)
16 Chief, Supplemental Nutrition Assistance)
Program, Food and Nutrition Service, United)
17 States Department of Agriculture, and their)
successors in office, ,)
18)
Defendants.)
19)

20 The United States requests a brief extension of time to file its reply to Plaintiff, Ezell
21 Anderson, Jr’s Amended Opposition to the United States’ Motion for Summary Judgment from
22 October 5, 2016, to and including October 13, 2016.¹ Good cause exists for this short extension
23 because service of the Amended Opposition was made by regular mail on Thursday, September 29,
24 2016, and as of the date of this filing, counsel for the United States is not in receipt of the exhibits to
25 the Amended Opposition, specifically a DVD referenced by Plaintiff as Exhibit B(1), “NSDAA
26 Conference USDA OIG.” (ECF No. 58 at 9-10). To provide a comprehensive Reply, the United

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28 ¹ ECF Nos. 54, 58.

1 States counsel requests the opportunity to review the DVD as it was not produced in discovery, and it
2 is unclear what information is contained on the DVD.

3 The United States' request for an approximate one-week extension of the Reply deadline is
4 based on the following:

5 1. The United States filed its Motion for Summary Judgment on August 19, 2016, with a
6 hearing date of September 21, 2016. (ECF No. 51-1). Plaintiff's opposition was due on September
7 7, 2016. No opposition was timely filed by Plaintiff.

8 2. Per Order dated September 9, 2016, this Court noted that Plaintiff did not timely
9 oppose the United States' Motion for Summary Judgment, but allowed Plaintiff an additional three
10 weeks, to and including September 28, 2016, to file an opposition. (ECF No. 54).

11 3. On September 29, 2016, counsel for the United States was informed by way of ECF
12 that an opposition to the United States' Motion for Summary Judgment had been filed. (ECF No.
13 57). This filing was eight pages, and did not include any exhibits referenced in the opposition. Most
14 significantly, no proof of service on counsel for the United States was provided in the opposition.

15 4. On September 30, 2016, counsel for the United States was informed via ECF of an
16 Amended Opposition to the United States' Motion for Summary Judgment. (ECF No. 58). This
17 filing was thirty pages, and included a proof of service by regular mail dated September 29, 2016.
18 (ECF No. 58 at 9).


19 5. The Amended Opposition filed at ECF No. 58 included twenty pages of exhibits, and
20 in particular, Exhibit B(1) was a single piece of paper representing a photocopy of a DVD with the
21 handwritten notation, "NDSAA Conference USDA OIG." (ECF No. 58 at 10). The Amended
22 Opposition states in paragraph 11 that "Exhibit "B(1)" describe[sic] the same circumstances as found
23 in this present matter concerning Mom's Choice, but in the instance of Exhibit "B(1)" the USDA
24 stayed within the rules to invoke trafficking against the owner." (ECF No. 58 at 4, ¶ 11).

25 6. The DVD referenced as Exhibit B(1) was not produced in discovery, which closed in
26 this case on July 22, 2016. (ECF Nos. 46, 48) .
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ORDER

Having reviewed the ex parte request by the United States, and for good cause showing, it is ordered that the United States' reply to plaintiff's amended opposition to the Motion for Summary Judgment be filed on October 13, 2016. Hearing on the motion is continued to October 26, 2016 at 10:00 a.m. in courtroom no. 24.

Dated: October 4, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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