

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 10-cv-02103-PAB-KLM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

IRAQ ABADE, et al.,

Plaintiffs-Intervenors,

and

MARYAN ABDULLE, et al.,

Plaintiffs-Intervenors,

v.

JBS USA, LLC,
d/b/a JBS Swift & Company,

Defendant.

ORDER

This matter is before the Court on Defendant's Motion in Limine to Exclude the Testimony of Plaintiff's Expert Mark S. McNulty [Docket No. 520].

Defendant previously sought an extension of time to challenge the admissibility of Mr. McNulty's expert report and two supplemental expert reports on October 31, 2014. Docket No. 374. The Court denied the motion, except with respect to defendant's Fed. R. Civ. P. 26 challenges to Mr. McNulty's last supplemental report. Docket No. 426 at 8. The Court found that none of the four factors for finding

excusable neglect favored defendant. *Id.* at 3-5. Defendant filed a motion challenging Mr. McNulty's last supplemental report under Rule 26, but it was denied. Docket No. 453.

Defendant's prior motion, seeking leave to untimely challenge Mr. McNulty's reports, raised the same arguments as those found in the present motion. Namely, defendant argued (1) that Mr. McNulty's reports improperly rely on data beyond the events of Ramadan 2008, which defendant claimed was "well beyond the scope" of Phase I, Docket No. 374 at 3, and (2) that Mr. McNulty's testimony was inadmissible under Fed. R. Evid. 702 and 403. *Id.* at 6; *see also* Docket No. 520 at 3-4 (raising the same arguments). Defendant does not request reconsideration and cannot make these arguments timely in 2017 simply by restyling its untimely 2014 motion as a motion in limine. *See* Docket No. 501 at 1-2 (denying defendant's untimely motion to dismiss, which was filed three years after the relevant deadline). Accordingly, the Court will deny defendant's motion as untimely.

Accordingly, it is

ORDERED that Defendant's Motion in Limine to Exclude the Testimony of Plaintiff's Expert Mark S. McNulty [Docket No. 520] is **DENIED**.

DATED August 4, 2017.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge