

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**  
U.S. Magistrate Judge Gordon P. Gallagher

Civil Case No.: 11-cv-03182-REB-GPG

TIMOTHY SAWATZKY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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**ORDER REGARDING POSSIBLE MISFILING OF DOCUMENT 51**

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A discovery dispute with regard to this case has recently been referred to this Court for resolution. This involves document 48 (Plaintiff's Motion for Protective Order), document 49 (Plaintiff's Motion to Compel) document 51 (Defendant's Response) and document 52 (Defendant's Response). Replies have not yet been forthcoming.

Document 51 appears to have been filed in error. In particular, document 51 purports to be a response to document 36 which involves a similar but distinct discovery issue which was resolved in November. Document 51 specifically references document 36 and has a signature page indicating that it was filed on November 1, 2012 even though the CM/ECF filing date indicates that it was entered into the system on March 8, 2013. In addition, Defendant's Response in Document 52 specifically references facts in another document, assumedly document 51, which are absent.

The Court suspects that the wrong document inadvertently was attached and filed with CM/ECF. The Court attempted to resolve this matter informally. The Court's clerk has left two messages attempting to reach Defense Counsel Pestal regarding this filing and has been unsuccessful. The Court would like to get this matter resolved quickly so that an Order can be issued with regard to the discovery dispute.

Therefore, the Court ORDERS as follows:

The Defense shall have until the close of business on Tuesday, March 19, 2013 to correct the filing of document 51. Should the Defense choose to file a new document in place of document 51, any reply time which accrues to the Plaintiff shall begin upon the filing of Defendant's new document. Should Defendant choose not to file a new document in place of document 51, the Plaintiff's reply time began on March 8, 2013.

Dated March 14, 2013.

BY THE COURT:

s/ Gordon P. Gallagher

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Gordon P. Gallagher  
U.S. Magistrate Judge