

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

| | | |
|--------------------------|---|-------------------|
| THOMAS C. PORTA, et al., |) | |
| |) | |
| and |) | |
| |) | |
| ANDREW D. BARTH, et al., |) | No. 05-14210C |
| |) | & No. 05-759C |
| Plaintiffs, |) | |
| |) | CONSOLIDATED |
| v. |) | |
| |) | (Judge Firestone) |
| THE UNITED STATES, |) | |
| |) | |
| Defendant. |) | |

DEFENDANT’S MOTION TO ENLARGE TIME TO RESPOND TO DISCOVERY

Pursuant to the Court’s order on May 3, 2007, the United States files this motion to enlarge time to respond to a small subset of the discovery enumerated in the Court’s order on May 3, 2007. Our responses currently are due June 4, 2007 and we request additional time in order to complete production of these documents. (As discussed below, we intend to produce a substantial portion of the documents by June 4, 2007). This is the first enlargement of time being requested for this purpose. Plaintiffs’ counsel stated via telephone on May 24, 2007, that plaintiffs do not oppose an enlargement of time of two weeks, but do oppose a longer enlargement of time.

As the undersigned counsel stated during the conference with the Court on May 3, 2007, we anticipated that two issues might impair the United States’s ability to timely respond to the discovery ordered. First, counsel for Customs and Border Protection, Arthur I. Rettinger, the person with access to the sources of documents at Customs and Border Protection, was on an extended leave at the time of the May 3, 2007 conference. Declaration of Maame A.F. Ewusi-Mensah (“Ewusi-Mensah Decl.”) ¶¶ 2-3; Declaration of Arthur I. Rettinger (“Rettinger Decl.”)

¶¶ 2-3. Second, the agency involved with this case (as well as its personnel) has undergone substantial administrative reorganization during the time period covered by the discovery order, which makes the search for and collection of electronic documents as well as hard copy documents particularly difficult and time consuming.

Despite these challenges, counsel has endeavored to comply with the Court's discovery order in a timely manner by working with Mr. Rettinger's colleagues in his absence, and anticipates that it will be able to make a substantially complete production of documents in response to the order by the deadline of June 4, 2007. Ewusi-Mensah Decl. ¶ 4. Nevertheless, it appears that the defendant will be unable to complete its search for a small subset of potentially responsive documents, as discussed below. Accordingly, the defendant respectfully requests an enlargement of time to respond to the discovery set forth in the May 3, 2007 order.

In its May 3, 2007, order, the Court ordered production of the following categories of documents:

1. Correspondence, including emails, between Wayne Coleman and CBP employees regarding payment of overtime for the 6th day of training at the FLETC.
2. Correspondence, including emails, between Alethea Smalls and CBP employees regarding payment of overtime for the 6th day of training at the FLETC.
3. Correspondence, including emails, between Ronelle Rotterman and CBP employees regarding payment of overtime for the 6th day of training at the FLETC.
4. Materials sent to CBP employees explaining the retroactive overtime payment they received, as well as related documents.
5. A version of Plaintiffs' Exhibit 11 indicating the names of those people at the CBP who received it.

6. A complete copy of the document produced as MOR 188. (See attached.)

Counsel anticipates that the defendant will be able to produce documents responsive to Requests Nos. 4-6, or to document unsuccessful searches for these documents, by the June 4, 2007, deadline. In addition, counsel anticipates that defendant will be able to produce hard copy documents responsive to Requests 1-3, or document unsuccessful searches for these documents, by the June 4, 2007, deadline.

The primary source of delay for the production of documents has been the search for emails responsive to Requests Nos. 1-3. The information technology personnel of Customs and Border Protection have conducted an initial search for responsive emails based upon the “*subject line*” of the emails in the accounts of the three named individuals. Counsel is reviewing these documents, and will be able to produce responsive, non-privileged documents by the June 4, 2007, deadline. To conduct a search for responsive emails based upon the *text* of the emails in these individuals’ accounts, however, may take an additional two months or more because of the limitations of the technology used by Customs and Border Protection to store and search these email accounts and the fact that Customs and Border Protection staff responsible for these searches are currently engaged in a large technology migration involving CBP’s email software. Ewusi-Mensah Decl. ¶¶ 5-7; Rettinger Decl. ¶¶ 7-9. CBP’s information technology personnel have stated that they will be able to provide a cost and time estimate of the search to the undersigned counsel by the June 4, 2007, deadline. Id. We will inform opposing counsel and the Court of this information at that time for scheduling purposes. Once the search is completed, the undersigned counsel will require additional time to review the resulting emails for

responsiveness and for privilege. We sincerely regret any inconvenience this causes the parties or the Court, and will work with opposing counsel in an effort to develop search parameters which might shorten the length of time needed for the search.

For these reasons, we respectfully request that the Court grant our motion for an enlargement of time to complete our response to the discovery requests set forth in the Court's May 3, 2007 order.

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

JEANNE E. DAVIDSON
Director

s/ Kathryn A. Bleecker
KATHRYN A. BLEECKER
Assistant Director

s/ Maame A.F. Ewusi-Mensah
MAAME A.F. EWUSI-MENSAH
Trial Attorney
Commercial Litigation Branch
Civil Division
Department of Justice
Attn: Classification Unit
8th Floor
1100 L Street, NW
Washington, D.C. 20530
Tel: (202) 353-0503
Fax: (202) 514-8624

May 24, 2007

Attorneys for Defendant

CERTIFICATE OF FILING

I hereby certify that on this 24th day of May 2007, a copy of the foregoing
“DEFENDANT’S MOTION TO ENLARGE TIME TO RESPOND TO DISCOVERY” was filed
electronically. I understand that notice of this filing will be sent to all parties by operation of the
Court’s electronic filing system. Parties may access this filing through the Court’s system.

s/ Maame A.F. Ewusi-Mensah