

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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| 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 SUPPLEMENT
TO MOTION TO ENLARGE TIME TO RESPOND TO DISCOVERY

Pursuant to the Court’s direction on May 30, 2007, the United States files this supplement to its motion to enlarge time to respond to the discovery enumerated in the Court’s order on May 3, 2007. On May 30, 2007, the Court directed the undersigned counsel to indicate, by June 4, 2007, how much additional time would be needed for the United States to respond to the aforementioned discovery. The United States wishes to ask for a stay of its motion to enlarge time for two weeks, through and including June 18, 2007. This is a supplement to the first enlargement of time requested for this purpose. Plaintiffs’ counsel stated via telephone on June 4, 2007 that plaintiffs do not oppose this stay.

As the undersigned counsel stated during the conference with the Court on May 30, 2007, the information technology (“IT”) personnel of Customs and Border Protection (“CBP”) anticipated that they would be able to provide a preliminary estimate of the time and cost of additional searches of the text of CBP emails by June 1, 2007. CBP’s IT personnel estimate preliminarily that conducting the additional searches requested will take approximately six

months at a cost of nearly \$45,000. Accordingly, the United States intends to file for a protective order preventing this discovery on the ground that it is unduly burdensome and expensive. Rules of the Court of Federal Claims (“RCFC”) 26(c); cf. Federal Rules of Civil Procedure 26(b)(2)(B) (“A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost.”). The undersigned counsel has discussed with plaintiffs’ counsel the possibility of reaching an amicable solution to this discovery dispute. For example, the United States is willing to conduct a small number of additional, targeted “subject line” searches (which are less costly and less time consuming) in an attempt to locate additional responsive documents. To that end, the United States will produce to plaintiffs’ counsel this week the documents resulting from the searches that have been conducted this far. Plaintiffs’ counsel agreed that after he has had the opportunity to review these documents, he is willing to discuss with the undersigned counsel whether additional “subject line” searches might suffice and obviate the need for the United States to file a motion for a protective order.

In addition, in the event that an amicable resolution with plaintiffs is not reached, the United States requires time to prepare its motion for protective order, and, in particular, to prepare a supporting declaration from the CBP’s IT personnel setting forth the cost and time estimates of such a search. Accordingly, the United States will require a stay of its motion by two weeks to discuss with plaintiffs the possibility of an amicable resolution to this discovery dispute, and, if necessary, to prepare a motion for a protective order with supporting declaration.

For these reasons, we respectfully request that the Court grant our request to stay our motion for two weeks, through and including June 18, 2007.

Respectfully submitted,

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Director

s/ Kathryn A. Bleecker
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June 4, 2007

Attorneys for Defendant

CERTIFICATE OF FILING

I hereby certify that on this 4th day of June 2007, a copy of the foregoing
“SUPPLEMENT TO 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