

BENJAMIN C. MIZER  
 Principal Deputy Assistant Attorney General  
 Civil Division

ANTHONY J. COPPOLINO  
 Deputy Branch Director  
 Federal Programs Branch

AMY POWELL  
 BRIGHAM J. BOWEN  
 SAMUEL M. SINGER  
 amy.powell@usdoj.gov  
 brigham.bowen@usdoj.gov  
 U.S. Department of Justice  
 Civil Division, Federal Programs Branch  
 20 Massachusetts Avenue, N.W  
 Washington, D.C. 20001  
 Phone: (202) 514-9836  
 (202) 514-6289  
 Fax: (202) 616-8470

*Attorneys for Defendants*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

AYMAN LATIF, et al.,  <i>Plaintiffs,</i>	Case 3:10-cv-00750-BR
v.  LORETTA E. LYNCH, et al.,  <i>Defendants.</i>	MOTION FOR EXTENSION OF TIME TO FILE REPLY

Defendants request an extension of time to file their reply in support of their cross-motion for summary judgment, which is currently due on September 23, 2015. When the Court granted leave to Plaintiffs to submit declaration testimony from Plaintiffs’ putative expert witnesses, the Court noted that “[i]f Defendants require additional time to prepare their reply memoranda in

light of Plaintiffs' proffer of expert declarations, then the Court will consider any motion for an extension of time in due course." June 18, 2015 Minute Order. After weighing Defendants' potential avenues for response, Defendants are seriously considering and presently expect to submit additional declarations to address the opinions of Plaintiffs' putative experts.<sup>1</sup> The process of determining Defendants' approach, and then of identifying and securing appropriate declarants, has been underway since Plaintiffs filed their submissions, and Defendants have worked and will continue to work with all due diligence to prepare their responses and supporting materials. However, the materials presented by plaintiffs were extensive, and Defendants require additional time to consider and prepare their response. In addition, travel schedules of potential declarants and other officials have hindered the Government's deliberations. Moreover, Defendants' counsel face upcoming scheduling conflicts arising from competing litigation demands, including an urgent matter that will require substantial attention from all three undersigned counsel during the weeks of September 14 and 21. For these reasons, Defendants hereby request additional time to prepare and finalize their submissions and respectfully move the Court to extend their reply deadline to October 14, 2015.

Plaintiffs have advised that they object to Defendants' request, on the sole grounds that "we do not think that declarations on reply—presumably making impermissible new arguments or asserting impermissible new facts—are appropriate," and that granting the extension would cause "delay" threaten the argument date, currently set for October 19, 2015. In addition to these objections, Plaintiffs have asked Defendants to note that Plaintiffs wish to "reserve the right to supplement our objection after seeing your request."

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<sup>1</sup> In stating this intention, Defendants do not concede the admissibility of Plaintiffs' purported expert testimony, nor do Defendants waive the right to seek expert discovery, retain competing experts, and/or to file motions *in limine* concerning Plaintiffs' submissions, in the event Defendants' motion for summary judgment is not granted in their favor.

Plaintiffs' objections are unfounded and should be rejected. On the question of potential submissions, as noted above, any additional evidence Defendants submitted on reply would address new arguments and issues raised for the first time in Plaintiffs' cross-motion and reply. Such submissions are entirely appropriate. *See Saguario Med. Assocs., P.C. v. Banner Health*, No. CV-08-1386 PHX-DGC, 2009 U.S. Dist. LEXIS 103432, at \*23-24 n. 9, 2009 WL 3740700 (D. Ariz. Nov. 6, 2009) (noting that a declaration submitted for the first time in the reply was permitted because it was "rebuttal evidence" that responded to allegations made in the opposition); *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 477 (6th Cir. 2002) ("While the Rules are silent as to timing matters with reply affidavits, precedent establishes that, in the face of new evidence, the court should permit the opposing party an opportunity to respond" so long as no element of surprise or prejudice is created by doing so.').

Moreover, Plaintiffs' attempt to artificially close the factual record — after they opened it by submitting new materials with their opposition/reply — is manifestly prejudicial to Defendants. Plaintiffs' putative "expert" submissions and related arguments, which easily could have been submitted with and raised in Plaintiff's opening brief — and should have been — introduced a wide range of new issues into the matters in dispute between the parties, including new arguments concerning statistical probability, behavioral prediction standards, and scientific modeling. It would be plainly unjust for Defendants to be deprived of the opportunity to fully develop the record with facts and evidence in opposition to Plaintiffs' novel contentions. *Peters*, 285 F.3d at 477.

Finally, Plaintiffs' reliance on "delay" as a purported basis to object to Defendants' request is both surprising (considering the multiple and lengthy extensions Plaintiffs have received in order to prepare their papers) and meritless. In light of the numerous reasonable

grounds Defendants have presented for their modest request, Plaintiffs' naked objection to "delay" should be dismissed out of hand.

For the foregoing reasons, Defendants respectfully request an extension of time to file their reply in support of their motion for summary judgment to October 14, 2015. Defendants will be available for a rescheduled hearing date after a full, fair record has been prepared and submitted, and at a time that accommodates the Court's need to review all the submissions thoroughly and for the parties to prepare for argument based on the entire record.

Dated: September 14, 2015

Respectfully Submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General  
Civil Division

ANTHONY J. COPPOLINO  
Deputy Branch Director  
Federal Programs Branch

*s/ Brigham J. Bowen*  
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BRIGHAM J. BOWEN  
AMY POWELL  
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amy.powell@usdoj.gov  
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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion was delivered to all counsel of record via the Court's ECF notification system.

*s/ Brigham J. Bowen*  
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BRIGHAM J. BOWEN