

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

TRACEY K. KUEHL, et al.,	)	
	)	Case No. C14-02034-LRR
Plaintiffs,	)	
v.	)	
	)	<b>Motion for Permission to File</b>
PAMELA SELLNER, et al.,	)	<b>Authenticated Records Out of</b>
	)	<b>Time or in the alternative for an</b>
Defendants.	)	<b>Extension of Time to File</b>
	)	<b>Dispositive Motions</b>
	)	

This case involves alleged violations of the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, and the accompanying U.S. Fish & Wildlife regulations, 50 C.F.R. § 17.1 *et seq.*, that are predicated upon the United States Department of Agriculture (USDA)'s repeated citations of defendants' zoo for non-compliance with the Animal Welfare Act 7 U.S.C. § 2131 *et seq.* Those non-compliance citations are documented by USDA inspectors in inspection reports that are shared with defendants after each of USDA's site visits as well as letters from USDA officials to defendants. Prior to filing this lawsuit, in spring 2014, Plaintiffs obtained copies of records related to defendants' compliance status under the Animal Welfare Act from the USDA through a Freedom of Information Act request. Plaintiffs produced all of those records to defendants in discovery, and Plaintiffs intend to use these inspection reports in support of a motion for summary judgment due June 1, 2015.

According to Federal Rule of Evidence 902, these records are self-authenticating and can be admitted for use in court so long as they are certified by a custodian of records for the federal agency. On April 6, 2015, undersigned counsel formally requested certification of “previously released records” under 7 CFR § 1.22 so that Plaintiffs could use USDA’s records in support of their motion for summary judgment. Since initially filing the request for certification of previously released records with the USDA, undersigned counsel has diligently followed up with USDA FOIA staff in an effort to secure timely certification of the records. Undersigned counsel emailed or telephoned FOIA staff on April 8, April 22, April 23, April 29, May 7, May 18, May 20, 2015, and May 27. USDA has declined to expedite dispute being advised of dispositive motions being due June 1. To date, undersigned counsel has not received certification of records from the USDA; nor has she received confirmation from FOIA staff that the records are forthcoming by a date certain.

According to this Court’s approved Scheduling Order and Discovery Plan, the deadline for filing of dispositive motions is June 1, 2015. Undersigned counsel is prepared to meet this Court’s dispositive motions deadlines and intends to file Plaintiffs’ motion on June 1, as ordered; however, at this time undersigned counsel does not believe she can support Plaintiffs’ motion with authenticated records from USDA on that date. Undersigned counsel attempted to contact opposing counsel on May 20 by email and telephone call and May 27 by email in an effort to obtain

opposing counsel's consent to this motion but was unable to speak with him.

Opposing counsel has not yet responded to undersigned counsel.

**Therefore**, undersigned counsel requests permission from this Court to file Plaintiffs' dispositive motion with previously released USDA records obtained through FOIA, rather than authenticated records. Undersigned counsel will submit the authenticated records once they have been certified by USDA. In the alternative, undersigned counsel requests an extension of time of fifteen days in order to give USDA FOIA staff more time to certify previously released USDA inspection records of defendants' zoo, which is the subject of this litigation.

Respectfully submitted,

*/s Jessica L. Blome*

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**Verification of Counsel**

I, Jessica L. Blome, am counsel of record, and I certify that the foregoing is true to the best of my knowledge and belief.

May 28, 2015  
Date

/s Jessica L. Blome  
Jessica L. Blome

**Certificate of Service**

I certify that a copy of this Motion was delivered to all counsel of record through the Court's electronic case filing system this 28<sup>th</sup> day of May, 2015.

/s Jessica L. Blome  
Jessica L. Blome