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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

<p>EAGLE BEAR, INC.</p> <p>Plaintiff,</p> <p>v.</p> <p>THE BLACKFEET INDIAN NATION, and DARRYL LaCOUNTE, DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS</p> <p>Defendants.</p>	<p>Cause No. 4:22-cv-00093-BMM</p> <p><b>BLACKFEET NATION'S RESPONSE IN OPPOSITION TO EAGLE BEAR INC.'S MOTION FOR ADDITIONAL TIME TO COMPLETE SUPPLEMENTAL DISCOVERY AND BRIEFING</b></p>
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COMES NOW the Defendant Blackfeet Indian Nation, and respectfully submits its Response in Opposition to Eagle Bear Inc.'s Motion for Additional Time to Complete Supplemental Discovery and Briefing, as follows:

Eagle Bear seeks another unnecessary and prejudicial delay to continue illegally occupying Blackfeet Indian Nation land without a lease.

On April 19, 2023, this Court granted “Eagle Bear’s request for leave to conduct additional discovery related to the documents the BIA produced on March 31, 2023.” Doc. 98 at 5 (emphasis added). It did not grant leave for continuation of a very broad search of government emails, without limitation as to time and scope. The reason for Eagle Bear’s request to extend the June 2 deadline is not within the scope of the Court’s Order and does not provide Eagle Bear a valid reason to delay taking the depositions it claims it needs to conduct during this brief extended discovery period, in order to effectively brief the relevant summary judgment issues.

The Court set this fast-track schedule in an apparent recognition of the need to resolve this matter quickly and without further delay. At the status conference on October 17, 2022, the Court stated that it planned to get the Parties a ruling before the tourist season begins, (Doc. 9) and as it now sits, because of the federal government’s continued lack of diligence, we are beyond that time. Any further delay will frustrate the Court’s schedule and is extremely prejudicial to the Blackfeet Nation.

As set forth in its Brief in Support of Motion to Reopen Discovery, Eagle Bear’s principal reason for reopening discovery is as follows:

*In order to mitigate the effect of the BIA’s belated disclosure of this information, Eagle Bear requests the opportunity to conduct the discovery it would have conducted and incorporate the Pease Emails*

*into its briefing in the ways it would have done if the BIA had timely disclosed the Pease Emails.*

Doc. 93 at 5 (emphasis added).

Thus, Eagle Bear’s Motion to Reopen Discovery is solely related to the Pease Emails and incorporating the Pease Emails into its briefing. To that end, Eagle Bear’s Motion requests: (1) Leave to conduct additional discovery related to the Pease Emails; (2) Leave to file supplemental briefing; and (3) that the Court defer ruling on the Motions for summary judgment until the foregoing discovery and supplemental briefing is complete. Doc. 92 at 1-2. Eagle Bear did not request leave for continuation of its discovery dispute with the BIA and facilitate a “more comprehensive search effort” of further BIA emails. *Id. compare with* Doc. 100-1 at 3.

Nowhere in Eagle Bear’s Motion to Reopen Discovery or supporting Brief did it express any concern about BIA’s email search protocols. This is especially important, when *before* Eagle Bear filed its Motion, it had “continuing concerns about the BIA’s searches and its efforts to identify all documents responsive to Eagle Bear’s discovery requests.”<sup>1</sup> Doc. 100-1 at 1-3, Email from Attorney Griffin Stevens to Assistant U.S. Attorney’s Lynsey Ross and John Newman, dated April

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<sup>1</sup> The Blackfeet Nation was unaware of the discovery correspondence between counsel for Eagle Bear Inc. and the U.S. Attorney’s Office until May 4, 2023, after undersigned requested that counsel for Eagle Bear serve the Blackfeet Nation with discovery requests and responses, pursuant to Fed. R. Civ. P. 5.

4, 2023, at 12:52PM. In other words, Eagle Bear represented to this Court and the other Parties that it only wanted discovery reopened for a limited purpose. That was the scope of the Court's Order permitting Eagle Bear's request for additional discovery and Eagle Bear should not have expanded its current discovery pursuits beyond that limited purpose.

Under Fed. R. Civ. P. 56(d), a party opposing a summary judgment motion that seeks to reopen discovery, like Eagle Bear, must make clear what information is sought and how it would preclude summary judgment. *Tatum v. City & Cty of San Francisco*, 441 F.3d 1090, 1100 (9<sup>th</sup> Cir. 2006) (citations omitted). Eagle Bear has never done that. Now it seeks to go beyond the scope of its originally represented discovery mission, again without making the required showing.

By failing to raise its concerns about BIA's discovery efforts in its Motion, Brief and Supporting Rule 56(d) Affidavit, and failing to express what, if any, information is sought from further discovery, Eagle Bear waived its right to seek further discovery, and its Motion for Additional Time should be denied on that basis alone. The Court should not authorize the additional delay that Eagle Bear now requests, especially where Eagle Bear cannot articulate what, if anything, it believes it will discover from the now broadened discovery pursuits.

Indeed, Eagle Bear's only stated reason for reopening discovery originally was to depose BIA staffers Pease, Wagner and Tatsey (again) and issue follow-up

written discovery – because it would allegedly “reveal information material to this case and to Eagle Bear’s position on summary judgment in this matter.” Doc. 93-3 at 2 ¶ 8. That was the only stated reasoning for its then existing pursuit to reopen discovery.

Yet, contrary to Eagle Bear’s Motion and the Court’s April 19<sup>th</sup> Order, Eagle Bear requested, and the BIA undertook, “a broad search to include anything potentially responsive [to all of Eagle Bear’s discovery requests]” which has “resulted in over 150,000 emails without the targeted structure.” Doc. 100-2 at 6, Email from Lynsey Ross dated May 3, 2023. The U.S. Attorney’s Office, however, “was able to reduce the number of results from over 150,000 down to approximately 1,000” emails. Doc. 100-2 at 1. The U.S. Attorney’s Office has also represented that production of those approximately 1,000 emails will be completed today, May 11, 2023. Doc. 100-3 at 1.<sup>2</sup> That provides the Parties with enough time to review the emails, depose witnesses and file the 1,500 word supplement brief solely related to the March 31, 2023 BIA discovery production, by June 2, 2023.

Eagle Bear’s discovery efforts are based on pure speculation and *ad nauseum* are outside of the Court’s April 19<sup>th</sup> Order. They are also contrary to case

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<sup>2</sup> The U.S. Attorney’s Office has represented that at least some of the contents of the emails is unrelated to this litigation, such “employment action (hiring etc.)” which should necessarily reduce time for the parties to review them. *See* Doc. 100-3 at 1.

law governing reopening discovery pursuant to Fed. R. Civ. P 56(d). *California v. Campbell*, 138 F.3d 772, 779-80 (9<sup>th</sup> Cir. 1998)(the evidence sought must be more than “the object of pure speculation.”); *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9<sup>th</sup> Cir. 2008)(requiring “specific facts” be enumerated to seek to reopen discovery pending summary judgment); *Margolis v. Ryan*, 140 F.3d 850, 854 (9<sup>th</sup> Cir. 1998)(movant must provide a basis and factual support to reopen discovery); *Continental Maritime v. Pacific Coast Metal Trades*, 817 F.2d 1391, 1395 (9<sup>th</sup> Cir. 1987) (“the party seeking a continuance bears the burden to show what specific facts it hopes to discover that will raise an issue of material fact”). Eagle Bear has not provided any valid argument or reason to extend the June 2 deadline and the Court should not do so.

While the BIA has not been forthcoming in this litigation, Eagle Bear did not express its continued concerns about the BIA’s lack of diligence in its April 4, 2023 Motion to Reopen Discovery – it was strictly focused on the March 31, 2023 production, *i.e.* the Pease Emails. Eagle Bear is attempting to capitalize on the BIA’s culpable discovery practices once again, by requesting a near 6-week extension after June 2, so Eagle Bear can continue to illegally occupy Blackfeet Nation land for yet another tourist season. This Court should prevent such inequity from occurring and deny Eagle Bear’s Motion. Any other result will severely prejudice the Blackfeet Nation.

Counsel for the Blackfeet Nation requested that counsel for Eagle Bear notice the depositions it claims it needs to take as soon as possible. Doc. 100-2, at 3-4. But counsel for Eagle Bear has refused, and instead, has endeavored to further its unwarranted discovery efforts outside of its April 4, 2023 Motion, and the scope of the Court's April 19<sup>th</sup> Order. Allowing Eagle Bear to further delay this case over speculative discovery is prejudicial and should not be allowed.

Counsel for Eagle Bear represented to all parties on May 4 that "I am hopeful that we can (sic) do the depositions between May 17 and 19, but if we can't or if additional documents are likely to surface, we will have to deal with that fact." Doc. 100-2, at 3. The U.S. Attorney's Office has represented that all documents will be available with enough time for review before the May 17 - 19 deposition dates, and Eagle Bear should be held to conducting such depositions during those times.

For these reasons, the Blackfeet Nation respectfully requests that Eagle Bear's Motion be denied.

DATED this 11<sup>th</sup> day of May, 2023.

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_Derek E. Kline\_\_\_\_\_

Attorney for Defendant  
Blackfeet Nation

### **CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(d)(2), I hereby certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 point; is double-spaced; and the word count, calculated by Microsoft Office Word, is not more than 4,000 words, excluding the Caption, and the Certificate of Compliance and Certificate of Service.

/s/ Derek E. Kline

### **CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify under the penalty of perjury that on the 11<sup>th</sup> day of May, 2023, a copy of the foregoing was served by electronic means to the parties noted in the Court's ECF transmission facilities.

/s/ Derek E. Kline