

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

EMPOWER OVERSIGHT)
WHISTLEBLOWERS & RESEARCH,)
601 King Street, Suite 200)
Alexandria, VA 22313-3151)

Plaintiff,)

No. 1:21-cv-01370-RDA-TCB

v.)

U.S. SECURITIES AND EXCHANGE)
COMMISSION,)
100 F Street NE)
Washington, DC 20549)

Defendant.)

**UNOPPOSED MOTION FOR A 19-DAY EXTENSION OF TIME
TO FILE AN OPPOSITION TO SUMMARY JUDGMENT**

Under Local Rule 7, Empower Oversight respectfully moves this Court for a 19-day extension of time to file its opposition to the SEC’s motion for summary judgment. The SEC does not oppose this motion; the agency suggested the changes to the briefing schedule. A proposed order is attached.

On December 8, 2021, Empower Oversight filed this action against the SEC for failing to comply with the Freedom of Information Act, 5 U.S.C. § 552. The SEC initially issued “no records” responses to Empower Oversight’s FOIA requests. But the agency eventually produced responsive documents on February 22, 2022, after Empower Oversight filed an administrative appeal.

On April 7, 2022, this Court entered an order requiring the parties to file a joint statement as to discovery, summary judgment, and a proposed briefing schedule. Dkt. No. 12. The parties filed three status reports. *See* Dkt. Nos. 13, 18, 19. In each report, the SEC explained that a subset of responsive records were subject to the agency’s confidential treatment procedure and that those

documents had not yet been produced. On June 17, 2022, the Court ordered the parties to file a joint motion to set the summary judgment briefing schedule. Dkt. No. 20.

The parties filed a joint motion, Dkt. No. 21, and the Court granted the motion, Dkt. No. 22. On August 2, 2022, Empower Oversight moved for leave to file an amended complaint. Dkt. No. 23. The amended complaint alleges that the SEC failed to comply with statutory deadlines (Count I), that the SEC failed to conduct a reasonable search for responsive records (Count II), and that the SEC failed to provide the requested records or the reasonably segregable portion of records not subject to a FOIA exemption (Count III). The parties conferred and agreed to a new briefing schedule. The Court granted Empower Oversight's motion to file the amended complaint, and the Court ordered the parties to file any motions for summary judgment on or before August 31, 2022. Dkt. No. 24.

On August 30, 2022—one day before the deadline to move for summary judgment—the SEC provided a “supplemental release” of nearly 1,500 pages of previously produced responsive records to Empower Oversight, but with some unspecified redactions lifted. In an email, the SEC's Office of FOIA Services apologized to Empower Oversight “for any inconveniences this may have caused” (apparently referring to the eleventh-hour release of modified records). Although the SEC indicated that the supplemental production includes only newly *unredacted* versions of previously produced responsive records, the SEC confirmed that it failed to clearly mark which redactions were removed by the agency in its supplemental production. Empower Oversight asked follow-up questions about whether the SEC had internal records as to which redactions it had removed, but the agency declined to answer those questions. In a September 2, 2022, email responding to Empower Oversight's efforts to clarify what new information had been produced, the Office of FOIA Services explained that the “newly unredacted information consists of certain email addresses and Simpson Thacher client names,” but that a “page to page comparison should be performed for an accurate analysis of these records.”

The supplemental production includes non-searchable PDF images. Empower Oversight diligently has been reviewing these records page-by-page. At the same time, Empower Oversight

also has been working diligently to prepare its opposition to the SEC’s motion for summary judgment, which the agency filed on August 31, 2022, along with several exhibits. *See* Dkt. Nos. 27, 28.

The opposition is currently due no later than September 14, 2022. Empower Oversight requests an additional 19 days of time, up to and including October 3, 2022, to file its opposition. Good cause exists for the Court to grant this request, as the SEC proposed this modification to the briefing schedule. Empower Oversight reasonably seeks additional time to complete the page-by-page review of nearly 1,500 pages of “supplemental” records that the SEC produced only one day before it moved for summary judgment. The additional time will not be prejudicial to the SEC, as the Court also may amend the scheduling order to require the SEC to file its reply eight days after Empower Oversight files its opposition—i.e., on or before October 11, 2022.

* * *

Empower Oversight requests that the Court grant its motion for a 12-day extension of time to file its opposition and that the Court issue an order amending the schedule to require:

- Filing the opposition to summary judgment on or before Monday, October 3, 2022; and
- Filing a reply in support of the motion for summary judgment on or before Monday, October 11, 2022.

Respectfully submitted,

/s/ Jeffrey S. Beelaert

Jeffrey S. Beelaert (VSB No. 81852)
STEIN MITCHELL BEATO & MISSNER LLP
901 15th Street NW, Suite 700
Washington, DC 20005
Tel: (202) 661-0923
Fax: (202) 296-8312
Email: jbeelaert@steinmitchell.com

*Attorney for Plaintiff Empower Oversight
Whistleblowers & Research*

September 7, 2022