

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED FOOD AND
COMMERCIAL WORKERS UNION,
LOCAL No. 663, *et al.*,

Plaintiffs,

Case No. 0:19-cv-02660-JNE-TNL

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

v.

UNITED STATES DEPARTMENT
OF AGRICULTURE,

Defendant.

Plaintiffs hereby notify the Court of supplemental authority in support of their opposition to Defendants' motion to stay summary-judgment proceedings and for voluntary remand (ECF 40). In *Keltner v. United States*, No. 19-663C, 2020 WL 2957175 (Fed. Cl. June 3, 2020),¹ the court engaged in a thorough discussion of the law of voluntary remands, addressing many of the same cases and other authorities addressed in Plaintiffs' opposition, and finding it "clear" that, to obtain a voluntary remand, "the agency must express some intent to reconsider the original agency decision that is the subject of the legal challenge, after which the

¹ Although this decision was issued prior to the filing of Plaintiffs' opposition on June 5, 2020, due to the lag in publication, Plaintiffs did not learn of this decision until after their opposition was submitted.

court has discretion to grant or deny the motion.” *Id.* at *5-*11.

Applying that standard and employing reasoning that applies equally to USDA’s request here, *Keltner* denied the agency’s request for a remand. The court noted that:

the government does not wish to “reconsider” the original decision at all. Rather, the government seeks a remand simply so that the [agency] can bolster its reasons for denying [plaintiff]’s claim, presumably so that the [agency]’s decision would then have a higher chance of withstanding subsequent judicial scrutiny. That proffered justification for remand is no justification at all.

Id. at *12. Just as Plaintiffs argued in their opposition, ECF 49 at 13–17, the court noted that there is no support for “grant[ing] a motion for voluntary remand when the government’s primary goal on remand is to write a better decision for a predetermined outcome.” *Id.* at *13.

Given that the administrative record was sufficient to allow a prompt resolution of plaintiff’s claims on the merits, the court concluded that “a remand would not ‘further the interests of justice,’ but would delay this case further and serve to only potentially improve the government’s litigation posture.” *Id.* at *13.

The same applies here. *See* ECF 49 at 35–36.

Dated: June 8, 2020

Respectfully submitted,

s/ Adam R. Pulver

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