



Cheema's Supermarket v. United States Department of Agriculture

2019 | Cited 0 times | D. Massachusetts | March 12, 2019

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

RIFAT M. CHEEMA d/b/a/) SUPERMARKET) Plaintiff,) CIVIL ACTION v.) NO. 17-10055-JGD
UNITED STATES,) Defendant.)

MEMORANDUM OF DECISION AND ORDER

March 12, 2019 DEIN, U.S.M.J.

I. INTRODUCTION This matter is before the court on the defendant the United States Department of Motion for Summary Judgment. (Docket No. 52). The plaintiff Rifat M. order to contest an agency ruling which found

Nutrition Assistance Program benefits, and which disqualified that trial that the a present credible evidence at this stage of the case on which a jury could reasonably find for

For the reasons herein, the court rule make that showing. This court, therefore, ALLOWS Motion and grants summary judgment in its favor.

II. STATEMENT OF FACTS 1 The following facts are undisputed unless otherwise indicated. 2

SNAP Benefits The , established through the Food Stamp Act, 7 U.S.C. § 2011, et seq., is intended [and] to safeguard the health and well- among low- . (DF ¶ 1). SNAP is operated by the Food and

. (Id. ¶ 2). Through SNAP, eligible participants are

1 ‘ M. Cheema, Rifat M. Cheema, Nusrat Cheema, and Ishrat Cheema (Docket No. 63-1 at 1-16) (collectively, . the affidavits of Asim Sadig and Isam (Docket No. 63-1 at 17-19) (together, . .R. argument that the Customer Affidavit should not be considered because the identities of the two

individuals were never disclosed to the defendant ‘ fails to submit evidence necessary to meet their burden even with the Customer Affidavit, this court

2 See L.R. Opposition[s] to motions for summary judgment must be filed, unless the court orders otherwise, within 21 days after the motion is served. A party opposing the motion shall include a



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concise statement of the material facts of record as to which it is contended that there exists a genuine issue to be tried, with page references to affidavits, depositions and other documentation. party does not submit a statement of facts in compliance with Local Rule 56.1, the defendant facts are deemed admitted. Id. (all facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless Brown v. Armstrong, 957 F. Supp. 1293, 1297- Memorandum (Docket No. 63) Pl. cites largely to the d ‘ However, in that same factual also inserts citations to certain pieces of evidence attached to its Memorandum. As set forth below, this court will consider the evidence submitted in this fashion, but otherwise deems the d allotted funds to spend on certain food items. SNAP funds are used by beneficiaries through , which are loaded monthly and operate in a similar fashion to debit cards. (Id. ¶¶ 3-5).

EBT cards can be used at approved stores on approved items. (Id. ¶ 6). For example, SNAP regulations provide that certified retail stores cannot accept EBT benefits for particular goods including alcohol, cigarettes, tobacco, lottery tickets, pet foods, soaps, paper products, household supplies, vitamins, medicines, and hot prepared foods. (Id. ¶ 15). FNS certifies stores to participate in the program and classifies each store based on its size and the types of goods sold. (See id. ¶¶ 8-14).

A retail store that violates SNAP regulations may be subject to civil penalties or disqualification from the program. (Id. ¶ 17). One such regulation is the prohibition on retail stores from exchanging EBT benefits for cash, which is considered trafficking. (Id. ¶¶ 18-19). Regulators monitor EBT transactions in order to detect suspicious behavior. All EBT transactions are recorded in a database maintained by the USDA. (Id. ¶ 21). The database records the date, time, and amount of each transaction, and the store and household identification numbers related to each. (Id. ¶23) also recorded after each transaction. (Id. ¶ 24). The database has the capacity to produce certain reports of suspicious activity known as Anti-Fraud Locator using EBT Retailer Transactions, or reports. (Id. ¶ 25). FNS, and its Investigative Analysis Branch, is responsible for monitoring stores and investigating suspicious activity. (Id. ¶¶ 31-32).

If an investigation results in disciplinary action by FNS, administrative and judicial review is conducted pursuant to 7 C.F.R. §§ 278, 279. Where, as here, FNS permanently disqualifies a store for trafficking benefits, the disqualification is effective from the date the retailer receives notice of the decision. 7 U.S.C. § 2023(a)(18). A retailer may request review of a penalty from an Administrative Review Officer . 7 U.S.C. § 2023(a)(3); 7 C.F.R. § 279.2. The ARO is then charged with making a final agency determination. 7 U.S.C. § 2023(a)(5); 7 C.F.R. 279.5. Once that final determination has been made, a retailer can seek review in federal court. 7 U.S.C. § 2023(a)(13).

(DF ¶ 39). Brothers Farhat, Nusrat, and Rifat Cheema own the store. (Id. ¶ 41). 3

became authorized to accept SNAP benefits. (Id. ¶ 42). to accept



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SNAP benefits as a retail store, but not as a wholesaler. (Id. ¶ 47). originally was classified as small grocery store for SNAP purposes and was later reclassified as a combination store/other in 2011. (Id. ¶ 43). . Id. ¶ 53). The store is approximately 1300 square feet, has a single cash register, and has no scanning devices. (Id. ¶¶ 44-45). offers customers small handheld baskets as opposed to large shopping carts. (Id. ¶ 50). At all times, one of the Cheema brothers works the cash register and uses a calculator to tally purchases. (Id. ¶ 45).

loyal customers who travel long distances to shop at the store. (. ¶ 4) 3

In his affidavit, brother Ishrat Cheema asserts that he is also a part owner. (at 13). that the store specializes in unique Halal meats, much of which is sold at a significant markup. (Id. ¶¶ 4, 10). The store alleges that its customers often buy Halal meat for an entire month at (Id. ¶¶ 11, 14; . ¶ 6). the owners carries meat orders to the checkout counter for customers and that most orders fit

within typical shopping bags. (. ¶ 9) customers place orders with us over the phone, and then come in at a later time to pick up

their order. When (Id. ¶ 12). Since the purchases are pre-tallied

common make purchases beyond the meat. Oftentimes, these customers swipe their cards twice: once for the items ordered by phone, and a second time for the items picked up in-person. (Id.; . ¶ 3). In order to keep track of the large amount of others use a notebook, replaced about every three months. (Pl. Mem. at 9- , submitted as Ex. C and produced to the court at Docket No. 65)).

The Trafficking Investigation Before June of 2015, the ALERT system discovered suspect transactions from . (DF ¶ 51). Thereafter, FNS commenced an investigation into potential trafficking. (Id. ¶ 52). and August of 2015. (Id.). On September 28, 2015, an FNS , where (Id. ¶¶ 52-53). After the store visit, Program ing layout, storage capabilities, inventory, available equipment, the trans- those of comparable stores. (Id. ¶¶ 54, 55).

benefit trafficking. (Id. ¶¶ 56, 57). The letter informed the brothers that the Agency was con-

lleged conduct. (Id.). The Charge Letter detailed the suspicious transactions underlying the decision, and grouped suspicious activity into four categories. (Id. ¶ 58). The trafficking charge was based on: (1) multiple transactions made too rapidly to be credible; (2) multiple transactions made from individual accounts in short time frames; (3) transactions where all or most of an allotment of benefits were used in a short time frame; and (4) unusually large transactions. (Id.). The Charge Letter individual violations. (Id. ¶ 70). The Charge Letter allowed for (Id. ¶ 71) th two fax submissions. (Id. ¶ 73).

In responding to the allegations busy during the period they were under review because of the



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Muslim holy months of Ramzan Somali customers order by phone and then pick up their orders in the store; (4) many cus-

tomers who swipe their EBT cards realize they have a balance and make another transaction; distances groceries at once for the entire month; and (6) customers often shop in groups and swipe the same card for multiple purchases. (Id. ¶ 74; A.R. 100-101). credit card statements for the months of the investigation to support their claims. (DF ¶ 75).

After submitting their objections to the allegations and associated evidence, Mr. Rifat telephone orders. (Id. ¶¶ 76-78) ces and, after a subse-

-meat invoices for review. (Id. ¶¶ 79- 81). It does not appear from the record that the requested phone evidence for review. (Id. ¶ 84). tracks phone orders and the type of volume the store

experiences. (Docket No. 65).

The Agency 4

, and ultimately concluded that the rendered explanations failed to explain the suspicious transactions. (DF ¶ 83). Specifically, the Agency found that the evidence did not support the proffered statement -20 phone orders each day, - sions the contention tha not support the idea that multiple large purchases could be completed in quick succession, that

the holy months did not explain the high sales in August of 2015, EBT trans- action amounts during the holy months matched those of other months during the year, that

4 “ duplicate invoices, invoices falling outside of the review period, and invoices that lacked a vendor name or that otherwise could not be verified. (DF ¶ 82). credible, that the physical storage space and observed inventory did not support the assertion

(Id. ¶¶ 84-104). The Agency concluded

that it was more likely than not that C (Id. ¶ 105).

On April 27, 2016, (Id. ¶ 109) Administrative Review Branc (Id. ¶ 113). ARO Ronald Gwinn was

assigned to the case and asked the plaintiff (Id. ¶ 115) such documentation was not provided within a three-

week period, no review would occur. (Id.). - tion. (Id. ¶ 116). ARO Gwinn reviewed the case nonetheless and determined that it was more (Id. ¶ 117). The final Agency d (Id. ¶ 118).



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air Second Amended Complaint in federal court on September 11, de novo

from the S Id. at 3). The USDA filed the Motion for Summary Judgment on August 22, 2018. (Docket No. 52). After briefing from the parties, the court held a hearing on the motion on December 13, 2018.

Additional facts will be provided herein where appropriate.

III. ANALYSIS A. Summary Judgment Standard of Review *PC Interiors, Ltd. v. J. Tucci Constr. Co.*,

794 F. Supp. 2d 274, 275 (D. Mass. 2011) (quoting *Mesnick v. Gen. Elec. Co.*, 950 F.2d 816, 822 (1st Cir. 1991)) (additional citation omitted). The burden is upon the moving party to show, genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

Fed. R. Civ. P. 56(a). possess[] the capacity to sway the outcome of the liti and there is a genuine dispute where an may reasonably *Vineberg v. Bissonnette*, 548 F.3d 50, 56 (1st Cir. 2008) (internal quotation and citation omitted). The court the material presented in the light most favorable to the non-movant, and [] must indulge all *Petitti v. New England Tel. & Tel. Co.*, 909 F.2d 28, 31 (1st Cir. 1990) (internal quotation and citation omitted).

When a properly supported motion for summary judgment is made, the non-moving party must set forth *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986) (internal quotation and citation omitted). The non-moving party can then avoid summary judgment only by providing properly supported evidence of disputed material facts. *LeBlanc v. Great Am. Ins. Co.*, 6 F.3d 836, 841-42 (1st Cir. 1993). improbable in tion for summary judgment. *Crawford v. Lamantia*, 34 F.3d 28, 31 (1st Cir. 1994) (internal quotation and citation omitted).

B. Standard of Review in SNAP Cases filing a complaint against the United States in the United States Court for the district in which it

resides or is engaged in business . . . requesti 7 U.S.C. § 2023(a)(13). The district court then determines the validity of the FNS decision by trial de novo. 7 U.S.C. § 2023(a)(15). When reviewing an FNS decision under 7 U.S.C. § 2023, the w is broader than that normally associated with agency review under the Adminis- trative Procedure Act, 5 U.S.C. § 500 et seq. issues raised and not merely to determine whether the administrative findings are supported

by substantial evidence on the record. The Court must reach its own factual and legal conclu- *Ramirez v. United States*, 514 F. Supp. 759, 763 (D.P.R. 1981); see also , 890 F.3d 371, 376 (1st Cir. 2018). Irobe, 890 F.3d at 379.

The burden of proof in a lawsuit under 7 U.S.C. § 2 decision. Id. at 374. Where evidence of trafficking has been submitted by the government



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disposi- Id. at 377 (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 249-50, 106 S. Ct. 2505, 2511, 9 L. Ed. 2d 202 (1986)). store is in the best position to show what actually happens on its premises. Allocating the burden of proof to the store tacitly recognizes this reality and, in the bargain, incentivizes shopkeepers to maintain accurate records of all SNAP transactions. A contrary rule would have the perverse effect of rewarding businesses for shoddy record- Id. at 378.

In evaluating evidence of trafficking, the court need not have direct evidence in order to grant summary judgment for the agency; the court may rely on circumstantial evidence created by EBT data. *Kahin v. United States*, 101 F. Supp. 2d 1299, 1303- is true that there are no published opinions which rely primarily on evidence generated from

EBT data, the statute clearly intended that EBT data be used for this purpose. Reliance on evidence garnered explicitly recognized under the statute. 7 U.S.C. § 2021(a). It may well be easier for a Plaintiff to rebut - mean that the FNS cannot rely on it where, as here, the Plaintiff has failed to rebut or raise

; see also *Famous Int Mkt. v. United States*, No. 17- find a store committed a SNAP violation and disqualify it based on facts established through on-

site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system. citing 7 C.F.R. § 278.6(a) (internal quota- tions omitted)). - tion gleaned from EBT databases and reports of on- Irobe, 890 F.3d at 379 reports may be probative of trafficking: in appropriate cases, they may be sources of circum- stantial evidence of fraud, sufficient Id. rged with ensuring that merchants and food-stamp recipients alike color between the lines. When the evidence suggests that program rules are being flouted, agency Id. at 381. Accordingly, this court will evaluate the evidence submitted, whether direct or circumstantial, in ruling on the instant summary judgment motion. Furthermore, although the First Circuit has not adopted the stricter

viewpoint adhered to by some other Circuits which requires an opponent of summary judgment in SNAP benefit cases to raise a specific material issue in response to each alleged violation. Instead, the First Circuit in Irobe remained open to the idea that multiple transactions could be rebutted by the same rationale. Irobe, 890 F.3d at 380 n.3. However, each set of alleged violations must still be explained. Thus, if a store can rebut one set of alleged violations, but not raise a genuine issue as to the others, that is not enough to survive summary judgment because unrebutted instances of trafficking remain. See *Duchimaza v. United States*, 211 F. Supp. 3d 421, 433 (D. Conn. 2016) . After

doing so, I conclude that while Plaintiffs have created a genuine issue of fact as to Attachment 1, they have not with respect to Attachments 2 and 3. Thus, I grant summary judgment as to

E store [has] Irobe, 890



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F.3d at 380 n.3. Id. at 380 (citing Anderson, 477 U.S. at 252, 106 S. Ct. at 2512). Consistent with the above, the court will evaluate Ch submitted evidence in light of the with regard to each of the

sets of allegations, summary judgment in favor of the USDA is appropriate.

C. Discussion

1. Liability As addressed more fully below, this court finds here what the First Circuit affirmed in the factually similar case of Irobe compelling reasonable inferences in favor of the Store, no rational factfinder could conclude that the Store

ha[s] demonstrated by a preponderance of the evidence that the finding of trafficking was Id. at 381. 5

In this proceeding, the USDA set forth four sets of behaviors as the basis for its trafficking finding. The court will address each in turn, along with the rebuttal

5 e factual comparison between the store in Irobe and itself. (See, e.g., Pl. Mem. at 20- [The scenario in Irobe was] entirely dissimilar ““ ler without significant issue for nearly eighteen (18) years.... entity referenced in Irobe). This previous conduct, or the fact that it is still in operation, negates the comparison between the evidence

of trafficking in Irobe and the evidence found by FNS here. evidence submitted by Che This court concludes that has failed to meet its burden with regard to each category. (a) EBT Transactions Made Too Close Together to be Credible

USDA first identifies 62 pairs of transactions made within ten minutes or less, submitting that these transactions were made too closely together, and, consequently, evidence trafficking instead of actual sales. (DF ¶ 59). Of the 62, sixteen were made in under two minutes and seven were made within 90 seconds or less. (Id. ¶ 60). Notably, many of these transactions were for amounts totaling hundreds of dollars each. (Id.).

USDA argues that these transactions lack credibility on their face and further lose credibility in light of the limitations o specifically cites to of a single cashier calculating items on a calculator, and small counterspace. The court agrees

with the USDA that each of these factors would make it very difficult, if not impossible, for a cashier to complete multiple large transactions in quick succession.

These irregular sets of transactions create strong circumstantial evidence of trafficking. See Irobe, 890 F.3d at 379 (evaluating a similar set of purchases made in quick succession and ities of shopping at the Store . . . and the availability of only a single clerk, these paired transactions raise obvious ;



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Famous Intl Mkt. conveyor belt for customers to place items, an optical scanner to scan products into the cash register system, and bagging area[,] and with only one cash register, it is highly unlikely the Market would be able to process not only transactions in quick succession but transactions in quick succession. - Cf. id., at *11 (remained open longer than the comparison stores fails. The Market does not adduce evidence

.

s that the rapid transactions provide sufficient evidence of trafficking. In support thereof, first] explained by the fact that many EBT shoppers carpooled and/or shopped in large g (Pl. Mem. related conclusions drawn from the physical of accommodate the business model of serving (Id.

at 25).

In making these arguments, through which affiants explain that [o]ftentimes, either I would carpool, or I would observe

(. ¶ 7). 6

First, it is not clear to the court exactly how shopping in large groups explains repetitive large transactions when a store clerk would be required to tally items between each purchase regardless of crowd size. Second, even if it were possible for a cashier to check out large groups of customers in such rapid succession, istics did not assertions from customers are too generalized

6 This paragraph is only included in -1 at 19), as it appears to the court -1 at 17) is missing the second page (including a signature). See Famous Intl Mkt. customers do not refute or provide detail on specific purchases at issue and do not provide

[of] the ; see also Duchimaza,

uld visit the store on the same day is simply a conclusion; Plaintiffs cite no examples, provide no data, and do not even attempt to account for the specific transactions the FNS identified in this category. specific and credible evidence to show the court that a genuine issue exists as to whether such shopping practices regularly occurred at such practices explain the 62 transactions submitted to the court by the government.

next attempts to rebut the data evidence by claiming that large amounts of orders are placed over the phone and are pre-tallied, allowing for large orders to be s not submit records of phone orders from the review period, but instead submits a recent phone order book containing claims are substantially similar to the phone order notebook from (Pl. Mem. at 10 (referring to Ex. C (Docket No. 65))). Those records, most of which are not



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legible, lack important indicators such as time, date, and payment method used for each of the orders. Moreover, even if the court were to accept the records as evidence of high phone order volume, actually resulted in rapid transactions, or transactions involving hundreds of dollars, or otherwise explaining

ffidavit for this phone order argument. Therein, the Cheema brothers aver that:

Many of our customers place orders with us over the phone, and then come in at a later time to pick up their order. When the customers arrive, we already have the total price of their purchase calculated. While coming into the store to pick up their order, customers often make purchases beyond the meat. Oftentimes, these customers swipe their cards twice: once for the items ordered by phone, and a second time for the items picked up in-person. . ¶ 12). This generalized claim is not enough to survive summary judgment and, as addressed above, further evidence linking the alleged large volumes of phone orders to quickly successive transactions at the store, and has not explained how placing orders ahead of time speeds up the checkout of the individual purchases to the extent . In addition, fails to demonstrate for the court how the submitted order book sufficiently explains this theory from their affidavit. The indication that orders are currently made over the phone, coupled with general assertions about customer behavior, does not sufficiently rebut the d evidence of suspiciously rapid, large transactions in 2015.

the argument that the phone records were not available to the govern- ment during the initial investigation, contending that such a discrepancy between that record and the one before this court warrants a denial of summary judgment. (Pl. Mem. the logistics of SNAP transactions are certain to be a factor, it becomes far less of a deterrent to . At oral argument, phone orders business model created a disputed material fact. This court disagrees.

This court considers the evidence before it in light of the appropriate burden placed on the parties. This court recognizes that it must consider evidence submitted to the court, even if it was not submitted to the Agency during its investigation. This court further recognizes that its decision is not deferential to the A but, rather, that its deci- sion is de novo, and that the court must review the submissions before it in order to determine whether a genuine issue of material fact exists. Ramirez, 514 F. Supp. provision of 7 U.S.C. Sec. 2023 . . . requires the Court to examine all the issues raised and not

merely to determine whether the administrative findings are supported by substantial evidence on the record. The Court must reach its own factual and legal conclusions and is not limited to matters considered in the administrative findings.); Irobe is warranted if a nonmovant who bears the burden on a dispositive issue fails to identify signifi-

can). Nevertheless, where, as here, the evidence offered by the plaintiff does not demonstrate credible evidence that an issue of fact exists, summary judgment is appropriate. Here, after ans-



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actions has not been refuted, and their existence properly supports the inference of trafficking.

(b) Multiple Transactions Made From the Same EBT Account

in Short Time Frames The USDA next identifies 62 instances in the review period where the same household made multiple transactions, each set of which were made within a timeframe of 18 hours. (DF ¶ 63). Fifty-one of those transactions were part of sets of purchases that occurred within a timeframe of ten minutes or less. (Id. ¶ 64). Similar to their argument related to the first group of transactions, sets are explained by the fact that many customers order items over the phone and then make a separate purchase of goods that they find once they arrive at the store. . phone to help expedite wait time and check out process.), ¶ 3 (When purchasing groceries at

[sic] that I placed an order for ahead of time, it would not be uncommon for me to make two (2) or more transactions during one (1) visit.). explains that some customers complete two transactions because they forget items the first time around. (See Pl. Mem. (referencing charts at Ex. D showing that customers exhibited similar behavior at other stores)).

USDA questions rationales for these patterns because in eleven of the transactions, the latter purchase was for an amount equal to or greater than the first. (See DF ¶ 124). , particularly in light of the size of the second transactions in many of the sets. (See, e.g., A.R. 72 transaction nos. 138, 139); see Famous I l Mkt. the second transaction in relation to the first, the high dollar amount of the second purchases

Further, the Customer Affidavit is generalized and does not suffice to explain the sheer number of repetitive transactions from single beneficiaries. Similarly, argument that is not persuasive. (See Pl. Mem. at 6). Thus, has submitted charts showing EBT customers making multiple . (Id. at Exs. A, D). However, the fact that suspicious repeat transactions occurred at different stores result of normal shopping behavior instead of trafficking, nor does it make the ones that

ct. Furthermore, the court has no context for those other transactions, and at the other stores were actually legitimate SNAP purchases despite their suspicious appear-

ance. Che neither corroborated nor here. (See id. rns by EBT).

In sum, is insufficient to establish a genuine issue of material fact. The existence of a large number of multiple trans- actions made from the same EBT account in a short time frame is further evidence of trafficking.

(c) in

Short Time Frames 110 occasions on which individual beneficiaries used most or all of their monthly



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allotment in an unusually short period of time. (DF ¶ 65). Forty-five of these 110 transactions were for the precise amount of remaining benefits in a particular account. (Id. ¶ 66). FNS points to a government study to show that, in contrast, an average beneficiary takes three weeks to spend 90% of their monthly SNAP benefit allotment. (DF ¶ 93). dictates that many shoppers will deviate from the average in a ten-year-old repo (Pl. Mem.

at 26). purchasing patterns of its patrons involving large purchases of halal meat to last weeks or

months, a scenario that is uncommon in most compared stores illu (Id.). Affidavit wherein it is “ [sic], it would not

be uncommon for me to spend more than half, if not all, of my monthly EBT benefits in one (. ¶ 6). 7

concrete evidence explaining these suspect transactions. Generalized statements claiming that

entire SNAP allotments are spent on purchases of monthly supplies of meat is not sufficient to create a genuine issue of fact regarding these 110 alleged violations.

The instant situation is virtually identical to the facts in Irobe, where the First Circuit affirmed a grant of summary judgment for the government despite similar assertions by the affected store. As the Court held:

in which he offered generalized, non-specific observations about his sometimes would purchase expensive items (such as goat or camel meat) or buy rice in bulk. This testimony, the Store argues, creates a genuine dispute about whether the 205 EBT transactions exceeding \$174 were for SNAP-

7 -1 at 19), as it appears to the -1 at 17) is missing the second page.

eligible foodstuffs.... These arguments lack force in the face of the ample transactional data. It is common ground that the mere existence of a scintilla of evidence in support o ward off summary judgment. Where the plaintiff has the burden of proof, there must be evidence on which the factfinder could reasonably find for the plaintiff. There is no such evidence here and generalized conclusions, such as Irobe has proffered, cannot fill the void. Irobe, 890 F.3d at 380-81 (internal citations and quotations omitted). Similarly here, the way of affidavit are not enough to show The fact that the court in Irobe had and customers does not change this analysis since these affidavits are similarly very

generalized.

(d) Unusually Large Transactions 596 EBT transactions during the review period of over \$47 each, which the USDA deems abnormally large. (DF ¶ 67). Of these, 437 were for over \$100. (Id. ¶ 68) other



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similar stores. - d to other stores that sell Halal meats reveals that, during June, double per transaction than (Id. ¶ 127 (emphasis in original) (showing that while other stores which sold Halal meat averaged \$50, \$35.28, \$54.31, \$40.12 and \$37.86)). Moreover, when compared generally to other markets classified as average purchase amount. (Id. ¶ 126).

(Pl. Mem. at 26-27 (store was warranted, the amount of meat sold per week should have warranted classification

). However, Che such

specialty stores that category :

[a] of meat products ... [which] [m]ay also carry non-food items or other food a description may bett -

(Id. at 27). This bald assertion, without more, is insufficient to negate the govern transactions are typical of such a specialty store. See Famous Intl Mkt., 2018 WL 3015249, at

-stocked and offers international foods, the Market does not adduce specific evidence addressing why its EBT transaction data differs so greatly from the

At oral argument, Chee The point misses the comparison at

issue. The government did indeed reference purchases at Stop & Shop and BJs in arguing that compa Def. Mem. (Docket No. 53) at 17). That inter-customer comparison argument that the individual those at both other stores selling Halal meat and other stores within classification category of medium grocery average sales at those stores was inappropriate.

surrounding certain holidays. (Pl. Mem. at 27 (transactions correlate with delivery dates of hundreds to thousands of pounds of meat, and/or

customers. Not only did many of the customers spend comparable amounts at other Halal

stores, but most made quite significant transactions at non-). First, if customers are indeed spending large amounts at other Halal stores and non-Halal stores during this time of the year eries in

the review period (June, July and August of 2015) were not significantly different from those [at] in non-holiday months outside the review peri (DF ¶ 96). This contradicts claim that the holidays created irregular transaction patterns.

[its] meat, and then viewing customer purchases within the next one to two days, it becomes



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(Pl. Mem. at 12). The Cheema brothers aver in the (. ¶ 7), without evidentiary citation, that [w]hile there are 596 meat delivery, or within the two days after, or within two days of the Fourth of July for any

festivities occurring after sundown. This leaves merely 100 large purchases that do not correlate with delivery dates or the Fourth of July. Many of them correlate with religious (Pl. Mem. at 12-13) t evidence to give credence to the claim that the holidays were a driving force behind the large transactions in the review period. Thus, claim regarding purchases near delivery dates to be true, there remain approximately 100 uncontested alleged violations, In addition, this argument ignores the

See DF ¶ 85).

further defends the high value transactions by claiming that:

[o]n average, much of our inventory is sold at a significant markup due to the nature/designation of the specialty foods that we provide to our customers. Upon information and belief, Middle Eastern foods/brands often cost substantially more to ship to supermarkets than more common- place food items. On average during the months in question, our store sold chicken at a 69% markup, beef at an 81.5% markup, lamb at a 26.5% [markup], and goat at a 20% markup. (. ¶ 10). FNS had initially assumed a 40% markup on goods in estimating that, based on submitted invoices, the store had an inventory during the review period of \$274,307.46 worth of product. (DF ¶ 102). The actual amount of sales were \$113,148.62 in SNAP benefits and \$310,007.10 in credit card sales, for a total amount of \$423,155.72, exclusive of cash sales. (DF ¶ 103). In making the claim that the 40% markup estimate was too low, Cheem sufficiently explains the serious discrepancy in projected and actual sales, or how it accounts for specific instances of unusually high purchases. pensive than the govern- ment assumes is not enough to create a genuine issue on summary judgment. Famous Intl Mkt. - pricing justifies the 400 large transactions at issue is

above government calculations by asserting that the govern- tabulation of available inventory was lacking :

for nearly \$150,000 in sales over a three month period as indicative of include a large number of invoices equates to trafficking. On the contrary, ecords would have shown inventory for the \$150,000 in sales that the Agency has flagged as potential trafficking. (Pl. Mem. at 7 (internal citations omitted)). This argument does purport to address the fact that s estimation of inventory. The numbers presented by

expected sale potential based on store neither produced invoices expl of inventories for other time periods similar to the one under investigation for the court to consider by comparison lack of inventory for the amount of sales and high value ignores the at this stage in this proceeding. In light



Cheema's Supermarket v. United States Department of Agriculture

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of the set of

rebut the this court showing its ability to sell at such a volume, that evidence may have been enough to

survive summary judgment on this set of transactions. However, t failed to maintain those records, without more, is insufficient. See Irobe store is in the best position to show what actually happens on its premises. Allocating the

burden of proof to the store tacitly recognizes this reality and, in the bargain, incentivizes shopkeepers to maintain accurate records of all SNAP transactions. A contrary rule would have the perverse effect of rewarding businesses for shoddy record-

[w]hen purchasing groceries “ [sic], it would not be uncommon for me to make large purchases (\$100.00 - \$200.00 or greater) in one or two transactions usually because I was purchasing a significant amount of meat[,] is unavailing. (. ¶ 4). that it can produce evidence beyond this general assertion in support of this claim.

2. Adequacy of Sanction itted evidence to create a genuine issue of material fact with regard to liability for trafficking, this court turns to the appropriateness of the choice of a sanction only if it finds that choice to be arbitrary, capricious, or Irobe, 890 F.3d at 377 (internal citations and quotations omitted).

Kashif v. United States, No. 14-30180, 2016 WL 3886164, at *6 (D. Mass. May 12, 2016) (citing 7

U.S.C. § 2021(b)(3)(B); 7 C.F.R. § 278.6(e)(1)(i)). The USDA has discretion to instead assess a civil penalty in lieu of permanent disqualification if there is substantial evidence that such store or food concern had an effective policy and program in effect to prevent violations of the chapter and the regulations 3)(B). court with evidence of such a policy, the court hereby rules that the disqualification was

required by statute and was not arbitrary, capricious, or contrary to law. This court affirms the assigned penalty.

IV. CONCLUSION For all the reasons detailed herein, this court here Motion for Summary Judgment (Docket No. 52). / s / Judith Gail Dein Judith Gail Dein United States Magistrate Judge

