

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NATHANIEL MORGAN, an individual,
MICHAEL BEVAN, an individual,
individually, and on behalf of others
similarly situated,

Plaintiffs,

v.

ROHR, INC., a corporation; HAMILTON
SUNDSTRAND, a corporation, d/b/a
COLLINS AEROSPACE; UNITED
TECHNOLOGY CORPORATION, a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 3:20-cv-00574-GPC-AHG

ORDER:

**1) GRANTING IN PART AND
DENYING IN PART DEFENDANTS’
MOTION TO STRIKE;**

**2) GRANTING DEFENDANTS’
MOTION FOR LEAVE TO FILE
RESPONSE PAPERS;
[ECF No. 84]**

**3) VACATING THE HEARING ON
DEFENDANTS’ MOTION TO
STRIKE;**

**4) RESETTING HEARING ON
CLASS CERTIFICATION; and**

**5) DENYING AS MOOT
DEFENDANTS’ EX PARTE
APPLICATION TO SHORTEN
TIME;
[ECF No. 87]**

///

1 Before the Court is Defendants' Motion to Strike Plaintiffs' Reply Papers
2 Supporting Class Certification and Alternatively, Leave to File Response Papers. ECF
3 No. 84. Plaintiffs responded to the motion on September 24, 2021. ECF No. 91. And
4 Defendants' replied in support of their motion on October 8, 2021. Also before the Court
5 is Defendants' subsequent ex parte application to shorten time on the hearing on
6 Defendants' motion to strike, which is currently set for November 5, 2021. ECF No. 87.

7 For the reasons described below, the Court **GRANTS IN PART** and **DENIES IN**
8 **PART** Defendants' motion to strike Plaintiffs' reply papers, or in the alternative leave to
9 file further response papers. Defendants' motion to strike portions of Plaintiffs' reply is
10 **DENIED**, but the Court **GRANTS** Defendants' motion for leave to file a sur-reply and
11 other response papers, which they must file on or before November 5, 2021.

12 Accordingly, the Court **ORDERS** that the hearing on Plaintiffs' motion for class
13 certification be reset for January 14, 2022 at 1:30 p.m. in Courtroom 2D.

14 The Court further finds the Court finds the pending motions suitable for disposition
15 without oral argument pursuant to Civil Local Rule 7.1 (d)(1) and **VACATES** the
16 hearings scheduled on the motions. Defendants' ex parte application to shorten time on
17 the hearing on the motion to strike is therefore **DENIED** as moot.

18 **PROCEDURAL BACKGROUND**

19 **I. Plaintiffs' Motion for Class Certification**

20 On April 24, 2021, Plaintiffs moved this Court for class certification. ECF No. 56.
21 Defendants filed their response in opposition to Plaintiffs' motion to certify the class on
22 June 25, 2021. ECF No. 67. Plaintiffs filed their reply in support of class certification on
23 August 16, 2021. ECF No. 82. The class certification hearing is currently set for
24 November 5, 2021, the same day as the hearing on Defendants' motion to strike.

25
26 ///

1 District, Civil Local Rule 7.1 provides that “copies of all documentary evidence which
2 the movant intends to submit in support of the motion, or other request for ruling by the
3 court, must be served and filed *with the motion*.” S.D. Cal. Civ. L. R. 7.1(f)(2)(a)
4 (emphasis added). Indeed, the Ninth Circuit has held that “[t]he district court need not
5 consider arguments raised for the first time in a reply brief.” *Zamani v. Carnes*, 491 F.3d
6 990, 997 (9th Cir. 2007).

7 Because neither the Federal Rules of Civil Procedure nor this District’s Local
8 Rules provide litigants a *right* to file a sur-reply, which leaves the question of whether to
9 “permit[] the filing of a sur-reply is within the discretion of the district court.”
10 *Whitewater W. Indus., Ltd. v. Pac. Surf Designs, Inc.*, No. 317CV001118BENBLM, 2019
11 WL 3198800, at *1 (S.D. Cal. June 26, 2019). But courts have generally limited their
12 granting permission to file a sur-reply to circumstances where it is truly needed—namely,
13 “only where a valid reason for such additional briefing exists, such as where the movant
14 raises new arguments in its reply brief.” *Hill v. England*, 2005 WL 3031136 (E.D. Cal.
15 Nov. 8, 2005) (quoting *Fedrick v. Mercedes-Benz USA, LLC*, 336 F. Supp. 2d 1190, 1198
16 (N.D. Ga. 2005)); *see also Harvey v. Advisors Mortgage Grp.*, 321CV01048TWRAGS
17 (S.D. Cal. Sept. 17, 2021).

18 DISCUSSION

19 Here, as Defendants have argued, Plaintiffs’ reply brief in support of class
20 certification (ECF No. 77) far exceeds the 25-page limits allowed for their papers under
21 Civil Local Rule 7.1(h). In addition to the issue surrounding page limitations, and
22 Plaintiff’s inclusion of unsanctioned lengthy collections of evidence by repeated
23 reference throughout the body of the reply, Plaintiffs *also* filed supporting expert
24 declarations, as well as a lengthy proposed trial plan brief as part of the reply. It is
25 therefore clear that Plaintiffs’ reply brief goes beyond the scope of what is permitted in a
26 reply, both as to length *and* substance. For example, the Gorlick Declaration analyzes
27
28

1 pay records for employees outside the original sample. See ECF No. 80-22 ¶¶ 6-8, 13-33.
2 And the Steiner Declaration was prepared by a previously-undisclosed expert. ECF No.
3 80-21.

4 Given the above, the Court finds that some remedial action is warranted. To be
5 sure, Plaintiffs did not insert in their reply brand new causes of action, nor did they seek
6 to introduce evidence that is of an entirely different kind than that previously marshalled
7 in support of their claims. Nevertheless, by submitting on reply *further* evidence and
8 arguments in support of their motion to certify the class, rather than merely responding to
9 Defendants’ opposition to the motion, the Court finds that Plaintiffs here have indeed
10 “deprived Defendants of the opportunity to respond.” *Do*, 2020 WL 6484633 (S.D. Cal.
11 Nov. 4, 2020), at *2. Thus, under the circumstances, the filing of a sur-reply for the
12 Court to consider along with the party’s briefing on the issue of class certification, is
13 warranted. Finally, to provide Defendants sufficient time to prepare their sur-reply and
14 the accompanying documents, the hearing on Plaintiffs’ motion will be continued.

15
16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

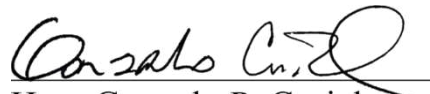
1 **CONCLUSION**

2 The Court hereby **GRANTS IN PART** and **DENIES IN PART** Defendants’
3 motion to strike. The Court **DENIES** Defendants’ motion to strike the portions of
4 Plaintiffs’ reply identified in Defendants’ motion, ECF No. 84 at 2. The Court **GRANTS**
5 Defendants’ motion for leave to file the following papers, on or before **November 5,**
6 **2021**: (1) A sur-reply not to exceed 15 pages; (2) a response to Plaintiffs’ Proposed Trial
7 Plan not to exceed 25 pages; and (3) an expert declaration responding to Plaintiffs’ expert
8 declarations. Accordingly, Court further **ORDERS** that the hearing on Plaintiffs’ Motion
9 for Class Certification, ECF No. 56, be **reset** for **January 14, 2022** at 1:30 p.m. in
10 Courtroom 2D.

11 The Court further **DENIES** as moot Defendants’ ex parte application to shorten
12 time on the hearing on Defendants’ motion to strike. ECF No. 87.

13 **IT IS SO ORDERED.**

14 Dated: October 14, 2021

15 
16 Hon. Gonzalo P. Curiel
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28