

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

CARLOSE SILVEIRA, GEOREGETTE)
PICKETT, and CHARLES HUGHES, as)
individuals and on behalf of all others)
similarly situated,)

1:13-CV-0084 AWI BAM

Plaintiffs,)

ORDER ON PLAINTIFFS' EX
PARTE APPLICATION TO
FILE A SURREPLY

v.)

JEFFREY A. BEARD, in his official)
capacity as the Secretary of the California)
Department of Corrections and)
Rehabilitation, and DOES 2 through 10,)
inclusive)

(Doc. No. 26)

Defendants.)

On April 11, 2013, the Court vacated a hearing on Defendants' motion to dismiss. The same day, Plaintiffs' filed an ex parte application to file a sur-reply. See Doc. No. 26. The sur-reply is attached as an exhibit to the application itself. Plaintiffs sur-reply is limited to addressing a Ninth Circuit case that was decided on April 4, 2013, and that was cited in Defendants' April 8, 2013, reply. The case, *North East Med'l Servs., Inc. v. California Dept. of Health Care Servs.*, 11-16759 (9th Cir. Apr. 4, 2013), was decided after Plaintiffs filed their opposition. Plaintiffs indicate that they contacted Defendants about filing a sur-reply, but that defense counsel stated in an e-mail that he would oppose the request to file a sur-reply.

In an e-mail to the courtroom deputy, Defendant has indicated that he wishes to oppose Plaintiffs' application and asks for two days to file their opposition.¹ Additionally, Defendants request time to file a reply to the sur-reply.

¹The e-mail is in the nature of a procedural inquiry. It informs the Court that Defendant wishes to file an opposition, and then asks how Defendant should request permission to respond to the sur-reply. Neither the merits of the request to file a sur-reply nor the motion to dismiss are discussed.

1 Defendants will not be permitted to file an opposition to the application. Plaintiffs'
2 application is modest and reasonable. Permitting time for the parties to file briefing on *North*
3 *East* will not cause a material delay in resolving the motion to dismiss. Because of the weight of
4 the Court's docket, no decision on the motion should be expected for several weeks in any event.
5 Given that the *North East* case is so new, Plaintiffs' request will be granted and Defendants will
6 be allowed to file a response to the sur-reply.

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8 Therefore, IT IS HEREBY ORDERED that:

- 9 1. Plaintiffs' ex parte request to file a sur-reply is GRANTED;
10 2. Plaintiffs' sur-reply, which is Doc. No. 26-2, is considered FILED and the Court will
11 consider that document in resolving the motion to dismiss; and
12 3. Defendants may file a response to the sur-reply no later than April 19, 2013.

13 IT IS SO ORDERED.

14 Dated: April 12, 2013



15 SENIOR DISTRICT JUDGE
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