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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GILBERTSON DRAGLINES, INC., No. 2:08-cv-01746-MCE-EFB

Plaintiff,

v.

ORDER

OPERATING ENGINEERS HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA, et al.,

Defendants.

OPERATING ENGINEERS HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA, et al.,

Counter-Claimants,

v.

GILBERTSON DRAGLINES, INC.

Counter-Defendant.

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On November 2, 2009, Plaintiff filed a Motion for Summary Judgment in this matter. Thereafter, on November 16, 2009, Defendants filed a joint document styled as both a Cross Motion for Summary Judgment and an opposition to Plaintiff's previously filed request for summary judgment.

1 The hearing on both motions was ultimately continued to
2 January 14, 2010, and minute orders were issued on November 23
3 and 24, 2009 requiring that any oppositions to the cross-motions
4 be filed by December 24, 2009, with replies due not later than
5 December 30, 2009.

6 On December 30, 2009, in response to Defendants' jointly
7 filed cross-motion/opposition, Plaintiff filed a joint reply in
8 support of its motion and in opposition to Defendants' motion.
9 The following day, Defendants objected to Plaintiff's filing as
10 untimely to the extent it comprised an opposition to Defendants'
11 motion, arguing that the jointly filed document deprived them of
12 the ability to file a reply before the scheduled January 14, 2010
13 hearing date. Defendants accordingly moved to strike Plaintiff's
14 opposition and set a hearing on that motion for February 12, 2010.

15 In order to simultaneously adjudicate both the motions
16 themselves and Defendants' Motion to Strike, the Court continues
17 the cross-motions for summary judgment to be heard on
18 February 12, 2010 at 2:00 p.m., the time and date already
19 scheduled for the Motion to Strike. In the interim, Defendants
20 may file a reply to Plaintiff's opposition to their motion for
21 summary judgment, should they choose to do so, not later than
22 January 21, 2010. That reply can be submitted without prejudice
23 to Defendants' claim that the opposition itself was untimely.

24 IT IS SO ORDERED.

25 Dated: January 7, 2010

26 

27 MORRISON C. ENGLAND, JR.
28 UNITED STATES DISTRICT JUDGE