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13 *Attorneys for Plaintiff* Pharmaceutical Research and
 14 Manufacturers of America

15 UNITED STATES DISTRICT COURT
 16 EASTERN DISTRICT OF CALIFORNIA

17 PHARMACEUTICAL RESEARCH AND
 18 MANUFACTURERS OF AMERICA,

19 Plaintiff,

20 v.

21 EDMUND GERALD BROWN, Jr., in his
 capacity as Governor of the State of
 22 California, and

23 ROBERT P. DAVID, in his official
 capacity as Director of the California
 24 Office of Statewide Health Planning and
 Development,

25 Defendants.

Case No.: 2:17-cv-02573-MCE-KJN

**PLAINTIFF'S APPLICATION FOR
 LEAVE TO FILE SUR-REPLY**

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1 On March 26, 2018, the State filed its reply brief in support of its Motion to Dismiss
2 PhRMA's Complaint. (ECF No. 24.) The State's reply brief misconstrues central allegations in
3 the Complaint in a manner that is material to the Court's assessment of PhRMA's claim under the
4 Dormant Commerce Clause. Because the Court submitted this motion on the briefs on January
5 29, 2018, (ECF No. 20), PhRMA will not have the opportunity to correct these errors for the
6 Court at oral argument. PhRMA therefore respectfully requests this Court's leave to submit a
7 short, targeted sur-reply for the limited purpose of clarifying these critical issues. PhRMA's
8 proposed sur-reply is attached hereto as Exhibit A.

9 PhRMA is cognizant of the fact that sur-replies are not typical of this Court's practice, and
10 is sensitive to the Court's heavy caseload. Accordingly, PhRMA's proposed sur-reply focuses
11 only on clarifying issues that are absolutely essential to this Court's resolution of the motion to
12 dismiss, and is limited to three pages. For the reasons described, good cause exists for PhRMA to
13 file the attached sur-reply. To the extent the Court is not inclined to grant PhRMA's request for
14 leave to file a sur-reply, PhRMA respectfully requests that the Court re-set this matter for oral
15 argument so that these mischaracterizations can be addressed.

16 PhRMA's counsel attempted to contact counsel for the State on April 2, 2018, to
17 determine whether the State opposes PhRMA's application for leave to file a sur-reply, but did
18 not receive a response before the close of business that day.

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1 DATED: April 2, 2018

/s/ Annie S. Amaral
Annie S. Amaral
Avalon J. Fitzgerald
DOWNEY BRAND LLP

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3
4 /s/ Robert N. Weiner (as authorized on 4/2/2018)
Robert N. Weiner
Jeffrey L. Handwerker
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7 *Attorneys for Plaintiff* Pharmaceutical Research
and Manufacturers of America

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ORDER

Good cause appearing, Plaintiff PhRMA is granted leave to file the sur-reply attached as Exhibit A to Plaintiff's Application for Leave to File Sur-Reply.

IT IS SO ORDERED.

Dated: April 4, 2018


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE