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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' PENSION TRUST)	Case No. 09-0044 SC
FUND; GIL CROSTHWAITE AND RUSS)	
BURNS, as Trustees,)	ORDER DENYING REQUEST
)	<u>FOR ORAL ARGUMENT</u>
Plaintiffs,)	
)	
v.)	
)	
CLARK'S WELDING AND MACHINE, a)	
California partnership, aka)	
CLARK'S WELDING, aka CLARK'S)	
WELDING AND MACHINING; SYLVESTER)	
HABERMAN, individually, and FRANZ)	
EDELMAYER, individually,)	
)	
Defendants.)	
)	
)	
)	

On November 20, 2009, Defendants Clark's Welding and Machine, Sylvester Haberman, and Franz Edelmayer requested oral argument with respect to Plaintiffs' Motion for Summary Judgment. Docket No. 84 ("Request"). Defendants contend Plaintiffs introduced new evidence and arguments in their Reply brief. Id. at 2. The request for oral argument is DENIED. The hearing on the Motion for Summary Judgment scheduled for Friday, December 4, 2009, is VACATED and the Motion for Summary Judgment will be decided on the papers. There will be no oral arguments and no appearances.

While the Court may later determine that it should not consider the alleged new evidence and arguments, at this juncture

United States District Court
For the Northern District of California

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of the proceedings, and in order to provide Defendants with an opportunity to respond, Defendants may file a Sur-Reply not to exceed five (5) pages. The Sur-Reply must be e-filed before 5:00 p.m. on Thursday, December 3, 2009.

IT IS SO ORDERED.

Dated: November 30, 2009


UNITED STATES DISTRICT JUDGE