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9 IN THE UNITED STATES DISTRICT COURT
 10 THE NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12 PUBLIC.RESOURCE.ORG., a California non- profit organization, 13 Plaintiff, 14 v. 15 UNITED STATES INTERNAL REVENUE 16 SERVICE, 17 Defendant.) Case No. 13-cv-02789-WHO)) DEFENDANT’S ADMINISTRATIVE) MOTION FOR LEAVE TO FILE SUR-) REPLY)))))))))))
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 19 Pursuant to Civil L.R. 7-11, Defendant United States Internal Revenue Service (the
 20 “IRS”) respectfully submits this administrative motion for leave to file a sur-reply to address
 21 Plaintiff Public.Resource.Org’s (“Public.Resource’s”) request for \$24,787.50 in fees on fees,
 21 which was first substantiated by a supplemental declaration submitted with Public.Resource’s
 22 reply in further support of its motion for attorneys’ fees and costs.

23 Good cause exists to grant the IRS’s administrative motion because the supplemental
 24 declaration is new evidence to which the IRS has not had a chance to respond. *See, e.g., Bautista*
 25 *v. Hunt & Henriques*, No. C-11-4010 JCS, 2012 WL 160252, at *3 n.1 (N.D. Cal. Jan. 17, 2012)
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1 (granting leave to file a sur-reply based upon new material submitted in connection with non-
2 moving party's reply); *cf.* Civil L.R. 7-3(d) (permitting an opposing party to serve an "Objection
3 to Reply Evidence"). Public.Resource advised that it would seek fees on fees in its original
4 motion, and estimated that it would incur between \$15,000 and \$25,000 in such fees. But
5 Public.Resource did not provide any support for this projection and there were no applicable
6 billing entries for the IRS to scrutinize and object to at the time the IRS filed its opposition.

7 It is only now with their reply that Public.Resource has submitted such evidence
8 Accordingly, the IRS should be given an opportunity to respond because the lack of such
9 opportunity would "prevent[] a fair adversary process in which [the] defendant[] could challenge
10 the fee request." *Stewart v. Gates*, 987 F.2d 1450, 1452 (9th Cir. 1993); *see also Lantz v.*
11 *Kreider*, No. 3:05-CV-00207-VPC, 2010 WL 2609080, at *1 n.1 (D. Nev. June 25, 2010) (noting
12 that court granted party leave to file a sur-reply where opposing party "included an additional
13 request for fees in their reply brief"); *Gibson v. City of Kirkland*, No. C08-0937MJP, 2010 WL
14 55855, at *1 (W.D. Wash. Jan. 5, 2010) (granting party leave to file a supplemental response
15 because "[an attorneys' fees] submission that does not allow an opposing party to meaningfully
16 challenge the reasonableness of time spent undermines the adversarial process").

17 Pursuant to Civil L.R. 7-11(a), the undersigned counsel sought a stipulation from
18 Public.Resource agreeing to the relief requested herein, but opposing counsel did not give their
19 consent. (*See* Declaration of Stephen S. Ho.)

20 For the foregoing reasons, the IRS respectfully requests that the Court grant it leave to
21 file the sur-reply attached hereto as Exhibit A.

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1 Dated: August 26, 2015

2 Respectfully submitted,

3 MELINDA L. HAAG
4 United States Attorney

5 CAROLINE D. CIRAULO
6 Acting Assistant Attorney General

7 By: /s/ Stephen S. Ho
8 STEPHEN S. HO
9 Trial Attorney, Tax Division
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11 Attorneys for Defendant United States
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1 **CERTIFICATE OF SERVICE**

2 I certify that I served a true and correct copy of the foregoing *Administrative Motion for*
3 *Leave to File Sur-Reply* on Plaintiff's counsel via the Court's ECF System this 26th day of
4 August, 2015.

5
6 /s/ Stephen S. Ho
STEPHEN S. HO