

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ZELTIQ AESTHETICS, INC.,

Plaintiff,

v.

BTL INDUSTRIES, INC., et al.,

Defendants.

Case No. [13-cv-05473-JCS](#)

**ORDER GRANTING LEAVE TO FILE
SURREPLY**

Plaintiff has moved for partial summary judgment. Defendants object to new arguments in, and evidence submitted with, Plaintiff’s Reply, and ask the Court to disregard this material. *See* dkt. 62. The Federal Rules provide that an “affidavit supporting a motion must be served with the motion,” Fed. R. Civ. P. 6(c)(2), and district courts have discretion to disregard untimely evidence and arguments. *See Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 898 (1990); *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). The Court declines to exercise that discretion in this case, and instead grants Defendants leave to file a surreply addressing Plaintiff’s new evidence and arguments, not to exceed five double-spaced pages, no later than Friday, March 6, 2015. Defendants may also file declarations in support of their surreply.

IT IS SO ORDERED.

Dated: March 3, 2015



JOSEPH C. SPERO
United States Magistrate Judge