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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 STARVONA HARRIS,
8 Plaintiff,

9 v.

10 BEST BUY STORES, L.P.,
11 Defendant.

Case No. 15-cv-00657-HSG

**ORDER GRANTING MOTION TO FILE
SUR-REPLY**

Re: Dkt. No. 74

12 Currently before the Court is Plaintiff's motion for leave to file a sur-reply. For the
13 reasons explained below, the Court GRANTS Plaintiff's motion.

14 Defendant timely filed its reply to Plaintiff's opposition to Defendant's summary judgment
15 by the deadline of March 10, 2016. Dkt. No. 71. On March 11, 2016, Defendant filed an errata
16 indicating that Dkt. No. 71 contained errors in certain mathematical calculations. Accordingly,
17 Defendant filed a corrected reply, see Dkt. No. 72. On March 14, 2016, pursuant to Local Rule 7-
18 3(d), Plaintiff filed an objection to the corrected reply, arguing that Defendant's latest reply
19 "contains new arguments, theories and calculations that vary from its reply brief filed on March
20 10," Dkt. No. 73.

21 The Court agrees with Plaintiff that Defendant's latest reply contains new information.
22 Normally, the Court would not entertain a reply brief containing new authority and argument, see
23 *Roe v. Doe*, No. C 09-0682 PJH, 2009 WL 1883752, at *5 (N.D. Cal. June 30, 2009) (holding that
24 a court may strike new evidence raised for the first time in a reply). However, in this case, the
25 Court exercises its discretion to consider Defendant's latest reply, finding the brief helpful to the
26 Court's merits analysis. Accordingly, the Court STRIKES Dkt. No. 71 from the docket.

27 Because of the new information in Defendant's reply, the Court GRANTS Plaintiff's
28 motion to file a sur-reply. See *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir.1996) (where new


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evidence is presented in a reply to a motion for summary judgment, the district court should not consider the new evidence without giving the non-movant an opportunity to respond).

Plaintiff is directed to limit the sur-reply to only the new information contained in Dkt. No. 72. The sur-reply should not repeat arguments or raise new arguments that could have been raised in its opposition. The sur-reply may not exceed five pages and is due by March 21, 2016.

IT IS SO ORDERED.

Dated: 3/15/2016


HAYWOOD S. GILLIAM, JR.
United States District Judge