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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEON PATTEN,

Plaintiff,

v.

LELAND W. HANCOCK, et al.,

Defendants.

Case No. [15-cv-04022-JSW](#)

**ORDER RE OBJECTIONS TO
PLAINTIFF'S SECOND OPPOSITION
BRIEF AND PERMITTING SUR-REPLY**

Re: Docket No. 31

Defendants have moved to dismiss this case for lack of subject matter jurisdiction, and the Court is scheduled to hear the motion on January 22, 2016.

The state of the docket and the briefing in this case is suboptimal. On October 23, 2015, Defendants filed their original motion to dismiss. (Docket No. 14.) Plaintiff's opposition to that motion should have been filed on November 6, 2015. Plaintiff did not file a timely opposition.

Subsequently, on November 20, 2015, Defendants filed a "Corrected Motion to Dismiss." (Docket No. 16.) On that same day, Plaintiff belatedly, and without leave of court, filed his opposition to the motion to dismiss. (Docket No. 17.) Thereafter, on November 23, 2015, filed a second "Corrected Motion to Dismiss." (Docket No. 23.)

On November 24, 2015, the Court issued an Order to Show Cause to the parties, which it discharged on December 7, 2015. (Docket Nos. 24, 28.) In that Order, the Court stated that it would treat the second corrected motion to dismiss as the operative motion. Although not expressed in that Order, the Court's ruling was premised on Defendants' response to the Order to Show Cause, which demonstrated that the changes made to the motion were not substantive. Accordingly, the Court directed Defendants to file their reply brief by December 18, 2015, and rescheduled the hearing for January 22, 2016.

1 On December 18, 2015, Defendants filed their reply. However, on that same date, Plaintiff
2 filed a second opposition to the motion to dismiss, without seeking leave of court to do so.
3 Defendants have now objected to that filing, and they ask that the Court strike the second
4 opposition and not consider it, and they argue that they would be prejudiced, because they did not
5 have the opportunity to reply to the arguments raised in the second opposition.

6 Plaintiff's second opposition incorporates by reference the opposition brief and
7 declarations filed on November 20, 2015. It also includes three additional paragraphs of
8 argument. (Second Opposition at 2:17-26.) As the Court reads those paragraphs, they do no more
9 than repeat arguments, albeit in different words, raised in Plaintiff's first opposition brief at page
10 3, lines 6-26.

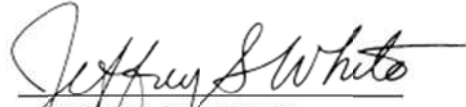
11 However, if Defendants in good faith can demonstrate to the Court that those three
12 additional paragraphs, which are comprised of eight lines of argument, contain information that
13 they were not able to respond to in their reply brief, the Court shall permit them the opportunity to
14 a two paragraph sur-reply.

15 If Defendants wish to file a sur-reply, they shall submit their proposed sur-reply by no later
16 than January 11, 2016, accompanied by a statement that specifically states which of the arguments
17 raised at page 2, lines 17-26, of Plaintiff's second opposition, Defendants were unable to respond
18 to in their reply brief.

19 **With the exception of the possible sur-reply, and unless specifically ordered by the**
20 **Court, the Court shall not accept any further briefs in connection with the motion to dismiss.**

21 **IT IS SO ORDERED.**

22 Dated: January 5, 2016

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25 **JEFFREY S. WHITE**
26 **United States District Judge**
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