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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NHU NGOC NGUYEN,

vs.

MICHAEL S. ASTRUE, Commissioner of
Social Security Administration,

Defendant.

CASE NO. 10cv2349-LAB (BGS)

**ORDER RE: HEARING ON
ATTORNEY’S FEES; AND

ORDER RE: *EX PARTE*
APPLICATION TO FILE MOTION
TO STRIKE**

Currently on calendar for Monday, June 27, 2011 at 11:15 a.m. is a hearing on Plaintiff’s motion for attorney’s fees. Pursuant to Civil Local Rule 7.1(d)(1), the Court finds this motion suitable for decision without oral argument. Accordingly, the hearing on this matter is taken off calendar and this matter is taken under submission. No appearances will be required in this matter on Monday, June 27, 2011.

Defendant has filed an *ex parte* motion for leave to file a motion to strike a declaration to Plaintiff’s reply brief, primarily on the basis that it is inadmissible. Defendant in the alternative raises merits-based issues. To the extent the application raises evidentiary issues, the Court construes it as an objection to the declaration and will consider it for that purpose. To the extent the application seeks to argue the merits, it is essentially a sur-reply. Arguments not raised in the opening brief are ordinarily waived, so in most cases a surreply

1 serves little purpose. *Mesa Grande Band of Mission Indians v. Salazar*, 657 F. Supp. 2d
2 1169, 1173 (S.D.Cal., Sept. 25, 2009) (citing *United States v. Romm*, 455 F.3d 990, 997 (9th
3 Cir. 2006)). To the extent Plaintiff raises any new arguments Defendant has not yet had the
4 opportunity to reply to, no sur-reply is required.

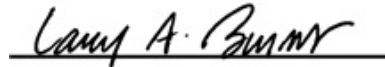
5 The *ex parte* motion (docket no. 12) is therefore construed as objections to the
6 affidavit submitted in support of Plaintiff's reply. The Clerk is directed to terminate its status
7 as a motion.

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9 **IT IS SO ORDERED.**

10 DATED: June 22, 2011

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HONORABLE LARRY ALAN BURNS
United States District Judge

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