

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02680-RBJ-KLM

JOHN DOE,

Plaintiff,

v.

MERCK & CO., INC., and
MERCK SHARP & DOHME CORP.,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion for Leave to File Surreply** [Docket No. 21; Filed on February 13, 2012] (the "Motion"). On February 3, 2012, Defendants filed a Motion to Submit Supplemental Authority [#17] in connection with Plaintiff's pending Motion to Proceed Anonymously [#2]. Defendants did not submit any new evidence or additional legal argument in their motion; they simply submitted a copy of one additional state-law opinion from New Jersey. See *Ex. A* [#17-1]. The Court granted the Motion to Submit Supplemental Authority on February 9, 2012. See *Minute Order* [#19].

As Plaintiff himself cites, "Generally, the nonmoving party should be given an opportunity to respond to new material raised for the first time in the movant's reply." *Motion* [#21] at 2 (quoting *Green v. New Mexico*, 420 F.3d 1189, 1196-97 (10th Cir. 2005)). However, "material" includes new evidence and new legal arguments. See *id.* (citing *Doebele v. Sprint/United Mgmt. Co.*, 342 F.3d 1117, 1139 n.13 (10th Cir. 2003)). Because Defendants have only submitted supplemental authority without providing new evidence or raising new legal arguments,

IT IS HEREBY **ORDERED** that the Motion is **DENIED**.

Dated: February 15, 2012