

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CAMBRIDGE UNIVERSITY PRESS,
et al.,

Plaintiffs,

-vs.-

MARK P. BECKER, in his official
capacity as Georgia State University
President, et al.,

Defendants.

Civil Action File
No. 1:08-CV-1425-ODE

DEFENDANTS' MOTION FOR LEAVE TO FILE SURREPLY

Defendants MARK P. BECKER, in his official capacity as Georgia State University President, et al. (collectively, "Defendants"), respectfully file this Motion For Leave To File Surreply ("Motion for Leave"). A copy of Defendants' "Surreply In Further Support Of Defendants' Opposition To Plaintiffs' Motion To Exclude The Expert Report Of Kenneth D. Crews" (the "Surreply") is attached hereto as Exhibit 1.

Defendants respectfully submit that a surreply is warranted to respond to Plaintiffs' inaccurate characterization of the Defendants' conduct and intentions presented for the first time in Plaintiffs' reply brief. (*See* Pl. Reply at 10-14).

Plaintiffs' reply includes, again, multiple inaccurate assertions of wrongdoing, namely Defendants knew that they would call Dr. Crews as a testifying expert as of January 2009 and purposefully withheld that information. Defendants submit that a surreply is warranted because they would otherwise be denied an opportunity to respond to Plaintiffs' arguments presented for the first time in the reply.

“Arguments raised for the first time in a reply brief are not properly before the reviewing court.” *United States v. Oakley*, 744 F.2d 1553, 1556 (11th Cir. 1984) (citing *United States v. Benz*, 740 F.2d 903, 916 (11th Cir. 1984)). “Normally, a party may not raise new grounds for granting its motion in a reply. Where a party does raise new grounds in its reply, the Court may . . . permit the non-moving party additional time to respond to the new argument.” *Int’l Telecomms. Exch. Corp. v. MCI Telecomms. Corp.*, 892 F. Supp. 1520, 1531 (N.D. Ga. 1995); see also *Telecomm Technical Servs., Inc. v. Siemens Rolm Commc’ns, Inc.*, 66 F. Supp. 2d 1306, 1310 (N.D. Ga. 1998) (allowing non-movant to file surreply briefs because movant raised new arguments in its reply briefs).

Nothing in the Federal Rules of Civil Procedure or this Court’s Local Rules prohibits the filing of surreplies. See *USMoney Source, Inc., v. Am. Int’l Specialty Lines Ins. Co.*, No. 1:07-cv-0682-WSD, 2008 WL 160709, at *2 n.5 (N.D. Ga. Jan. 15, 2008) (granting parties’ motions to file supplemental briefing and noting that

although surreplies are not allowed as a matter of right, “the Court may in its discretion permit the filing of a surreply . . . where a valid reason for such additional briefing exists”), *rev’d and remanded on other grounds*, 288 Fed. App’x 558, 563 (11th Cir. 2008). Thus, the decision to grant a party permission to file a surreply is within this Court’s discretion. *See Groobert v. President and Dirs. of Georgetown College*, 219 F. Supp. 2d 1, 13 (D.D.C. 2002). Accordingly, Defendants respectfully requests that the Court exercise its discretion and grant leave to file a surreply to clarify the record and to respond to Plaintiffs’ new arguments in its reply.

WHEREFORE, for the foregoing reasons, Defendants respectfully request that this Court grant their Motion For Leave in the form attached hereto as Exhibit 2 and consider Defendants’ Surreply in evaluating Plaintiffs’ Motion (Dkt. No. 106).

Respectfully submitted this 30th day of June, 2009.

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to L.R. 5.1B and 7.1D of the Northern District of Georgia, that the foregoing Defendants' Motion For Leave To File Surreply complies with the font and point selections approved by the Court in L.R. 5.1B. The foregoing pleading was prepared on a computer using 14-point Times New Roman font.

/s/ Katrina M. Quicker _____
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 30th day of June, 2009, I have electronically filed the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE SURREPLY** with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

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