

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JOHN ROCK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 1:12-cv-01019-TWP-DKL
	)	
NATIONAL COLLEGIATE ATHLETIC	)	
ASSOCIATION,	)	
	)	
Defendant.	)	

**ORDER DENYING LEAVE TO FILE SURREPLY**

On January 22, 2016, the Plaintiff, John Rock (“Mr. Rock”) filed a reply brief to his motion to certify class. ([Filing No. 184.](#)) Over a month later, on February 24, 2016, the Defendant, National Collegiate Athletic Association (“NCAA”), filed a motion for leave to file a sur-reply. ([Filing No. 196.](#)) On February 29, 2016, Mr. Rock filed a response. ([Filing No. 201.](#))

In the motion for leave, the NCAA asserts that a sur-reply is necessary to address new arguments raised for the first time in Mr. Rock’s reply brief. As such, the NCAA requests leave to file a nine-page sur-reply on March 7, 2016, after the NCAA has completed the deposition of a rebuttal expert on February 29, 2016. In his response, Mr. Rock contends that no new issues were raised in the reply and notes that rebuttal experts were anticipated in a prior briefing order.

As Seventh Circuit courts have made clear, “reply briefs are for replying, not for raising new matters or arguments that could and ought to have been advanced in the opening brief.” *Ner Tamid Congregation of N. Town v. Krivoruchko*, 620 F. Supp. 2d 924, 929 (N.D. Ill. 2009). Raising new arguments in a reply brief is not only “unfair to one’s opponent” but also “adversely affects the accuracy of the judicial process, which depends on comprehensive presentations by

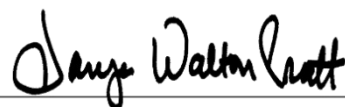
both sides.” *Autotech Techs. Ltd. P’ship v. Automationdirect.com, Inc.*, 235 F.R.D. 435, 437 (N.D. Ill. 2006). To avoid this impermissible result, courts “either invoke the waiver doctrine or allow the filing of a surreply.” *Id.*

The Court notes that the NCAA did not specifically identify any new arguments that were raised for the first time in Mr. Rock’s reply. Instead, the NCAA contends that Mr. Rock’s reply brief was accompanied by three previously undisclosed expert reports, one of which offers a new definition of “recruit”.

Nevertheless, as Mr. Rock points out, this Court’s briefing schedule specifically allowed Mr. Rock to file rebuttal expert reports in his reply brief to the motion for class certification. ([Filing No. 65 at 5.](#)) Accordingly, the NCAA cannot credibly argue that it was “surprised” by the attachment of Mr. Rock’s rebuttal expert reports in the reply. That scheduling order, entered almost two and a half years ago, also anticipated no sur-reply brief. Despite being aware of this schedule and the likelihood of new expert reports being filed in the reply, the NCAA did not move for leave to file a sur-reply brief to respond to Mr. Rock’s rebuttal experts until over one month after briefing on the motion for class certification was fully completed. The Court considers this too late. Instead, without identifying a “new” and unanticipated argument in Mr. Rock’s reply brief, the Court does not consider the NCAA’s request to file a sur-reply to be justified.

Accordingly, the Court **DENIES** the NCAA’s motion for leave to file a sur-reply. ([Filing No. 196.](#)) However, Mr. Rock is cautioned that any new arguments that may have been raised in the reply, apart from the anticipated expert rebuttal reports, will not be considered by the Court. Finally, the parties should anticipate no further briefing regarding the motion to certify class.

Date: 2/29/2016



---

TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

Daniel E. Pulliam  
FAEGRE BAKER DANIELS LLP  
(Indianapolis)  
daniel.pulliam@faegrebd.com

Kathy Lynn Osborn  
FAEGRE BAKER DANIELS LLP  
(Indianapolis)  
kathy.osborn@faegrebd.com

Daniel J. Kurowski  
HAGENS BERMAN SOBOL SHAPIRO  
LLP  
dank@hbsslaw.com

Jeff D. Friedman  
HAGENS BERMAN SOBOL SHAPIRO  
LLP  
jefff@hbsslaw.com

Jon T. King  
HAGENS BERMAN SOBOL SHAPIRO  
LLP  
jonk@hbsslaw.com

Steve W. Berman  
HAGENS BERMAN SOBOL SHAPIRO  
LLP  
steve@hbsslaw.com

Elizabeth A. Fegan  
HAGENS BERMAN SOBOL SHAPIRO,  
LLP  
beth@hbsslaw.com

James Piatt  
RILEY WILLIAMS & PIATT, LLC  
jpiatt@rwp-law.com

Joseph N. Williams  
RILEY WILLIAMS & PIATT, LLC  
jwilliams@rwp-law.com

William N. Riley  
RILEY WILLIAMS & PIATT, LLC  
wriley@rwp-law.com

Jacob K. Danziger  
SCHIFF HARDIN, LLP  
350 S. Main Street, Suite 210  
Ann Arbor, MI 48104

Gregory L. Curtner  
SCHIFF HARDIN, LLP - Michigan  
gcurtner@schiffhardin.com

Jessica A. Sprovstoff  
SCHIFF HARDIN, LLP - Michigan  
jsprovtsoff@schiffhardin.com

Kimberly K. Kefalas  
SCHIFF HARDIN, LLP - Michigan  
kkefalas@schiffhardin.com

Robert James Wierenga  
SCHIFF HARDIN, LLP - Michigan  
rwierenga@schiffhardin.com

Suzanne L. Wahl  
SCHIFF HARDIN, LLP - Michigan  
swahl@schiffhardin.com

Sara Willingham  
THE PAYTNER LAW FIRM PLLC  
swillingham@paynterlawfirm.com

Stuart McKinley Paynter  
The Paynter Law Firm PLLC  
stuart@paynterlawfirm.com