

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KATHLEEN C. BENISON and
CHRISTOPHER BENISON,

Plaintiffs,

Case No. 12-cv-15226

v

Honorable Thomas L. Ludington

GEORGE ROSS, E. GARY SHAPIRO,
IAN R. DAVISON,

Defendants.

**ORDER DENYING DEFENDANT'S MOTION TO STRIKE REPLY BRIEF OR
TO ALLOW THE FILING OF A SUR-REPLY**

On September 20, 2013, Plaintiffs filed a motion to strike Defendants' reply brief or to allow the filing of a sur-reply regarding Defendants' motion for summary judgment. ECF No. 23. Plaintiffs argue that a sur-reply brief is necessary to address three new declarations in Defendants' reply brief. Defendants oppose Plaintiffs' request. ECF No. 24.

Reply briefs are intended to reply to arguments made in the opposing party's response brief. *See Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 553 (6th Cir. 2008). Where a party raises a new argument in a reply brief, the Court should allow a sur-reply to which the non-moving party did not have a reasonable opportunity to respond. *Engineering & Mfg. Servs. LLC v. Ashton*, 387 F. App'x 575, 583 (6th Cir. 2010).

Here, Defendants did not raise new arguments; rather, Defendants provided the three declarations to refute statements made by Plaintiffs in their response brief. The first declaration, Dr. Ray Christie's, is intended to contextualize and rebut the statement that Dr. Benison "became the first professor at CMU in the past 37 years (and perhaps ever) to be denied a promotion based

solely on lack of university service.” Pls.’ Response, ECF No. 20. The second declaration, Dr. Leigh Orf’s, rebuts Plaintiffs’ statement that Dr. Orf “voted against the no confidence resolution” as a member of the Academic Senate. Response 10-11, ECF No. 20. Finally, the third declaration, Cindy Rudingh’s, is intended to rebut Plaintiffs’ statement that Christopher Benison was the “first person to have an academic hold placed on his transcript because CMU reversed a tuition remission.” Pls.’ Resp. 1. All three declarations in Defendants’ reply brief were used to rebut statements made by Plaintiffs in their response. Therefore, Defendants’ declarations are not “new evidence or arguments” and a sur-reply brief is thus not warranted.

Accordingly, it is **ORDERED** that Defendant’s motion to strike new evidence and arguments or to allow the filing of a sur-reply brief (ECF No. 23) is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: September 24, 2013

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 24, 2013.

s/Tracy A. Jacobs
TRACY A. JACOBS