

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA EASTERN  
DIVISION Civil Action No. 4:11-cv-00059-FL

SIRSI CORPORATION d/b/a  
SIRSIDYNIX,

Plaintiff,

v.

**REPLY BRIEF IN RESPONSE TO  
PLAINTIFF'S BRIEF IN  
OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS  
PURSUANT TO Rule 12(b)(6)**

CRAVEN-PAMLICO-CARTERET  
REGIONAL LIBRARY SYSTEM,

Defendant.

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Defendant submits this Reply Brief, pursuant to Local Civil Rule 7.1(f)(1) in response to Plaintiff's Memorandum of Law in Opposition to (hereinafter "Plaintiff's Motion") Defendant's Rule 12(b)(6) Motion to Dismiss. (hereinafter "Defendant's Motion to Dismiss")

**STATEMENT OF THE CASE AND FACTS**

In the interests of efficiency, Defendant respectfully directs the Court to Defendant's Memorandum of Law in Support of its Motion to Dismiss pursuant to Rule 12(b)(6) for a recitation of the case and facts.

**ARGUMENT**

Defense counsel admits to violating Local Civil Rule 7.1(d). (hereinafter "Rule 7.1(d)") by inadvertently failing to file a supporting Memorandum of Law with Defendant's Motion to

Dismiss on or about June 17, 2011. Defendant cured the defect on July 5, 2011, by filing its supporting Memorandum of Law. Plaintiff was not prejudiced by the violation.

The Court may deny a Motion to Dismiss if the moving party fails to comply with Rule 7.1(d). Where, however, the non-moving party has not been prejudiced, and the defect was cured, the interests of justice and judicial efficiency allow the Court to decide the Motion to Dismiss on its merits. *Cassell v. Monroe*, 5:10-CT-3023, 2010 WL 5125339, \*2 Case 4:11-cv-00059-BO Document 15 Filed 07/22/11 Page 5 of 16 6 (E.D.N.C. Dec. 7, 2010) (Boyle, J.) (unpublished cases are attached as Exhibit A). The Court can and should decide Defendant's 12(b)(6) Motion to Dismiss on its merits. *Curley v. Adams Creek Associates, et al.*, No. 4:08-CV-21-H, page 2 of 4 (E.D.N.C. October 14, 2010) (Maniel, D.).

In *Curley*, Plaintiff filed a Motion to Stay, but failed to simultaneously file a supporting memorandum, or appropriate verification. *Id.* Defendants moved the court to deny the Motion to Stay, for failure to comply with Rule 7.1(d). *Id.* at 1. The court declined to deny the motion, stating; "that Plaintiff's tardy filing of a supporting memorandum was sufficient to cure the defect under Rule 7.1(d)." *Id.* at 2. Here Defendant cured the defect by filing its Memorandum of Law on or about July 5, 2011 and Plaintiff argued against the merits of the Memorandum in its Motion.

Additionally, the cases relied upon by Plaintiff in its Motion are factually distinguishable from the matter sub judice. In *Nationwide Mutual Insurance v. McMahon*, cited by Plaintiff, the court denied a motion for failure to comply with Rule 7.1(d), because the moving party never submitted a memorandum of law after being notified of the deficiency; the breach was never cured. *Nationwide Mutual Insurance v. McMahon*, 365 F.Supp 2d 671, 673 (E.D.N.C. 2005). In *Sager v. Standard Ins. Co.*, also cited by the Plaintiff, the Court denied the movant's Motion for; (1)

failure to comply with Rule 7.1(d), “(2) The motion was not signed by local counsel, as required by Local Civil Rule 83.1 (d); and (3) The motion was filed after the close of fact discovery and no motion to extend the fact discovery deadline had been filed. See April 13, 2010 Order (establishing fact discovery deadline of March 31,2010) [DE-21].” *Sager v. Standard Ins. Co.*, 5:08-CV-628 (E.D.N.C. July 12, 2010). Here, Defendant cured the deficiency; Plaintiff was not prejudiced; and Plaintiff’s hyper-technical reading of Rule 7.1(d) does not serve the interests of justice or judicial economy.

### CONCLUSION

Defendant respectfully urges the Court to hear its Rule 12(b)(6) Motion to Dismiss on the merits. If the Court denies Defendant’s 12(b)(6) Motion on that grounds that it failed to comply with Rule 7.1(d), Defendant respectfully urges the Court to do so without prejudice, as courts routinely do, so Defendant can re-file the Motion and the Memorandum simultaneously. *See Mitchell v. Smithfield Packing*, 4:08-CV-182-H (E.D.N.C. November 24, 2010); *Harris v. Smithfield Packing*, 4:09-CV-41-H (E.D.N.C. November 24, 2010).

This the 26 day of July 2011.

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2011 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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