

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

WILLIAM THORPE, *et al.*,

*Plaintiffs,*

v.

VIRGINIA DEPARTMENT OF  
CORRECTIONS, *et al.*,

*Defendants.*

CASE NO. 2:20-cv-00007-JPJ-PMS

**CLASS PLAINTIFFS’  
MOTION FOR LEAVE TO FILE SUR-REPLY**

Pursuant to Local Rule 11(c), Class Plaintiffs respectfully move for leave to submit the attached Sur-Reply in response to new arguments made in the Reply in Support of Defendants’ Motion to Stay (ECF No. 111) (“Defs.’ Reply”).

“The standard for granting a leave to file a surreply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party’s reply.” *Vandelinde v. Priority Auto. Roanoke, Inc.*, 2021 U.S. Dist. LEXIS 53820, at \*16, No. 7:20-cv-00330, (quoting *United States v. Sum of \$70,990,605*, 991 F. Supp. 2d 144, 153 (D.D.C. 2013) (quoting *Lewis v. Rumsfeld*, 154 F.Supp.2d 56, 61 (D.D.C. 2001))). Class Plaintiffs satisfy this standard because, in their Reply, Defendants argue for the first time that this Court has already dismissed all claims for injunctive and declaratory relief against Defendants in both their official and individual capacities. Defendants also argue for the first time that Class Plaintiffs have been dilatory in pursuing discovery. Neither of these arguments appeared in Defendant’s original brief, and Plaintiffs have not had the opportunity to respond.

For these reasons, Class Plaintiffs respectfully request leave to file the attached Sur-Reply, which addresses these new arguments raised by Defendants.

Dated: July 22, 2021

Respectfully submitted:

/s/ Tara Lee

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of July, 2021, I electronically filed the foregoing Class Plaintiffs' Motion for Leave to File Sur-Reply with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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