UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA Big Stone Gap Division

WILLIAM THORPE, et al.,
Plaintiff,
v.
VIRGINIA DEPARTMENT OF CORRECTIONS, et al.,
Defendants.

Case No. 2:20-cv-00007-JPJ-PMS

DEFENDANTS' RESPONSE TO CLASS PLAINTIFFS' MOTION FOR LEAVE TO FILE SURREPLY BRIEF

To justify the filing of their proposed surreply brief, Plaintiffs variously characterize the arguments in Defendants' reply, Dkt. 78, as "new," "novel," and "not presented to the Magistrate Judge or in Defendants' Objections." *See* Dkt. 79 at 1–2; Dkt. 79-1 at 1. Although Defendants reject those characterizations, they do not oppose the relief sought by Plaintiffs if the Court concludes that further briefing from Plaintiffs would assist in its resolution of this matter.

Plaintiffs also indicate, however, that they "will separately move this Court for leave to file a reply in support of their single Objection to the Magistrate Judge's Report and Recommendation," Dkt. 79 at 1 n.1, in response to Defendants' opposition *filed more than two weeks ago*, Dkt. 74. Defendants reserve the right to oppose such a motion, given the untimeliness of a reply under Local Civil Rule 11(a).

October 20, 2020

Respectfully submitted,

<u>/s/ Maya M. Eckstein</u>

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

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