

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

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WILLIAM THORPE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:20-cv-00007-JPJ-PMS
)	
VIRGINIA DEPARTMENT OF)	
CORRECTIONS, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS’ MOTION FOR LEAVE TO FILE SURREPLY BRIEF
IN FURTHER RESPONSE TO PLAINTIFF’S RULE 72(B) OBJECTION TO
MAGISTRATE JUDGE’S REPORT & RECOMMENDATION**

Pursuant to Local Civil Rule 11(c)(2), Defendants respectfully seek leave to file a surreply brief in response to Plaintiffs’ recent reply (Dkt. 85) in support of their objection (Dkt. 71) to the Magistrate Judge’s Report and Recommendation (Dkt. 70). In support of this motion, Defendants state as follows:

1. In this putative class action that seeks to invalidate the Virginia Department of Corrections’ Step-Down Program, among the claims Plaintiffs assert is that Defendants violated a settlement agreement from the 1980s. Defendants moved to dismiss Plaintiffs’ breach-of-contract claim, along with their other claims.

2. On September 4, 2020, in her 89-page report and recommendation (“R&R”), the Magistrate Judge determined that Plaintiffs’ breach-of-contract claim, having accrued in 2012, is time-barred and therefore recommended that the Court dismiss it. Dkt. 70.

3. Two weeks later, Plaintiffs timely filed an objection to the R&R under Federal Rule of Civil Procedure 72(b), Dkt. 71, and two weeks after that, Defendants timely filed an opposition brief. Dkt. 75.

4. On October 27—twenty-five days after Defendants’ opposition—Plaintiffs moved for leave to file a reply brief in further support of their objection, Dkt. 81, a motion this Court granted, Dkt. 83. Their reply brief, Dkt. 85, contains new arguments that Defendants wish to respond to.

5. Defendants submit that a surreply brief addressing the arguments and authorities raised by Plaintiffs would be helpful to the Court’s consideration of the dispositive motions filed in this case. *Cf. Ambrose v. Southworth*, 953 F. Supp. 728, 731 (W.D. Va. 1997) (“[A] reply brief is warranted to the extent that it addresses [Plaintiffs’] response.”). Defendants have prepared such a surreply—the focused 5-page brief attached hereto as Exhibit 1.

6. As Plaintiffs point out, Dkt. 81 at 2 n.1, Defendants did not oppose Plaintiffs’ filing of a surreply brief of their own in opposition to Defendants’ objections to the R&R, Dkt. 80.

7. For these reasons, good cause exists for granting the requested relief.

WHEREFORE, Defendants respectfully request that the Court grant their motion for leave to file a surreply brief, and order that their proposed surreply brief, attached hereto as Exhibit 1, be deemed filed.

November 14, 2020

Respectfully submitted,

/s/ Maya M. Eckstein

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 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.

By: /s/ Maya M. Eckstein
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