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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANDREW FLORES, an individual, AMY
SHERLOCK, on her own behalf and on
behalf of her minor children, T.S. and S.S.,
JANE DOE, an individual,

Plaintiffs,

v.

GINA M. AUSTIN, an individual, et al.,

Defendants.

Case No.: 20-CV-656 TWR (DEB)

**ORDER GRANTING EX PARTE
APPLICATION FOR LEAVE TO
FILE SUR-REPLY**

(ECF No. 25)

Before the Court is Plaintiffs’ Ex Parte Motion to File a Sur-Reply. (“Motion,” ECF No. 25.) Under Civil L.R. 7.1(d)(1), the Court finds the matter suitable for disposition without oral argument. For the reasons set forth below, the Court **GRANTS** the motion.

LEGAL STANDARD

Neither the Federal Rules of Civil Procedure nor this District’s Local Rules provide a right to file a sur-reply. Rather, “permitting the filing of a sur-reply is within the discretion of the district court.” *Whitewater W. Indus., Ltd. v. Pac. Surf Designs, Inc.*, No. 317CV01118BENBLM, 2018 WL 3198800, at *1 (S.D. Cal. June 26, 2018). Sur-replies should be allowed “only where a valid reason for such additional briefing exists,

1 such as where the movant raises new arguments in its reply brief.” *Hill v. England*, No.
2 CVF05869RECTAG, 2005 WL 3031136, at *1 (E.D. Cal. Nov. 8, 2005) (internal
3 quotation marks omitted). “[A]n argument is not ‘new’ when it is made in response to an
4 issue raised in an earlier briefing.” *Great Am. Ins. Co. v. Berl*, No. CV 17-03767 SJO,
5 2017 WL 8180627, at *1 (C.D. Cal. Oct. 23, 2017) (internal quotation marks altered)
6 (citing *Baloch v. Norton*, 517 F. Supp. 2d 345 (D.D.C. 2007)).

7 **ANALYSIS**


8 Here, the Court finds that a sur-reply is warranted. In their Reply, Defendants
9 assert two new grounds to dismiss Plaintiffs’ claims: issue and claim preclusion. (*See*
10 ECF No. 24 at 7–8.) Neither of those arguments were raised in the Motion to Dismiss.
11 (*See* ECF No. 21.) As a result, Plaintiffs should be allowed to respond to these claims,
12 especially since either one of those grounds can dispose of Plaintiffs’ case entirely. The
13 Court finds that a sur-reply is appropriate under these circumstances and **GRANTS**
14 Plaintiff’s motion.

15 **CONCLUSION**

16 Because Defendants make new arguments in their Reply, the Court **GRANTS**
17 Plaintiffs’ Ex Parte Motion to File a Sur-Reply. (ECF No. 25.) Plaintiffs **MUST FILE**
18 their sur-reply on or before Friday, March 26, 2021.

19 **IT IS SO ORDERED.**

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21 Dated: March 22, 2021

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23 _____
24 Honorable Todd W. Robinson
25 United States District Court
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