

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL VETERANS LEGAL)
SERVICES PROGRAM, et al.,)
)
Plaintiffs,)
)
v.) Civil Action No. 16-745 ESH
)
UNITED STATES OF AMERICA,)
)
Defendant.)
)
)
_____)

RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUR-REPLY

Defendant opposes Plaintiffs' request to file a sur-reply but agrees to allow the filing of Plaintiffs' Concise Statement Of Genuine Issues Of Material Fact.

Plaintiffs appear, at first blush, to be attempting to address an issue not raised earlier, the issue presented for the first time in Defendant's Reply: that in their opposition, "Plaintiffs have made no effort to address the claim made in support of Defendant's dispositive motion that they have not alleged a statutory remedy that supports an illegal extraction claim. Def. Mem. at 15-19." Reply at 5-6. In fact, however, Plaintiffs then argue in their proffered sur-reply, that which they should have argued in any opposition, the merits of their exaction claim. Plaintiffs offer no legitimate basis for having failed to address all of the claims presented by Defendant at the proper time (i.e., in Plaintiffs' opposition).

Having failed to make any showing of excusable neglect, they should not be allowed to alter their opposition by means of a sur-reply. See Smith v. District of Columbia, 430 F.3d 450, 456 57 and n.5 (D.C. Cir. 2005) ("In the absence of any motion for an extension, the trial court had no basis on which to exercise its discretion" to allow an untimely filing.)

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Response To Plaintiffs' Motion For Leave To File A Sur-Reply and a proposed order has been made through the Court's electronic transmission facilities on this 17th day of August, 2016.

/s/
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