

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

Case No. 15-cv-324-C

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY
SYSTEM OF OKLAHOMA,

Defendants.

**DEFENDANTS' MOTION FOR LEAVE TO FILE
SURREPLY TO PLAINTIFF'S REPLY TO
DEFENDANTS' OPPOSITION TO REINSTATEMENT**

Defendants, pursuant to LCvR 7.1(i), respectfully request this Court grant leave to file a surreply to Plaintiff's Reply to Defendants' Opposition to Reinstatement [Doc. 271]. In support Defendants state:

1. Local Rule of Civil Procedure 7.1(i) permits the filing of reply briefs to respond to new matter raised in the response brief.
2. On December 29, 2017, Plaintiff filed her 293-page reply to Defendants' Opposition to Reinstatement ("Reply"). [Doc. 271].
3. The reason for the surreply is to address the abundance of new arguments, newly alleged "facts" and new exhibits presented in Plaintiff's 293 page

filing, including, but not limited to multiple unsubstantiated declarations, created after the filing of Defendants' response, and attached exhibits.

4. The law in the Tenth Circuit is clear: "[W]here a moving party advances in a reply new reasons and evidence in support of its motion. . . , the nonmoving party should be granted an opportunity to respond." *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir. 1998); *Black v. TIC Inv. Corp.*, 900 F.2d 112, 116 (7th Cir. 1990); *Pimentel & Sons Guitar Makers, Inc. v. Pimentel*, 229 F.R.D. 208, 210 (D.N.M. 2005).

5. In the event the court denies Defendants' request to file a surreply, Defendants request the court disregard all new material and new arguments contained in Plaintiff's reply as improper.

6. The reason courts do not consider new matters presented in a reply brief is because the opposing party has not had an opportunity to respond. (*See Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000). "[T]o allow an appellant to raise new arguments at this juncture would be manifestly unfair to the appellee who, under our rules, has no opportunity for a written response." *Headrick v. Rockwell Int'l Corp.*, 24 F.3d 1272, 1278 (10th Cir. 1994)(internal quotation marks and citations omitted).

7. Counsel for Defendants has contacted Plaintiff's counsel and he has no objection to requested relief.

WHEREFORE, Defendants respectfully request the Court grant leave to file a surreply within seven (7) days of the granting of this motion, or in the alternative, disregard all new matters, (including all declarations and other exhibits), improperly set forth in Plaintiff's Reply.

Respectfully submitted,

/s/ Dixie L. Coffey

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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