

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DISABILITY RIGHTS CONNECTICUT,
INC., on behalf of its constituents,

Plaintiff,

v.

CONNECTICUT DEPARTMENT OF
CORRECTION;

ANGEL QUIROS, Acting Commissioner,
Connecticut Department of Correction,
in his official capacity; and

ROGER BOWLES, Warden,
Northern Correctional Institution,
in his official capacity,

Defendants.

Civil Action No. 3:21-cv-00146-KAD

April 16, 2021

**PLAINTIFF DISABILITY RIGHTS CONNECTICUT'S
MOTION FOR LEAVE TO FILE SUR-REPLY MEMORANDUM**

Pursuant to Local Rule 7(d), Disability Rights Connecticut, Inc. (“DRCT”) respectfully moves for leave to file a sur-reply memorandum in the above-captioned case. Specifically, DRCT seeks to respond to the reply brief (ECF No. 46) filed by Defendants in support of their motion to stay (ECF No. 33). A copy of the proposed sur-reply is attached hereto as **Exhibit A**.

Good cause exists to allow DRCT leave to file a sur-reply. “Arguments may not be made for the first time in a reply brief.” *Benjamin v. Oxford Health Ins., Inc.*, 2017 WL 772328, at *3 (D. Conn. Feb. 28, 2017) (citation omitted); *Corpes v. Walsh Const. Co.*, 2015 WL 5331725, at *6 (D. Conn. Sept. 14, 2015) (same). When new material issues are raised “in opposition papers, the non-moving party should seek leave, or may receive the Court’s *sua sponte* permission, to file a sur-reply to address those new issues.” *Travelers Indem. Co. v. Excalibur Reinsurance*

Corp., 2013 WL 4012795, at *3 (D. Conn. Aug. 5, 2013); *Ferrie v. DirecTV, LLC*, 2016 WL 183474, at *1 n.1 (D. Conn. Jan. 12, 2016) (same); *see also Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, 2020 WL 401776, at *1 n.1 (D. Conn. Jan. 24, 2020) (“The Court here grants RPS leave to file a sur-reply pursuant to Rule 7(d). The Court finds that good cause for filing a sur-reply exists in light of the new evidence raised in Plaintiffs’ reply.”).

Defendants have raised two new arguments in their reply brief: first, that a stay of discovery is warranted in light of the announced closure of Northern, and second, that a stay of discovery is warranted in light of certain proposed legislation. Neither of these arguments were made in Defendants’ opening brief (or addressed in DRCT’s opposition brief). Accordingly, these arguments should not be considered. Even if considered, these new argument do not support a stay. For the foregoing reasons, good cause exists to grant DRCT leave to file a sur-reply in the form attached hereto.

Dated: April 16, 2021

Respectfully submitted,

/s/ Kyle Mooney

Kyle Mooney (*pro hac vice*)

Eric Lin (*pro hac vice*)

Neal Burstyn (*pro hac vice*)

Morrison & Foerster LLP

250 West 55th Street

New York, NY 10019

Phone: (212) 468-8000

Fax: (212) 468-7900

Email: kmooney@mofocom

elin@mofocom

nburstyn@mofocom

Dan Barrett (ct29816)

Elana Bildner (ct30379)

ACLU Foundation of Connecticut

765 Asylum Avenue, 1st Floor

Hartford, CT 06105

Phone: (860) 471-8471
Email: e-filings@acluct.org

Hope Metcalf (ct424312)
Ali Gali (Law Student Intern)
Karen Chikezie (Law Student Intern)
Luke Connell (Law Student Intern)
Lowenstein International Human Rights Clinic
Yale Law School
P.O. Box 208215
New Haven, CT 06520
Phone: (203) 432-9404
Email: hope.metcalf@ylsclinics.org

Kasey Considine (ct30756)
Disability Rights Connecticut (DRCT)
846 Wethersfield Avenue
Hartford, CT 06114
Phone: (860) 297-4300
Fax: (860) 296-0055
Email: kasey.considine@disrightsct.org

*Counsel for Plaintiff Disability Rights
Connecticut, Inc.*