



U.S. Department of Justice
Civil Division, Federal Programs Branch

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January 19, 2011

Via U.S. Mail

The Honorable Garrett E. Brown, Jr.
U.S. District Judge
U.S. District Court – District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Room 2020
Trenton, NJ 08608

Re: iMEGA, et al. v. Eric H. Holder, Jr., et al., No. 3:09-cv-1301 (GEB-TJB)

Dear Judge Brown:

Enclosed please find two courtesy copies of Federal Defendants' Motion, which was filed electronically today via the Court's ECF system.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Leary", with a long, sweeping horizontal stroke extending to the right.

Peter D. Leary
Counsel for the Federal Defendants

Enclosures

cc: Eric M. Bernstein, Richard L. Rudin and Leon J. Sokol, counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

INTERACTIVE MEDIA ENTERTAINMENT &
GAMING ASSOCIATION, INC., *et al.*,

Plaintiffs,

v.

ERIC H. HOLDER, JR., *et al.*,

Defendants.

Civil Action No.
3:09-cv-1301 (GEB-TJB)

Plaintiffs' decision to file three sur-replies, which total 25 pages, both abandons their previous representation and violates this Court's January 11, 2011 Order. Accordingly, the three documents (Docs. 61, 62, 63) should be stricken.

On December 17, 2010, counsel for the New Jersey Horsemen's Associations and Senator Raymond J. Lesniak sought leave to file a sur-reply to address the alleged impact SCR 132 has on this case. See Doc. 56. Specifically, counsel represented that "If the court grants the permission which the plaintiffs seek herein, the plaintiffs would agree to be limited to a letter or supplemental brief of not to exceed three (3) pages [.]” Id. at 2 (emphasis added). Both this letter, and a subsequent letter from iMEGA, make clear that the request to file one combined, three-page sur-reply was made on behalf of all plaintiffs. Compare id. at 1 (“I write this letter on behalf of all plaintiffs and plaintiff-intervenor, Senate

President, Stephen M. Sweeney.”) with Doc. 57 at 1 (“Please be advised that Interactive Media Entertainment & Gaming Association, Inc. joins in the request of Plaintiff, Senator Lesniak, for the reasons stated therein.”). Defendants’ response reflected the clarity of plaintiffs’ request: “Defendants submit this letter explaining our position with respect to Plaintiffs’ request (Docs. 56 & 57) for permission to file a three-page surreply in support of their opposition to Defendants’ pending motion to dismiss (Doc. 40).” See Doc. 58 at 1.¹

Likewise, in granting plaintiffs’ request, the Court noted that the matter came “upon the applications to file a sur-reply,” see Doc. 60 (emphasis added), and ordered “that Plaintiffs’ and Intervenor-Plaintiff’s request to file a sur-reply is GRANTED; and it is further ORDERED that Plaintiffs and Intervenor Plaintiff shall each respectively file their comprehensive sur-reply within seven days of the date of this order.” Id. (emphasis added). At no point did plaintiffs ask to file multiple sur-replies that would run dozens of pages long when combined, nor did this Court ever grant such a request.

Instead of complying with this Court’s order, and honoring their own representation, plaintiffs filed three separate sur-replies that exceed their requested

¹ It also should be noted that defendants’ clear understanding of plaintiffs’ plain request informed defendants’ decision to take no position on that request rather than opposing it.

page limit by more than 800%. And not only do these briefs, when combined, total 25 pages, but each one of them exceeds three pages when just taken alone. See Doc. 61 (4 pages), Doc. 62 (16 pages), Doc. 63 (5 pages).

It is well within this Court's inherent powers to strike a sur-reply that exceeds a page limit requested by a plaintiff. See, e.g., Best Medical Intern., Inc. v. Accuray, Inc., No. 2:10-cv-1043, 2010 WL 5053919, *1 (W.D. Pa. 2010) (striking a sur-reply which "exceeded the permitted number of pages which had been specifically requested by Plaintiff" concluding that "[s]uch tactics will not be condoned"). Accordingly, defendants respectfully request that the Court strike plaintiffs' improper sur-replies. Or, if the Court chooses to allow plaintiffs to file a sur-reply, the three documents they filed should be stricken, and they should be permitted to submit a single, combined three-page sur-reply, as they requested and as this Court granted them permission to do.

Dated: January 19, 2011

Respectfully submitted,

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Assistant Attorney General

PAUL J. FISHMAN
United States Attorney

VINCENT M. GARVEY
Deputy Branch Director, Federal Programs Branch

/s/ Peter D. Leary

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CERTIFICATE OF SERVICE

I hereby certify that, on January 19, 2011, a true and correct copy of the foregoing was served electronically upon the following parties or counsel:

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