

Rules of the Western District, that prohibits a party from filing a second or successive motion for summary judgment.

Second, the same lawyers appearing for Plaintiff in this case filed and litigated, cross-motions for summary judgment in a related case in this very district, involving the same counsel on both sides. Plaintiff cannot credibly argue that the filing of cross summary judgment motions is improper when its counsel has done exactly that in a strikingly similar case.

Third, Local Rule CV-7(e)'s surreply prohibition simply does not apply. The position Plaintiff asks this Court to adopt requires conflating two fundamentally different procedural mechanisms. A motion for summary judgment is a dispositive motion governed by Federal Rule of Civil Procedure 56 that seeks affirmative relief— judgment as a matter of law. A response to a motion for summary judgment, in contrast, can only ask that the motion be denied; it seeks no affirmative relief and advances no independent basis for judgment. A response can seek denial of a pleading; a motion for summary judgment can seek dismissal of a claim.

Fourth, Plaintiff's claimed prejudice is illusory. Plaintiff has a full and fair opportunity to respond to the District's Second Motion for Summary Judgment, just as the District had the opportunity to respond to Plaintiff's motion. Orderly briefing is not disrupted. This would be proceeding with cross-motions as courts regularly manage, and as counsel in this case has done before in this very Court.

For these reasons, Plaintiff's Motion to Strike should be denied.

STATEMENT OF FACTS

Plaintiff has pleaded a takings claim based on the purported effect that the District's amendment of its rules has had on Plaintiff's property interest (Dkt. 1). Two evidence-based and merits-based cross-motions for summary judgment regarding Plaintiff's takings claim are before the Court. The first is Plaintiff's Motion for Summary Judgment (Dkt. 66), Defendant's Response asking the Court to deny the relief requested by Plaintiff (Dkt. 76), and Plaintiff's Reply to same (Dkt. 77). By its motion, Plaintiff asks the Court to declare that the District's actions and the effects thereof constitute a taking and to require the District to repeal its Amended Rules and apply its Old Rules, and by its response, Defendant asks the Court to deny Plaintiff's request. The second cross-motion is Defendant's Motion for Summary Judgment (Dkt. 78) requesting that the Court grant the affirmative relief of dismissal of Plaintiff's claim. Defendant's cross-motion is the first and only time that Defendant has (1) asserted that the actual facts of the case, developed after full discovery including depositions, are dispositive of Plaintiff's takings claim, and (2) affirmatively sought dismissal of Plaintiff's claim on that basis. No Response or Reply are yet on file because Plaintiff instead filed its Motion to Strike (Dkt. 79) and companion Motion to Stay (Dkt. 80).

ARGUMENTS AND AUTHORITIES

There is only one way to obtain the affirmative relief of dismissal of a plaintiff's claims on the merits: a Rule 56 Motion for Summary Judgment specifically requesting that relief. That relief cannot be obtained by any other vehicle here.¹ So, that is what

¹ A motion for summary judgment is the correct vehicle and the vehicle Defendant employed here. Fed. R. Civ. P. 56(a). While federal courts have some

Defendant filed, and such cross-motions are the only way to set the table for the Court to have a full menu of relief options before it.

A. Cross-motions for summary judgment are permissible, appropriate, and routine

Cross-motions for summary judgment, each seeking opposite relief, including responses and replies, is an entirely permissible and routine method of resolving cases. *See, e.g., Playa Vista Conroe v. Ins. Co. of the West*, 989 F.3d 411, 414 (5th Cir. 2021); *Santander Consumer USA Inc. v. City of San Antonio*, 2025 U.S. Dist. LEXIS 150019 *2–3 (W.D. Tex 2025); *Discover Prop. & Cas. Co. & Travelers Indem. Co. of Conn. v. Blue Bell Creameries USA, Inc.*, 622 F. Supp. 3d 349, 351 (W.D. Tex. 2022); *Rowell v. Paxton*, 336 F. Supp. 3d 724, 727 (W.D. Tex. 2018).

Plaintiff's counsel knows this well. In a prior case brought by the same counsel (Sprouse Shrader Smith PLLC) against this same District asserting a takings claim and companion equal protection claim, the parties litigated two full sets of cross-motions for summary judgment—responses and replies included—with no objection from either side. *Fazzino v. Roe, et al.*, No. 6:18-CV-00114-JCM, (U.S. District Court Western District of Texas, Waco Division), docket sheet attached as Exhibit A.² That is, the

limited authority to grant summary judgment (including dismissal of a claim) to a nonmovant sua sponte, that avenue requires advance notice and opportunity to respond. Fed. R. Civ. P. 56(f). That procedure was never invoked. That is, while Defendant could (and did) ask the Court in its Response (Dkt. 76) to deny the relief sought by Plaintiff's Motion for Summary Judgment (Dkt. 66), Defendant could not obtain the affirmative relief (dismissal of Plaintiff's claims) by any mechanism other than its own cross-motion for summary judgment (Dkt. 78).

² First, there were cross-motions on Plaintiff's equal protection claims: Dkt. 57 (Defendants' Motion), Dkt. 59 (Response), and Dkt. 60 (Reply), and Dkt. 106 (Plaintiff's Motion, filed 10 months after Defendants' Reply), Dkt. 111 (Response) and Dkt. 114

lawyers before the Court have used the cross-motion process in a remarkably similar case in this very Court. They know from experience that multiple such motions are permissible in a single case. Plaintiff cites no rule—local or federal—prohibiting the District from filing its Second Motion for Summary Judgment. The absence of such authority is not an oversight.³ Plaintiff’s motion to strike one is not credible.

Plaintiff inexplicably asserts that Defendant’s cross-motion is brought “for an improper purpose.” Seeking the affirmative relief of dismissal of a Plaintiff’s claims is not an “improper purpose”; rather, it is the exact kind of purpose contemplated by Rule 56. Fed. R. Civ. P. 56(a) (providing that a party may move for summary judgment on any “claim or defense—or part of [any] claim or defense.”)

(Reply). This Court granted Defendants’ Motion and denied Plaintiff’s Motion (Dkt. 119). There were cross-motions on Plaintiff’s taking claims: Dkt. 105 (Plaintiff’s Motion), Dkt. 109 (Response), and Dkt. 113 (Reply), and Dkt. 107 (Defendant’s Motion), Dkt. 116 (Response), and Dkt. 121 (Reply). The Court did not reach those cross-motions, as the case settled. An annotated copy of the docket sheet for that case is attached as Exhibit A to this response.

³ To the extent that Plaintiff bases its Motion to Strike on Defendant’s prior November 7, 2025 Rule 12(c) Motion for Judgment on the Pleadings and/or Rule 56 Motion for Summary Judgment (Dkt 50), that motion does not support any stay in this case or striking of Dkt. 78. The two motions are not duplicates: Dkt. 50 was (1) filed over seven months ago, and is still awaiting court action, (2) predated all depositions, which form the key evidentiary basis for Dkt. 78, (3) rests primarily on different grounds, (4) led with Rule 12(c) Motion, invoking Rule 56 Motion for Summary Judgment only as necessary; and finally and importantly, (5) there is no order or Rule limiting the number of dispositive motions that a party may file. *See* Fed. R. Civ. P. 56; *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010) (observing that Rule 56 “does not limit the number of motions that may be filed . . . Rule 56 . . . does not bar successive motions.”). Tellingly, the Northern District of Texas *does* have such a rule, *see* N.D. Tex. L.R. 56.2(b) (“[A] party may file no more than one motion for summary judgment.”)—the Western District does not.

The legal reasoning and evidence cited in Defendant’s Motion for Summary Judgment overlaps with Defendant’s earlier Response to Plaintiff’s Motion for Summary Judgment; *of course it does*, that is the nature of cross-motions for summary judgment. *See, e.g., Playa Vista Conroe*, 989 F.3d at 414.. Cross-motions will almost always mirror each other: Plaintiff’s motion seeks the relief sought in Plaintiff’s Complaint and Defendant’s motion seeks dismissal of Plaintiff’s Complaint. For each the nonmovant’s responses simply request denial of the relief the movant has requested. Each motion should be considered on its own merits, in light of the specific relief that each requests.

B. The relief requested defines the issue, and is dispositive of Plaintiff’s challenge to Defendant’s Motion for Summary Judgment

Plaintiff asserts that Defendant’s Motion for Summary Judgment “is not a genuine independent dispositive motion” while failing to acknowledge the very thing that makes any motion a motion: the relief requested. Defendant agrees with Plaintiff that with respect to pleadings, substance indeed does control over form. Defendant’s Motion for Summary Judgment is the first and only pleading by Defendant that seeks dismissal of Plaintiff’s claims on the merits after development of the evidence. That is not a surrepley. That is a dispositive motion and striking it would deny Defendant the right to see the relief entirely.

The consequences of Plaintiff’s position make clear how extraordinary it is. Absent Defendant’s Motion for Summary Judgment, the Court could not grant dismissal of Plaintiff’s claims on the merits no matter how the evidence came in. Plaintiff is asking this Court to permanently foreclose that outcome—not because Defendant missed a deadline, violated a rule, or acted in bad faith, but simply because Defendant filed a

cross-motion for summary judgment on the same subject as Plaintiff's motion. Plaintiff cites no authority for that result because none exists.

As for overlap in the briefing: that is a feature of cross-motions, not a defect. Plaintiff is free to respond to Defendant's Motion by raising every argument available to it—including referring the Court back to Plaintiff's own affirmative motion for summary judgment and evidence. Again, that's how cross-motions for summary judgment work. And that's how they should work here.

CONCLUSION AND PRAYER

The Court should have the opportunity to grant the full measure of relief possible, from disposing of the case in Plaintiff's favor to disposing of the case in Defendant's favor. Cross-motions are the routine and appropriate mechanism for doing so, and consideration of Defendant's cross-Motion for Summary Judgment is thus a necessary element of that process. Defendant respectfully asks the Court to deny Plaintiff's Motion to Strike Defendant's Second Motion for Summary Judgment. Defendant further respectfully requests any and all other relief to which it may be entitled.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800 Phone
(512) 472-0532 Facsimile

By: /s/ Jose E. de la Fuente
JOSE E. de la FUENTE
State Bar No. 00793605
jdela Fuente@lglawfirm.com
JAMES F. PARKER
State Bar No. 24027591
jparker@lglawfirm.com
GABRIELLE C. SMITH
State Bar No. 24093172
gsmith@lglawfirm.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2026, I caused a true and correct copy of the foregoing to be transmitted by the Court's electronic filing system to the parties listed below:

Marvin W. Jones
marty.jones@sprouselaw.com
C. Brantley Jones
brantley.jones@sprouselaw.com
Sprouse Shrader Smith PLLC
701 S. Taylor, Suite 500
Amarillo, Texas 79105

Richard L. Coffman
rcoffman@coffmanlawfirm.com
The Coffman Law Firm
3355 West Alabama, Suite 240
Houston, Texas 77098

ATTORNEYS FOR PLAINTIFF

/s/ Jose E. de la Fuente

JOSE E. de la FUENTE