

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

FAZZINO INVESTMENTS, LP §
for itself and all others similarly situated, §
PLAINTIFFS §

V. §

CASE NO. 6:25-cv -00001-ADA-DTG

BRAZOS VALLEY GROUNDWATER §
CONSERVATION DISTRICT, §
BVGCD §

**PLAINTIFF’S REPLY IN SUPPORT OF MOTION TO STRIKE DEFENDANT’S
SECOND MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff’s Motion to Strike is predicated on the fact that Defendant’s Second Motion for Summary Judgment (Dkt. #78) is an unauthorized surreply to Plaintiff’s Motion for Summary Judgment. In its Motion to Strike, Plaintiff outlines in detail the duplicative arguments made by Defendant in three different pleadings, including its Second Motion for Summary Judgment. Instead of addressing this core issue, Defendant’s Response again invokes the straw man fallacy, dodging Plaintiff’s actual point by asserting that its Second Motion for Summary Judgment is really just a proper cross-motion to Plaintiff’s Motion for Summary Judgment.

But Plaintiff does not argue that cross-motions for summary judgment are categorically improper. Rather, Plaintiff challenges Defendant’s attempt to submit additional merits briefing after summary judgment briefing has already closed. Defendant’s Response repeatedly defends the general propriety of cross-motions for summary judgment, but it never addresses the actual issue presented: whether its Second Motion for Summary Judgment is, in substance, an unauthorized surreply to Plaintiff’s Motion for Summary Judgment that also violates the Local

Rule CV-7 briefing page limits. Defendant does not contravene—much less, address—Plaintiff’s argument. Defendant concedes the point.

The Court should evaluate Defendant’s Response based upon its practical function rather than its caption. Where a filing merely repackages arguments previously advanced in opposition to a motion, and is filed only after the opposing party’s reply brief is submitted, it operates as a surreply regardless of the title placed upon it.

Defendant contends that Plaintiff suffers no prejudice because Plaintiff can simply respond to its Second Motion for Summary Judgment. But that is the prejudice. Defendant already received the benefit of filing a response to Plaintiff’s summary judgment motion. After reviewing Plaintiff’s reply, Defendant submitted another merits brief advancing substantially the same arguments under the label of a new summary judgment motion. Plaintiff is now forced to incur additional expense and briefing obligations to address arguments that are already before the Court. Local Rule CV-7(e) exists to prevent precisely this type of serial briefing and preserve orderly motion practice.

CONCLUSION

Because by way of its silence, Defendant concedes that its Second Motion for Summary Judgment (Dkt. #78) functions as an unauthorized and duplicative surreply, and because Defendant fails to demonstrate any legitimate need for an additional merits brief after summary judgment briefing has closed, Plaintiff respectfully requests the Court to strike Defendant’s Second Motion for Summary Judgment (Dkt. 78), and grant Plaintiff such other and further relief to which it is entitled.

Date: June 16, 2026

Respectfully submitted,

/s/ Marvin W. Jones

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2026, I served a true and correct copy of Plaintiff's Reply in Support of Motion to Strike Defendant's Second Motion for Summary Judgment on Defendant's counsel via email and the Court's electronic filing system.

/s/ Marvin W. Jones

Marvin W. Jones