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7 SUPERIOR COURT OF ARIZONA
8 MARICOPA COUNTY

10 AMBER WINTERS, et al.,
11
12 Plaintiffs,
13 vs.
14 BANNER HEALTH INC., et al.,
15 Defendants.

No. CV2012-007665

**MOTION TO STRIKE PART I OF
PLAINTIFFS' REPLY IN SUPPORT
OF MOTION FOR NEW TRIAL RE
BREACH OF CONTRACT**

16
17 Plaintiffs seek Rule 60 relief in their reply in support of an untimely Rule 59
18 motion for new trial (the "Motion"). This is obviously improper. The Court should
19 strike Part I of Plaintiffs' reply, pursuant to Rule 7.1(a).

20 From the very beginning, Plaintiffs knew that the Motion was untimely—that is
21 why they asked the Court to extend their filing time under Rule 6(b). But Defendants
22 showed that Rule 6(b) clearly bars such an extension. Now in reply, Plaintiffs try
23 something different, asking the Court to treat the Motion as one made under Rule 60,
24 rather than Rule 59.

25 Courts do not consider arguments made for the first time in a reply. *Dawson v.*
26 *Withycombe*, 216 Ariz. 84, 111, ¶ 91, 163 P.3d 1034, 1061 (App. 2007); *Evans v.*
Lundgren, 11 Ariz. App. 441, 445, 465 P.2d 380, 383 (App. 1970). Here, Plaintiffs did

1 not just advance a new argument—they made a new motion under a different rule.
2 Plaintiffs knew the Motion was untimely and could have sought Rule 60 relief at the
3 outset, but they did not do so. They cannot now seek Rule 60 relief in their reply and
4 deprive Defendants of any opportunity to respond.¹

5 The Court should strike Part I of Plaintiffs’ reply and decline to treat the Motion as
6 one brought under Rule 60.

7 RESPECTFULLY SUBMITTED this 29th day of January, 2015.

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By /s/ Christopher L. Hering
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26 ¹ This is not to say that Plaintiffs made any real effort to show their entitlement to Rule
60 relief—all they did was list several subsections of Rule 60. Plaintiffs never showed
how or why any particular subsection of Rule 60 justifies relief here.

1 FILED electronically with the Clerk of the
2 Court this 29th day of January, 2015 and
3 COPIES mailed this 29th day of January,
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