

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANN COLEMAN,)
)
Plaintiff,)
)
v.)
)
MARRIOTT INTERNATIONAL, INC.,)
d/b/a FAIRFIELD INN & SUITES, et al.,)
)
Defendants.)

Case No. 16-cv-1343-JTM-TJJ

ORDER

This matter is pending before the Court on Defendants’ Motion to Strike Plaintiff’s Reply in Support of her Motion to Amend Pleadings, or in the Alternative, for Leave to File Surreply (ECF No. 41). Defendants request an order striking two paragraphs and two exhibits to Plaintiff’s Reply (ECF No. 37) in support of her motion for leave to amend her complaint. In the alternative, Defendants request leave to file a surreply to address evidence and arguments asserted by Plaintiff in her Reply. Plaintiff has not filed any response in opposition to Defendants’ motion.

Although uncontested by Plaintiff, the Court denies Defendants’ motion. First, Defendants have not asserted any valid grounds for striking Paragraphs 2 and 3 and Exhibits 1 and 2 to Plaintiff’s Reply. Federal Rule of Civil Procedure 12(f) provides that the Court may strike from a pleading “any redundant, immaterial, impertinent, or scandalous matter.” Defendants do not seek to strike the two paragraphs and two exhibits at issue based upon any of the grounds listed in Rule 12(f). Nor is a reply to a motion listed as one of the types of “pleadings” under Rule 7(a) the Court

may strike under Rule 12(f).¹ Defendants' request to strike certain paragraphs contained within, and exhibits attached to, Plaintiff's Reply is denied.

Defendants alternatively request that they be permitted to file a surreply to address the evidence and arguments asserted by Plaintiff in her Reply. Under District of Kansas Local Rule 7.1(c), briefing on motions is limited to the motion (with memorandum in support), a response, and a reply.² A surreply is not allowed unless the court grants a party leave to file it.³

Circumstances that may justify granting leave to file a surreply include where a movant raises new legal arguments or presents new evidence in a reply, which the responding party should be given an opportunity to address.⁴ The rules governing the filing of a surreply "are not only fair and reasonable, but they assist the court in defining when briefed matters are finally submitted and in minimizing the battles over which side should have the last word."⁵

After reviewing Plaintiff's Reply (ECF No. 37), the Court finds that, with the exception of the Incident Report, Defendants have already responded to or addressed in their Response (ECF No. 31) all the evidence and arguments they claim to be newly asserted in Plaintiff's Reply. Defendants have failed to persuade the Court that Plaintiff's inclusion of the two referenced paragraphs and exhibits in her Reply justify the filing of a surreply. But to ensure that the parties have a full and fair opportunity to present all arguments and evidence supporting their respective

¹ See *Sheldon v. Khanal*, No. 07-2112-KHV, 2008 WL 474262, at *3 n.4 (D. Kan. Feb. 19, 2008) ("[P]laintiffs' reply is not a 'pleading' which the Court may strike under Rule 12(f).").

² *COPE v. Kansas State Bd. of Educ.*, 71 F. Supp. 3d 1233, 1238 (D. Kan. 2014).

³ *Id.*

⁴ *Id.* See also *Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005) (a nonmoving party should be given an opportunity to respond to new material raised for the first time in a reply brief).

⁵ *COPE*, 71 F. Supp. 3d at 1238.

positions, the Court grants Defendants' request for oral argument. A limited evidentiary hearing on Plaintiff's Motion for Leave to File First Amended Complaint or, in the Alternative, Motion to Substitute Party (ECF No. 27) will be set by further Order of the Court.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Strike Plaintiff's Reply in Support of her Motion to Amend Pleadings, or in the Alternative, for Leave to File Surreply (ECF No. 41) is DENIED.

IT IS FURTHER ORDERED THAT Defendants' request for oral argument on Plaintiff's Motion for Leave to File First Amended Complaint or, in the Alternative, Motion to Substitute Party (ECF No. 27) is GRANTED.

IT IS SO ORDERED.

Dated February 10, 2017, at Kansas City, Kansas.



Teresa J. James
U. S. Magistrate Judge