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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

MICHAEL JAFFEY,

Plaintiff(s),

v.

DEL TACO RESTAURANTS, INC.,

Defendant(s).

Case No. 2:17-CV-2600 JCM (PAL)

ORDER

Presently before the court is plaintiff Michael Jaffey’s (“Jaffey”) motion for leave to file surreply, or in the alternative, to strike. (ECF No. 43).

Plaintiff argues that defendant’s reply to the pending motion (ECF No. 40), was improper because the documents it attached as exhibits introduced new evidence for the first time that defendant could have raised in its original motion to stay (ECF No. 14). Introduction of new evidence at this stage does not afford plaintiff an opportunity to respond.

As plaintiff notes, the court will not “consider new evidence provided in a reply when the other party does not have an opportunity to respond to the evidence.” *Oracle USA, Inc. v. Rimini Street, Inc.*, Case No. 2:10-cv-0106-LRH-VCF, 2016 WL 6208254 \*2 (D. Nev. Oct. 24, 2016) (citing *Provenz v. Miller*, 102 F.3d 1478 (9th Cir. 1996)). This is to avoid the need for a surreply, which is disfavored, but permissible with leave of the court. Local Rule 7-2(b).

Upon review, the court finds that defendant’s reply contained new evidence presented for the first time. Specifically, the supplemental declaration of Jeanne Graves and the Del Taco LLC e-signature disclosure & consent document attached as exhibits to defendant’s reply. (ECF No. 40, Ex. 1-4). Accordingly, the court will grant plaintiff’s motion for leave to file surreply.


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Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion (ECF No. 43) be, and the same hereby is, GRANTED in part, consistent with the foregoing.

Plaintiff may file a surreply no later than February 26, 2018.

DATED February 14, 2018.

  
UNITED STATES DISTRICT JUDGE