



1 structure. (ECF No. 57 (“Prior Order”).)<sup>2</sup> Upon completion of the entity discovery period,<sup>3</sup>  
2 the parties filed the two motions now pending before the Court: (1) Plaintiff’s motion for  
3 default judgment and to deem the dismissal of the counterclaim to be with prejudice (ECF  
4 No. 71 (“Motion”));<sup>4</sup> and (2) Defendant’s motion to strike Plaintiff’s Motion (ECF No. 76).<sup>5</sup>  
5 United States Magistrate Judge Carla L. Baldwin stayed the deadline for Plaintiff to file  
6 an amended complaint until the Court resolves the pending motions. (ECF No. 81.) As  
7 further explained below, while the Court clarifies that ‘new answer’ would have been  
8 clearer than ‘amended answer’ in the Prior Order, the Court will deny Plaintiff’s motion as  
9 unsupported and overreaching, and accordingly deny Defendant’s motion as moot.

10 As the Court stated therein, the purpose of the Prior Order was to “set out some  
11 next steps calculated to allow the parties to determine the correct Defendant entities to  
12 sue and then move this case forward despite the existing scheduling order.” (ECF No. 57  
13 at 5.) Read in that context, the importance Plaintiff places on the phrase ‘amended  
14 answer’ in its Motion is an overreach. (ECF No. 71 at 2, 8, 15-17 (repeatedly making the  
15 point that “Defendant sought leave to amend that which cannot be amended – a legal  
16 nullity”.) Plaintiff is technically correct, of course, but even Plaintiff otherwise  
17 acknowledges in its Motion that the Court meant ‘new answer’ by characterizing the ability  
18 the Court gave Defendant in the Prior Order as the ability to enter a ‘late appearance.’  
19 (*Id.* at 5.) And the Court otherwise provided in the Prior Order that it expected Plaintiff to  
20 either file an amended complaint, or not, and then Defendant would file an answer to that  
21 complaint. (ECF No. 57 at 8-9.) That is still what the Court expects the parties to do.

22 Moreover, Plaintiff does not really reveal that what it seeks is reconsideration of  
23 the Prior Order until its reply brief. (*Compare* ECF No. 71 at 8 (arguing it would be

---

24  
25 <sup>2</sup>The Court also awarded Plaintiff compensatory fees and costs as a sanction for  
26 the issues Defendant’s unforced error introduced into this case. (ECF Nos. 57 at 5-6, 62  
(awarding fees and costs).)

27 <sup>3</sup>It was extended several times. (ECF No. 70.)

28 <sup>4</sup>Defendant responded (ECF No. 74), Plaintiff replied (ECF No. 80).

<sup>5</sup>Plaintiff responded (ECF No. 79), Defendant replied (ECF No. 82).

1 appropriate for the Court to reconsider its decision once, in passing, without citing the  
2 reconsideration standard) *with* ECF No. 80 at 3 (attempting to characterize its Motion as  
3 one for reconsideration, this time with the legal standard.) If Plaintiff sought  
4 reconsideration, it should have filed a motion for reconsideration instead of the Motion,  
5 as raising new arguments in reply briefs is generally disfavored. *See, e.g., Ironshore*  
6 *Indem. Inc. v. Kay*, Case No. 2:21-cv-01706-JAD-BNW, --- F. Supp. 3d ----, 2022 WL  
7 4329790, at \*7 n.60 (D. Nev. Sept. 16, 2022) (“Issues raised for the first time in  
8 a reply brief are typically waived.”) (citation omitted).

9 But perhaps more importantly, Plaintiff does not mention in its Motion that the Court  
10 awarded it over 12 thousand dollars in sanctions against Defendant for the same type of  
11 sloppy work or obfuscation it complains about in the Motion—that Defendant does not  
12 seem to know which corporate entity it is, or how its related corporate entities interact.  
13 (ECF Nos. 57, 62.) Thus, Plaintiff’s Motion overlooks the fact that it has already received  
14 a remedy for Defendant’s misconduct. Entering a default against CF USA, Inc. and  
15 somehow blocking CF USA, Inc. or its related entities from ever filing a counterclaim  
16 would be an additional remedy requiring additional justification.<sup>6</sup>

17 That said, Plaintiff does provide some additional justification. In gist, Plaintiff  
18 argues that Defendant appears increasingly confused about the relationships between  
19 the entities somehow involved with the coffee cherries at Plaintiff’s facility as this case  
20 proceeds, so much so that Plaintiff infers Defendant is acting in bad faith—and this  
21 confusion has only deepened during the entity discovery period. (ECF No. 71 at 9-11.) It  
22 is indeed incredible that Defendant and its counsel did not appear to know who owns the  
23 coffee cherries at issue on June 8, 2022. (*Id.* at 11; *see also* ECF No. 71-6 at 2 (“Our  
24 position is that CF USA, Inc. was intended to own the property, but that CF Global  
25 Holdings might directly have some ownership in the property.”).) This is especially the  
26 case because Defendant filed the now-stricken counterclaim that depends on ownership  
27 of the coffee cherries on May 21, 2021. (ECF No. 2.) And perhaps even more so because,

28 \_\_\_\_\_  
<sup>6</sup>Plaintiff is also not precluded from moving to dismiss any future counterclaims.

1 as Plaintiff points out (ECF No. 71 at 11), these statements contradict statements  
2 Defendant's counsel made earlier in this case.

3 However, as noted, Plaintiff has already been compensated—at least to some  
4 extent—for Defendant's errors, and the Court still finds that equity favors proceeding as  
5 contemplated in the Prior Order. And as also noted in the Prior Order, equity also favors  
6 resolving disputes like this one on their merits. Now that the entity discovery period has  
7 closed, Plaintiff may either file an amended complaint or stand on its original complaint  
8 within seven days per Judge Baldwin's order. (ECF No. 81.) As Judge Baldwin notes,  
9 then the remaining deadlines in the Prior Order kick back in. (*Id.*; *see also* ECF No. 57 at  
10 9.) For avoidance of doubt, any answer to any amended complaint Plaintiff files would be  
11 a new answer as the Court struck Defendant's first answer and counterclaim.

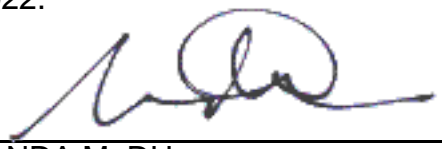
12 In sum, Plaintiff's Motion is denied. Defendant's motion to strike (ECF No. 76) is  
13 accordingly denied as moot.

14 The Court notes that the parties made several arguments and cited to several  
15 cases not discussed above. The Court has reviewed these arguments and cases and  
16 determines that they do not warrant discussion as they do not affect the outcome of the  
17 issues before the Court.

18 It is therefore ordered that Plaintiff's motion for default judgment and to deem the  
19 dismissal of the counterclaim to be with prejudice (ECF No. 71) is denied.

20 It is further ordered that Defendant's motion to strike (ECF No. 76) is denied as  
21 moot.

22 DATED THIS 17<sup>th</sup> Day of November 2022.

23  
24   
25 \_\_\_\_\_  
26 MIRANDA M. DU  
27 CHIEF UNITED STATES DISTRICT JUDGE  
28