

its argument that TCRA is liable for the independent acts of its members. But even if Plaintiffs' Supplement was properly before the Court, it does not raise an actual issue as to TCRA's liability.

2. At the outset, Plaintiffs' "Supplement" is an improper surreply filed without leave of opposing counsel or the Court. "Absent leave of court, no further submissions" after a reply on a motion are allowed. Local Rule CV-7(e)(1). Surreplies are highly disfavored, "as they are usually a strategic effort by the nonmovant to have the last word on a matter." *Tijerina-Salazar v. Venegas*, No. PE:19-CV-00074-DC-DF, 2022 U.S. Dist. LEXIS 96377, 2022 WL 1750474, at *2 (W.D. Tex. May 31, 2022). Leave to file a surreply is only provided "in extraordinary circumstances on a showing of good cause" and is "limited to addressing only new arguments raised for the first time by the opposing party in their reply briefing and not included in the original motion." *Id.* (internal quotations omitted).

3. Here, Plaintiffs' Supplement is not addressing a new argument, but rather seeking to bolster an argument previously made in their response. *See* Doc. 84 at 11–13 (arguing that TCRA's members participated in a boycott and therefore the TCRA is liable for their actions). Plaintiffs' Supplement is therefore an improper surreply that should not be considered by the Court.

4. However, even if the Supplement is properly before the Court, it does not alter Plaintiffs' failure to state a claim. As noted in TCRA's reply, the TCRA is only liable if Plaintiffs plead facts showing that the members were not undertaking parallel independent action, but rather were acting in concert at the behest of the organization. *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 374–75 (5th Cir. 2014).

5. The Supplement focuses on statements by Pam Coder and Lisa Venator Morton, who are non-parties to the suit and have not been TCRA directors or officers at any relevant time

for these proceedings. Simply put, this does not show that TCRA was acting as an organization to endorse a boycott.

6. Moreover, the attached evidence actually goes against showing an organized boycott, as Ms. Morton responded sarcastically: “oh, **couldn’t be because of his awful work.** What did he expect?!” Ex. A to Supplement (emphasis supplied). This would tend to show an independent parallel basis for court reporters refusing to use Plaintiffs’ services due to their lack of quality, rather than coordinated anticompetitive conduct.

7. The Court should not consider the Supplement because it is untimely and improper under both the Local Rules and the Federal Rules of Civil Procedure. But even if the Court does admit the Supplement, it does not affect the TCRA’s basic arguments or provide a basis for Plaintiffs to move forward with their improper claims. This Court should grant the Motion to Dismiss.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of May, 2024, a true and correct copy of the foregoing instrument was served upon all counsel of record via CM/ECF filing and email as applicable.



A. Boone Almanza