

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 20-21964-CIV-ALTONAGA

**SECURITIES & EXCHANGE
COMMISSION,**

Plaintiff,

v.

**TCA FUND MANAGEMENT
GROUP CORP., et al.,**

Defendants.

ORDER

THIS CAUSE came before the Court on AW Exports Pty Ltd, Warwick Broxom, and Jonathan James Kaufman’s (the “Kaufman Creditors”) Motion for Leave to File Sur-Reply [ECF No. 309], filed on October 21, 2022. The Motion derives from Receiver, Jonathan Perlman’s Receiver’s Motion for Approval of Creditor Distribution Plan and First Interim Distribution to Creditors [ECF No. 294], filed on August 22, 2022. The Kaufman Creditors filed a Response [ECF No. 302] to that Motion, to which the Receiver filed a Reply [ECF No. 306].

The Kaufman Creditors now seek an opportunity to file a sur-reply. (*See generally* Mot.). The Kaufman Creditors take issue with one paragraph in the Reply, which they assert warrants a sur-reply:

[T]he Kaufman Creditors incorrectly assume that the Receiver does not object to their claim. That is not the case. The Kaufman Creditors’ unsecured claim arises from an undomesticated, foreign judgment for attorneys’ fees and costs entered by an Australian court in violation of the stay entered by this Court.

(*Id.* ¶ 3 (quoting Reply 3)). The Kaufman Creditors characterize this passage as an “attack on the Kaufman Creditors” that “has no bearing” on the underlying Motion for Approval of Creditor

Distribution Plan and First Interim Distribution to Creditors and “is simply unnecessary.” (*Id.* ¶¶ 4–5).

Without prejudging the arguments raised in the Response or the Reply, the Court disagrees that the Receiver’s statements warrant a sur-reply. “When a reply squarely responds to the arguments in a response brief, and does not advance new arguments, a sur-reply is unwarranted.” *S.E.C. v. Watkins*, 317 F. Supp. 3d 1244, 1249 (N.D. Ga. 2018) (alteration adopted; citation and quotation marks omitted). Here, the Reply quotes directly from the Kaufman Creditors’ Response, which argued that “there is no reason to delay payment of undisputed amounts to known creditors.” (Reply 3 (quoting Resp. 12)). The Reply — which contends there *may be* reason to delay payment — immediately follows that quote with the passage that sparked the Kaufman Creditors’ Motion. (*See id.* 3–4).


By quoting the Response and then countering it, the Reply does exactly what reply briefs are supposed to do. *See Chandler ex rel. BC v. Soc. Sec. Admin., Comm’r*, No. 4:17-cv-2053, 2019 WL 1167796, at *1 (N.D. Ala. Mar. 13, 2019) (“The purpose of a reply brief is to respond to arguments raised in the response in a way that is helpful to the Court.”). Responsive arguments in a reply brief do not warrant a sur-reply, even if the party opposing the motion strongly disagrees with those arguments. “To allow such surreplies as a regular practice would put the court in the position of refereeing an endless volley of briefs.” *Garrison v. Ne. Ga. Med. Ctr., Inc.*, 66 F. Supp. 2d 1336, 1340 (N.D. Ga. 1999).

Accordingly, it is

ORDERED AND ADJUDGED that the Motion [ECF No. 309] is **DENIED**.

CASE NO. 20-21964-CIV-ALTONAGA

DONE AND ORDERED in Miami, Florida, this 24th day of October, 2022.



CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record