

4. On October 22, 2012, the Plaintiffs filed their reply to the Defendants' opposition to the TRO motion (Doc. # 18). Included in the Plaintiffs' reply was a declaration of Waleed Hamed (Doc. # 18-5) that was also executed on October 22nd (the "W. Hamed Decl.").

5. The entire declaration is premised on and supports arguments that are raised for the first time in a reply brief.

6. For example, Waleed Hamed attests for the first time to the purchases of specific "businesses and real property" and other alleged acts involving "the profits from the Plaza Extra supermarkets," including the alleged "withdrawal" of those profits. W. Hamed Decl. at ¶¶ 2-6.

7. Those specific arguments are not raised in the underlying TRO motion – or even the complaint on which the TRO motion is based.

8. It is well settled that, "[a]s a general matter, the courts [...] will not consider arguments raised [...] for the first time in a reply brief. [Courts] follow this rule so that [parties] are not prejudiced by the lack of an opportunity to respond to issues raised for the first time in [...] reply brief." *United States v. Boggi*, 74 F.3d 470, 478 (3d Cir. 1996) (internal quotations and citations omitted).

9. Indeed, absent leave, Local Rule 7.1(a) only permits a motion, a response in opposition, and a reply.

10. In the present action, because the Plaintiffs' reply brief (Doc. # 18) raises arguments for the first time, the Defendants have been "prejudiced by the lack of an opportunity to respond to" to those issues. *Boggi*, 74 F.3d at 478.

11. Specifically, in their reply, the Plaintiffs state that they have "filed an amended complaint as permitted by Rule 15, but the facts essential to the Rule 65 request remain unchanged." Reply at p. 2.

12. However, at footnote 8 of the same reply brief, they then state: “The defendants also argue that the plaintiff failed to provide a factual basis for his claim that the parties used the profits from the Plaza Extra supermarkets to buy other assets on a 50/50 basis. *To address this point, the amended complaint lists some of these purchases*, which are substantial. Attached hereto is a declaration from Wally Hamed that confirms the 50/50 investment of these partnership profits. See Exhibit 5.” *Id.* at p. 8 n.8 (emphasis added).

13. Obviously these portions of the Plaintiffs’ reply are in conflict. On one hand the Plaintiffs aver that the facts essential to a Rule 65 analysis “remain unchanged,” but on the other hand the Plaintiffs reference and rely on a newly drafted and executed declaration that is used to buttress the allegations in a newly drafted amended complaint (Doc. # 15) filed on October 19, 2012 – *after* the TRO motion (Doc. # 1-4) and *after* the Defendants’ response (Doc. # 12) thereto.

14. Moreover, as noted above, the entire declaration raises arguments for the first time that were not raised in the underlying TRO motion.

15. For this reason alone, the Court should strike the entire declaration and all portions of the Plaintiffs’ reply brief that reference or rely on the offending declaration.

16. Alternatively, if the Court is inclined to allow the Plaintiffs to raise arguments for the first time in their reply, the Defendants respectfully request the opportunity to respond to those new arguments through a sur-reply of no more than 20 pages, the same page length of the Plaintiffs’ reply, together with any counter-declarations/affidavits that the Defendants might file in support of the sur-reply.

WHEREFORE, Defendants Fathi Yusuf and United Corporation respectfully request that this Court enter an order striking the October 22nd declaration and all portions of the Plaintiffs’ reply brief that reference or rely on the offending declaration; or, in the alternative, granting them leave to file a sur-reply brief of no more than 20 pages, together with any counter-declarations/affidavits;

and granting any further relief that the Court deems just and appropriate. A proposed such Order is attached hereto.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on Nov. 2, 2012, a true and accurate copy of the foregoing document was served via USPS and email to the following:

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