

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARCUS BAGWELL and SCOTT LEVY,	:	NO. 3:16-CV-01350-JCH
individually and on behalf of all others similarly	:	
situated,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
WORLD WRESTLING ENTERTAINMENT,	:	
INC.,	:	
	:	
Defendant.	:	NOVEMBER 17, 2017

**DEFENDANT’S UNOPPOSED MOTION FOR LEAVE TO FILE REPLY
MEMORANDUM IN SUPPORT OF MOTION TO COMPEL REGARDING
PRIVILEGE ISSUES**

Defendant World Wrestling Entertainment, Inc. (“WWE”) hereby moves, without opposition, for leave to file the reply memorandum attached as Exhibit A in support of its motion to compel regarding privilege issues solely for the limited purpose of addressing entirely new evidence submitted in opposition to the motion by Plaintiff Scott Levy (“Levy”).

1. On October 27, 2017, the Court entered an order providing that “[t]here will be no reply” in connection with WWE’s motion to compel regarding privilege issues. (Doc. No. 136.)

2. On November 13, 2017, however, Levy filed an opposition to the motion to compel that contained entirely new evidence. Specifically, Levy submitted an affidavit that made new claims that completely belied the prior representations of his counsel and flatly contradicted his own deposition testimony in an attempt to salvage his privilege claims. In the affidavit, Levy claimed for the first time that it was his “understanding” that Attorney Peterson sent him the March 16, 2016 email as a result of a referral from Attorney Konstantine Kyros. (See Doc. No. 153-1 ¶¶ 7-12.)

ORAL ARGUMENT REQUESTED

3. In the interest of justice and fairness, before the Court rules on the motion to compel, WWE should be provided with an opportunity to respond to the new issues that Levy raised for the first time in his opposition papers and that WWE could not remotely have foreseen given the contrary assurances previously given by Plaintiff's counsel. *See Guadagni v. N.Y. City Transit Auth.*, 387 Fed. Appx. 124, 125-126 (2d Cir. 2010) ("We have held, moreover, that reply papers may properly address new material issues raised in the opposition papers so as to avoid giving unfair advantage to the answering party.") (internal quotation marks omitted); *Ferrie v. DirecTV, LLC*, No. 3:15-CV-409, 2016 U.S. Dist. LEXIS 5081, at *2-3 (D. Conn. Jan. 12, 2016) ("When new evidence appears in opposition papers, the non-moving party should seek leave, or may receive the Court's *sua sponte* permission, to file a sur-reply to address those new issues.") (internal quotation marks omitted) (Hall, J.); *MMC PPA v. Bridgeport Hosp.*, No. 3:11-CV-1733, 2015 U.S. Dist. LEXIS 102324, at *4-5 (D. Conn. Aug. 5, 2015) (granting motion for leave to file a surreply brief where a party raised a new argument in a reply brief because the opposing party "should be provided an opportunity to respond") (Merriam, J.).

4. WWE has inquired of Plaintiff's counsel regarding their position on the instant motion, and they do not oppose the motion

WHEREFORE, the Court should grant WWE's unopposed motion for leave to file the reply memorandum attached as Exhibit A in support of its motion to compel.

DEFENDANT WORLD WRESTLING
ENTERTAINMENT, INC.

By: /s/ Jerry S. McDevitt

Jerry S. McDevitt (*pro hac vice*)
Curtis B. Krasik (*pro hac vice*)
K&L GATES LLP
K&L Gates Center
210 Sixth Avenue
Pittsburgh, PA 15222
Phone: (412) 355-6500
Fax: (412) 355-6501
Email: jerry.mcdevitt@klgates.com
Email: curtis.krasik@klgates.com

Jonathan B. Tropp (ct11295)
Jeffrey P. Mueller (ct27870)
DAY PITNEY LLP
242 Trumbull Street
Hartford, CT 06103
Phone: (860) 275-0100
Fax: (860) 275-0343
Email: jbtropp@daypitney.com
Email: jmueller@daypitney.com

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that, on November 17, 2017, a copy of foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jeffrey P. Mueller
Jeffrey P. Mueller (ct27870)