

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:11-cv-22657-MGC

R.K./FI MANAGEMENT, INC., et. al
Plaintiffs,
vs.
JOHN DOE,
Defendant.

**UNOPPOSED MOTION FOR LEAVE TO FILE SUR-SUR-REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATION**

Defendant, JOHN DOE, (hereinafter "DOE") hereby files this motion for leave to file a Sur-Sur-Reply in support of its motion for reconsideration (D.E. 10) and in response to Plaintiffs, R.K./FI MANAGEMENT, INC., R.K. ASSOCIATES VII, INC., 17070 COLLINS AVENUE SHOPPING CENTER, LTD., RAANAN KATZ, and DANIEL KATZ, (collectively "RKA") Sur-Reply brief (D.E. 44) to enable DOE to respond to new arguments and case law raised for the first time in Defendant's Sur-Reply, which were not previously raised.

RKA does not oppose DOE's motion for leave to file a Sur-Sur-Reply. This Court has discretion to grant a Motion for Leave to File a Sur-Sur-Reply. See e.g. See Canadian Steel Fabricators, Ltd. v. Garner, 2011 U.S. Dist. LEXIS 108237 (S.D. Fla. 2011); Breckenridge Pharm., Inc. v. Metabolite Labs., Inc., 2007 U.S. Dist. LEXIS 7775 (S.D. Fla. 2007).

RKA's Sur-Reply for the first time affirmative states by motion only (and not by affidavit) the following four (4) cases were supposedly provided to the State Court Judge:(1) In re Anonymous Online Speakers, No. 09-71265, 2011 WL 61635, at *2 (9th Cir. Jan. 7, 2011); (2) Bass v. Rivera,

826 So. 2d 534 (Fla. 2d DCA 2002); (3) Jews for Jesus, Inc. v. Rapp, 997 So.2d 1098 (Fla. 2008); and (4) Layne v. Tribune Co., 146 So. 234 (Fla. 1933).

Since DOE is moving for reconsideration based on error of the law by the State Court, among other things, the discussion of these cases is relevant. DOE should be afforded an opportunity to rebut, distinguish and more fully explain why if these cases were relied upon by the State Court it was an error of law and manifest injustice.

For the reasons stated herein, DOE requests that this Court permit a Sur-Sur-Reply.

CERTIFICATE OF GOOD FAITH CONFERENCE

I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues and opposing counsel does not oppose this request.

 s/RobertKain

Dated: September 30, 2011

Respectfully submitted,

By: s/Robert Kain

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CERTIFICATE OF SERVICE

I hereby certify that on ____September 30, 2011_____, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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