



1 Cal. 2006) (sustaining objection to new evidence submitted with plaintiff’s reply in support of  
 2 preliminary injunction motion); *Gutierrez v. 78th Judicial Dist. Court*, No. 1:07-CV-1268, 2009  
 3 WL 1507415, \*13 n. 2 (W.D. Mich. May 29, 2009) (“The opposing party should not have to  
 4 incur the cost and effort of additional filings—a motion for leave to file a sur-reply, and the sur-  
 5 reply itself—because the movants deliberately, or more likely inadvertently, held back part of  
 6 their case”).

7 **First**, the belatedly submitted declaration from Ms. Wilson contains assertions relating  
 8 to her employment that Plaintiffs could have submitted in support of their opening brief, but did  
 9 not. Dkt. # 22 ¶¶ 1-3, 6-8. *See Docusign, Inc.*, 468 F. Supp. 2d at 1307 (striking supplemental  
 10 declarations on reply “address[ing] issues which should have been addressed in the opening  
 11 brief”); *Cal. Expanded Metal Prod. Co. v. Klein*, 426 F. Supp. 3d 730, 743 (W.D. Wash. 2019)  
 12 (striking supplemental declaration on reply where declarant “could . . . have included those  
 13 factual assertions in his sparsely supported first declaration”). Plaintiffs’ opening brief did not  
 14 mention Ms. Wilson and was not accompanied by a declaration from her. Dkt. # 15. The  
 15 Amended Complaint made only the barebones allegation that Ms. Wilson’s contract employment  
 16 with Expedia.com had been terminated due to travel restrictions causing a reduction in travel.  
 17 Dkt. # 13 ¶¶ 9, 26.<sup>2</sup> When Plaintiffs filed their opening brief, the relevant events regarding  
 18 Ms. Wilson had already transpired, but Plaintiffs chose not to submit any evidence regarding her  
 19 claims or entitlement to a preliminary injunction, including any claimed irreparable harm if an  
 20 injunction is not entered. Where a party seeks to meet the “high burden for injunctive  
 21 relief . . . merely by allegation and not by evidence,” referring “only to the complaint and the  
 22 allegations therein, and provid[ing] no proof that those allegations were correct,” it cannot cure  
 23 that defect by submitting additional evidence in reply. *Acosta, Inc. v. Kerdman Enterprises, G.P.*,  
 24 No. CV0802473MMMPJWX, 2008 WL 11336210, at \*8 (C.D. Cal. June 2, 2008).

25 <sup>2</sup> Although the Amended Complaint references a declaration from Ms. Wilson, *see* Dkt. # 13 ¶ 26, no such  
 26 declaration was filed. No declaration was filed from Ms. Wilson until the July 10, 2020 declaration that is the subject  
 of this Surreply.



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**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 14th day of July, 2020, at Seattle, Washington.

/s/ Emma Grunberg  
EMMA GRUNBERG, WSBA No. 54659  
Deputy Solicitor General