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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANDREA VAN SCOY, et al.,  
Plaintiffs,  
v.  
NEW ALBERTSON'S INC.,  
et al.,  
Defendants.

No. 2:08-cv-02237-MCE-KJN

**ORDER**

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Presently before the Court are Motions for Summary Judgment (ECF Nos. 128 and 130) filed on behalf of the various Defendants to this litigation. Those motions hinge to a great extent on the argument that Plaintiffs' claims are barred by the six-month statute of limitations applicable to actions governed by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 141, et seq. ("LMRA").

Aside from the bare argument that Section 301 precludes Plaintiffs' claims, the moving papers make no effort to delineate how that six-month period applies to each of the Plaintiffs' various claim.

1 That dearth of any individual analysis prompted Plaintiffs, in  
2 opposition, to point out that Defendants had not adequately  
3 demonstrated any expiration of the limitations period, and  
4 accordingly had not met their burden of establishing the  
5 propriety of summary judgment. Then, in reply, for the first  
6 time, Defendants cited authority for the proposition that an LMRA  
7 claim accrues for statute of limitations purposes when a  
8 plaintiff first learns of the wrongful conduct for which he or  
9 she complains. Defendants went on to explain how that deadline  
10 barred each of the Plaintiffs' individual claims.

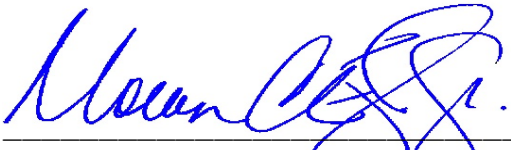
11 It is improper to introduce new facts and/or legal arguments  
12 for the first time by way of reply, as opposed to the initial  
13 moving papers. See Lujan v. Nat'l Wildlife Federation, 497 U.S.  
14 871, 894-95 (1990). Indeed, the "district court need not  
15 consider arguments raised for the first time in a reply brief."  
16 Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007). It would  
17 therefore be improper for this Court to rule upon Defendants'  
18 Motions without affording Plaintiffs the opportunity to respond  
19 to the limitations arguments now articulated in Defendants'  
20 reply.

21 The hearing on the present Motions, now set for May 5, 2011  
22 at 2:00 p.m., is hereby continued to **June 9, 2011 at 2:00 p.m.** in  
23 order to facilitate the needed additional briefing. The parties  
24 should address not only how the applicable statute of limitations  
25 is triggered in cases of this nature and how the limitations  
26 period applies to Plaintiffs' particular claims, but also whether  
27 the filing of a timely discrimination complaint may toll or  
28 otherwise affect claims also subject to the LMRA.

1 Plaintiffs' supplemental brief, not to exceed ten (10) pages in  
2 length, must be filed not later than **May 19, 2011**. Defendants  
3 may file a reply to that briefing, no longer than five (5) pages  
4 in length, by **June 2, 2011**.

5 IT IS SO ORDERED.

6 Dated: May 4, 2011

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10 MORRISON C. ENGLAND, JR.  
11 UNITED STATES DISTRICT JUDGE  
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