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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 BRICKLAYERS & ALLIED
12 CRAFTWORKERS LOCAL UNION NO. 3,
13 AFL-CIO et al.,

No. C 11-05051 SI

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Plaintiffs,

ORDER REQUIRING SUR-REPLY

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v.

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E&L YOUNG ENTERPRISES,

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Defendant.

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Currently before the Court is defendant's motion to dismiss. The matter is currently set for hearing on June 29, 2012. In the motion to dismiss, defendant raised two arguments: (1) plaintiffs failed to plead relief to which they are entitled under 29 U.S.C. § 158; and (2) actions based upon "alter ego" liability belong to the bankruptcy trustee (who is administering the personal bankruptcy petition of the CEO of defendant corporation). Plaintiffs filed an opposition to the motion to dismiss on June 8, 2012 and defendant filed its reply on June 15, 2012. In that reply, however, defendant raises a wholly new argument: that the collective bargaining agreement upon which plaintiffs rest their claims for relief in this case has been "rejected by operation of law" in the bankruptcy court and, therefore, plaintiffs' claims must be dismissed here. *See* Docket No. 43.

It is improper to raise a legal argument for the first time in a reply brief. Nonetheless, the Court will address the argument on its merits after plaintiffs have an opportunity to file a sur-reply. Therefore,

1 on or before **June 26, 2012**, plaintiffs shall file a sur-reply addressing defendant's newly raised
2 argument in support of its motion to dismiss. The hearing on this matter is rescheduled to **July 6, 2012**.

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4 **IT IS SO ORDERED.**

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6 Dated: June 19, 2012



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8 SUSAN ILLSTON
9 UNITED STATES DISTRICT JUDGE

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