

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**BRITVIC SOFT DRINKS, LTD.,**

**Plaintiff,**

**v.**

**FIELD SERVICE 400 LLC;  
JAMES BIRCH; et al.,**

**Defendants.**

**Case No. 05-2101-CM**

**MEMORANDUM AND ORDER**

In this closed case, defendant James Birch recently filed a motion to vacate judgment (Doc. 70). After defendant filed his reply brief, plaintiff filed a related motion: Plaintiff's Motion to Strike New Arguments in Reply Memorandum or for Leave to File Sur-reply (Doc. 75). Plaintiff requests that the court either strike and disregard a portion of defendant's reply memorandum because it raises new arguments and authorities, or alternatively allow plaintiff to file a surreply to address the new arguments.

Plaintiff correctly notes that this court ordinarily declines to consider new arguments offered for the first time in a reply brief. *See Liebau v. Columbia Cas. Co.*, 176 F. Supp. 2d 1236, 1244 (D. Kan. 2001). This court will strike new arguments that appear in reply briefs to avoid a situation where an "opposing party has not had an opportunity to address the issues." *Boilermaker-Blacksmith Nat'l Pension Fund v. Gendron*, 67 F. Supp. 2d 1250, 1257 n.4 (D. Kan. 1999) (citing *Martin v. Kansas*, 996 F. Supp. 1282, 1295 (D. Kan. 1998)).

The court finds that defendant's reply brief does not inappropriately raise new arguments. To the contrary, defendant tailored his reply to plaintiff's response brief. Plaintiff identified perceived weaknesses in defendant's arguments and authorities, and defendant replied with reasons he believes he remains entitled to relief. Plaintiff had an opportunity to address all issues discussed by defendant, and did so at length. And defendant is not necessarily expected to contain his authorities to those cited in his original brief when replying to plaintiff's arguments. Defendant's reply appropriately countered plaintiff's arguments, and plaintiff's motion to strike is denied. For these same reasons, plaintiff is not entitled to file a surreply.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion to Strike New Arguments in Reply Memorandum or for Leave to File Sur-reply (Doc. 75) is denied.

Dated this 14th day of May, 2012, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**