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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Dalia Spina,

) No. CV 05-0712- PHX-SMM

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Plaintiff,

) **ORDER**

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v.

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Maricopa County Department of
Transportation, , a Political
Subdivision of Maricopa County,

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Defendant.

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Before the Court is Plaintiff’s Motion for Leave to File Surreply RE: Defendant’s
18 Motion for Summary Judgment (Doc. 119). Upon consideration of the arguments of the
19 parties, the Court makes the following ruling.

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Neither Federal Rule of Civil Procedure 7 nor the local rules of practice for this
21 District provide for the filing of a surreply, and surreplies are not authorized by any other
22 rules of procedure absent express prior leave of the Court. By filing its Surreply and
23 Motion to File Surreply as one document, Plaintiff has essentially filed a Surreply without
24 first obtaining leave of this Court to do so. Plaintiff’s Surreply was, therefore, improper.

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Furthermore, Plaintiff’s Motion for Leave to File Surreply fails to offer a
26 justifiable reason upon which the Court might grant the leave requested. Plaintiff argues
27 that Defendant raised a new argument in the Reply: whether Plaintiff has evidence to
28 show that the alleged retaliatory termination was carried out pursuant to a policy or

1 custom as required by Monell v. Dept. of Soc. Services of City of New York, 436 U.S.
2 658 (1978). However, this argument was raised in response to Plaintiff's Response. In
3 her Response to Defendant's Motion for Summary Judgment, Plaintiff argued that she
4 had established a prima facie case on each of her claims against Defendant, including her
5 section 1983 claim. While Plaintiff did not refer to section 1983 in her Response per se,
6 she argued that she had shown the required elements for a First Amendment retaliation
7 claim, pled in her complaint as a section 1983 claim. Defendant sought to refute that
8 claim by pointing out that Plaintiff presented no evidence of an unconstitutional
9 municipal policy, which was her burden to do. Plaintiff will not now be afforded the
10 opportunity to submit a supplemental pleading, as Defendant did not raise a new and
11 material point in its Reply. As such, Defendant's Motion for Summary Judgment is now
12 fully briefed, and ready for the Court's review.

13 Accordingly,

14 **IT IS HEREBY ORDERED DENYING** Plaintiff's Motion for Leave to File a
15 Surreply (Doc. 119).

16 **IT IS FURTHER ORDERED** striking Plaintiff's Surreply and Supplemental
17 Statement of Facts (Docs. 119-120).

18 DATED this 31st day of March, 2009.

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22 Stephen M. McNamee
23 United States District Judge
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