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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Robert William Dutcher,
10 Plaintiff,

11 v.

12 Charles L Ryan, et al.,
13 Defendants.
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No. CV-15-01079-PHX-ROS (ESW)

ORDER

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16 Pending before the Court is Defendant Stowe's Motion to Strike (Doc. 99), which
17 Defendant Shields has joined (Doc. 100). Defendants Stowe and Shields contend that
18 Plaintiff's February 14, 2017 "Notice of Additional Material and Relevant Caselaw"
19 (Doc. 95) is an improper sur-reply to their Replies (Docs. 91, 92) in support of the
20 Motion for Summary Judgment (Doc. 71) filed by Defendant Stowe, which Defendant
21 Shields has joined (Doc. 78).

22 Local Rule of Civil Procedure 56.1(d) permits a response to a motion for summary
23 judgment and a reply. A sur-reply is not authorized by the Federal or Local Rules of Civil
24 Procedure.

25 In his Notice (Doc. 95), Plaintiff discusses case law and responds to the argument
26 in Defendant Stowe's Reply (Doc. 91 at 2-4)¹ that Plaintiff failed to properly raise his
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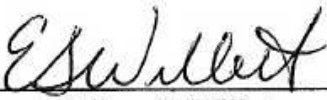
¹ Defendant Shields has joined in the Reply. (Doc. 92).

1 retaliation claim in the administrative grievance proceedings. In his Response (Doc. 101
2 at 2) opposing the Motion to Strike (Doc. 99), Plaintiff explains that he saw “the need to
3 give the Court some instruction as to the issue that the new cases applied to.” The Court
4 finds that Plaintiff’s “Notice” is properly construed as a sur-reply. *See Credit Suisse*
5 *First Boston Corp. v. Grunwald*, 400 F.3d 1119, 1124 (9th Cir. 2005) (stating that
6 court must look beyond the motion’s caption to its substance). Plaintiff did not request
7 permission from the Court before filing his “Notice” (Doc. 95). None of the cases
8 discussed in Plaintiff’s Notice were issued after the submission of the parties’ briefing.
9 The Court finds that Plaintiff has not shown good cause for the filing of a sur-reply.
10 Accordingly,

11 **IT IS ORDERED** granting the Motion to Strike (Doc. 99) and Joinder (Doc. 100).

12 **IT IS FURTHER ORDERED** striking Plaintiff’s “Notice of Additional Material
13 and Relevant Caselaw” (Doc. 95).

14 Dated this 28th day of March, 2017.

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17 Eileen S. Willett
18 United States Magistrate Judge
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