

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOUIS BRANCH,

Plaintiff,

VS.

N. GRANNIS, et al.,

Defendants.

1:08-cv-01655-AWI-GSA-PC

**ORDER STRIKING PLAINTIFF'S
MOTION AS IMPERMISSIBLE
FILING/SURREPLY
(Doc. 166.)**

I. BACKGROUND

Louis Branch (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 7, 2008. (Doc. 1.) This action now proceeds on the Third Amended Complaint, filed by Plaintiff on July 10, 2013, against defendants Umphenour, Szalai, and Alvarez (“Defendants”) for deliberate indifference to a serious risk to Plaintiff’s safety in violation of the Eighth Amendment, and against defendant Umphenour for retaliation in violation of the First Amendment. (Doc. 94.)

On September 2, 2014, Defendants filed a motion for summary judgment. (Doc. 138.) On September 29, 2014, Plaintiff filed an opposition to the motion. (Doc. 142.) On January 29, 2015, with leave of court, Plaintiff filed an amended opposition. (Doc. 155.) On February 5, 2015, Defendants filed a reply to the amended opposition. (Doc. 157.) On April 22, 2015,

1 Plaintiff filed a motion requesting the court not to consider Defendants' new argument in
2 Defendants' reply. (Doc. 166.) The court construes Plaintiff's motion of April 22, 2015, as a
3 surreply.

4 **II. SURREPLY**

5 A surreply, or sur-reply, is an additional reply to a motion filed after the motion has
6 already been fully briefed. USLegal.com, <http://definitions.uslegal.com/s/sur-reply/> (last
7 visited December 31, 2013). The Local Rules provide for a motion, an opposition, and a reply.
8 Neither the Local Rules nor the Federal Rules provide the right to file a surreply. A district
9 court may allow a surreply to be filed, but only "where a valid reason for such additional
10 briefing exists, such as where the movant raises new arguments in its reply brief." Hill v.
11 England, 2005 WL 3031136, *1 (E.D.Cal. Nov. 8, 2005).

12 Plaintiff's motion filed on April 22, 2015, seeks to respond to Defendants' reply to
13 Plaintiff's amended opposition. The court neither requested a further response nor granted a
14 request by Plaintiff to file one. Moreover, Defendants' motion for summary judgment was
15 deemed admitted to the court on February 5, 2015, more than two months before Plaintiff filed
16 his motion. L. R. 230(l). Plaintiff has not shown good cause for the court to allow a further
17 response at this juncture. Therefore, Plaintiff's motion shall be stricken from the record as an
18 impermissible surreply.

19 **III. CONCLUSION**

20 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion filed on
21 April 22, 2015, is STRICKEN from the Court's record.

22 IT IS SO ORDERED.

23 Dated: May 16, 2015

24 /s/ Gary S. Austin

25 UNITED STATES MAGISTRATE JUDGE

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