

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 LOUIS BRANCH,

12 Plaintiff,

13 vs.

14 N. GRANNIS, et al.,

15 Defendants.  
16

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

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

17 **I. BACKGROUND**

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

25 On September 2, 2014, Defendants filed a motion for summary judgment. (Doc. 138.)  
26 On September 29, 2014, Plaintiff filed an opposition to the motion. (Doc. 142.) On January  
27 29, 2015, with leave of court, Plaintiff filed an amended opposition. (Doc. 155.) On February  
28 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  
23 IT IS SO ORDERED.

24 Dated: May 16, 2015

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE