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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 JOSH THOMAS,

11 Plaintiff,

12 vs.

13 WILKINSON, et al.,

14 Defendants.  
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1:15-cv-00527-LJO-GSA-PC

ORDER GRANTING DEFENDANT  
TEHRANI'S MOTION TO STRIKE  
(ECF No. 38.)

ORDER STRIKING PLAINTIFF'S  
SURREPLY  
(ECF No. 37.)

17 **I. BACKGROUND**

18 Josh Thomas ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action  
19 pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on April  
20 21, 2014, at the Fresno County Superior Court, case number 14CECG01710. On April 2, 2015,  
21 defendant Jasmine A. Tehrani removed the complaint to federal court pursuant to 28 U.S.C.  
22 1441(a). (ECF No. 2.) This case now proceeds on the original complaint against defendants  
23 Jasmine A. Tehrani and Renee Wilkinson, Ph.D.<sup>1</sup> ("Defendants") on Plaintiff's Eighth  
24 Amendment claim that Defendants refused to correct inaccurate information on Plaintiff's  
25 psychological report, which led to the repeated denial of parole; and on related state claims.  
26 (Id.)  
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<sup>1</sup> Sued as "Rene Wilkinson." (ECF No. 41 at 1:23-34.)

1 On August 29, 2016, defendant Tehrani file a Rule 12(b)(6) motion to dismiss. (ECF  
2 No. 31.) On September 23, 2016, Plaintiff filed an opposition to the motion to dismiss. (ECF  
3 No. 35.) On September 29, 2016, defendant Tehrani filed a reply to Plaintiff's opposition.  
4 (ECF No. 36.) On October 13, 2016, Plaintiff filed a response to defendant Tehrani's reply.  
5 (ECF No. 37.)

6 On October 20, 2016, defendant Tehrani filed a motion to strike Plaintiff's October 13,  
7 2016 response as an impermissible surreply. (ECF No. 38.) On November 11, 2016, Plaintiff  
8 filed an opposition to the motion to strike. (ECF No. 40.) Defendant Tehrani's motion to strike  
9 is now before the court.

## 10 **II. SURREPLIES**

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

18 Defendant Tehrani argues that Plaintiff's document styled "Opposition to Defendant[]  
19 Tehrani's Reply," filed on October 13, 2016, is an improper surreply, and the Court should  
20 strike it from the record. (ECF No. 38 at 3:5-7.) In opposition, Plaintiff argues that his  
21 surreply should be allowed to protect his record on appeal, and that defendant Tehrani should  
22 be ordered to submit evidence that Plaintiff's Eighth Amendment, negligence, and intentional  
23 infliction of emotional distress were litigated in his prior habeas case.

24 Plaintiff's opposition to defendant Tehrani's reply is a surreply because it was filed on  
25 October 13, 2016, after defendant Tehrani's motion to dismiss was fully briefed. The motion to  
26 dismiss was fully briefed and submitted on the record under Local Rule 230(I) on September  
27 29, 2016, when defendant Tehrani filed a reply to Plaintiff's opposition. (ECF No. 36.) In this  
28 case, the court neither requested any surreply nor granted a request on the behalf of Plaintiff to

1 file a surreply. Plaintiff has not shown good cause for the court to allow him to file a surreply  
2 at this juncture. Therefore, defendant Tehrani's motion to strike shall be granted, and  
3 Plaintiff's surreply shall be stricken from the record as improperly filed.

4 **III. CONCLUSION**

5 Based on the foregoing, IT IS HEREBY ORDERED that:

- 6 1. Defendant Tehrani's motion to strike, filed on October 20, 2016, is GRANTED;
- 7 and
- 8 2. Plaintiff's surreply, filed on October 13, 2016, is STRICKEN from the court's
- 9 record.

10 IT IS SO ORDERED.

11 Dated: January 18, 2017

12 /s/ Gary S. Austin  
13 UNITED STATES MAGISTRATE JUDGE

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