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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 MICHAEL SCOTT McRAE,

10 Plaintiff,

11 v.

12 BAIRAMIAN DIKRAN, et al.,

13 Defendants.
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1:16-01066-NONE-GSA-PC

ORDER STRIKING IMPERMISSIBLE
SURREPLY
(ECF No. 92.)

16 **I. BACKGROUND**

17 Michael Scott McRae (“Plaintiff”) is a federal prisoner proceeding *pro se* and *in forma*
18 *pauperis* with this civil rights action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388
19 (1971). This case now proceeds with Plaintiff’s Second Amended Complaint filed on March 9,
20 2018, against defendants Dr. Dikran Bairamian,¹ Dr. Kevin Cuong Nguyen, and Dr. David Betts,
21 for inadequate medical care under the Eighth Amendment and state law claims for medical
22 malpractice and medical battery. (ECF No. 14.)

23 On October 23, 2020, defendant Bairamian filed a motion for summary judgment. (ECF
24 No. 80.) On October 27, 2020, defendant Betz filed a motion for summary judgment. (ECF No.
25 81.)
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27 ¹ In his original Complaint, Plaintiff referred to this defendant as Dr. Bairamian, Dikran, M.D.
28 (ECF No. 1.) The court entered the defendant’s name as Bairamian Dikran. (Court docket.) In his Answer to the
complaint, defense counsel clarifies that this defendant’s name is Dikran Bairamian. (ECF No. 32.)

1 On December 4, 2020, Plaintiff filed an opposition to both of the motions for summary
2 judgment. (ECF No. 88.)

3 On December 4, 2020, defendant Bairamian filed a reply to Plaintiff's opposition. (ECF
4 No. 87.) On December 10, 2020, defendant Betz filed a reply to Plaintiff's opposition. (ECF
5 No. 89.)

6 On December 23, 2020, Plaintiff filed a response to both of the defendants' replies. (ECF
7 No. 92.) The court construes Plaintiff's response to defendants' replies as an impermissible
8 surreply.

9 **II. SURREPLY**

10 A surreply, or sur-reply, is an additional reply to a motion filed after the motion has
11 already been fully briefed. USLegal.com, <http://definitions.uslegal.com/s/sur-reply/> (last visited
12 March 1, 2021). The Local Rules provide for a motion, an opposition, and a reply. Neither the
13 Local Rules nor the Federal Rules provide the right to file a surreply. A district court may allow
14 a surreply to be filed, but only "where a valid reason for such additional briefing exists, such as
15 where the movant raises new arguments in its reply brief." Hill v. England, 2005 WL 3031136,
16 *1 (E.D.Cal. Nov. 8, 2005).

17 Plaintiff's response to both defendants' replies is a surreply because it was filed on
18 December 23, 2020, after both of the defendants' motions were fully briefed. Defendant
19 Bairamian's motion for summary judgment was fully briefed and submitted on the record under
20 Local Rule 230(l) on December 4, 2020 when defendant Bairamian filed a reply to Plaintiff's
21 opposition, (ECF No. 87); and, defendant Betz's motion for summary judgment was fully briefed
22 on December 10, 2020 when defendant Betz filed a reply to Plaintiff's opposition, (ECF No. 89).
23 In this case, the court neither requested a surreply nor granted a request on behalf of Plaintiff to
24 file a surreply. Plaintiff has not shown good cause for the court to allow him to file any surreply
25 at this juncture. Therefore, Plaintiff's surreply shall be stricken from the record.²

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27 ² A document which is 'stricken' will not be considered by the Court for any purpose."
28 (Informational Order, ECF No. 3 at 2 ¶II.A.)

1 **III. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's surreply, filed on
3 December 23, 2020, is STRICKEN from the court's record.

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6 IT IS SO ORDERED.

7 Dated: March 2, 2021

/s/ Gary S. Austin
8 UNITED STATES MAGISTRATE JUDGE