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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JAMAR HEARNS,

12 Plaintiff,

13 v.

14 ROSA GONZALES, et al.,

15 Defendants.  
16

1:17-cv-00038-AWI-GSA (PC)

**ORDER DENYING PLAINTIFF'S MOTION  
TO FILE SURREPLY  
(ECF No. 51.)**

**ORDER STRIKING PROPOSED SURREPLY  
(ECF No. 50.)**

17 **I. BACKGROUND**

18 Jamar Hearn ("Plaintiff") is a former state prisoner proceeding *pro se* and *in forma*  
19 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds  
20 against defendant Rosa Gonzales on Plaintiff's claims for retaliation, violation of the Free  
21 Exercise Clause, and violation of the Bane Act. (ECF No. 21.)

22 On July 19, 2019, Plaintiff filed a motion for leave to file a surreply and submitted a  
23 proposed surreply for the court's review. (ECF Nos. 50, 51.) Defendant has not opposed the  
24 motion.

25 **II. SURREPLY**

26 A surreply, or sur-reply, is an additional reply to a motion filed after the motion has  
27 already been fully briefed. USLegal.com, <http://definitions.uslegal.com/s/sur-reply/> (last visited  
28 December 31, 2013). The Local Rules provide for a motion, an opposition, and a reply. Neither

1 the Local Rules nor the Federal Rules provide the right to file a surreply. A district court may  
2 allow a surreply to be filed, but only “where a valid reason for such additional briefing exists,  
3 such as where the movant raises new arguments in its reply brief.” Hill v. England, 2005 WL  
4 3031136, \*1 (E.D.Cal. Nov. 8, 2005).

5 Plaintiff seeks to file a surreply in response to Defendant’s reply to Plaintiff’s opposition  
6 to Defendant’s motion for summary judgment filed on May 3, 2019. Plaintiff argues that  
7 Defendant raised two new issues in her reply brief. The first issue concerns Defendant’s  
8 statement that Plaintiff admitted in his opposition that he received a free prayer rug approximately  
9 five months after the incident, a fact that “Plaintiff explicitly refused to provide” at his deposition.  
10 (ECF No. 51 at 10.) Defendant objects to Plaintiff using this purported fact to create a genuine  
11 dispute of material fact. The second issue concerns Defendant’s statement that Plaintiff has used  
12 standards for a RLUIPA claim, not a First Amendment free exercise claim. If granted leave to  
13 file a surreply, Plaintiff expects to explain why he did not disclose at his deposition that he  
14 received a free prayer rug, and to defend his use of facts supporting a RLUIPA claim.

15 These two “new” issues identified by Plaintiff were not newly raised by Defendant in her  
16 reply brief. Plaintiff himself disclosed in his opposition that he had received a free prayer rug,  
17 and Plaintiff himself raised and argued a RLUIPA claim in his opposition. These are not new  
18 issues requiring a surreply by Plaintiff.

19 In his proposed surreply, Plaintiff offers substantial support to his argument that  
20 Defendant’s actions caused a substantial burden to the practice of his religion and were not  
21 reasonably related to a legitimate penological interest. Plaintiff previously argued the substantial  
22 burden issue in his opposition and he now seeks to bring the argument again, more than a month  
23 after Defendant’s motion for summary judgment was fully briefed and deemed submitted to the  
24 court. L.R. 230(l).

25 Plaintiff has not shown good cause for the court to allow him to file a surreply. Therefore,  
26 Plaintiff’s motion shall be denied and his proposed surreply shall be stricken from the record.

27 **III. CONCLUSION**

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

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1. Plaintiff's motion to file a surreply (ECF No. 51), filed on July 19, 2019, is DENIED; and
2. Plaintiff's proposed surreply (ECF No. 50), filed on July 19, 2019, is STRICKEN from the record.

IT IS SO ORDERED.

Dated: October 31, 2019

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE