

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES BOWELL,
Plaintiff,
vs.
F. MONTOYA, et al.,
Defendants.

1:17-cv-00605-LJO-GSA-PC
ORDER STRIKING IMPERMISSIBLE
SURREPLY
(ECF No. 30.)

I. BACKGROUND

James Howell (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff’s First Amended Complaint, filed on May 3, 2018, against defendants Montoya and Carter for violation of due process under the Fourteenth Amendment, and against defendants Killmer and Lopez for conspiracy to place Plaintiff at risk of serious harm and for failure to protect Plaintiff under the Eighth Amendment. (ECF No. 16.)¹

¹ On October 25, 2018, the court issued an order dismissing all other claims and defendants from this case, for Plaintiff’s failure to state a claim. (ECF No. 20.)

1 On January 10, 2019, Defendants filed a motion for an order revoking Plaintiff's *in forma*
2 *pauperis* status ("motion"). (ECF No. 24.) On January 29, 2019, Plaintiff filed an opposition to
3 the motion. (ECF No. 28.) On February 4, 2019, Defendants filed a reply to Plaintiff's
4 opposition. (ECF No. 29.)

5 On February 13, 2019, Plaintiff filed a second opposition to Defendants' motion. (ECF
6 No. 30.) The court construes Plaintiff's second opposition as an impermissible surreply.

7 **II. SURREPLY**

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

15 Plaintiff's second opposition to Defendants' motion is a surreply because it was filed on
16 February 13, 2019, after Defendant's motion was fully briefed. The motion for an order revoking
17 Plaintiff's *in forma pauperis* status was fully briefed and submitted on the record under Local
18 Rule 230(l) on February 4, 2019, when Defendant filed a reply to Plaintiff's first opposition.
19 (ECF No. 29.) In this case, the court neither requested a surreply nor granted a request on the
20 behalf of Plaintiff to file a surreply. Plaintiff has not shown good cause for the court to allow
21 him to file a surreply at this juncture. Therefore, Plaintiff's surreply shall be stricken from the
22 record.²

23 ///

24 ///

25 ///

26
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 February 13, 2019, is STRICKEN from the court's record.

4
5 IT IS SO ORDERED.

6 Dated: February 14, 2019

/s/ Gary S. Austin
7 UNITED STATES MAGISTRATE JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28