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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. 32.)

**I. BACKGROUND**

James Bowell (“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.)<sup>1</sup>

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<sup>1</sup> 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, 2013, Plaintiff filed a second opposition to Defendants' motion. (ECF  
6 No. 30.) On February 15, 2019, the court issued an order striking the second opposition as an  
7 unauthorized surreply. (ECF No. 31.)

8 On February 2019, Plaintiff filed a third opposition to Defendants' motion. (ECF No.  
9 32.) The court construes Plaintiff's third opposition again as an impermissible surreply.

## 10 **II. SURREPLY**

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 visited  
13 December 31, 2013). The Local Rules provide for a motion, an opposition, and a reply. Neither  
14 the Local Rules nor the Federal Rules provide the right to file a surreply. A district court may  
15 allow a surreply to be filed, but only "where a valid reason for such additional briefing exists,  
16 such as where the movant raises new arguments in its reply brief." Hill v. England, 2005 WL  
17 3031136, \*1 (E.D.Cal. Nov. 8, 2005).

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

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26  
27 <sup>2</sup> 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 15, 2019, is STRICKEN from the court's record.

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5 IT IS SO ORDERED.

6 Dated: February 19, 2019

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