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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-NONE-GSA-PC
ORDER STRIKING IMPERMISSIBLE
SURREPLY
(ECF No. 94.)

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

On January 25, 2021, defendants Carter, Killmer, Lopez, and Montoya (“Defendants”) filed a motion for summary judgment. (ECF No. 90.) On February 3, 2021, Plaintiff filed an opposition to the motion. (ECF No. 28.) On February 9, 2021, Defendants filed a reply to Plaintiff’s opposition. (ECF No. 93.)

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 February 25, 2019, Plaintiff filed a second opposition to Defendants' motion. (ECF
2 No. 30.) The court construes Plaintiff's second opposition as an impermissible surreply.

3 **II. SURREPLY**

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

11 Plaintiff's second opposition to Defendants' motion is a surreply because it was filed on
12 February 3, 2021 after Defendant's motion was fully briefed. The motion for summary judgment
13 was fully briefed and submitted on the record under Local Rule 230(l) on February 9, 2021 when
14 Defendants filed a reply to Plaintiff's first opposition. (ECF No. 93.) In this case the court
15 neither requested a surreply nor granted a request on the behalf of Plaintiff to file a surreply.
16 Plaintiff has not shown good cause for the court to allow him to file a surreply at this juncture.
17 Therefore, Plaintiff's surreply shall be stricken from the record.²

18 **III. CONCLUSION**

19 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's surreply, filed on
20 February 13, 2019, is STRICKEN from the court's record.

21 IT IS SO ORDERED.

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23 Dated: March 2, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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