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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD L. PRONECHEN,

Plaintiff,

v.

SECRETARY OF U.S. DEPARTMENT OF
HOMELAND SECURITY,

Defendant.

Case No. 2:06-cv-01726 LEW

**ORDER ON DEFENDANT’S MOTION
TO STRIKE NEW ARGUMENTS FROM
PLAINTIFF’S REPLY BRIEF OR,
ALTERNATIVELY, FOR LEAVE TO
FILE A SUR-REPLY**

Plaintiff filed his Reply [83] in support of his Motion to File Second Amended Complaint on January 14, 2010. By minute order [86] entered on January 15, 2010, the Court took plaintiff’s motion under submission. On January 15, 2010, defendant Secretary of the Department of Homeland Security (“DHS”) filed a Motion to Strike New Arguments from Plaintiff’s Reply Brief or, Alternatively, for Leave to File a Sur-Reply [87]. Plaintiff did not file a response to DHS’s motion to strike. Having reviewed the reply brief and the motion to strike, and good cause appearing therefore, the Court **NOW FINDS AND RULES AS FOLLOWS:**

Plaintiff’s reply brief raises a new argument that was not included in his Memorandum of Points and Authorities in Support of brief on his Motion to File Second Amended Complaint [80]. In his reply, plaintiff argues for the first time that, upon receipt of a copy of an August 25, 2004 email from plaintiff, the person responsible for processing plaintiff’s original EEO claim had an affirmative duty to amend plaintiff’s claim to include a new discrimination claim based on his non-selection for the Sacramento

1 position announced in job announcement 0492414. “The district court need not consider arguments
2 raised for the first time in a reply brief.” *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (citing
3 *Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 2003)). The Court in its discretion has determined that
4 it will not consider this new argument in support of plaintiff’s motion to amend. Therefore,

5 **IT IS HEREBY ORDERED THAT** the motion to strike is **GRANTED** and the following
6 portions of plaintiff’s reply brief and supporting documents are hereby stricken from the record:

- 7 1. The new argument found at page 3, line 15 through page 4, line 28 of the reply brief [83];
- 8 2. The entire supporting exhibit entitled EEOC MD 110 “Chapter 5 - Agency Processing of
9 Formal Complaints” [83-2]; and
- 10 3. Paragraph 3.b of the Declaration of Ronald Pronechen in Support of Motion to Amend
11 [84].

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13 DATED: January 26, 2010

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16 HONORABLE RONALD S.W. LEW
17 Senior U.S. District Court Judge
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