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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 *D.C., a minor by and through his*
12 *Guardian Ad Litem, Helen Garter, on*
13 *behalf of himself and all others similarly*
14 *situated,*

Plaintiff,

v.

15 COUNTY OF SAN DIEGO, et al.,

16
17 Defendants.

Case No.: 15-cv-1868-MMA (NLS)

**ORDER GRANTING DEFENDANT'S
EX PARTE MOTION FOR
PERMISSION TO FILE SUR-REPLY**

[Doc. No. 115]

18
19 On November 11, 2020, Plaintiff filed a motion for leave to file a second amended
20 complaint. *See* Doc. No. 108. Defendant County of San Diego (the “County”) opposed,
21 to which Plaintiff replied. *See* Doc. Nos. 109, 113. The County now requests permission
22 to file a sur-reply. *See* Doc. No. 115. Plaintiff opposes the motion. *See* Doc. No. 116.

23 The Local Rules do not authorize the filing of a sur-reply. *See generally* CivLR
24 7.1. That said, District Courts have the discretion to either permit or preclude the filing
25 of a sur-reply upon request. *See Johnson v. Wennes*, No. 08-CV-1798-L (JMA), 2009
26 U.S. Dist. LEXIS 36992, 2009 WL 1161620, at *2 (S.D. Cal. Apr. 28, 2009). Such
27 discretion “should be exercised in favor of allowing a sur-reply only where a valid reason
28 for such additional briefing exists, such as where the movant raises new arguments in its

1 reply brief.” *Estate of Alvarado v. Tackett*, No. 13-CV-1202 W (JMA), 2018 U.S. Dist.
2 LEXIS 34794, at *3 (S.D. Cal. Mar. 2, 2018).

3 The Court finds that additional briefing is warranted. First, Plaintiff raises a new
4 argument in his reply. Plaintiff’s motion is devoid of Rule 16. *See* Doc. No. 109.
5 Instead, he strictly briefs the matter under Rule 15. *See id.* at 9. In reply, he argues why
6 Rule 15, not Rule 16 applies. *See* Doc. No. 113 p. 3. This is a new argument. Moreover,
7 according to the County, an incident has occurred since the briefing on Plaintiff’s motion
8 closed. *See* Doc. No. 115 at 2. Namely, the County’s settlement offer lapsed. *See id.*
9 Whether and how this has any bearing on the merits of Plaintiff’s motion is unclear. But
10 the County should be permitted to update the Court, and its argument, accordingly.
11 Therefore, the Court finds good cause and **GRANTS** the County’s motion. The County
12 may file a three-page maximum sur-reply on or before **December 14, 2020**.

13 **IT IS SO ORDERED.**

14 Dated: December 10, 2020

15 

16 HON. MICHAEL M. ANELLO
17 United States District Judge