

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NATHANIEL BORRELL DYER,	:	
	:	
Plaintiff,	:	CIVIL ACTION FILE
	:	NO. 1:18-CV-03284-CAP
v.	:	
	:	
ATLANTA INDEPENDENT SCHOOL	:	
SYSTEM,	:	
	:	
Defendant.	:	
	:	

DEFENDANT’S MOTION TO DISREGARD PLAINTIFF’S SURREPLY

Defendant Atlanta Independent School System (“AISS”) files this Motion to Disregard Plaintiff’s Surreply. (Doc. 10). In support of this Motion, AISS shows this Court the following:

INTRODUCTION

On August 29, 2018, AISS filed a reply brief (Doc. 9) in support of its Motion to Dismiss Plaintiff’s Complaint. (Doc. 2). On September 17, 2018, Plaintiff filed a “Response to Defendant’s Motion to Dismiss for Failure to State a Claim.” (Doc. 10). Despite its title, Plaintiff’s “response” is actually a surreply. Neither the Federal Rules of Civil Procedure nor this Court’s Local Rules permit a party to file a surreply. And numerous decisions establish that a party may not file a surreply without the court’s consent, which this Court typically reserves for unusual

circumstances not present here. Plaintiff neither asked for permission before filing his surreply nor pointed to any valid reason for additional briefing on AISS's Motion to Dismiss. A long line of cases establish that Plaintiff's surreply is procedurally improper and should be disregarded.¹

PROCEDURAL BACKGROUND

Plaintiff filed this lawsuit on June 4, 2018, in the Superior Court of Fulton County asserting claims for violations of the First and Fourteenth Amendments, slander, discrimination and retaliation, and harassment. (Doc. 1, 7-16). AISS filed a Notice of Removal on July 9, 2018. (Doc. 1). On July 16, 2018, AISS moved to dismiss Plaintiff's Complaint. (Doc. 2). Plaintiff belatedly responded in opposition on August 15, 2018. (Doc. 8). And on August 29, 2018, AISS filed a reply brief in support of its Motion to Dismiss to address the arguments in Plaintiff's response. (Doc. 9).

On September 17, 2018, without leave of court, Plaintiff filed his "Response to Defendant's Motion to Dismiss for Failure to State Claim." (Doc. 10). That brief,

¹ AISS, in effect, asks this Court to strike Plaintiff's surreply. A motion to strike under Rule 12(f), however, is not the proper procedural device for objecting to Plaintiff's surreply. That rule explicitly provides that the object of a motion to strike must be a "pleading," which the Federal Rules define as a complaint; an answer; a reply to a counterclaim; an answer to a cross-claim; a third-party complaint; or a third-party answer. Fed. R. Civ. P. 7(a). A surreply brief is not a pleading. Accordingly, AISS styles this Motion as a motion to disregard Plaintiff's surreply.

which purports to respond to the various arguments AISS advanced in its reply brief, is plainly intended to be a surreply. AISS asks this Court to disregard that surreply.

ARGUMENT AND CITATION TO AUTHORITY

I. PLAINTIFF DID NOT ASK FOR LEAVE TO FILE A SURREPLY AND PROVIDED NO VALID REASON WHY ONE SHOULD BE ALLOWED.

The rules governing the filing of surreplies with this Court are crystal clear. “The Court normally does not permit sur-replies.” *Henley v. Turner Broad. Sys., Inc.*, 267 F. Supp. 3d 1341, 1349 (N.D. Ga. 2017). “Neither the Federal Rules of Civil Procedure nor this Court's Local Rules authorize the filing of surreplies as a matter of right or in the ordinary course of litigation. Although the Court may permit the filing of a surreply, this discretion should be exercised in favor of allowing a surreply *only where a valid reason for such additional briefing exists.*” *Willoughby v. Youth Villages, Inc.*, 219 F. Supp. 3d 1263, 1273 n. 23 (N.D. Ga. 2016) (citation omitted) (emphasis added). This Court permits a surreply to be filed only in unusual circumstances, such as when “a movant raises new arguments or facts in a reply brief, or where a party wishes to inform the Court of a new decision or rule implicating the motion under review.” *Roelle v. Cobb Cty. Sch. Dist.*, No. 1:13-CV-3045-WSD, 2014 WL 4457235, at *9 (N.D. Ga. Sept. 10, 2014). This Court disfavors surreplies because permitting them in the regular course of litigation

“would put the court in the position of refereeing an endless volley of briefs.” *Fedrick v. Mercedes-Benz USA, LLC*, 366 F. Supp. 2d 1190, 1197 (N.D. Ga. 2005).

Plaintiff never asked this Court for permission before filing his surreply. And he has not presented any compelling reason to justify a surreply. He points to no new arguments raised by AISS for the first time in its reply or any new decisions or rules that bear on AISS’s Motion to Dismiss. Instead, Plaintiff intended his surreply to respond to the arguments advanced in AISS’s reply brief. The arguments in AISS’s reply, however, simply addressed the contentions in Plaintiff’s response brief. This Court has routinely rejected surreplies filed under these circumstances. *See Chemence Med. Prod., Inc. v. Medline Indus., Inc.*, 119 F. Supp. 3d 1376, 1383 (N.D. Ga. 2015) (recognizing that if the arguments in a surreply “simply respond to arguments raised in a response brief, no surreply is warranted.”) (citing *Roelle*, 2014 WL 4457235, at *9 (“If the new arguments raised in a reply brief directly address arguments raised in the non-movant’s response, no surreply is warranted.”)); *see also Henley*, 267 F. Supp. 3d at 1349 (denying motion for leave to file a surreply where the defendant’s reply “squarely respond[ed] to the arguments in Plaintiffs’ response brief, and [did] not advance new arguments.”).

Those authorities plainly forbid Plaintiff from filing his surreply. Accordingly, this Court should not consider the arguments and citations to authority presented in Plaintiff’s surreply when assessing AISS’s Motion to Dismiss.

CONCLUSION

For the reasons set forth above, AISS respectfully asks this Court to disregard Plaintiff's "Response to Defendant's Motion to Dismiss for Failure to State Claim" and award all other relief it deems just and proper.

Respectfully submitted, this 21st day of September, 2018.

/s/ Brandon O. Moulard

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing was prepared using Times New Roman font, 14-point type, which is one of the font and print selections approved by the Court in L.R. 5.1(B).

This 21st day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2018, I served a copy of the foregoing **DEFENDANT’S MOTION TO DISREGARD PLAINTIFF’S SURREPLY** by filing a copy of the same via the Court’s CM/ECF electronic-filing system, which will deliver an electronic copy of this filing to:

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