

**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.	:	
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**DEFENDANT’S RESPONSE**  
**TO PLAINTIFF’S MOTION FOR LEAVE TO FILE SURREPLY**

Defendant Atlanta Independent School System (“AISS”) files this response in opposition to Plaintiff’s Motion for Leave to File Surreply. (Doc. 15). For the reasons set forth below, AISS respectfully asks this Court to deny Plaintiff’s motion.

**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, retaliation, and harassment. (Doc. 1-1 at 9-11). 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). On September 21, 2018, AISS filed a Motion to Disregard Plaintiff's Surreply, arguing that this Court's Local Rules do not permit surreplies, and that Plaintiff neglected to ask for permission before filing his surreply. (Doc. 13). Plaintiff never directly responded to that motion. Instead, twenty-four days later, on October 15, 2018, Plaintiff filed a Motion for Leave to File Surreply. (Doc. 15). As an attachment to that motion, Plaintiff submitted a modified version of his September 17, 2018, brief, which he re-titled, "Surreply to Defendant's Motion to Dismiss for Failure to State a Claim." (Doc. 15-1). This Court should deny that Motion.

### **ARGUMENT AND CITATION TO AUTHORITY**

#### **I. THIS CASE DOES NOT PRESENT UNUSUAL CIRCUMSTANCES THAT JUSTIFY THE FILING OF A SURREPLY.**

Neither the Federal Rules of Civil Procedure nor this Court's Local Rules permits parties to file surreplies. *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 may, in its discretion, permit a party to file a surreply. *Fedrick v. Mercedes-Benz USA, LLC*, 366 F. Supp. 2d 1190, 1197 (N.D. Ga. 2005). This Court has typically declined to

permit surreplies unless there are “unusual circumstances” that justify additional briefing. *See Henley v. Turner Broad. Sys., Inc.*, 267 F. Supp. 3d 1341, 1349 (N.D. Ga. 2017); *Chemence Med. Prod., Inc. v. Medline Indus., Inc.*, 119 F. Supp. 3d 1376, 1383 (N.D. Ga. 2015); *Roelle*, 2014 WL 4457235 at \*9. Examples of qualifying “unusual circumstances” include the introduction of new arguments or facts in a reply brief, or where a party wishes to inform the court of a new decision or rule that bears on the motion under review. *Henley*, 267 F. Supp. 3d at 1349. The purpose of this Court’s reluctance to permit surreplies as a regular practice is to avoid “refereeing an endless volley of briefs.” *Garrison v. Ne. Georgia Med. Ctr., Inc.*, 66 F. Supp. 2d 1336, 1340 (N.D. Ga. 1999), *aff’d sub nom. Garrison v. Ne. Georgia Med. Ctr.*, 211 F.3d 130 (11th Cir. 2000).

A party’s mere desire to address arguments in the opposing party’s reply brief does not, standing alone, warrant a surreply. For instance, in *Chemence Med. Prod., Inc.*, 119 F. Supp. 3d at 1383, the court denied the defendant’s motion for leave to file a surreply in opposition to the plaintiff’s motion for partial summary judgment. The court reasoned that the plaintiff had raised no new arguments in its reply brief. *Id.* The court also clarified that if the arguments in a reply brief simply respond to the arguments raised in the opposing side’s response brief, “no surreply is warranted.” *Id.*; *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."); *Roelle*, 2014 WL 4457235, at \*9 (denying the plaintiff's motion for leave to file a surreply because the defendant's reply brief advanced no new arguments and instead only raised arguments to address the plaintiff's response brief); *contrast Atlanta Fiberglass USA, LLC v. KPI, Co.*, 911 F. Supp. 2d 1247, 1262 (N.D. Ga. 2012) (permitting the defendant to file a surreply because the plaintiff presented "new facts and evidence" in its reply brief).

As AISS argued in its Motion to Disregard Plaintiff's Surreply, its reply in support of its Motion to Dismiss raised no new arguments and presented no new facts. It simply responded to the arguments and factual contentions asserted in Plaintiff's response brief. In his Motion for Leave to File Surreply, Plaintiff does not quarrel with that notion. He does not identify even one novel argument or new fact in AISS's reply brief. And he points to no new decisions or rules that implicate AISS's Motion to Dismiss. In fact, Plaintiff fails to make even a semblance of an argument for why he should be permitted to file a surreply.

Plaintiff does not dispute that he filed his surreply for the sole purpose of responding to the arguments in AISS's reply brief. According to *Chemence Med. Prod., Inc.*, *Henley*, *Roelle*, and a host of other decisions from this Court that have

addressed this topic, that is not a sufficient justification for a surreply. This case simply does not present the “unusual circumstances” typically needed to warrant a surreply. This Court, therefore, should deny Plaintiff’s Motion for Leave to File Surreply.

Respectfully submitted, this 29th day of October, 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 29th day of October, 2018.

*/s/ Brandon O. Moulard*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of October, 2018, I served a copy of the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE 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, and by depositing a copy of the same in the U.S. mail with adequate postage affixed thereto to ensure delivery to the following:

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