

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

James Lutchter Negley, Plaintiff,	§	
	§	
	§	
vs.	§	Civil Action No. SA-12-CV-00362-OLG
	§	
Federal Bureau of Investigation, Defendant.	§	
	§	

**DEFENDANT’S RESPONE IN OPPOSITION TO PLAINTIFF’S MOTION  
FOR LEAVE TO FILE SUR-REPLY**

1. The only reason given in support of Plaintiff’s request for a second bite at the Response apple is that Defendant “cite[d] a new authority [in its Reply] not cited in its original Motion.” If this standard were accepted by the Court, Sur-Replies, and Responses to Sur-Replies would become the rule rather than the exception in federal civil litigation. Moreover, Defendant submits that the Court can determine on its own whether the *Tamayo* case is persuasive, or distinguishable, as claimed by Plaintiff.

2. Plaintiff’s Sur-Reply also contradicts the very rationale supporting his Motion for Leave. Plaintiff does not confine his Sur-Reply argument to the *Tamayo* case, but also cites two new references of his own, and adds additional argument which could have been provided earlier to the Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff’s Motion for Leave should be DENIED. In the event the Court grants Plaintiff’s Motion for Leave, Defendant requests seven days in which to file a Response to the Sur-Reply.

DATED: October 17, 2012

Respectfully submitted,  
**ROBERT PITMAN,**  
United States Attorney

By: /s/ Robert Shaw-Meadow

AGENCY COUNSEL:

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was electronically filed via the Court's CM/ECF system on this 17<sup>th</sup> day of October, 2012, and was served via ECF as follows:

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Attorney at Law  
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/s/ Robert Shaw-Meadow  
**ROBERT SHAW-MEADOW**  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

James Lucher Negley, Plaintiff,	§	
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	§	
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Federal Bureau of Investigation, Defendant.	§	
	§	

**ORDER**

The matter before the Court is Plaintiff's Motion for Leave to File Sur-Reply to Defendant's Reply to Response to Motion for Protective Order (docket no. 27), filed October 17, 2012.

As the parties have both submitted extensive briefing on the disputed issues, the Court is not in need of additional briefing. Accordingly, Plaintiff's Motion for Leave is DENIED.

**SIGNED AND ENTERED** this \_\_\_ day of \_\_\_\_\_, 2012.

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HON. ORLANDO GARCIA  
U.S. DISTRICT JUDGE