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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER N. WASHINGTON,
Plaintiff,
v.
DERRAL G. ADAMS,
Defendant.

CASE NO. 1:09-cv-01666-AWI-SKO PC
FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF’S MOTION
TO STRIKE BE DENIED AND SURREPLY BE
DISREGARDED
(Doc. 51)
THIRTY-DAY OBJECTION DEADLINE

Plaintiff Christopher N. Washington, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 21, 2009. On August 24, 2011, Defendant filed a motion to dismiss. Plaintiff filed an opposition on September 6, 2011, and Defendant filed a reply on September 19, 2011. The motion was deemed submitted and the Court recommends that it be granted in part and denied in part in a separate but concurrently-issued findings and recommendations.

Also pending before the Court is Plaintiff’s related motion to strike Defendant’s reply, filed on September 29, 2011. Fed. R. Civ. P. 12(f). The motion also appears to be intended as a surreply.

Rule 12(f) provides that the Court may strike from a pleading “an insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Rule 12(f) is limited to striking from a pleading only those specific matters which are provided for in the rule.

Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 974-75 (9th Cir. 2010). Neither a motion to dismiss nor a reply is a pleading, Fed. R. Civ. P. 7(a), and Plaintiff’s disagreement with arguments

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1 set forth therein does not subject them to being stricken as redundant, immaterial, impertinent, or
2 scandalous, Fed. R. Civ. P. 12(f).

3 Further, Plaintiff did not seek and obtain leave of court to file a surreply and the Court did
4 not order one filed. As a result, Defendant's motion was submitted upon the filing of the reply, and
5 Plaintiff's arguments in surreply should be disregarded. Local Rule 230(1).

6 For the reasons set forth herein, the Court RECOMMENDS that Plaintiff's motion to strike
7 be denied and his surreply be disregarded.

8 These Findings and Recommendations will be submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
10 **days** after being served with these Findings and Recommendations, the parties may file written
11 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
12 Findings and Recommendations." The parties are advised that failure to file objections within the
13 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
14 1153 (9th Cir. 1991).

15
16 IT IS SO ORDERED.

17 **Dated: November 28, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE