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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELVIN X. SINGLETON,

Plaintiff,

v.

HEDGEPATH, et al.,

Defendants.

1:08-cv-00095-AWI-GSA-PC

ORDER DENYING PLAINTIFF'S
REQUEST TO SUBMIT ADDITIONAL
EVIDENCE
(Doc. 184.)

ORDER DEEMING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT, AND DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT,
SUBMITTED ON THE RECORD
(Docs. 132, 147.)

_____ /

Kelvin X. Singleton ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 16, 2011, Plaintiff filed an ex parte request to submit additional evidence in support of his opposition to Defendants' motion for summary judgment. (Doc. 184.)

Plaintiff seeks to submit as evidence a Second Level Appeal Decision signed by Chief Medical Executive P. Finander, M.D. on May 2, 2011, partially granting Plaintiff's Appeal filed February 24, 2011 in which Plaintiff requested eyeglasses and further evaluation of partial blindness. Plaintiff argues that this evidence supports his argument that an ophthalmologist diagnosed him as having a possible stroke, and contradicts Defendants' reply in support of their motion for summary judgment.

1 The evidence Plaintiff seeks to submit is a signed statement by Chief Medical Executive
2 P. Finander, M.D. asserting that he reviewed a medical record documenting a diagnosis of
3 "chronic open-angle glaucoma" and "possible cerebrovascular accident (stroke)" by an unnamed
4 ophthalmologist who examined Plaintiff's eyes on April 14, 2011. (Exhibit to Motion, Doc. 184
5 at p. 8.) Dr. Finander's statement is inadmissible hearsay evidence. Further, evidence of
6 Plaintiff's condition and diagnosis on April 14, 2011 is not evidence of Plaintiff's condition and
7 diagnosis in 2006 and 2007, when the events at issue in Plaintiff's complaint allegedly occurred.¹
8 Moreover, the deadline for opposition to Defendants' motion for summary judgment has expired,
9 and therefore Plaintiff's submission of evidence is untimely. Local Rule 230(1); Doc. 158. For
10 these reasons, Plaintiff's motion to submit additional evidence shall be denied.

11 Based on the foregoing, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's motion to submit additional evidence in opposition of Defendants'
13 motion to dismiss is DENIED; and
- 14 2. Plaintiff's motion for partial summary judgment, filed on January 3, 2011, and
15 Defendants' motion for summary judgment, filed on February 22, 2011, are
16 DEEMED submitted on the Court's record, and no other documents in support of,
17 or opposition to, either motion shall be accepted for the Court's consideration.

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19 IT IS SO ORDERED.

20 Dated: May 23, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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¹To the extent that Plaintiff seeks to admit evidence that he has not received the glasses which were ordered for him on May 2, 2011, such evidence is not relevant to the events alleged in the complaint.