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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT GONZALES SAENZ,	CASE NO. 1:09-cv-00557-BAM PC
Plaintiff,	ORDER DIRECTING DEFENDANT TO PROVIDE DOCUMENTS TO THE COURT
v.	ORDER STRIKING PLAINTIFF’S SURREPLY
SGT. D. REEVES,	(ECF No. 43.)
Defendant.	/ THIRTY-DAY DEADLINE

Plaintiff Robert Gonzales Saenz (“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 April 22, 2011, Defendant filed a motion to dismiss. (ECF No. 35.) Plaintiff filed an opposition on May 10, 2011, and Defendant filed a reply on May 16, 2011. (ECF No. 38, 39.) Plaintiff filed a surreply on June 8, 2011. (ECF No. 43.)

Plaintiff filed a surreply to Defendant’s reply to his opposition. The Local Rules provide for a motion, an opposition, and a reply. Neither the Local Rules nor the Federal Rules provide the right to file a surreply, and the Court neither requested one nor granted a request on the behalf of Plaintiff to file one. Plaintiff’s surreply, filed June 8, 2011, shall be stricken from the record.

Defendant Reeves brings this motion to dismiss Plaintiff’s retaliation claims on the grounds that Plaintiff did not file a grievance regarding retaliation by Defendant Reeves and therefore he failed to exhaust his administrative remedies. Defendant argues that, while Plaintiff asserts that he exhausted administrative remedies, the appeals he references were not processed though to the Director’s Level. Additionally, the alleged retaliatory incidents occurred in September 2007, and

1 December 2007. The appeal Plaintiff references is dated February 2007, long before these incidents
2 occurred and does not exhaust his retaliation claim.

3 Plaintiff argues that he exhausted his administrative remedies for the retaliation claim by
4 appeal Nos. SATF E-07-00748 and SATF E-06-03710, and the citizens/staff complaint filed at
5 Pleasant Valley State Prison on September 28, 2007. Plaintiff claims that since appeal No. SATF
6 E-07-00748 was granted in part he was not required to further pursue his administrative remedies
7 in order to exhaust.

8 In order to determine if Plaintiff exhausted his administrative remedies it is necessary to
9 review the appeals at issue, however neither party has filed the appeals with their pleadings.

10 Accordingly, it is HEREBY ORDERED that:

- 11 1. Plaintiff's surreply, filed June 8, 2011, is STRICKEN FROM THE RECORD; and
- 12 2. Within thirty days from the date of service of this order, Defendant shall file a copy
13 of inmate appeals SATF-E-06-03710 and SATF-E-07-00740, and the document
14 Plaintiff references filed at Pleasant Valley State Prison on September 28, 2007.

15 IT IS SO ORDERED.

16 **Dated: October 24, 2011**

16 /s/ **Barbara A. McAuliffe**
17 UNITED STATES MAGISTRATE JUDGE