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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

DEON WADE,

Plaintiff,

v.

**FRESNO POLICE DEPARTMENT,
et al.,**

Defendants.

1:09-CV-0599 AWI-BAM

**ORDER FOR ADDITIONAL
BRIEFING TO BE FILED BY
DECEMBER 9, 2011**

Currently pending before the Court is Defendants’ motion for summary judgment. In Defendants’ reply in support of their motion, they request that the Court strike two declarations pursuant to Federal Rule of Civil Procedure 37(c)(1).¹ See Court’s Docket Doc. No. 79 at p. 2. The declarations at issue were filed as exhibits to Plaintiff’s opposition brief, and purport to be made by Lamont White and Camilla/Camella Jones,² witnesses to the events alleged in Plaintiff’s complaint. See *id.* at Doc. No. 78. Defendants argue that Plaintiff failed to identify the

¹ Although Defendants designate their argument a “Motion to Strike the Declaration of Lamont White and C. Jones,” the Court will construe it as part of Defendants’ argument in support of their motion for summary judgment. The motion to strike was not docketed as a separate motion and, therefore, Plaintiff, who is proceeding *pro se*, was likely unaware that he was entitled, under Local Rule 230(l) (Fed. R. Civ. P. 78), to respond to the motion within 21 days from service.

² The Jones declaration is handwritten and somewhat difficult to read. The declarant’s first name appears to be spelled “Camella” in the introductory paragraph, and “Camilla” in the signature block.

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with contact information for Mr. White and Ms. Jones; and

2. On or before December 9, 2011, Plaintiff SHALL file a surreply to address the issue of whether his failure to disclose the White and Jones declarations and witness contact information to Defendants was substantially justified or was harmless.
3. Plaintiff is forewarned that if he does not file a surreply by December 9, 2011, the Court will strike the White and Jones Declarations and will thereafter issue its decision on Defendants' motion for summary judgment.

IT IS SO ORDERED.

Dated: November 21, 2011



CHIEF UNITED STATES DISTRICT JUDGE