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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 BENITO REYES,

12 Plaintiff,

13 vs.

14 J. SINGH, et al.,

15 Defendants.  
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1:11-cv-00362-LJO-GSA-PC

ORDER DENYING MOTION TO STRIKE  
(Doc. 45.)

19 **I. RELEVANT PROCEDURAL HISTORY**

20 Benito Reyes ("Plaintiff") is a state prisoner proceeding pro se with this civil rights  
21 action filed pursuant to 42 U.S.C. § 1983. This action now proceeds with Plaintiff's original  
22 Complaint, filed on March 3, 2011, against defendants Rose Martinez and Chinyere Nyenke  
23 ("Defendants"), for deliberate indifference to Plaintiff's serious medical needs in violation of  
24 the Eighth Amendment.<sup>1</sup> (Doc. 1.)

25 On March 16, 2015, Plaintiff filed a motion to strike Defendants' reply to Plaintiff's  
26 opposition to Defendants' amended motion for summary judgment as untimely. (Doc. 45.)  
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28 <sup>1</sup> On June 13, 2013, the court issued an order dismissing all other claims and defendants from  
this action, based on Plaintiff's failure to state a claim. (Doc. 17.)

1 Plaintiff argues that Defendants failed to file their reply within the deadline established by the  
2 court's order of January 16, 2015, which stated, "Defendants' reply to Plaintiff's response, if  
3 any, is due within seven days of the filing of the response." (Doc. 36 at 3 ¶III.3.) Plaintiff  
4 asserts in his motion:

5 "Plaintiff mailed his opposition on February 8, 2015, and assuming a 3 day  
6 arrival date of February 11, Defendants' reply was due on February 18, 2015.  
7 Defendants did not file [their] reply until March 2, 2015, twelve days late."

8 (Motion to Strike, Doc. 45 at 2:8-11.)

9 The court's record shows otherwise. Plaintiff filed his opposition on February 23, 2015.  
10 (Docs. 40-43.) Defendants filed their reply seven days later, on March 2, 2015. (Doc. 44.)  
11 Thus, Defendants' reply was timely filed, within the court's seven-day deadline. Therefore,  
12 Plaintiff's motion to strike shall be denied.

13 Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's motion to strike,  
14 filed on March 16, 2015, is DENIED.

15 IT IS SO ORDERED.

16 Dated: March 17, 2015

17 /s/ Gary S. Austin  
18 UNITED STATES MAGISTRATE JUDGE  
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