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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANDREW A. CEJAS,)	1:12cv00271 AWI DLB PC
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS’
)	MOTION TO STRIKE SUR-REPLY
vs.)	(Document 35)
)	
W.K. MYERS, et al.,)	ORDER STRIKING PLAINTIFF’S
)	SUR-REPLY
Defendants.)	(Document 34)

Plaintiff Andrew Cejas (“Plaintiff”) is a prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 28 U.S.C. § 1983. This action is proceeding on Plaintiff’s First Amended Complaint on the following claims: (1) violation of the First Amendment against Defendants Yates, Walker, Myers, McGee, Fisher, Trimble, Foston, Van Leer and Pimentel; (2) violation of RLUIPA against Defendants Yates, Walker, Myers, McGee, Fisher, Trimble, Foston, Van Leer and Pimentel; and (2) violation of the Fourteenth Amendment against Defendants Yates, Walker, Myers, McGee, Fisher, Trimble, Foston, Van Leer and Pimentel.

On March 28, 2014, Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff filed his opposition on May 19, 2014, and Defendants filed their reply on March 27, 2014. The motion is therefore fully briefed and pending before the Court. Local Rule 230(l).

1 On June 10, 2014, Plaintiff filed objections to Defendants' evidentiary objections. He
2 also filed a document entitled, "Petitioner's Objection to Respondent's Reply in Support of his
3 Motion to Dismiss." ECF No. 34.

4 On June 20, 2014, Defendants filed a motion to strike his "Objection to Respondent's
5 Reply in Support of his Motion to Dismiss." Plaintiff opposed the motion on July 16, 2014, and
6 Defendants filed a reply on July 23, 2014. The motion is submitted pursuant to Local Rule
7 230(l).

8 Parties do not have the right to file sur-replies and motions are deemed submitted when
9 the time to reply has expired. Local Rule 230(l). The Court generally views motions for leave to
10 file a sur-reply with disfavor. Hill v. England, 2005 WL 3031136, at *1 (E.D. Cal. 2005) (citing
11 Fedrick v. Mercedes-Benz USA, LLC, 366 F.Supp.2d 1190, 1197 (N.D. Ga. 2005)). However,
12 district courts have the discretion to either permit or preclude a sur-reply. See U.S. ex rel. Meyer
13 v. Horizon Health Corp., 565 F.3d 1195, 1203 (9th Cir. 2009) (district court did not abuse
14 discretion in refusing to permit "inequitable sur-reply"); JG v. Douglas County School Dist., 552
15 F.3d 786, 803 n.14 (9th Cir. 2008) (district court did not abuse discretion in denying leave to file
16 sur-reply where it did not consider new evidence in reply); Provenz v. Miller, 102 F.3d 1478,
17 1483 (9th Cir. 1996) (new evidence in reply may not be considered without giving the non-
18 movant an opportunity to respond).
19

20 In this instance, Plaintiff's sur-reply was not authorized by the Court and only serves to
21 repeat arguments made in his opposition. Plaintiff characterizes his filing as a reply to an answer
22 under Federal Rule of Civil Procedure 7(a), but he is incorrect. An "answer" as referred to in
23 Rule 7(a) is a response to a complaint. Defendants have not yet filed an answer and Rule 7(a) is
24 inapplicable.
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