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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 RICK HAZELTINE,

12 Plaintiff,

13 vs.

14 FRANCES HICKS, et al.,

15 Defendants.  
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18  
19

1:14-cv-00056-DAD-GSA-PC

ORDER DENYING PLAINTIFF'S REQUEST  
TO STRIKE  
(ECF No. 42.)

ORDER RESOLVING PLAINTIFF'S  
OBJECTIONS  
(ECF No. 52.)

ORDER DENYING PLAINTIFF'S REQUEST  
FOR STAY AS MOOT  
(ECF No. 57.)

20 **I. RELEVANT PROCEDURAL HISTORY**

21 Rick Hazeltine ("Plaintiff") is a civil detainee proceeding pro se and in forma pauperis  
22 with this civil rights action filed pursuant to 42 U.S.C. § 1983. This case now proceeds with  
23 Plaintiff's First Amended Complaint filed on July 6, 2015, on the following claim: Excessive  
24 force in violation of the Fourteenth Amendment against Defendants Ian Young, Benjamin  
25 Gamez, Rashaun Casper, Julius Oldan, Porfirio Sanchez Negrete, David Avilia, Rickey Smith,  
26 and Charles Ho (collectively "Defendants"). (ECF No. 27.)<sup>1</sup>  
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28 <sup>1</sup> On August 21, 2015, the Court issued an order dismissing all remaining claims from this  
action. (ECF No. 29.)

1 On September 24, 2016, Defendants filed a motion for summary judgment, which is  
2 pending. (ECF No. 53.) On October 5, 2016, Plaintiff filed a request for stay of the Court’s  
3 ruling on the motion for summary judgment. (ECF No. 57.) Plaintiff’s request for stay is now  
4 before the Court.

5 **II. PLAINTIFF’S REQUEST FOR STAY**

6 Plaintiff requests a stay of the Court’s ruling on Defendants’ motion for summary  
7 judgment pending determination of two issues: (1) Plaintiff’s request to strike Defendants’  
8 Answers from the record as untimely, and (2) Plaintiff’s objections to the denial of Plaintiff’s  
9 motion for reconsideration. Plaintiff argues that a ruling on the late filing of Defendants’  
10 responsive pleadings could render Defendants’ admissions moot.

11 **III. DISCUSSION**

12 Plaintiff’s two pending issues shall be resolved by this order, rendering his request for  
13 stay moot.

14 **A. Request to Strike**

15 Motions to strike are generally disfavored and “should not be granted unless the matter  
16 to be stricken clearly could have no possible bearing on the subject of the litigation . . . . If there  
17 is any doubt whether the portion to be stricken might bear on an issue in the litigation, the court  
18 should deny the motion.” Platte Anchor Bolt, Inc. v. IHI, Inc., 352 F.Supp.2d 1048, 1057  
19 (N.D.Cal. 2004) (internal citations omitted). “With a motion to strike, just as with a motion to  
20 dismiss, the court should view the pleading in the light most favorable to the nonmoving  
21 party.” Platte Anchor Bolt, Inc. at 1057. “Ultimately, whether to grant a motion to strike lies  
22 within the sound discretion of the district court.” Cruz v. Bank of New York Mellon, No. 12–  
23 00846, 2012 WL 2838957, at \*2 (N.D.Cal. July 10, 2012) (citing see Whittlestone, Inc. v.  
24 Handi–Craft Co., 618 F.3d at 973).

25 Plaintiff requests the Court to strike Defendants’ Answers to the First Amended  
26 Complaint as untimely. The Court finds no good cause to strike the Answers from the record.  
27 Even assuming the Answers are untimely, no sanctions shall be imposed, because Defendants  
28 were not required to file Answers to the First Amended Complaint.

1            “[T]he option to file an Answer to a First Amended Complaint lies with the defendant.”  
2 Stanley Works v. Snydergeneral Corp., 781 F.Supp. 659, 664-665 (E.D.Cal. 1990) (citing  
3 Wright, Miller & Kane, 6 Federal Practice and Procedure § 1476, pp. 558-559 (1990). “When  
4 an amended pleading does not add new parties, new claims, or significant new factual  
5 allegations, courts are often willing to allow the previously filed response to the original  
6 pleading [to] suffice.” Upek, Inc. v. Authentec, Inc., No. 10-424-JF PVT, 2010 WL 2681734,  
7 at \*3 (N.D. Cal. July 6, 2010), (quoting Justin Kraft & Kraft Piano Servs., LLC v. Arden, No.  
8 CV. 07-487-PK, 2009 WL 73869, at \*7 (D.Or. 2009) (quoting 3 Moore's Federal Practice §  
9 15.17 (3d ed.2008))).

10            Here, Plaintiff’s Amended Complaint proceeds with the same claims and defendants as  
11 Plaintiff’s initial Complaint, and Defendants’ Answers to the First Amended Complaint appear  
12 identical to their Answers to the initial Complaint. (ECF Nos. 18-25, 34-41.) Here, the Court  
13 finds that Defendants’ Answers to the initial Complaint suffice and therefore, Defendants were  
14 not required to file Answers to the First Amended Complaint. Accordingly, Plaintiff’s request  
15 to strike shall be denied.

16            **B.        Objections to Court Order**

17            Plaintiff asserts that the Court has not addressed his “Objections to the denying of  
18 plaintiff’s motion for reconsideration on the denial of the issuance of subpoenas duces tecum.”  
19 (ECF No. 57 at 1:26-28.) However, as discussed below, the Court’s order of September 3,  
20 2016 resolved this matter in its entirety, with prejudice.

21            On July 29, 2016, the Court issued an order denying Plaintiff’s motion for issuance of  
22 subpoenas. (ECF No. 48.) On August 15, 2016, Plaintiff filed a motion for reconsideration of  
23 the July 29 order. (ECF No. 49.) On August 26, 2016, the Court issued an order denying the  
24 motion for reconsideration. (ECF No. 50.)

25            Plaintiff subsequently filed objections to the August 26 order. (ECF No. 52.) On  
26 September 27, 2016, the Court issued an order addressing Plaintiff’s objections. (ECF No. 54.)  
27 The September 27 order advised Plaintiff that “[n]o further objections or motions for  
28 reconsideration concerning Plaintiff’s motion for issuance of subpoenas duces tecum shall

1 **be considered by the Court.”** (Id. at 3:7-9.) Thus, the matter of Plaintiff’s objections is  
2 resolved in its entirety.

3 **IV. CONCLUSION**

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

- 5 1. Plaintiff’s request to strike Defendants’ Answers as untimely, filed on March 24,  
6 2016, is DENIED;
- 7 2. Plaintiff’s objections, filed on September 9, 2016, are RESOLVED in their  
8 entirety; and
- 9 3. Plaintiff’s request for stay of the Court’s ruling on Defendants’ motion for  
10 summary judgment, filed on October 5, 2015, is DENIED as moot.

11 IT IS SO ORDERED.

12 Dated: November 12, 2016

13 /s/ Gary S. Austin  
14 UNITED STATES MAGISTRATE JUDGE