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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANNY M. COSTON,  
Plaintiff,  
v.  
J.K. YU, et al.,  
Defendants.

CASE NO. 1:14-cv-00148-AWI-MJS  
**ORDER GRANTING DEFENDANT'S  
MOTION TO STRIKE  
(ECF NO. 28)**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF Nos. 1 & 8.) The matter proceeds on Plaintiff's May 14, 2015, Second Amended Complaint, which was screened on May 22, 2015, and found to state an Eighth Amendment medical indifference claim against Defendant Dr. J.K. Yu. (See ECF Nos. 16, 18.) A Discovery and Scheduling Order then issued, setting the discovery deadline for December 19, 2016, and the dispositive motion deadline for February 27, 2017. (ECF No. 23.)

On October 19, 2016, Plaintiff lodged a Third Amended Complaint ("TAC") accusing several individuals of violating his constitutional rights; he did not submit a motion with this amended complaint. (ECF No. 27.) Defendant now moves to strike the TAC. (ECF No. 28.) Plaintiff has not filed an opposition.

Since Plaintiff previously amended his complaint, he was required to seek written consent of Defendant or leave of the Court prior to amending his pleading. Fed. R. Civ.

1 P. 15(a); E.D. Cal. Local Rules 137(c) and 220; Sapiro v. Encompass Inc., 221 F.R.D.  
2 513, 517 (N.D. Cal. 2004). Plaintiff did neither. Although leave to amend should be freely  
3 given when justice so requires, a court has discretion to strike an amended pleading that  
4 does not comply with Rule 15(a). Fed. R. Civ. P. 12(f)(1); Vasquez v. Johnson County  
5 Housing Coalition Inc., 2003 WL 21479186 at \*1 (D. Kan. 2003)).

6 Accordingly, it is HEREBY ORDERED that:

- 7 1. Defendant's motion to strike (ECF No. 28) is GRANTED; and  
8 2. Plaintiff's TAC (ECF No. 27) is STRICKEN.

9  
10 IT IS SO ORDERED.

11 Dated: November 16, 2016

12 /s/ Michael J. Seng  
13 UNITED STATES MAGISTRATE JUDGE