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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUSTAVO TORRES,
Plaintiff,
v.
J. GUTIERREZ, et al.,
Defendants.

Case No. 1:15-cv-00575-DAD-MJS (PC)

**ORDER GRANTING DEFENDANTS'
MOTION TO STRIKE PLAINTIFF'S
RESPONSE TO DEFENDANTS' NOTICE
OF INTENTION NOT TO FILE
EXHAUSTION MOTION**

(ECF No. 58)

CLERK TO STRIKE ECF NO. 57

**THIRTY DAY DEADLINE TO FILE
MOTION FOR SUMMARY JUDGMENT**

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. The action proceeds on Plaintiff's Eighth Amendment conditions of confinement claims against Defendants Arellano and Montanez and First Amendment retaliation claim against Defendant Montanez.

On June 24, 2016, Defendants filed a notice of intention not to file a motion for summary judgment for failure to exhaust. (ECF No. 52.) Defendants reserved the right to raise the issue of exhaustion at trial. (Id.)

On July 25, 2016, Plaintiff filed a response to Defendants' notice. (ECF No. 57.)

1 Therein, Plaintiff argues that he did, in fact, exhaust his administrative remedies; he also
2 presents evidence in support. He asks the Court to “grant” summary judgment in
3 Plaintiff’s favor on the issue of exhaustion. He also appears to ask the Court to grant
4 judgment in his favor on the merits on his claims.

5 On August 15, 2016, Defendants filed the instant motion to strike Plaintiff’s
6 response, construed as a motion for summary judgment on exhaustion grounds, as
7 untimely and procedurally defective or, in the alternative, grant Defendants an extension
8 of time until thirty days after the Court issues its ruling, to oppose Plaintiff’s motion.
9 (ECF No. 58.)

10 To the extent Plaintiff opposes a present or future claim that he failed to exhaust
11 his administrative remedies, that opposition is premature. Defendants have not claimed
12 that Plaintiff failed to exhaust. The Court will not, at this stage, issue any rulings related
13 to exhaustion. The Court therefore disregards Plaintiff’s arguments on this issue.

14 To the extent Plaintiff seeks judgment in his favor on the merits of his claims,
15 Defendants are correct that Plaintiff’s motion is procedurally defective. A party moving
16 for summary judgment must enumerate each fact relied upon in support of his motion
17 and cite to particular portions of the record, including pleadings, depositions, or
18 affidavits, that support each claim. Fed. R. Civ. P. 56(c); Local Rule 260(a). At present,
19 Plaintiff’s motion is vague and nonspecific and the Court cannot determine the basis for
20 his arguments.

21 Pursuant to the Discovery and Scheduling Order, the dispositive motions
22 deadline was August 10, 2016. (ECF No. 27.) In the interest of fairness, the Court will
23 grant Plaintiff **thirty (30)** days from the date of this order to renew his motion for
24 summary judgment on the merits. If Plaintiff chooses to so file, he must comply with
25 both the Federal Rules of Civil Procedure and the Eastern District Local Rules. He may
26 not renew his arguments regarding exhaustion. No extensions will be granted absent a
27 showing of good cause.

28 Accordingly, IT IS HEREBY ORDERED that:

- 1 1. Defendants' motion to strike (ECF No. 58) is GRANTED;
- 2 2. The Clerk of Court shall strike ECF No. 57 from the record; and
- 3 3. Plaintiff is granted **thirty (30)** days from the date of this order to file a motion
- 4 for summary judgment on the merits.

5
6 IT IS SO ORDERED.

7 Dated: February 1, 2017

8 /s/ Michael J. Seng
9 UNITED STATES MAGISTRATE JUDGE