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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MONICO J. QUIROGA III,

12 Plaintiff,

13 v.

14 SERGEANT GRAVES, et al.,

15 Defendants.
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1:16-cv-00234-DAD-GSA-PC

**ORDER ADDRESSING PLAINTIFF'S
OBJECTION AND DENYING
PLAINTIFF'S MOTION TO STRIKE
(ECF No. 65)**

**TWENTY-ONE DAY DEADLINE FOR
PLAINTIFF TO FILE OPPOSITION OR
STATEMENT OF NON-OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

19 Monico J. Quiroga III ("Plaintiff") is a prisoner proceeding *pro se* and *in forma pauperis*
20 with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff's
21 Fourth Amended Complaint filed on September 6, 2018, against defendant Corporal Oscar
22 Fuentes (Defendant) for violation of Plaintiff's due process rights under the Fourteenth
23 Amendment. (ECF No. 45.)

24 On June 18, 2019, Defendant filed a motion for summary judgment for failure to exhaust
25 administrative remedies. (ECF No. 62.) On July 1, 2019, Plaintiff filed an objection to the
26 motion. (ECF No. 65.) In the objection Plaintiff argues that Defendant's motion for summary
27 judgment was untimely because it was filed after the court's deadline for filing exhaustion of
28 remedies motions. Plaintiff requests that the motion for summary judgment be stricken.

1 Plaintiff is mistaken that Defendant's motion for summary judgment was not timely filed.
2 Defendant filed his motion for summary judgment on June 18, 2019. (ECF No. 62.) The court's
3 deadline for filing such a motion is July 11, 2019, which is after Defendant's motion was filed.¹
4 Therefore, Defendant's motion for summary judgment was timely filed and Plaintiff's motion
5 to strike shall be denied.

6 Accordingly, it is HEREBY ORDERED that:

- 7 1. Plaintiff's objection to Defendant's motion for summary judgment, filed on July
8 1, 2019, is resolved by this order;
- 9 2. Plaintiff's motion to strike Defendant's motion for summary judgment as
10 untimely is denied;
- 11 3. Plaintiff is granted twenty-one days from the date of service of this order in which
12 to file an opposition, or statement of non-opposition to the motion for summary
13 judgment; and
- 14 4. Plaintiff's failure to comply with this order shall result in a recommendation that
15 this case be dismissed.

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17 IT IS SO ORDERED.

18 Dated: July 7, 2019

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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¹In the court's discovery and scheduling order, filed on April 11, 2019, the court set a deadline of July 11, 2019, for the filing of exhaustion motions. (ECF No. 58.)