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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AUBREY LEE BROTHERS, II,  
Plaintiff,  
v.  
CHITA BUENAFE, N. RAMIREZ,  
Defendant.

Case No. 1:17-cv-00607-NONE-HBK  
ORDER STRIKING PLAINTIFF'S  
UNAUTHORIZED REPLY FROM THE  
RECORD  
(Doc. No. 84)

Pending review before the court is plaintiff's pleading titled "reply to defendant's response to plaintiff's improper surreply," construed as an unauthorized pleading. (Doc. No. 84).

I. BACKGROUND

Plaintiff Aubrey Lee Brothers, II, a state prisoner, initiated this action on May 1, 2017 by filing a *pro se* civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1). Defendants moved for summary judgment. (Doc. Nos. 63). Plaintiff filed an opposition (Doc. No. 76) and defendants filed a reply (Doc. No. 78). The motion for summary judgment remains pending before this court. On April 5, 2021, plaintiff filed an unauthorized surreply (Doc. No. 80) and defendants moved to strike the surreply from the record. (Doc. No. 81). On April 14, 2021, the court granted defendant's motion to strike the surreply. (Doc. No. 83). On April 20, 2021, plaintiff filed the instant reply. (Doc. No. 84).

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II. APPLICABLE LAW AND ANALYSIS

Federal Rule of Civil Procedure 7(a) only allows for certain pleadings, namely a complaint, answer, and reply. Neither the Federal Rules of Civil Procedure, nor the Local Rules for the Eastern District of California permit the filing of additional pleadings as a matter of right. *See Garcia v. Biter*, 195 F.Supp.3d at 1131 (E.D. Ca. July 18, 2016) (noting the plaintiff did not have a right to file a surreply under the local rules or under the Federal Rules of Civil Procedure). Moreover, the “court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P 12(f).

Here, plaintiff has already filed an unauthorized surreply and the court has stricken this surreply from the record. (Doc. Nos. 80, 83). Plaintiff now files a second unauthorized reply. (Doc. No. 84). Some of the material in this reply rehashes arguments already made previously in this case. Although it is likely that plaintiff did not receive the court’s April 14, 2021 order striking plaintiff’s initial unauthorized surreply before he filed the this second unauthorized reply, because the court did not authorize plaintiff’s reply, the court orders it stricken from the record.

Accordingly, it is now ORDERED:

The Clerk of Court shall strike plaintiff’s unauthorized reply from the record. (Doc. No. 84).

IT IS SO ORDERED.

Dated: April 23, 2021

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE