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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM YOUNG SUTHERLAND,

Plaintiff,

No. CIV S-09-2391 WBS DAD P

vs.

S. HERRMANN, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Several matters are pending before the court.

On March 11, 2011, two of the four defendants in this action, defendants Parmar and Spinks, filed a motion for summary judgment. Plaintiff filed his opposition to that motion on April 11, 2011, and defendants filed a reply on April 15, 2011. On May 23, 2011, plaintiff filed a response to defendants' reply, and on June 13, 2011, plaintiff filed an amendment to his opposition and an amendment to the declaration appended to his May 23, 2011 response to defendants' reply brief. Defendants have moved to strike the latter three documents filed by plaintiff as unauthorized and impermissible surreply briefs.

Local Rule 230(1) authorizes the filing of an opposition to a motion and a reply brief in support of the motion, and provides that a motion is "deemed submitted twenty-eight

1 (28) days after the service of the motion or when the reply is filed, whichever comes first.” Local
2 Rule 230(l) (E.D.Cal.). Plaintiff’s May 23, 2011 response to defendants’ reply, and his June 13,
3 2011 amendment to the declaration appended to that response, are not authorized and will
4 therefore be stricken.

5 The court has reviewed plaintiff’s June 13, 2011 proposed amendment to his
6 opposition. The proposed amendment is missing the third page of plaintiff’s opposition to the
7 motion, missing nine pages from Exhibit D, and adds as Exhibit K a copy of plaintiff’s
8 complaint. Plaintiff is not required to tender a copy of his complaint as an exhibit in opposition
9 to defendants’ motion for summary judgment. See Fed. R. Civ. P. 56(c)(3) (at summary
10 judgment court may consider other materials in the record). The June 13, 2011 proposed
11 amendment to plaintiff’s opposition adds no material necessary to plaintiff’s opposition. It will
12 therefore also be stricken.

13 On September 15, 2011, plaintiff filed a document styled “Petition to Pursue [sic]
14 Charges of Perjury Against M. Spinks and Subornation of Perjury Against Deputy Attorney
15 General Jessica R. Devencenzi.” Therein, plaintiff contends that throughout defendant Spink’s
16 responses to a set of interrogatories propounded by plaintiff, masculine articles of speech (such
17 as “his”) are used to refer to defendant Spink, when defendant Spink is in fact a female. It is
18 clear in the record, and undisputed by defendants, that defendant Spink is female. Plaintiff’s
19 motion will be denied.

20 On October 24, 2011, plaintiff filed a motion for to reopen discovery, and on
21 October 28, 2011, filed a motion for subpoenas duces tecums for service of discovery requests on
22 non-parties. In his motion to reopen discovery, plaintiff contends that the time to conduct
23 discovery in this action was inadequate to permit him to compel further responses to discovery
24 from defendants and to serve subpoenas duces tecum on non-parties. The record reflects that
25 plaintiff did timely file a motion to compel discovery responses which has been resolved by the

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1 court. See Order filed July 21, 2011 (Doc. No. 70).¹ The record also reflects that plaintiff has
2 previously sought and been denied leave to serve subpoenas duces tecum. Id. In the motion now
3 pending before the court, plaintiff does not provide any specific information concerning the of
4 the discovery he would seek by the requested subpoenas or why such discovery is essential to his
5 prosecution of this action. Therefore, plaintiff's motions will be denied.

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. Defendants' June 20, 2011 motion to strike filings (Doc. No. 69) is granted;
- 8 2. Docket Nos. 64, 66, and 67 are stricken;
- 9 3. Plaintiff's motion to pursue perjury charges (Doc. No. 76) is denied;
- 10 4. Plaintiff's motion for leave to reopen discovery (Doc. No. 78) is denied; and
- 11 5. Plaintiff's motion for subpoenas duces tecum (Doc. No. 79) is denied.

12 DATED: January 6, 2012.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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26 ¹ The court has completed the in camera review required by the July 21, 2011 order,
which has led to production of some additional documents to plaintiff.