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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNNY L. FRANKLIN,
Plaintiff,
v.
F. FOULK, et al.,
Defendants.

No. 2:14-cv-00057 KJM DB

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983 alleging deliberate indifference to his medical needs while he was incarcerated at High Desert State Prison. On January 29, 2016, defendants filed a motion for summary judgment claiming that plaintiff failed to exhaust his administrative remedies. (ECF No. 71.) Plaintiff filed an opposition to the motion. (ECF No. 76.) Defendants filed a reply in support of the motion. (ECF No. 77.) On April 4, 2016, plaintiff filed a sur-reply. (ECF No. 79.)


Defendants move to strike plaintiff’s sur-reply as unauthorized. (ECF No. 80.) Plaintiff did not respond to the motion to strike. For the following reasons, the undersigned grants defendants’ motion to strike.

Plaintiff’s sur-reply is not authorized by, nor filed in conformance with, the Local Rules or the Federal Rules of Civil Procedure. Moreover, plaintiff did not obtain the court’s permission to file this sur-reply.

1 A reply (or other response) to a reply is not recognized by the Federal Rules of Civil
2 Procedure or the Local Rules of this court. The Local Rule governing motions in prisoner cases
3 contemplates the submission of only an opposition by a responding party, and a reply by the
4 moving party. See E.D. Cal. L.R. 230(l). Furthermore, it provides that the motion is deemed
5 submitted twenty-eight days after the service of the motion or when the reply is filed. Here,
6 defendants' reply brief was filed on March 23, 2016. Therefore, the motion for summary
7 judgment was already deemed submitted before plaintiff filed his sur-reply.

8 Because there is no provision in the Federal Rules of Civil Procedure or the Local Rules
9 authorizing the filing of a sur-reply, and because plaintiff did not seek nor does plaintiff have this
10 court's permission to file such a brief, plaintiff's sur-reply is improper. Accordingly, IT IS
11 HEREBY ORDERED that defendants' motion to strike (ECF No. 80) is granted and the clerk's
12 office is instructed to strike plaintiff's sur-reply (ECF No. 79) from the docket.

13 Dated: February 13, 2017

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16 DEBORAH BARNES
17 UNITED STATES MAGISTRATE JUDGE
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20 TIM-DLB:10
21 DB / ORDERS / ORDERS.PRISONER.CIVIL RIGHTS / foul.0057.mts
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