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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD J. CRANE,  
Plaintiff,  
v.  
RODRIGUEZ, et al.,  
Defendants.

No. 2:15-cv-0208 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel. Plaintiff’s motion to strike defendants’ motions for summary judgment and his motion to modify the scheduling order are before the court.<sup>1</sup> As discussed below, both motions are denied.

Motion to Strike

Plaintiff filed a motion to strike defendants’ motions for summary judgment, claiming that “the court made a decree that plaintiff had won summary judgment on exhaustion,” and thus is barred by the “law of the case” doctrine. (ECF No. 253 at 5.) The motion is fully briefed. (ECF Nos. 255, 262.)

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<sup>1</sup> Defendant Weeks filed a motion for summary judgment on May 21, 2021; the remaining defendants, sometimes referred as the “group defendants,” filed their motion on May 7, 2021. (ECF Nos. 236, 240.)

1 “The court may strike from a pleading an insufficient defense or any redundant,  
2 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f).

3 As argued by defendants, no ruling on a motion for summary judgment has yet issued in  
4 this case. Therefore, there is no “law of the case” for this court to apply. Plaintiff’s claim that he  
5 won summary judgment on the issue of exhaustion of administrative remedies in this action is  
6 false. Plaintiff identifies no findings and recommendations in which the undersigned  
7 recommended granting plaintiff summary judgment on exhaustion grounds, and no district court  
8 order granting plaintiff summary judgment on exhaustion grounds. Rather, plaintiff refers to  
9 orders addressing his request for appointment of counsel, neither of which addressed a motion for  
10 summary judgment or the issue of exhaustion of administrative remedies in this case. In the  
11 December 7, 2020 order, the undersigned reiterated plaintiff’s own words written on a 1983  
12 intake sheet apparently submitted to a prospective lawyer. (ECF No. 225 at 7:24-26, citing ECF  
13 No. 216 at 47.)<sup>2</sup> In the July 13, 2021 order, the district court referred to the same quotes by  
14 plaintiff in addressing his motion for reconsideration of the order denying counsel, which cannot  
15 reasonably be interpreted as the district court granting plaintiff summary judgment on the issue of  
16 exhaustion. (ECF No. 246 at 3:11-13.) Indeed, the district court’s order clearly affirmed the  
17 denial of plaintiff’s motion to appoint counsel and denied plaintiff’s motion for reconsideration.  
18 (ECF No. 246 at 6.) Plaintiff’s effort to transmogrify such references into a court order  
19 concerning exhaustion is patently absurd and frivolous. Rulings on motions for appointment of  
20 counsel do not constitute “law of the case” on the issue of exhaustion of administrative remedies.

21 It is true that “[e]xhaustion should be decided, if feasible, before reaching the merits of a  
22 prisoner’s claim.” Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014). But contrary to  
23 plaintiff’s claim that the defendants “withdrew their motion for summary judgment” (ECF No.  
24 253 at 5), such motion for summary judgment was vacated by the court “without prejudice to its

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26 <sup>2</sup> Although plaintiff claimed he had exhausted claims in the California Supreme Court, the 1983  
27 intake sheet did not identify a specific case number or court in which plaintiff allegedly “won”  
28 summary judgment. (ECF No. 216 at 47.)

1 renewal or re-filing after the discovery disputes are resolved.” (ECF No. 131 at 4.)<sup>3</sup> Here,  
2 discovery disputes required postponing consideration; the defendants timely-filed their motion  
3 based on exhaustion and statute of limitations grounds, and their right to re-file such motion was  
4 preserved by the court’s order granting them leave to renew such motion. Therefore, defendants  
5 did not waive such defenses. There was no substantive ruling on such motion.

6 In his reply, plaintiff asks the court to *sua sponte* grant him summary judgment. (ECF  
7 No. 262 at 8-9.) Such request fails for several reasons. First, the request was not included in his  
8 motion, thereby depriving defendants an opportunity to respond. Second, plaintiff failed to  
9 adequately brief the exhaustion issues, under either Rule 56 of the Federal Rules of Civil  
10 Procedure, or the court’s local rules. Third, all of the defendants have moved for summary  
11 judgment, demonstrating that a *sua sponte* ruling is inappropriate.

12 Finally, some of plaintiff’s arguments address the substance of the defendants’ pending  
13 motions for summary judgment. It would be inappropriate for the court to address such  
14 arguments in the context of plaintiff’s motion to strike. Plaintiff should include such arguments  
15 in his opposition to the motions for summary judgment filed by defendants.

16 For all of the above reasons, plaintiff’s motion to strike the defendants’ motions for  
17 summary judgment is denied.

### 18 Sanctions

19 The group defendants contend that plaintiff should be sanctioned because the motion to  
20 strike is harassing, needlessly increased the cost of litigation, and was brought in bad faith to  
21 waste counsel and the Court’s time. (ECF No. 255 at 3.) Defendants point out that plaintiff’s  
22 conduct continues despite multiple admonitions by the Court. (*Id.* citing ECF Nos. 97  
23 [cautioning Plaintiff regarding filing baseless motions for sanctions], 131 [admonishing Plaintiff  
24 for unnecessarily burdening the court and the parties, and increasing the cost of this litigation],  
25 189 [admonishing Plaintiff for his disingenuous argument], 190 [granting Defendants’ request for  
26 expenses, and assessing Plaintiff \$1,750, the costs Defendants incurred in responding to

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27 <sup>3</sup> Defendant Weeks joined in the group defendants’ motion for summary judgment. (ECF No.  
28 84, 86.)

1 Plaintiff's frivolous motion to compel].) Defendants ask the court to prohibit plaintiff from filing  
2 any further motions or requests unrelated to opposing summary judgment. In reply, plaintiff  
3 argues that defendants' request for sanctions should be viewed as "opening the door" for plaintiff  
4 to seek sanctions because a party requesting sanctions for an improper reason can be sanctioned.  
5 (ECF No. 262 at 4.)

6 Defendants' request for sanctions is evaluated under the court's inherent authority.  
7 Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017). A court may impose  
8 sanctions under its inherent power "when a party has acted in bad faith, vexatiously, wantonly, or  
9 for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for  
10 an improper purpose." Fink v. Gomez, 239 F.3d 989, 992 (9th Cir. 2001) (citing Chambers v.  
11 NASCO, Inc., 501 U.S. 32, 45-47 & n.10 (1991); Roadway Express, Inc. v. Piper, 447 U.S. 752,  
12 766 (1980)). In Fink, the Ninth Circuit used the term "bad faith" to refer to "a broad range of  
13 willful improper conduct." Fink, 239 F.3d at 992. On the other hand, in the case of a chronically  
14 late attorney, for example, "mere tardiness does not demonstrate the improper purpose or intent  
15 required for inherent power sanctions." Id. (citation omitted). Similarly, a court "may not  
16 sanction mere 'inadvertent' conduct" under its inherent authority. Id. at 993 (citing Zambrano v.  
17 City of Tustin, 885 F.2d 1473, 1485 (9th Cir. 1989)). Sanctions are permitted under a court's  
18 inherent authority "when an attorney has acted recklessly if there is something more such as an  
19 improper purpose." Id.; see id. at 993-94 (recklessness plus frivolousness, harassment or  
20 improper purpose).

21 The undersigned finds that plaintiff's claim that he "won" summary judgment on the issue  
22 of exhaustion was frivolous and made in bad faith because it had no legitimate support in the  
23 record. Such motion wasted counsel and the Court's time, as well as increased defendants'  
24 litigation costs. Moreover, plaintiff's counter motion for sanctions violates the Court's prior  
25 order admonishing plaintiff to refrain from bringing baseless motions for sanctions.

26 Accordingly, defendants' motion for sanctions is granted. Plaintiff shall file his  
27 opposition to the pending motions for summary judgment within thirty days from the date of this  
28 order, and shall file no additional motions or requests that are unrelated to pending motions for

1 summary judgment until the court has ruled on the pending motions. The undersigned finds that  
2 such sanction is the least drastic sanction that can be imposed at this juncture. Plaintiff is  
3 cautioned that his continued filing of baseless or frivolous motions may result in a  
4 recommendation that this case be terminated. Fed. R. Civ. P. 41(b).

5 Motion to Modify the Time Schedule

6 On October 29, 2021, plaintiff filed a motion to modify the scheduling order to allow him  
7 additional time to file a motion for summary judgment.

8 “The district court is given broad discretion in supervising the pretrial phase of litigation.”  
9 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (citation and internal  
10 quotation marks omitted). Rule 16(b) provides that “[a] schedule may be modified only for good  
11 cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “The schedule may be modified  
12 ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’”  
13 Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting  
14 Johnson, 975 F.2d at 607).

15 This action was filed on January 26, 2015, and the scheduling order in this case has been  
16 modified multiple times. (See, e.g., ECF Nos. 189, 203, 206.) On December 7, 2020, the pretrial  
17 motions deadline was extended to May 21, 2021. (ECF No. 225.) The group defendants timely-  
18 filed their motion for summary judgment on May 7, 2021, and defendant Weeks filed his motion  
19 on May 21, 2021. (ECF Nos. 236, 240.) Plaintiff fails to demonstrate his diligence in bringing  
20 his own motion for summary judgment. He has now had almost six months in which to prepare  
21 his oppositions to such motions, yet chose to file a frivolous motion to strike the motions rather  
22 than file his oppositions. The court finds no good cause to further modify the scheduling order.  
23 Plaintiff may include his arguments in his oppositions to the pending motions for summary  
24 judgment and therefore should not be prejudiced by the inability to bring his own motion.

25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. Plaintiff’s motion to strike (ECF No. 253) is denied;  
27 2. The group defendants’ motion for sanctions (ECF No. 255) is granted;

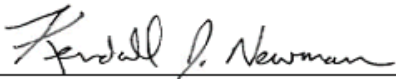
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1           3. As a sanction for bringing a baseless motion, plaintiff is prohibited from filing any  
2 motion or request that is not related to the pending motions for summary judgment until the court  
3 rules on the pending motions for summary judgment;

4           4. Plaintiff's motion to modify the scheduling order (ECF No. 263) is denied;

5           5. Plaintiff is granted thirty days in which to file oppositions to the pending motions for  
6 summary judgment (ECF Nos. 236, 240).

7 Dated: November 12, 2021

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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