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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEE EDWARD PEYTON,
Plaintiff,
v.
BRIAN KIBLER, et al.,
Defendants.

No. 2:21-cv-0719 DAD KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. Defendants’ motion for summary judgment is fully briefed and submitted for decision. On November 6, 2023, plaintiff filed a request for an extension of time to file a response to defendants’ reply, known as a sur-reply. As discussed below, plaintiff’s request is denied.

Background

Defendants’ motion for summary judgment was filed on December 15, 2022. (ECF No. 71.) On January 6, 2023, the undersigned stayed defendants’ motion and briefing thereon pending resolution of plaintiff’s request for reconsideration. (ECF No. 73.)

On August 23, 2023, the district court denied plaintiff’s motion for reconsideration. On September 7, 2023, the parties were directed to complete briefing on the pending motion for summary judgment. (ECF No. 79.) Plaintiff sought an extension of time to file his opposition, and on October 10, 2023, plaintiff was granted an additional 21 days to do so. (ECF No. 82.)

1 On October 11, 2023, plaintiff filed his opposition (ECF No. 83 at 1-22), statement of
2 disputed facts (ECF No. 83 at 23-27), and 251 pages of exhibits, including his declaration (ECF
3 No. 83 at 31-34). (ECF No. 83.)

4 Defendants filed their reply on October 25, 2023. (ECF No. 85.)

5 Sur-Replies

6 The Local Rules provide for a motion, an opposition, and a reply, and do not authorize the
7 routine filing of a sur-reply. E.D. Cal. L.R. 230(l). Nevertheless, a district court may allow a sur-
8 reply but only “where a valid reason for such additional briefing exists, such as where the movant
9 raises new arguments in its reply brief.” Hill v. England, 2005 WL 3031136, at *1 (E.D. Cal.
10 2005); accord Norwood v. Byers, 2013 WL 3330643, at *3 (E.D. Cal. 2013) (granting the motion
11 to strike the sur-reply because “defendants did not raise new arguments in their reply that
12 necessitated additional argument from plaintiff, plaintiff did not seek leave to file a sur-reply
13 before actually filing it, and the arguments in the sur-reply do not alter the analysis below”),
14 adopted, 2013 WL 5156572 (E.D. Cal. 2013).

15 Here, defendants did not raise new arguments or cite new evidence in their reply brief.
16 Indeed, plaintiff does not seek leave to file a sur-reply based on any alleged new arguments;
17 rather, plaintiff contends that the reply contains “several misstatements of record facts” and
18 “misstatements of law,” all concerning the merits of the case. (ECF No. 86 at 2.) Because
19 defendants did not raise new arguments in their reply no additional argument by plaintiff is
20 required for the court to address defendants’ motion. Plaintiff’s request for an extension of time
21 to file a sur-reply is denied because no sur-reply is needed by the court.

22 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion for extension of time to
23 file a sur-reply (ECF No. 86) is denied; plaintiff is not authorized to file a response to defendants’
24 reply.

25 Dated: November 13, 2023

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27 _____
28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE