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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ROBIN DASENBROCK,

12 Plaintiff,

13 vs.

14 A. ENENMOH, et al.,

15 Defendants.
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1:11-cv-01884-DAD-GSA-PC

ORDER DENYING MOTION FOR
SUMMARY JUDGMENT FILED BY
DEFENDANTS ENENMOH AND
PAGE AS MOOT, WITH LEAVE TO
AMEND WITHIN THIRTY DAYS
(ECF No. 68.)

17 This case was reassigned to the undersigned Magistrate Judge on September 8, 2016.
18 (ECF No. 200.) Upon review of the case, the court concludes that the motion for summary
19 judgment filed on May 4, 2014, by defendants Enenmoh and Page (“Defendants”) must be
20 denied as moot, with leave to file an amended motion. This case now proceeds with the
21 Second Amended Complaint filed on September 8, 2015. (ECF No. 140.) Defendants’ motion
22 for summary judgment was filed before the operative Second Amended Complaint was filed, at
23 the time this case proceeded on the First Amended Complaint.

24 The court recognizes that Defendants’ motion for summary judgment was previously
25 dismissed on September 17, 2014, and then reinstated by the court on July 6, 2016. (ECF Nos.
26 93, 183.) However, reinstatement of the motion after the Second Amended Complaint was
27 filed resulted in procedural issues that must be resolved. Even if the First and Second
28 Amended Complaints were identical, the court cannot properly consider a motion for summary

1 judgment that was filed before the operative complaint was filed. Moreover, the court and the
2 parties are entitled to a clear understanding of what is before the court.

3 If Defendants amend the motion for summary judgment, multiple oppositions and
4 replies shall not be permitted. As is well known, “[t]he court’s caseload is substantial and
5 judicial resources are limited.” Whitsitt v. Vinotheque Wine Cellars, 2007 U.S. Dist. LEXIS
6 59997, at *4, 2007 WL 2288128 (E.D. Cal. 2007). “Every paper filed with the [court], no
7 matter how repetitious or frivolous, requires some portion of the institution’s limited resources.
8 A part of the court’s responsibility is to see that these resources are allocated in a way that
9 promotes the interest of justice.” In re McDonald, 489 U.S. 180, 184, 109 S.Ct. 993, 103
10 L.Ed.2d 158 (1989).

11 The court shall consider only one motion, one opposition, and one reply.¹ Local Rule
12 230(l). Improperly filed surreplies are prohibited and shall be stricken.² As for exhibits, the
13 parties are advised to only send exhibits which clearly relate to their arguments. The parties are
14 also advised to refer to each exhibit in their pleading, directing the court to its location where it
15 can easily be found.

16 **III. CONCLUSION**

17 Based on the foregoing, IT IS HEREBY ORDERED that:

- 18 1. The motion for summary judgment filed by Defendants Enenmoh and Page on
19 May 4, 2014, is denied as moot, with leave to amend;
- 20 2. Defendants Enenmoh and Page are granted thirty days from the date of service
21 of this order in which to file an amended motion for summary judgment, as
22 discussed in this order; and

24 ¹ Defendants Enenmoh and Page are not precluded from filing separate motions, but for each
25 motion, only one opposition and one reply shall be permitted.

26 ² A surreply, or sur-reply, is an additional reply to a motion filed after the motion has already
27 been fully briefed. USLegal.com, <http://definitions.uslegal.com/s/sur-reply/> (last visited December 31, 2013). The
28 Local Rules provide for a motion, an opposition, and a reply. Neither the Local Rules nor the Federal Rules
provide the right to file a surreply. A district court may allow a surreply to be filed, but only “where a valid reason
for such additional briefing exists, such as where the movant raises new arguments in its reply brief.” Hill v.
England, 2005 WL 3031136, *1 (E.D.Cal. Nov. 8, 2005).

