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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

STEPHEN HACKETT,  
Plaintiff,  
v.  
TOOR,  
Defendant.

Case No. 1:15-cv-00670-DAD-BAM (PC)  
**ORDER GRANTING DEFENDANT’S EX  
PARTE APPLICATION FOR EXTENSION  
OF TIME TO FILE REPLY TO PLAINTIFF’S  
OPPOSITION TO MOTION FOR SUMMARY  
JUDGMENT**  
(ECF No. 40)  
**OPPOSITION DUE ON OR BEFORE  
JANUARY 5, 2018**

Plaintiff Stephen Hackett (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds against Defendant Toor (“Defendant”) for deliberate indifference in violation of the Eighth Amendment regarding conduct in May to June 2016.

On December 26, 2017, Plaintiff filed an opposition to Defendant’s Motion for Summary Judgment. (ECF No. 39.) The same day, Defendant filed an ex parte application for a ten-day extension of time to file a reply to Plaintiff’s opposition, up to and including January 5, 2018. Defendant filed a declaration of counsel in support of the ex parte application. (ECF No. 40.) Although Plaintiff has not had an opportunity to respond to Defendant’s request, the Court finds a response unnecessary. Local Rule 230(l).

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1 The declaration in support of Defendant's application explains that counsel has not  
2 received a mailed copy of Plaintiff's opposition, but received the document after it was  
3 electronically filed with the Court on December 26, 2017. Counsel further states that an  
4 extension of time is required because the opposition includes a proof of service dated December  
5 20, 2017, and therefore the reply would be due on December 27, 2017. As counsel is unable to  
6 draft a reply in such a short time, a ten-day extension of time is requested. (ECF No. 40.)

7 Defense counsel is reminded that in prisoner actions, the time for the filing of a reply is  
8 calculated as of the date that an opposition has been filed in CM/ECF, rather than the date of the  
9 proof of service or the date received by mail. Local Rule 230(1). Therefore, Defendant's reply is  
10 not due until January 2, 2018.

11 Nevertheless, having considered the ex parte application, the Court finds it appropriate to  
12 modify the briefing schedule in this matter. The Court further finds that Plaintiff will not be  
13 prejudiced by the brief extension requested here.

14 Accordingly, Defendant's ex parte application for an extension of time, (ECF No. 40), is  
15 GRANTED. Defendant's reply to Plaintiff's opposition to the motion for summary judgment is  
16 due no later than **January 5, 2018**.

17  
18 IT IS SO ORDERED.

19 Dated: January 2, 2018

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE