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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

REGINALD RAY YORK,
Plaintiff,
v.
G. GARCIA, et al.,
Defendants.

Case No. 1:15-cv-01828-DAD-BAM (PC)
**ORDER DENYING DEFENDANTS’
MOTION TO STRIKE PLAINTIFF’S
FEBRUARY 28, 2019 OPPOSITION TO
DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT**
(ECF No. 73)
SEVEN (7) DAY DEADLINE

Plaintiff Reginald Ray York is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s claims against Defendant Garcia for excessive force, Defendant Neighbors for failure to protect Plaintiff from the use of force, and Defendants Garcia and Neighbors for failure to decontaminate Plaintiff’s cell.

On December 3, 2018, Plaintiff filed a motion for summary judgment. (ECF No. 64.) On February 4, 2019, Defendants Garcia and Neighbors filed both an opposition to Plaintiff’s motion for summary judgment and their own motion for summary judgment. (ECF Nos. 68, 69.) On February 21, 2019, Plaintiff filed a reply to Defendants’ opposition to Plaintiff’s motion for summary judgment. (ECF No. 70.) On February 28, 2019, Defendants filed a reply in support of their motion for summary judgment. (ECF No. 71.) Also, on February 28, 2019, Plaintiff filed an opposition to Defendants’ motion for summary judgment. (ECF No. 72.)

1 On March 7, 2019, Defendants filed a motion to strike Plaintiff's February 28, 2019
2 opposition to Defendants' motion for summary judgment. (ECF No. 73.) Defendants contend
3 that Plaintiff's February 28, 2019 opposition is tantamount to a sur-reply because, since Plaintiff's
4 February 21, 2019 reply to Defendants' opposition responded to arguments raised and exhibits
5 filed in Defendants' motion for summary judgment, Defendants interpreted Plaintiff's February
6 21, 2019 filing to be both a reply in support of his own motion for summary judgment and an
7 opposition to Defendants' motion for summary judgment and, based on that belief, filed a reply in
8 support of their summary judgment motion before Plaintiff filed his February 28, 2019
9 opposition.

10 Although Plaintiff has not an opportunity to respond to Defendants' motion to strike, the
11 Court finds a response unnecessary, and the motion is deemed submitted. Local Rule 230(l).

12 As Defendants correctly point out, neither the Federal Rules of Civil Procedure nor the
13 Local Rules of this court permit a party to file a response to a reply. See, e.g., Wyatt v. Zanchi,
14 No. 1:09-cv-01242 BAM PC, 2011 WL 5838438, at *5 (E.D. Cal. Nov. 21, 2011). However, in
15 this Circuit, courts are required to liberally construe the filings and motions filed by a *pro se*
16 inmate in a civil suit. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010). While it is true
17 that Plaintiff's February 21, 2019 reply does refer to arguments raised, and exhibits filed, in
18 Defendants' motion for summary judgment, the majority of Plaintiff's February 21, 2019 reply
19 responds to issues and arguments raised in Defendants' opposition to Plaintiff's motion for
20 summary judgment. Therefore, the Court determines that Plaintiff's February 28, 2019
21 opposition to Defendants' motion for summary judgment is not an improper sur-reply.
22 Consequently, the Court denies Defendants' motion to strike Plaintiff's February 28, 2019
23 opposition to Defendants' motion for summary judgment.

24 Nevertheless, since Defendants' confusion about Plaintiff's February 21, 2019 reply is
25 understandable, the Court determines that there is good cause to grant Defendants leave to file a
26 supplemental reply addressing the arguments that Plaintiff raised in his February 28, 2019
27 opposition.

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Accordingly, it is HEREBY ORDERED that:

1. Defendants’ motion to strike Plaintiff’s February 28, 2019 opposition to Defendants’ motion for summary judgment, (ECF No. 73), is DENIED;
2. Defendants’ request for leave to file a supplemental reply to Plaintiff’s February 28, 2019 opposition, (ECF No. 73), is GRANTED; and
3. Defendants shall file their supplemental reply to Plaintiff’s February 28, 2019 opposition to Defendants’ motion for summary judgment within **seven (7) days** from the date of service of this order.

IT IS SO ORDERED.

Dated: March 18, 2019

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE