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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOUIS A. ALARCON,
Plaintiff,
v.
D. DAVEY, et al.,
Defendants.

1:16-cv-01461-JLT-(PC)

ORDER DENYING PLAINTIFF'S MOTION
TO RESUBMIT DATED OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT AND VERIFICATION OF
EXHIBITS

(Doc. 36)

On November 30, 2018, Plaintiff filed a motion seeking leave to resubmit his opposition to Defendants' motion for summary judgment with a dated signature page and verified exhibits. (Doc. 36.) Though Plaintiff did not date and sign the portion of his opposition titled as his "notice of motion and motion opposing defendants' motion for summary judgment," (*see* Doc. 34, pp. 1-2), Plaintiff signed both his memorandum of points and authorities in opposition, (*id.*, at pp. 3-25), and his opposition to Defendants' statement of undisputed facts, (*id.*, at pp. 26-32). Further, Plaintiff's proof of service of his opposition is dated and contains a verification. (*Id.*, p. 484.)

The Court cannot consider unsigned documents, but Plaintiff signed the documents necessary and material to his opposition to Defendants' motion for summary judgment. Plaintiff's "notice of motion and motion" in opposition is not required and is superfluous to his

1 opposition. Finally, the date Plaintiff signed his opposing documents is of no consequence; rather
2 the date that he gave his opposition to prison staff for mailing, as reflected on his proof of service,
3 which will dictate whether his opposition was timely filed. *See Douglas v. Noelle*, 567 F.3d
4 1103, 1107 (9th Cir. 2009) quoting *Houston v. Lack*, 487 U.S. 266, 270 (1988) (“notice is
5 deemed filed on the date the prisoner ‘delivered the notice to prison authorities for forwarding to
6 the [d]istrict [c]ourt’”).

7 Accordingly, Plaintiff’s “Motion For Leave to Resubmit Dated Summary Judgment
8 Motion and Verification of Exhibits,” filed on November 30, 2018 (Doc. 36), is DENIED.

9 IT IS SO ORDERED.

10 Dated: December 4, 2018

11 /s/ Jennifer L. Thurston
12 UNITED STATES MAGISTRATE JUDGE
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