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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT BRUCE,
Plaintiff,
v.
SHAMA CHAIKEN, et al.,
Defendants.

No. 2: 15-cv-960 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On August 31, 2017, the undersigned vacated defendants’ summary judgment motion. (ECF No. 70.) The undersigned also granted defendants’ request to reopen discovery. (Id.) Defendants were granted 80 days to depose plaintiff’s expert, Dr. Mallory. (Id.) The undersigned ordered that within 100 days, defendants were to inform the court whether they wished to file a new summary judgment motion or a supplemental reply. (Id.)

On December 7, 2017, defendants filed a request to file a supplemental reply. (ECF No. 75.) The undersigned herein sets a briefing schedule for this further briefing.

“It is well accepted that the raising of new issues and submission of new facts in [a] reply brief is improper.” Schwartz v. Upper Deck Co., 183 F.R.D. 672, 682 (S.D. Cal. 1999) (citing Provenz v. Miller, 102 F.3d 1478, 1483 (9th Cir. 1996) (“We agree with the Seventh Circuit, which held that ‘[w]here new evidence is presented in a reply to a motion for summary judgment,

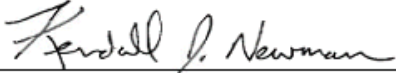
1 the district court should not consider the new evidence without giving the [non-]movant an
2 opportunity to respond.”)).

3 If defendants present new evidence in the reply, including Dr. Mallory’s deposition
4 transcript, plaintiff should be granted an opportunity to respond.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Defendants’ summary judgment motion (ECF No. 37) is reinstated;
- 7 2. Defendants may file a supplemental reply within thirty days of the date of this order;
- 8 3. If defendants present new evidence in the reply, plaintiff may file a response to the
9 supplemental reply within thirty days thereafter.

10 Dated: December 12, 2017

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12 _____
13 KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE

15 Br960.ord(sj)

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