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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,

Plaintiff,

v.

HAAS, et al.,

Defendants.

No. 2:15-cv-2266 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with this civil rights action filed pursuant to 42 U.S.C. § 1983. By order filed August 11, 2017, this court set a deadline of April 13, 2018 for filing dispositive motions. ECF No. 33. Sole defendant Haas timely filed a motion for summary judgment. ECF No. 42. Plaintiff timely filed an opposition, ECF No. 48; and defendant timely filed a reply, ECF No. 49. Thereafter, plaintiff filed a motion for leave to file a surreply, ECF No. 50, and a proposed surreply, ECF No. 51, which defendant opposed, ECF No. 52. Still later, on June 15, 2018, plaintiff filed an untimely “motion for summary judgment,” ECF No. 55, which defendant opposes, ECF No. 56. For the reasons that follow, this court will construe plaintiff’s motion as further argument in surreply, and will allow both surreplies to be considered when the court reviews the merits of defendant’s motion for summary judgment.

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1 A surreply is not authorized by the Local Rules or by the Federal Rules of Civil
2 Procedure, although it may be allowed “where a valid reason for such additional briefing exists.”
3 See e.g. Hill v. England, 2005 WL 3031136, at *1, 2005 U.S. Dist. LEXIS 29357, at *2-3 (Case
4 No. 1:05-cv-0869 REC TAG) (E.D. Cal. Nov. 8, 2005). The undersigned finds good cause to
5 consider plaintiff’s additional filings which are specific, succinct, and aimed at refuting
6 defendant’s substantive arguments. See ECF No. 51 (4 pp.); ECF No. 55 (8 pp.). Moreover,
7 plaintiff appropriately sought leave of court to submit his first filing, supported by his sworn
8 affidavit. ECF No. 50. However, because plaintiff’s subject filings are outside the deadline for
9 dispositive motions in this case, his “motion for summary judgment” will be construed as the
10 final portion of his surreply.

11 For these reasons, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff’s motion for leave to file a surreply, ECF No. 50, is granted.
- 13 2. Plaintiff’s surreply, ECF No. 51, is admitted; the Clerk of Court shall designate this
14 filing as “Surreply Part 1 of 2.”
- 15 3. Plaintiff’s motion for summary judgment, ECF No. 55, is construed as Part 2 of his
16 surreply and, as such, is admitted; the Clerk of Court shall delete the designation “Motion for
17 Summary Judgment,” and designate this filing as “Surreply Part 2 of 2.”
- 18 4. Defendant’s oppositions, ECF Nos. 52, 56, will also be considered when the court
19 conducts a substantive review of defendant’s motion for summary judgment.
- 20 5. The parties are directed to refrain from filing any additional material related to the
21 motion for summary judgment, which is submitted for decision.

22 DATED: July 10, 2018

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24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE
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