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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW DENNIS,
Plaintiff,
v.
SCOTT KERNAN, et al.,
Defendants.

No. 2:16-cv-0542 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Defendants seek leave to file a potentially late reply to plaintiff’s opposition to their motion for summary judgment. ECF No. 183. Defendants seek an extension because plaintiff never served them with a copy of the opposition, and it was not identified as an opposition until the court deemed plaintiff’s cross-motion for summary judgment as an opposition. Id. They assert that if their deadline to reply is calculated from the date the court’s order construing the cross-motion as a response was filed, then the reply is timely, but because they are unsure which date should be used for calculating the reply deadline,¹ they are seeking an extension of time. Id. at 3.

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¹ Defendants assert that it is unclear which of four dates the court intends to rely on for purposes of determining the deadline to file a reply. ECF No. 183 at 3.

1 On February 4, 2022, the court received plaintiff's opposition to defendants' motion for
2 summary judgment, which was captioned "Plaintiff's Notice of Cross-Move Motion for Summary
3 Judgment Against *and In Response to* Defendant Martha Mays FNP-C and Ralph Diaz." ECF
4 No. 171 (emphasis added). The opposition was entered into CM/ECF on February 7, 2022.
5 Though the court later deemed the cross-motion portion of the filing an opposition, from the
6 beginning it was clearly captioned as a cross-motion *and response*. Accordingly, any reply was
7 due no later than February 14, 2022, and defendants' reply, filed March 18, 2022, is untimely.
8 See L.R. 230(1).² However, because defendants' motion for leave to file an untimely reply
9 demonstrates excusable neglect, the motion will be granted and the reply will be deemed timely
10 filed. See Fed. R. Civ. P. 6(b)(1)(B).

11 Accordingly, IT IS HEREBY ORDERED that defendants' motion for leave to file an
12 untimely reply (ECF No. 183) is GRANTED and the reply filed March 18, 2022 (ECF No. 182)
13 is deemed timely.

14 DATED: March 21, 2022

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE
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27 ² The Local Rules were amended on March 1, 2022, and included an amendment to Rule 230(1)
28 that changed the time for filing replies. Prior to March 1, 2022, the time for filing a reply in a pro
se prisoner action was seven days after the opposition was filed in CM/ECF.