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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLTON LEE AUDETTE,

Petitioner,

v.

ERIC ARNOLD, Warden,

Respondent.

No. 2:16-cv-1256 JAM AC P

ORDER

By order filed May 12, 2017, the court granted respondent’s second request for extended time to file and serve a reply to petitioner’s opposition to respondent’s pending motion to dismiss this action on the grounds that it is successive and untimely filed. See ECF No. 25. The court also granted petitioner’s request for discovery, and directed respondent to include *in his reply* a verified copy of petitioner’s prior convictions including his “actual discharge date.” Id. Petitioner was accorded the opportunity to file a surreply within thirty days after service of respondent’s reply.

Respondent filed his reply on June 9, 2017. See ECF No. 27. The reply did not include the discovery ordered by the court. Respondent noted in his reply that the subject documents had not been received and “do not appear to be needed for the adjudication of Respondent’s motion to dismiss nor are they discussed in this reply.” Id. at 2 n.2.

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1 On July 10, 2017, petitioner filed a motion to compel production of the court-ordered
2 discovery and for sanctions. See ECF No. 28. On July 14, 2017, respondent submitted the court-
3 ordered discovery without substantive comment. See ECF No. 29. Petitioner has now filed a
4 “reply” noting respondent’s delay in producing the discovery and failure to address petitioner’s
5 arguments premised on the calculation of his prior convictions, and requesting additional time to
6 file his surreply. See ECF No. 30. Petitioner received the discovery on or before July 24, 2017,¹
7 the date he signed his most recent filing, and requests thirty days to file his surreply. Id.
8 Petitioner will be granted additional time, subject to the shortened briefing schedule set forth
9 below.

10 The undersigned notes that respondent failed to abide by the court’s order filed May 12,
11 2017. Respondent’s counsel is admonished that he should have sought a third extension of time
12 to file a comprehensive reply that included production of the discovery documents and addressed
13 the relevance of those documents to petitioner’s claims and respondent’s motion to dismiss.
14 Nevertheless, sanctions are not warranted at this time.

15 For good cause shown, IT IS HEREBY ORDERED that:

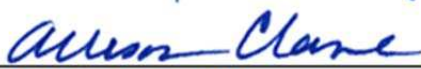
16 1. Respondent shall, within seven (7) days after the filing date of this order, file and serve
17 a “supplemental reply” that addresses petitioner’s habeas claims premised on the allegedly
18 improper assessment of his prior convictions, as reflected in the subject discovery, and the
19 relevance of these matters to respondent’s pending motion to dismiss.

20 2. Petitioner shall, within fourteen (14) days after service of respondent’s supplemental
21 reply, file and serve his “surreply” in opposition to respondent’s motion to dismiss.

22 3. No extensions of time will be granted.

23 4. Petitioner’s motion to compel discovery, ECF No. 28, is denied as moot.

24 DATED: August 3, 2017

25 
26 ALLISON CLAIRE
27 UNITED STATES MAGISTRATE JUDGE

28 ¹ The proffered certificate of service for this discovery, dated July 13, 2017, reflects service in a
different case. See ECF No. 29-4 at 1.