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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIO DINERO SESSOMS,
Plaintiff,
v.
JOHN PATRICK KELLER, et al.,
Defendants.

No. 2:16-cv-1943-EFB

ORDER

Plaintiff has filed a § 1983 action against defendants, accusing them of violating his Fifth and Fourteenth Amendment rights. ECF Nos. 11, 13. The action currently proceeds against defendants Keller and Woods.¹ On March 2, 2018, Keller filed a motion to dismiss. ECF No. 28. When plaintiff filed no opposition, Keller asked the court to grant the motion. ECF No. 31. Instead, the court directed plaintiff to respond to the motion. ECF No. 32. On April 9, 2018, plaintiff informed the court that he had not received Keller’s motion and made some arguments opposing the motion. ECF No. 35. Keller filed a reply again urging the court to grant the motion. ECF No. 36.

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¹ The complaint asserts a claim against another defendant, Arturo Venegas, Jr., who could not be served at the address provided by plaintiff. ECF No. 33. The process receipt was filed on the docket on April 2, 2018, and Venegas remains unserved as of this date.

1 In the meantime, on April 5, 2018, Woods filed a motion to dismiss on the same grounds
2 raised by Keller. ECF No. 34. Having received plaintiff's filing of April 9th informing the court
3 that he had not received Keller's motion, the court entered a minute order allowing plaintiff 30
4 days to oppose Woods's motion by supplementing his earlier filing and allowing defendant seven
5 days thereafter to file a supplemental reply. ECF No. 37. This brief order failed to recognize that
6 defendants had actually filed two separate motions to dismiss and that plaintiff claimed to have
7 not received the earlier motion (filed by Keller), not Woods's motion.

8 On May 18, 2018, plaintiff filed a handwritten "Response to Richard Woods Motion to
9 Dismiss." ECF No. 39. On May 21, 2018, plaintiff filed a type-written "Opposition to Motions
10 to Dismiss in Compliance with the Court's Orders." ECF No. 40. Defendants claim that it was
11 improper for plaintiff to file the May 21st opposition brief. ECF No. 41. According to
12 defendants, the May 21st brief "is untimely and Plaintiff did not ask for and was not given
13 permission to file two separate oppositions." *Id.* They ask the court, in essence, to strike the May
14 21st opposition and consider only the May 18th "Response." *Id.* That request is denied.

15 The court recognizes that the lack of clarity here arises not from any fault of plaintiff but
16 rather the minute order issued on April 18, 2018. ECF No. 37. Defendants have chosen to file
17 separate, although substantively identical, motions to dismiss, and plaintiff is therefore entitled to
18 file oppositions to each separately-filed motion. To avoid any prejudice to defendants, the court
19 will allow them seven days from the date of this order to file a reply to the later-filed opposition
20 (ECF No. 40).

21 Accordingly, it is hereby ORDERED that, within seven days of the date of this order,
22 defendants may file a reply to plaintiff's May 21, 2018 opposition brief. Defendants are not
23 obligated to file such a reply. Thereafter, the matter will stand submitted.

24 So ordered.

25 DATED: July 12, 2018.

26 
EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
28