

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Smiley Martin,

Plaintiff,

v.

Officer J. Her,

Defendant.

No. Case 2:18-cv-01658-KJM-KJN

ORDER

The court’s final pretrial order in this matter listed several undisputed facts and permitted the parties to object within fourteen days. *See* FPTO at 2–4, 11. Defendant Officer Her objects that some of these facts are actually disputed. *See* Objs., ECF No. 62. He claimed unambiguously at summary judgment, however, that the same facts were undisputed. *Compare* FPTO at 4 *with* Def.’s Stmt. Undisp. Facts Nos. 18–38, ECF No. 33-7 *and with* Mem. at 3–4, ECF No. 33-2. Plaintiff urges the court to hold Officer Her to that previous position. *See generally* Resp., ECF No. 63. The court agrees. “[S]tatements of fact contained in a brief may be considered admissions of the party in the discretion of the district court.” *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 227 (9th Cir. 1988) (emphasis omitted). Officer Her has not argued that his admissions were accidental or incorrect, and he has not cited evidence that might create a dispute that could be adjudicated at trial. *Cf. Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848, 860

1 (9th Cir. 1995) (“[If] the party making an ostensible judicial admission explains the error . . . , the
2 trial court must accord the explanation due weight.”). His objections are **overruled**.

3 IT IS SO ORDERED.

4 DATED: December 3, 2021.

5



CHIEF UNITED STATES DISTRICT JUDGE