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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN JOSEPH NOBLE IV,
Plaintiff,
vs.
LT. V. J. GONZALEZ,
Defendant.

1:07-cv-01111-LJO-GSA-PC
ORDER DENYING PLAINTIFF’S RULE 56
MOTION FOR STAY, WITHOUT
PREJUDICE
(Doc. 51.)
ORDER GRANTING PLAINTIFF’S
MOTION FOR EXTENSION OF TIME
TO FILE OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT
SIXTY DAY DEADLINE TO FILE
OPPOSITION

I. BACKGROUND

Steven Joseph Noble IV ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 31, 2007. (Doc. 1.) This case now proceeds with the First Amended Complaint, filed by Plaintiff on February 24, 2009, against defendant V. J. Gonzalez ("Defendant"), for retaliation in violation of the First Amendment. (Doc. 15.) On December 26, 2012, Plaintiff filed a motion to compel discovery responses, which is pending. (Doc. 44.) On May 29, 2013, Defendant filed a motion for summary judgment, which is pending. (Doc. 49.)
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1 On July 1, 2013, Plaintiff filed a motion for stay under Rule 56, requesting the court to
2 postpone consideration of Defendant's motion for summary judgment, in light of Plaintiff's
3 pending motion to compel. (Doc. 51.) In the alternative, Plaintiff requests an extension of time
4 to file an opposition to the motion for summary judgment. Id.

5 **II. RULE 56 MOTION**

6 Pursuant to Federal Rule of Civil Procedure 56(d), if a nonmovant to a motion for
7 summary judgment shows by affidavit or declaration that for specified reasons he cannot
8 present facts to oppose the motion, the Court may defer consideration of the motion or allow
9 time for further discovery. Fed. R. Civ. P. 56(d)(1),(2). The nonmovant must identify by
10 affidavit [or declaration] the specific facts that further discovery would reveal, and explain why
11 those facts would preclude summary judgment. Tatum v. City and County of Sacramento, 441
12 F.3d 1090, 1100 (9th Cir. 2006); Johnson v. JP Morgan Chase Bank, No. CV F-008-0081 LJO
13 SMS, 2009 WL 179727, at 2-3 (E.D. Cal. Jan. 26, 2009).

14 Plaintiff requests the court to postpone consideration of Defendant's motion for
15 summary judgment of May 29, 2013, pending resolution of Plaintiff's motion to compel of
16 December 26, 2012. Plaintiff has submitted a declaration arguing that he requires the discovery
17 sought in his motion to compel in order to properly prepare, file, and serve his opposition to the
18 motion for summary judgment.

19 Plaintiff's declaration does not specify the facts that further discovery would reveal or
20 explain why those facts would preclude summary judgment. Therefore, Plaintiff's Rule 56
21 motion shall be denied, without prejudice to renewal of the motion with a declaration meeting
22 the required standard.

23 **III. MOTION FOR EXTENSION OF TIME**

24 In the alternative, Plaintiff requests a sixty-day extension of time to file an opposition to
25 Defendant's motion for summary judgment. Good cause appearing, the extension of time shall
26 be granted.

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1 **IV. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that:

3 1. Plaintiff's Rule 56 motion, requesting postponement of the court's consideration
4 of Defendant's motion for summary judgment, is DENIED without prejudice; and

5 2. Plaintiff is GRANTED sixty days from the date of service of this order in which
6 to file an opposition to Defendant's motion for summary judgment of May 29, 2013.

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9 IT IS SO ORDERED.

10 Dated: July 2, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE