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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANNY JAMES COHEA,

Plaintiff,

v.

D. ADAMS, et al.,

Defendants.

CASE NO. 1:08-cv-01186-LJO-SMS PC

ORDER DENYING PLAINTIFF’S MOTION FOR RECONSIDERATION

(ECF No. 80)

Plaintiff Danny James Cohea, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 13, 2008. On September 2, 2011, an [order](#) issued denying Plaintiff’s [motion to compel](#) as premature and denying Plaintiff’s motion for a hearing regarding discovery disagreements and sanctions. (ECF No. 76.) Plaintiff filed a [motion for reconsideration](#) on September 29, 2011. (ECF No. 80.) Plaintiff brings this motion arguing that the Magistrate Judge’s ruling was an abuse of discretion and exhibits partiality to Defendants in this action.

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, “[o]n motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . (3) fraud . . . or (6) any other reason that justifies relief.” Fed. R. Civ. Proc. 60(b). Where none of these factors is present the motion is properly denied. Fuller v. M.G. Jewelry, 950 F.2d 1437, 1442 (9th Cir. 1991).

Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from an order

1 for any reason that justifies relief. Rule 60(b)(6) “is to be used sparingly as an equitable remedy to
2 prevent manifest injustice and is to be utilized only where extraordinary circumstances . . .” exist.
3 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation
4 omitted). The moving party “must demonstrate both injury and circumstances beyond his control
5” Id. (internal quotation marks and citation omitted).

6 “A motion for reconsideration should not be granted, absent highly unusual circumstances,
7 unless the district court is presented with newly discovered evidence, committed clear error, or if
8 there is an intervening change in the controlling law,” and it “may *not* be used to raise arguments or
9 present evidence for the first time when they could reasonably have been raised earlier in the
10 litigation.” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.
11 2009) (internal quotations marks and citations omitted) (emphasis in original).

12 Plaintiff filed a precautionary motion to compel which was denied as premature. Discovery
13 is self executing and the opposing party is to have an opportunity to respond to discovery requests
14 prior to requesting intervention of the Court. The Court will only become involved where there is
15 a discovery dispute. Where a party has failed to answer a question, answer an interrogatory, or permit
16 inspection of a document the requesting party may move for an order to compel an answer,
17 production, or inspection. Fed. R. Civ. Proc. 37(a)(3)(B). Plaintiff filed his motion prior to
18 receiving responses from Defendants and the Magistrate Judge did not err in denying the motion to
19 compel.

20 Additionally, the Magistrate Judge denied Plaintiff’s motion for a hearing regarding
21 discovery agreements and sanctions. Plaintiff continues to argue that the Defendants violated the
22 discovery and scheduling order, acted in bad faith, and submitted fraudulent documents to the Court
23 to obtain their extension of time to conduct discovery. The Magistrate Judge reviewed the pleadings
24 and arguments of the parties and found that Defendants did not engage in any improper conduct and
25 no violation of the discovery deadlines occurred. The Magistrate Judge did not abuse her discretion
26 in denying Plaintiff’s motions.

27 Plaintiff also claims that orders of the Court demonstrate that the Magistrate Judge exhibited
28 partiality to Defendants in this action. Plaintiff states that the order issued by Judge Snyder

1 wrongfully construed that the claims in this action were not clearly defined until the order issued on
2 September 14, 2010. Initially, the Court notes that the order finding that the claims were not clearly
3 defined until September 14, 2010, was issued by Judge Oberto. Judge Oberto issued the order
4 extending discovery based upon the ambiguity that existed due to the delay in issuing the order
5 adopting the findings and recommendations because Plaintiff had filed an appeal. (ECF No. 57.)
6 While Plaintiff argues that the claims were clearly defined, since the order adopting the findings and
7 recommendations had not issued, the findings and recommendations could have been rejected by the
8 District Court. Therefore, until the issuance of the order adopting there was ambiguity as to which
9 claims were proceeding in this action.

10 Additionally, Plaintiff argues that Judge Snyder showed favoritism by finding that
11 Defendants motions to amend the scheduling order were timely filed. Plaintiff argues that the fact
12 that the motions for an extension of time were filed on the discovery deadline shows they were filed
13 for an improper purpose. However, the Court fails to see how filing a motion for an extension of
14 time on the deadline demonstrates an improper purpose. A motion for an extension of time is timely
15 if it is filed on the due date.

16 Plaintiff argues that granting Defendant's motion to amend the scheduling order demonstrates
17 that Judge Snyder was partial to Defendants because the prior order stated that further motions would
18 not be granted absent good cause. However, good cause was found to grant Defendants motion to
19 amend the scheduling order. Additionally, in this instance there is an additional defendant that has
20 been served and, on June 6, 2011, discovery was opened for the newly served defendant. The Court
21 may also consider the interest of judicial economy in deciding the motion to amend the scheduling
22 order. Given the huge prisoner caseload of the court and the fact that discovery is still proceeding
23 in this action, it was within the discretion of the court to allow an extension of time to file a
24 dispositive motion.

25 The Court finds unpersuasive Plaintiff's arguments that Judge Snyder was erroneous in ruling
26 that his discovery requests, propounded a week prior to the discovery cut-off date, were untimely.
27 Plaintiff states that the orders granting an extension of time did not restate that requests must be
28 served forty five days prior to the cut-off date. Even assuming that Plaintiff did believe the forty five

1 days was not required, the Federal Rules still require thirty days for responses to be served. Fed. R.
2 Civ. P. 33(b)(2), 34(b)(2)(A), 36(a)(3). Plaintiff's requests were untimely under either interpretation
3 of the order. Since discovery had closed in this action and no discovery issued remained to be
4 decided the Magistrate Judge did not err in denying Plaintiff's motion for a hearing and sanctions.
5 Plaintiff's disagreement with the order of the Court is not a basis for reconsideration.

6 Plaintiff claims that the order of the Court deprives him of his right to oppose Defendants'
7 motion for summary judgment. Plaintiff argues that pursuant to Federal Rule of Civil Procedure
8 56(f), he should be granted an opportunity to conduct additional discovery so he can oppose
9 Defendants' motion for summary judgment. Plaintiff quotes the former language of Federal Rule
10 of Civil Procedure 56(f)¹ in bringing his motion. However, on December 1, 2007, the language of
11 the Rule was changed and the motion is properly brought under Federal Rule of Civil Procedure
12 56(d), which states in relevant part "[i]f a nonmovant shows by affidavit or declaration that for
13 specific reasons, it cannot present facts essential to justify its opposition, the court may . . . allow
14 time to obtain affidavits or declarations to take discovery. . . ." The party seeking relief under Rule
15 56(d) is required to "identify by affidavit the specific facts that further discovery would reveal, and
16 explain why those facts would preclude summary judgment." Tatum v. City and County of San
17 Francisco, 441 F.3d 1090, 1100 (9th Cir. 2006). The Court has the discretion of allowing additional
18 time for discovery under Rule 56(d). However, discovery in this action opened on December 9,
19 2009, and Plaintiff had approximately sixteen months to conduct discovery. In finding that Plaintiff
20 had ample time to conduct discovery, the Magistrate Judge did not err or abuse her discretion.

21 Finally, although Plaintiff alleges that the Magistrate Judge showed partiality to Defendants
22 by granting their motions for extensions of time but denying his motions, Plaintiff did not file a
23 motion to amend the scheduling order. Although Plaintiff's asserts that his discovery requests were
24 timely propounded, he is incorrect. There is no reading of the Federal Rules that supports his
25 argument that discovery served two days prior to the discovery cut-off date is timely.

26
27 ¹Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated
28 present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment
or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or
may make such other order as is just. Fed. R. Civ. Proc. 56(f) (West 2007).

1 Plaintiff has failed to show that extraordinary circumstances exist that entitle him to relief.
2 Harvest, 531 F.3d at 749. Plaintiff had ample opportunity to propound discovery on Defendants
3 Adams, Jones, and Vela-Lopez and his failure to propound discovery within the deadlines does not
4 entitle him to relief, nor did the Magistrate Judge abuse her discretion or err in denying Plaintiff's
5 motions.

6 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motion for
7 reconsideration, filed September 29, 2011, is DENIED.

8 IT IS SO ORDERED.

9 **Dated:** October 18, 2011

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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