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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN T. MISKO,)	1:10-cv-00713-LJO-BAM (PC)
)	
Plaintiff,	)	ORDER REGARDING PLAINTIFF’S
	)	REQUEST FOR DELAY OF
v.	)	DEFENDANT’S SUMMARY JUDGMENT
	)	(ECF No. 75)
WILLIAM SULLIVAN, et al.,)	
	)	ORDER DIRECTING DEFENDANT TO
Defendants.	)	SERVE PLAINTIFF WITH A CORRECTED
	)	COPY OF THE CROSS-MOTION FOR
	)	SUMMARY JUDGMENT AND FILE
	)	PROOF OF SERVICE WITHIN SEVEN (7)
	)	DAYS
)	
)	
)	
)	

Plaintiff John T. Misko (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds against Defendant Williams for deliberate indifference in violation of the Eighth Amendment.

On February 20, 2015, the Court extended the dispositive motion deadline to April 24, 2015. (ECF No. 70.)

On February 23, 2015, Plaintiff filed a dispositive motion. (ECF No. 71.) Defendants opposed the motion on April 27, 2015. (ECF No. 74.)

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1 On April 24, 2015, Defendant Williams filed a cross-motion for summary judgment. Fed.
2 R. Civ. P. 56. Although Plaintiff was provided with notice of the requirements for opposing a
3 motion for summary judgment, he failed to timely file an opposition.

4 On May 22, 2015, the Court issued an order requiring Plaintiff to file an opposition or
5 statement of non-opposition to Defendant's cross-motion for summary judgment within twenty-
6 on (21) days. (ECF No. 76.) On the same date, Plaintiff filed the instant motion requesting that
7 the Court either deny Defendant's motion for summary or stay it until he can obtain the
8 necessary affidavits and other evidence. Plaintiff also reports that Defendant failed to send him
9 the correct first page of the memorandum of points and authorities. (ECF No. 75.)

10 Plaintiff's request for a stay of Defendant's cross-motion for summary judgment to obtain
11 affidavits and evidence is governed by Federal Rule of Civil Procedure 56(d). Rule 56(d)
12 provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it
13 cannot present facts essential to justify its opposition, the court may: (1) defer considering the
14 motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3)
15 issue any other appropriate order." Fed. R. Civ. P. 56(d). In seeking relief under Rule 56(d),
16 Plaintiff bears the burden of specifically identifying relevant information, where there is some
17 basis for believing that the information actually exists, and demonstrating that the evidence
18 sought actually exists and that it would prevent summary judgment. Blough v. Holland Realty,
19 Inc., 574 F.3d 1084, 1091 n.5 (9th Cir. 2009) (quotation marks and citation omitted); Getz v.
20 Boeing Co., 654 F.3d 852, 867-68 (9th Cir. 2011); Tatum v. City and County of San Francisco,
21 441 F.3d 1090, 1100-01 (9th Cir. 2006). Plaintiff has made no such showing and his generalized
22 assertions are not sufficient. Therefore, Plaintiff's motion to defer or deny Defendant's motion
23 for summary in order to obtain affidavits and discovery shall be denied, without prejudice.

24 Nonetheless, the Court finds a brief extension of time appropriate so that Plaintiff may
25 obtain a correct copy of Defendant's motion for summary judgment and supporting
26 memorandum of points and authorities. Defendant will be directed to re-serve Plaintiff with a
27 correct copy of the motion and supporting papers and submit proof of service to the Court.

1 Thereafter, Plaintiff's opposition or statement of non-opposition shall be filed within twenty-one
2 (21) days following service of the corrected motion for summary judgment.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's motion to defer or deny Defendant's motion for summary in order to obtain
5 affidavits and discovery is DENIED, without prejudice;
- 6 2. Defendant Williams shall serve Plaintiff with a corrected copy of the motion for
7 summary judgment and supporting papers within seven (7) days following the date of
8 this order and file proof of service with this Court;
- 9 3. Within twenty-one (21) days following service of Defendant's corrected motion for
10 summary judgment, Plaintiff shall serve and file his opposition or statement of non-
11 opposition.

12
13 IT IS SO ORDERED.

14 Dated: May 27, 2015

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE