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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBIN DASENBROOK,

Plaintiff,

v.

A. ENENMOH, et al.,

Defendants.

Case No. 1:11-cv-01884 AWI DLB PC

ORDER REGARDING PLAINTIFF'S
MOTIONS

[ECF Nos. 39, 45, 47, 48, 53, 62, 64, 74, 75, 82,
83, 84, 87, 91]

ORDER REGARDING DEFENDANTS'
MOTION TO TAKE DEPOSITION AS MOOT
[ECF No. 41]

ORDER DENYING MOTION FOR
SUMMARY JUDGMENT WITHOUT
PREJUDICE TO REILING
[ECF No. 68]

Plaintiff Robin Dasenbrook ("Plaintiff") is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Enenmoh, Page, Perez and blonde Doe 1 for claims of negligence and deliberate indifference to a serious medical need in violation of the Eighth Amendment.

On November 29, 2012, Plaintiff filed a First Amended Complaint. On May 13, 2013, the Court determined that service was appropriate and directed the U.S. Marshal Service to serve the amended complaint on Defendants Enenmoh, Page, and Perez. On August 14, 2013, Defendant Enenmoh filed a waiver of service. On September 10, 2013, Defendant Enenmoh filed an answer. On September 11, 2013, the Court issued a discovery and scheduling order. The discovery cut-off

1 date was set for February 10, 2014, and the dispositive motion deadline was set for April 9, 2014.
2 On February 5, 2014, Defendant Page filed a waiver of service with the Court. According to the
3 waiver, the U.S. Marshal attempted service by mail on June 12, 2013, but it proved unsuccessful.
4 The U.S. Marshal made a second attempt to forward the mail on January 7, 2014, which did prove
5 successful. On March 7, 2014, Defendant Page filed an answer to the amended complaint. On May
6 9, 2014, Defendants Enenmoh and Page filed a motion for summary judgment. Plaintiff filed an
7 opposition on June 9, 2014. Defendants filed a reply to the opposition on July 14, 2014.

8 In addition to the above, Plaintiff has filed numerous motions, which the Court will now
9 address in turn.

10 I. Motion for Extension of Time [ECF No. 39]

11 On December 19, 2013, Plaintiff filed a motion for an enlargement of time regarding the
12 service of process on the defendants. Defendants did not file an opposition. Plaintiff stated he had
13 heard nothing concerning the service of Defendants Page and Perez since the Court issued its order
14 on May 13, 2013, directing the U.S. Marshal to serve Defendants Enenmoh, Page, and Perez.
15 Plaintiff is advised that Defendant Enenmoh executed a waiver of service of summons on August 14,
16 2013, and filed an answer to the complaint on September 10, 2013. [ECF Nos. 23, 38.] As to
17 Defendant Perez, the summons was returned unexecuted on December 30, 2013. [ECF No. 40.]
18 According to the Process Receipt and Return, Defendant Perez could not be located without more
19 information since there are numerous Perez in the Department of Corrections' database. [ECF No.
20 40.] A waiver of service was returned executed by Defendant Page on February 5, 2014. [ECF No.
21 44.] The waiver of service was initially sent on June 12, 2013, with no result. [ECF No. 44.] The
22 waiver was then reattempted on January 7, 2014, and it was executed on February 3, 2014, by
23 Defendant's counsel. [ECF No. 44.] With respect to blonde nurse Doe #1, the Court did not direct
24 service on this individual insofar as the individual remains unidentified. Therefore, there is no cause
25 for an enlargement of time at present. Plaintiff's motion will be denied.

26 II. Motions for Copy of Deposition Transcript [ECF Nos. 45, 74]

27 Plaintiff has filed motions to obtain a copy of his deposition transcript. Defendants did not
28 file an opposition. Plaintiff is not entitled to a free copy of his deposition transcript. Fed. R. Civ. P.

1 30(f)(3). Plaintiff is entitled only to review the transcript and make changes, if he made a request for
2 review before the completion of the deposition. Fed. R. Civ. P. 30(e)(1). If Plaintiff made a timely
3 request, the Court requests that Defendants ensure the review to which he is entitled occurs.
4 Nevertheless, Plaintiff's motions for a free copy of the deposition transcript are DENIED.

5 III. Motion for Contempt [ECF No. 47]

6 On February 18, 2014, Plaintiff filed a motion to find Defendant Page in contempt of court.
7 Defendants did not file an opposition. Plaintiff complains that Defendant Page was mailed a
8 summons and complaint on June 12, 2013, and Defendant Page did not respond. Plaintiff states that
9 over the next several months he attempted to ascertain the status of service on Page but to no avail.
10 Plaintiff states he only found out that Page had been located when he received Defendants' motion
11 for an extension of time to serve responses to Plaintiff's discovery requests. Plaintiff claims
12 Defendant Page violated court scheduling orders and should be found in contempt of court. Plaintiff
13 requests money damages be awarded him.

14 As noted above, a waiver of service was mailed to Defendant Page on June 12, 2013. The
15 attempt was unsuccessful and the U.S. Marshal Service forwarded the waiver again on January 7,
16 2014. Defendant Page acknowledged receipt of the waiver and executed the waiver on February 3,
17 2014, through her attorney. Defendant Page then filed an answer to the complaint on March 7, 2014.
18 The Court understands Plaintiff's frustration in the delay; however, the Court does not find any
19 cause to find Defendant Page in contempt. The first attempt by the U.S. Marshal Service at service
20 proved unsuccessful but there is no reason to believe this was due to Defendant Page's malfeasance.
21 Accordingly, Plaintiff's motion to find Defendant Page in contempt is denied. Plaintiff's concerns
22 as to the timing of Defendant Page's entry into the action will be addressed by reopening discovery
23 as to Defendant Page, by separate order.

24 IV. Motion for Judicial Notice and Default Judgment [ECF Nos. 48, 53]

25 On February 18, 2014, Plaintiff filed a motion requesting judicial notice, a motion requesting
26 an order to answer interrogatories and admissions, and motion for default judgment. Defendants did
27 not file an opposition. Plaintiff again details his frustrations in attempting to determine the status of
28 service on Defendants Page and Perez. Plaintiff states that it was not until January 30, 2014, that he

1 found out that Defendant Page had been found and was being represented by the Attorney General.
2 Plaintiff complains that this delay has prejudiced him because Defendant Page did not enter the
3 action until after the court-ordered discovery cut-off date, and this has frustrated his attempts to
4 serve discovery on Defendant Page.

5 Plaintiff first asks that the Court take judicial notice of the actions of the parties. Plaintiff is
6 advised that the Court is well aware of the actions of the parties based on the numerous pleadings
7 filed in this case.

8 Plaintiff next asks that Defendant Page be directed to answer the interrogatories and
9 admissions he attached to his motion. By separate order, discovery will be reopened solely as to
10 Defendant Page. Plaintiff may then serve his discovery requests to the extent that they have not
11 already been answered.

12 Plaintiff next asks that default judgment be entered against Defendant Page. He renews this
13 request in his motion of March 24, 2014. According to the Process Receipt and Return, the U.S.
14 Marshal did not personally serve Defendant Page. [ECF No. 44.] The record shows that a waiver of
15 service was executed on February 3, 2014, after the waiver was mailed on January 7, 2014.
16 Defendant Page then timely filed an answer on March 7, 2014. Since Defendant Page appeared in
17 the action and filed a timely response, entry of default is precluded. Fed. R. Civ. P. 4(d), (e), Fed. R.
18 Civ. P. 55; Franchise Holding II, LLC v. Huntington Rests. Grp., Inc., 375 F.3d 922, 927-28 (9th
19 Cir. 2004) (if party appeared, clerk's entry of default void ab initio). Accordingly, Plaintiff's motion
20 is HEREBY DENIED.

21 V. Motion for Sanctions

22 On April 30, 2014, Plaintiff filed a motion to impose sanctions against Defendant Page for
23 violating Fed. R. Civ. P. 33 and 36(a) by failing to respond to Plaintiff's discovery requests for
24 admissions and interrogatories. Defendant did not file an opposition. Plaintiff states that once he
25 became aware that Defendant Page had appeared, he served several discovery requests on her.
26 Plaintiff states that Defendant Page failed to respond to his requests. As Plaintiff acknowledges,
27 however, the discovery cut-off date was February 10, 2014. Therefore, the requests Plaintiff served
28 on Defendant Page were untimely and Plaintiff had not sought an extension of time to serve his

1 discovery requests beyond the cut-off date. Defendant Page's refusal to answer discovery beyond
2 the cut-off date is not sanctionable conduct. Plaintiff's motion for sanctions is denied.

3 Nevertheless, the Court understands Plaintiff's frustration in the timing of Defendant Page's
4 appearance which has deprived him of the opportunity to obtain discovery from Defendant Page.
5 Therefore, by separate order, discovery will be reopened as to Defendant Page.

6 VI. Motions for Ruling [ECF Nos. 62, 91]

7 On April 23, 2014, and July 16, 2014, Plaintiff filed motions requesting a court ruling on the
8 numerous motions in this case. Plaintiff is advised that the Court is burdened with a massive
9 backlog of cases. The Court is sympathetic to Plaintiff's concerns, but the Court must act on matters
10 in the order they are presented, and the filing of numerous motions requesting the same relief only
11 serves to complicate and stall proceedings. Accordingly, Plaintiff's motions are denied.
12 Nevertheless, the Court will render rulings on multiple outstanding motions with this Order.

13 VII. Motions to Supplement [ECF Nos. 82, 83, 87]

14 On June 12, 2014, Plaintiff filed two motions to supplement his June 9, 2014, opposition to
15 Defendant's motion for summary judgment. On June 18, 2014, Plaintiff filed a motion to expand
16 and attach a supplemental brief to his opposition. As will be set forth below, Defendants' motion
17 for summary judgment will be denied with leave to refile at the conclusion of discovery. At that
18 time, Plaintiff will have the opportunity to file a full and complete opposition.

19 VIII. Motion to be Relieved of Claim Requirements [ECF No. 84]

20 Plaintiff requests that he be relieved of the claim requirements set forth in Cal. Gov. Code §
21 946.4(a). Plaintiff raises this argument in response to Defendants' argument in the motion for
22 summary judgment that Defendants are entitled to summary judgment on Plaintiff's negligence
23 claims because Plaintiff failed to present a government claim to the Board within six months of the
24 accrual of the cause of action. Defendants' motion for summary judgment will be denied with leave
25 to refile once discovery is complete. Plaintiff may raise his arguments in his opposition at that time.
26 Therefore, Plaintiff's motion is denied.

27 IX. Motion to Exclude Deposition Transcript [ECF No. 75]

28 On May 29, 2014, Plaintiff filed a motion to exclude the deposition of Plaintiff on January

1 29, 2014. Plaintiff complains that he was not given a copy of the transcript, therefore, he is
2 precluded from countering Defendants' arguments concerning statements he made in his deposition.
3 As discussed above, Plaintiff is not entitled to a free copy of his deposition transcript. Moreover,
4 Defendants have attached relevant portions of the deposition transcript to the motion for summary
5 judgment. Therefore, Plaintiff's argument that he cannot counter Defendants' arguments is not well-
6 taken. Accordingly, Plaintiff's motion to exclude the deposition transcript is denied.

7 X. Defendants' Motion to Take Deposition by Videoconference [ECF No. 41]

8 On January 8, 2014, Defendants filed a motion to take Plaintiff's deposition by
9 videoconference. Insofar as Plaintiff's deposition has already been conducted, the motion is denied
10 as moot.

11 XI. Motion for Summary Judgment [ECF No. 68]

12 On May 9, 2014, Defendants Enenmoh and Page filed a motion for summary judgment. By
13 separate order, the Court will reopen discovery as to Defendant Page. In light of this, the Court will
14 deny the motion for summary judgment without prejudice to refile the motion after discovery has
15 been concluded. By separate order, the Court will set forth a scheduling order.

16 **ORDER**

17 Accordingly, IT IS HEREBY ORDERED:

- 18 1) Plaintiff's motions [ECF Nos. 39, 45, 47, 48, 53, 62, 64, 74, 75, 82, 83, 84, 87, 91]
19 are DENIED;
20 2) Defendants' motion to take Plaintiff's deposition by videoconference is DENIED as
21 moot; and
22 3) Defendants' motion for summary judgment is DENIED WITHOUT PREJUDICE to
23 refile at the conclusion of discovery.

24 IT IS SO ORDERED.

25 Dated: September 17, 2014

26 /s/ Dennis L. Beck
27 UNITED STATES MAGISTRATE JUDGE
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