UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA BULKIN, 1:13-cv-00388-DAD-EPG (PC) ORDER DENYING PLAINTIFF'S MOTION Plaintiff, TO STAY PENDING OUTCOME OF DISCOVERY AND GRANTING PLAINTIFF v. 20 DAYS TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT V. OCHOA, et al., (ECF NO. 62) Defendants. 20-DAY DEADLINE Plaintiff is a prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 

Plaintiff is a prisoner proceeding *pro se* in a civil rights action pursuant to 42 U.S.C. § 1983. On April 21, 2016, defendants Alvarez, Mares, and Ochoa ("Defendants") filed a motion for summary judgment. (ECF No. 47). On May 16, 2016, Plaintiff filed a motion for a 30-day extension to file a response to the motion for summary judgment. (ECF No. 50). The Court granted Plaintiff's request. On June 8, 2016, the Court denied Plaintiff's motion to modify the discovery and scheduling order, but granted Plaintiff another extension of time. (ECF No. 52). On July 14, 2016, Plaintiff filed another motion for extension of time (ECF No. 55). According to the motion, Plaintiff filed discovery requests on November 20, 2015, January 15, 2016, and June 17, 2016. Plaintiff further alleged that Defendants failed to respond to any discovery requests. The Court granted the extension of time, ruled that the discovery requests of January

<sup>&</sup>lt;sup>1</sup> Magistrate Judge Dennis L. Beck was the presiding magistrate judge at the time, and continued to be the presiding magistrate judge until September 8, 2016.

15, 2016, and June 17, 2016, were untimely, and ordered Defendants to file a status report concerning the status of Plaintiff's November 20, 2015, discovery request. (ECF No. 56).

Defendants filed their status report on August 11, 2016. (ECF No. 60). According to Defendants, they never received the November 20, 2015, discovery request. Defendants point out that Plaintiff failed to mention the November 20, 2015, discovery request in his motion to modify the discovery and scheduling order or in his previous request to extend his deadline to respond to Defendants' summary judgment motion. Defendants also point out that the November 20, 2015, discovery request was also untimely because the discovery cutoff was December 8, 2015, and all written discovery requests were required to have been served thirty days prior to the close of discovery.

On September 26, 2016, Plaintiff filed this motion to stay proceedings pending outcome of discovery. Plaintiff asks the Court to deny the motion for summary judgment or to stay the proceedings so that he can obtain discovery from Defendants. The reason for Plaintiff's request is that Defendants failed to respond to Plaintiff's discovery requests.

The Court will not deny the motion for summary judgment at this time on the basis of the discovery issue. Additionally, the Court will not stay the proceedings. Plaintiff has already requested numerous extensions of time, which were granted. Additionally, it appears that Plaintiff failed to bring up Defendants' alleged failure to respond to the November 20, 2015, discovery request until approximately July of 2016. Plaintiff had numerous opportunities to bring this alleged failure to the Court's attention, but did not. In any event, it appears that Plaintiff's discovery request was untimely. The discovery cutoff was December 8, 2015, and all written discovery requests were required to have been served thirty days prior to the close of discovery.

Therefore, the Court will not stay the proceedings. The Court will, however, grant Plaintiff twenty (20) days to respond to Defendants' motion for summary judgment. While Plaintiff states that he cannot oppose the motion without discovery, the Court notes that he can rely on his own affidavit in opposition to the motion.

Accordingly, IT IS ORDERED that Plaintiff's motion to stay proceedings pending outcome of discovery is DENIED.

1	IT IS FURTHER ORDERED that Plaintiff is granted twenty (20) days from the date of	
2	this order to file a response to Defendants' motion for summary judgment, which was filed on	
3	April 21, 2016.	
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5	IT IS SO ORDERED.	
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