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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANNY M. COSTON,
Plaintiff,
v.
J.K. YU,
Defendant.

CASE NO. 1:14-cv-00148-AWI-MJS
**ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR LEAVE TO
ISSUE SUBPOENAS, FILE AN
OPPOSITION TO PLAINTIFF'S
SUMMARY JUDGMENT MOTION AND
FILE A MOTION FOR SUMMARY
JUDGMENT
(ECF NO. 49)**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter proceeds against Defendant Dr. J.K. Yu on an Eighth Amendment medical indifference claim. **Pending since February 27, 2017**, is Plaintiff's motion for summary judgment, which Defendant has yet to oppose despite extension of her deadline for conducting discovery and filing opposition.

On August 15, 2017, after the last deadline had expired, Defendant filed an extraordinary motion seeking even more time to conduct discovery, to file an opposition to Plaintiff's motion, and to file her own summary judgment motion. (ECF No. 49.)

1 As the Court previously found, Defendant did not conduct any discovery in this
2 case during the eight-month discovery period which ended December 19, 2016. (ECF
3 No. 23.) Defendant's first two requests to reopen discovery were denied because she did
4 not demonstrate diligence during that lengthy period. (ECF Nos. 35, 43.)

5 On May 24, 2017, Defendant's third request to reopen discovery was granted
6 after defense counsel, Deputy Attorney General John Feser, finally provided a
7 reasonable explanation for his previous failure to conduct discovery. (ECF No. 47.)
8 Defendant was granted an additional sixty days to conduct discovery, including
9 propounding discovery requests on Plaintiff and to obtain copies of Plaintiff's medical
10 records. Defendant's response to Plaintiff's motion for summary judgment was due no
11 later than August 7, 2017.

12 It appears that Mr. Feser did propound discovery on Plaintiff on May 25, 2017.
13 Decl. of J. Marquez in Supp. of Def.'s Mot (ECF No. 49-1) ¶ 2; Decl. of A. Gonzalez in
14 Supp. of Def.'s Mot. (ECF No. 49-2) ¶ 2. However, he never followed through on it after
15 Plaintiff failed to respond. There is no indication he ever sought Plaintiff's medical
16 records. Mr. Feser also failed to file an opposition to Plaintiff's summary judgment motion
17 or a summary for judgment motion on behalf of Defendant before the August 7, 2017,
18 deadline.

19 Following Mr. Feser's departure from the Department of Justice on August 11,
20 2017, this case was reassigned to another Deputy Attorney General who filed the instant
21 motion after learning of Mr. Feser's prolonged inaction. New defense counsel seeks
22 additional time to issue a subpoena for Plaintiff's medical records, to file an opposition to
23 Plaintiff's summary judgment motion, and to file her own motion for summary judgment.
24 She requests that Defendant Dr. Yu not be made to suffer because of Mr. Feser's
25 failings.

26 It does appear that Defendant's failure to act is attributable to the negligence of
27 her assigned counsel, Mr. Feser, and not to Defendant personally. However, neither the
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1 office of the Attorney General nor the client can immunize themselves from the acts of
2 their agent. Someone must bear the responsibility for this unconscionable delay, and
3 that someone will not be Plaintiff who already has been prejudiced by having his motion
4 for summary judgment tabled for six months. Defendant will not be granted additional
5 time to file opposition to Plaintiff's motion for summary judgment. The time has expired.
6 The Court deems that motion submitted and will rule on it accordingly.

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8 On the other hand, as regards the proposed post-deadline subpoena and
9 summary judgment motion, though we are dealing with the same period of negligent
10 delay by Defendant, the Court can envision no real prejudice to Plaintiff in allowing such
11 steps to proceed. Instead, granting the relief sought will help ensure all relevant
12 evidence is brought before the Court and give the Court the opportunity to determine if
13 any matters remaining after Plaintiff's summary judgment motion is ruled on can be
14 addressed and resolved without trial.

15 Based on the foregoing, IT IS HEREBY ORDERED that Defendant's motion (ECF
16 No. 49) is GRANTED IN PART:

- 17 1. Defendant is granted twenty one (21) days from the date of this order to issue
18 a subpoena for Plaintiff's relevant medical records;
- 19 2. Defendant is granted sixty (60) days from the date of this order to file a motion
20 for summary judgment;
- 21 3. The deadline for Defendant to oppose Plaintiff's motion for summary judgment
22 has expired and will not be reopened. That motion is submitted.

23 IT IS SO ORDERED.

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25 Dated: August 19, 2017

/s/ Michael J. Seng
26 UNITED STATES MAGISTRATE JUDGE
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