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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID G. LEONARD,
Plaintiff,
v.
JIM DENNY, et al.,
Defendants.

No. 2:12-cv-0915 TLN AC P

ORDER

Plaintiff is a current state and former county prisoner proceeding pro se with claims brought pursuant to 42 U.S.C. § 1983; Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134; Section 504 of the Rehabilitation Act of 1973; and state tort law. Currently before the court are plaintiff’s motions to substitute (ECF No. 135), reopen discovery (ECF No. 136), and for an extension of time to respond to defendants’ motion for summary judgment (ECF Nos. 148, 153, 154).¹ Also before the court is defendants’ motion to exceed the page limit for their summary-judgment motion. ECF No. 140.

I. Motions to Substitute and Re-Open Discovery

Plaintiff has filed a motion to substitute or rename defendant “J. Saunders” as defendant “Samuel Sanders.” ECF No. 135. By separate motion, he argues that, based upon the confusion

¹ Plaintiff’s motions for protective orders (ECF Nos. 151, 152) will be addressed by separate order.

1 surrounding defendant's identity, discovery should be re-opened. ECF No. 136. Defendants do
2 not object to correcting the docket to reflect that the defendant's correct name is Samuel Sanders
3 (ECF No. 139), but do object to the re-opening of discovery (ECF No. 138).

4 Plaintiff's request to substitute or rename defendant "J. Saunders" will be granted to the
5 extent that the Clerk of the Court will be directed to update the docket to reflect that defendant "J.
6 Saunders'" correct name is "Samuel Sanders." To the extent the motion seeks to substitute
7 "Samuel Sanders" for "J. Saunders," the motion will be denied because it is clear that "Samuel
8 Sanders" and "J. Saunders" are the same individual who was simply mis-named.²

9 With respect to plaintiff's motion to re-open discovery, he argues that he has been
10 deprived the opportunity to take discovery specific to defendant Sanders because he was unaware
11 of the defendant's correct name until he received defendants' motion to extend the dispositive
12 motion deadline (ECF No. 133) on December 19, 2017. ECF No. 136 at 1-2. He further argues
13 that re-opening discovery would be proper because it would allow him to pursue motions to
14 compel. *Id.* at 3. Defendants oppose the motion on the grounds that plaintiff has been aware of
15 defendant Sanders' correct name for some time and was not prevented from conducting discovery
16 as to this defendant. ECF No. 138.

17 In this case, discovery was initially scheduled to close on August 26, 2016. ECF No. 80
18 at 5. The deadline was extended a number of times, first to allow plaintiff to file motions to
19 compel, and then to allow the parties to telephonically meet and confer in an effort to resolve the
20 discovery issues raised. ECF Nos. 86, 103, 107, 120, 128. Because the parties were attempting
21 to resolve the discovery disputes without court intervention, plaintiff's motions to compel were
22 vacated with leave to re-file as to any issues that remained upon completion of the parties'
23 discussions. ECF Nos. 107, 116, 118, 128. Plaintiff was notified on multiple occasions that he
24 would have forty-five days from the completion of discovery discussions to file a motion to
25 compel on any outstanding discovery issues. ECF Nos. 107, 116, 118, 120, 128. On August 18,

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27 ² In the opposition to plaintiff's motion to re-open discovery, defendants assert that Sanders was
28 "the only physician during Plaintiff's detainment at Sutter County Jail" (ECF No. 138 at 2) and
plaintiff does not dispute this fact (ECF No. 147 at 4).

1 2017, defendants filed a notice advising the court that the parties had conducted their last
2 telephonic conference that day (ECF No. 131), thus triggering plaintiff's time to file a motion to
3 compel. On October 17, 2017, after plaintiff's time for filing a motion to compel had passed, the
4 court issued an order noting that discovery was closed and re-setting the dispositive motion
5 deadline. ECF No. 132. On December 8, 2017, the dispositive motion deadline was extended to
6 February 1, 2018. ECF No. 134. On January 4, 2018,³ plaintiff filed his motion to re-open
7 discovery (ECF No. 136), accompanied by a letter stating that there had been an eleven-day delay
8 in his receipt of the December 8, 2018 order, and that he had never received the October 17, 2017
9 order (ECF No. 137).

10 In considering whether to grant a motion to amend the scheduling order and re-open
11 discovery, the court is to consider:

12 "1) whether trial is imminent, 2) whether the request is opposed, 3)
13 whether the non-moving party would be prejudiced, 4) whether the
14 moving party was diligent in obtaining discovery within the
15 guidelines established by the court, 5) the foreseeability of the need
for additional discovery in light of the time allowed for discovery
by the district court, and 6) the likelihood that the discovery will
lead to relevant evidence."

16 City of Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017) (quoting United
17 States ex rel. Schumer v. Hughes Aircraft Co., 63 F.3d 1512, 1526 (9th Cir. 1995)). It is
18 "significant" when a party is seeking to re-open discovery rather than extend the discovery
19 deadline. W. Coast Theater Corp. v. City of Portland, 897 F.2d 1519, 1524 (9th Cir. 1990). "The
20 difference [between the two types of requests] is considerable" because "a request for an
21 extension acknowledges the importance of a deadline, [while] a retroactive request suggests that
22 the party paid no attention at all to the deadline." Id. While trial has not yet been set in this case
23 and defendants have not explicitly claimed they would be prejudiced by the re-opening of
24 discovery, this case has been pending since April 2012 and the other factors for consideration
25 weigh heavily against the re-opening of discovery.

26 First, defendants oppose the motion, and their assertion that plaintiff was not prevented

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28 ³ Since plaintiff is a prisoner proceeding pro se, he is afforded the benefit of the prison mailbox
rule. Houston v. Lack, 487 U.S. 266, 276 (1988).

1 from taking discovery from defendant Sanders is well taken. Even if plaintiff did not realize that
2 he had defendant Sanders' name wrong until December 19, 2017, he was still able to seek
3 discovery from him, as it is clear from Sanders' actions that he understood that he was the
4 individual plaintiff meant when he referred to "J. Saunders,"⁴ and there is no evidence that he
5 attempted to avoid his discovery obligations by feigning ignorance as to who plaintiff intended as
6 the defendant.⁵ Furthermore, if plaintiff was uncertain as to whether J. Saunders or S. Sanders
7 was the proper defendant prior to discovery, as he also seems to argue (ECF No. 136 at 2; ECF
8 No. 147 at 3, 5), then the discovery period was the time to request further information specific to
9 his intended defendant. Although plaintiff appears to claim that this is what he attempted to do
10 (ECF No. 147 at 3, 5, 7-8), his actual requests, which were directed at all defendants, belie this
11 assertion (ECF No. 138-1 at 5-14; ECF No. 147 at 54-75). Two of the three requests he addresses
12 with particularity do not appear geared toward clearing up any confusion over Sanders' identity.
13 ECF No. 147 at 3 (Request for Admission 4, seeking admission that defendant Brown was under
14 the supervision of J. Saunders or S. Sanders), 10 (Request for Admission 53, seeking to
15 authenticate a recommendation by an outside provider). While the third request does appear to be
16 an attempt to determine S. Sanders' involvement, as opposed to J. Saunders' (id. at 7 (Request for
17 Admission 10, seeking admission that "Specialist (Ophthalmologist) appointment was made by
18 Samuel R. Sanders acting as a Medical Doctor for the Sutter County Jail")), it was objected to as
19 having vague terms, seeking admissions on compound issues, and being overbroad and irrelevant
20 and was neither denied nor admitted on that basis (id. at 25).⁶ It does not appear that defendant

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22 ⁴ Sanders accepted service addressed to "J. Saunders" (ECF No. 34) and did not take any action
23 to either quash service or be dismissed from the case based on mistaken identity. Moreover,
24 though Sanders appears to have been less than prompt in clarifying his name, he did eventually
25 file a motion in which he provided his correct name and noted that he had been erroneously sued
26 as "J. Saunders," making explicit his understanding that he was the individual plaintiff intended
27 to sue. ECF No 133 at 1. It appears that he was also the only physician at the Sutter County Jail
28 during the time plaintiff was there. ECF No. 138 at 2.

⁵ Defendants objected to the discovery requests on a number of grounds, but none related to Sanders' identity. ECF No. 138-1 at 22-37; ECF No. 147 at 22-49, 54-76.

⁶ Although defendants provide Sanders amended responses, in which he admits to making an ophthalmology referral (ECF No. 138-1 at 24), plaintiff claims that he did not receive the amended responses until he received them as attachments to the opposition to his motion to re-

1 objected to the request for admission based on mistaken identity, and if plaintiff believed that the
2 response and objections were improper, he was free to file a motion to compel after the discovery
3 discussions came to a close.

4 Next, while plaintiff did pursue discovery and the parties conducted a number of
5 telephonic conferences regarding discovery, the court is unable to find that plaintiff was diligent
6 in his attempts to clarify whether J. Saunders and S. Sanders were the same or different people.
7 His fourth request for admission clearly identified both J. Saunders and S. Sanders as possible
8 supervisors for defendant Brown. This demonstrates that at the time he propounded discovery he
9 was aware of the possibility that he had mis-named the defendant or that there were two different
10 individuals that may have been involved in his care, yet he failed to submit requests that would
11 resolve the uncertainty or file a motion to compel related to requests when his dissatisfaction with
12 the response was not resolved through the parties' discovery discussions. Though plaintiff argues
13 that such information should have been disclosed to him in accordance with Federal Rule of Civil
14 Procedure 26 (ECF No. 136 at 4), pro se prisoner cases such as this one are explicitly exempted
15 from disclosure requirements, Fed. R. Civ. P. 26(a)(1)(B)(iv), and he fails to explain why he did
16 not move to compel disclosures if he believed they were required.

17 As to the next factor, the court finds that given the amount of time the parties were given
18 to both conduct discovery, address discovery disputes, and file motions to compel, it was not
19 foreseeable that additional discovery would be necessary after discovery closed without the filing
20 of any motions to compel.

21 Finally, it is not clear that re-opening discovery would lead to further admissible evidence.
22 Although plaintiff asserts that he did not have the opportunity to submit discovery requests to
23 defendant Sanders, that is not the case. Plaintiff submitted requests to all defendants and could
24 have submitted requests specific to defendant Sanders that, at a minimum, could have been used
25 to address any doubts plaintiff may have had about his identity.

26 In light of the factors weighing against re-opening discovery, and plaintiff's failure to seek
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28 open discovery (ECF No. 147 at 11-12). The court will therefore only look to defendants'
original responses.

1 to extend the discovery deadline despite his demonstrated knowledge of both the necessity and
2 means of doing so (ECF Nos. 83, 92, 98, 110, 117, 124 (motions to extend discovery deadline)),
3 the motion to re-open discovery will be denied.

4 II. Motion to Exceed the Page Limit

5 Defendants have filed a motion to exceed the page limit set by the assigned District Judge
6 for motions coming before him. ECF No. 140. However, because this case was brought by a
7 person in custody seeking relief under 42 U.S.C. § 1983, all dispositive matters are referred to the
8 undersigned. L.R. 302(c)(17). Because the motion is being considered by the undersigned in the
9 first instance, the page limitations adopted by the District Judge do not apply and the undersigned
10 does not have a policy on page limits. The motion will therefore be denied as unnecessary.

11 III. Motions for Extension of Time

12 Plaintiff seeks an extension of his time to respond to the motion for summary judgment.
13 ECF Nos. 148, 153, 154. Good cause appearing, the request will be granted and plaintiff shall
14 have sixty days from service of this order to file his response. Given the amount of time that has
15 passed since the motion for summary judgment was filed, no further extensions will be granted
16 absent a showing of extraordinary circumstances.

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. Plaintiff's motion to substitute defendant "J. Saunders" (ECF No. 135) is granted to
19 the extent the Clerk of the Court is directed to update the docket to reflect that defendant "J.
20 Saunders'" correct name is "Samuel Sanders." The motion is otherwise denied.

21 2. Plaintiff's motion to re-open discovery (ECF No. 136) is denied.

22 3. Defendants' motion to exceed the page limit for their summary-judgment motion
23 (ECF No. 140) is denied as unnecessary.


24 4. Plaintiff's motions for an extension of time to respond to the motion for summary
25 judgment (ECF Nos. 148, 153, 154) are granted. Plaintiff shall have sixty days from service of
26 this order to respond to the motion for summary judgment. Failure to file a response will result in

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1 a recommendation that case be dismissed for failure to prosecute and no further extensions of
2 time will be granted absent a showing of extraordinary circumstances.

3 DATED: June 13, 2018

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
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