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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SEAN O’NEAL,
Plaintiff,
v.
AUGUST JOHNSON, et al.,
Defendants.

No. 2:14-cv-2374 DB PS

ORDER

On September 14, 2016, plaintiff filed a motion requesting a continuation of the September 30, 2016 hearing of defendants’ motion for summary judgment pursuant to Rule 56(d) of the Federal Rules of Civil Procedure.¹ (Dkt. No. 114.) Defendants filed an opposition on September 16, 2016. (Dkt. No. 117.)

Under Rule 56(d), the court must deny or continue a motion for summary judgment if an opposing party can show that “for specified reasons, it cannot present facts essential to justify its opposition.” Fed. R. Civ. P. 56(d). Indeed, Rule 56(d) “require[es], rather than merely permit[s], discovery where the nonmoving party has not had the opportunity to discover information that is essential to its opposition.” Metabolife Int’l Inc. v. Wornick, 264 F.3d 832, 849 (9th Cir. 2001).

¹ The parties previously consented to Magistrate Judge jurisdiction over this action pursuant to 28 U.S.C. § 636(c)(1). (Dkt. No. 16.)

1 The opposing party “must identify the specific facts that further discovery would reveal and
2 explain why these facts would preclude summary judgment.” Tatum v. City & Cty. of San
3 Francisco, 441 F.3d 1090, 1100 (9th Cir. 2006).

4 In order to be entitled to relief under Rule 56(d), however, plaintiff here “must show (1)
5 that [he] ha[s] set forth in affidavit form the specific facts that [he] hope[s] to elicit from further
6 discovery, (2) that the facts sought exist, and (3) that these sought-after facts are ‘essential’ to
7 resist the summary judgment motion.” State of California v. Campbell, 138 F.3d 772, 779 (9th
8 Cir. 1998); see also Blough v. Holland Realty, Inc., 574 F.3d 1084, 1091 n.5 (9th Cir. 2009)
9 (noting that to obtain a continuance under 56(d) a party must make a timely application,
10 specifically identifying the relevant information and some basis for the belief that the information
11 sought actually exists); Nidds v. Schindler Elevator Corp., 113 F.3d 912, 921 (9th Cir. 1996)
12 (“The burden is on the party seeking additional discovery to proffer sufficient facts to show that
13 the evidence sought exists.”). In addition, the movant must also establish their diligence in
14 previously pursuing the discovery that they now assert is necessary. Pfingston v. Ronan
15 Engineering Co., 284 F.3d 999, 1005 (9th Cir. 2002) (“The failure to conduct discovery diligently
16 is grounds for the denial of a Rule 56[d] motion.”). “District courts have wide latitude in
17 controlling discovery, and decisions not to permit further discovery in response to motions made
18 pursuant to Federal Rule of Civil Procedure 56[d] are reviewed for abuse of discretion.” United
19 States v. Johnson Controls, Inc., 457 F.3d 1009, 1023 (9th Cir. 2006) (citing United States v.
20 Kitsap Physicians Serv., 314 F.3d 995, 1000 (9th Cir. 2002)); see also Swoger v. Rare Coins
21 Wholesalers, 803 F.3d 1045, 1047 (9th Cir. 2015).

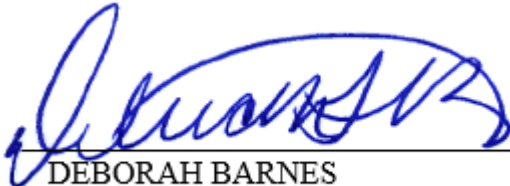
22 Here, discovery in this action closed on May 26, 2016. In this regard, plaintiff has failed
23 to establish diligence. Moreover, plaintiff’s motion fails to set forth specific facts that he hopes to
24 elicit from further discovery, that the facts sought exist, and that these sought-after facts are
25 ‘essential’ to resist the summary judgment motion. In this regard, plaintiff’s motion argues that
26 he has “just barely begun to scratch the surface” and that plaintiff “has some more special
27 interrogatory questions to ask depending on [defendants’] answers.” (Dkt. No. 114-1) at 3.)

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Accordingly, IT IS HEREBY ORDERED that plaintiff's September 14, 2016 motion under Rule 56(d) (Dkt. No. 114) is denied.²

Dated: September 22, 2016



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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² Plaintiff's motion, however, also asserted that a continuation of the hearing of defendants' motion for summary judgment was necessary because plaintiff did not have sufficient materials available at his law library. In a separate order, the court continued the hearing of defendants' motion for summary judgment from September 30, 2016, to October 7, 2016, allowing plaintiff additional time to research and draft his opposition. (Dkt. No. 119.)