

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD TERRAN FURNACE,

Plaintiff,

v.

SGT. K KNUCKLES, et al.,

Defendants.

) No. C 09-6075 MMC (PR)

) **ORDER DENYING PLAINTIFF'S**
) **RULE 56(d) MOTION; GRANTING**
) **LIMITED EXTENSION OF TIME TO**
) **FILE OPPOSITION TO SUMMARY**
) **JUDGMENT MOTION**

) **(Docket No. 175)**

On December 30, 2009, plaintiff, a California prisoner incarcerated at Corcoran State Prison ("CSP") and proceeding pro se, filed the above-titled civil rights action under 42 U.S.C. § 1983. On April 26, 2011, defendants filed a motion to dismiss and for summary judgment (hereafter, "motion for summary judgment"). Following two extensions of time and referral of the action to Magistrate Judge Elizabeth D. Laporte for discovery, the Court entered a scheduling order directing plaintiff to file and serve his response to the motion for summary judgment no later than February 11, 2013.

Now before the Court is plaintiff's "Motion for Denial or Continuance of Summary Judgment under the Fed. R. Civ. P. 56(f)," which the Court construes as a request under Rule 56(d) of the Federal Rules of Civil Procedure¹ to defer consideration of defendants' motion, in order to afford plaintiff the opportunity to propound discovery necessary to oppose the motion.

¹ Effective December 1, 2010, the provisions of former subdivision (f) were carried forward without material change as subsection (d).

1 Rule 56(d) reads as follows:

2 If a nonmovant shows by affidavit or declaration that, for
3 specified reasons, it cannot present facts essential to justify its
4 opposition, the court may: (1) defer considering the motion or
deny it; (2) allow time to obtain affidavits or declarations or to
take discovery; or (3) issue any other appropriate order.

5 Fed. R. Civ. P. 56(d). Subdivision (d) provides a means for litigants to avoid summary
6 judgment when the non-movant needs to discover affirmative evidence necessary to oppose
7 the motion. See Garrett v. San Francisco, 818 F.2d 1515, 1518 (9th Cir. 1987). In making a
8 Rule 56(d) motion, a party opposing summary judgment must make clear “what information
9 is sought and how it would preclude summary judgment.” Margolis v. Ryan, 140 F.3d 850,
10 853 (9th Cir. 1998). The requesting party must set forth in affidavit form the specific facts
11 such party hopes to elicit from further discovery; additionally, such party must show the
12 facts sought exist and that the sought-after facts are “essential to oppose summary
13 judgment.” Family Home and Finance Center, Inc. v. Federal Home Loan Mortgage Corp.,
14 525 F.3d 822, 827 (9th Cir. 2008).

15 Here, plaintiff argues he should receive the requested continuance “because of
16 defense counsel’s suppression of relevant evidence.” (Pl. 56(d) Mot. at 3.) Such assertion is
17 not sufficient to satisfy plaintiff’s burden under Rule 56(d). In particular, plaintiff has
18 neither “identif[ied] the specific facts that further discovery would . . . reveal[],” see Tatum
19 v. City and County of S.F., 441 F.3d 1090, 1101 (9th Cir. 2006), nor has he shown how any
20 such sought-after facts “would have precluded summary judgment,” id.

21 Moreover, in its order of August 29, 2011, the Court directed plaintiff to complete
22 discovery within 120 days. Plaintiff has had well in excess of 120 days to conduct and
23 complete discovery. While he claims he was in trial and/or denied access to legal supplies
24 through December 2011 (see Mot. at 2), he identifies no impediment to his conducting
25 discovery in the past 13 months. Nor does he claim that he was in any manner precluded
26 from bringing any asserted “suppression of relevant evidence” before Magistrate Judge
27 Laporte. Indeed, a review of the docket shows plaintiff has filed several discovery motions,
28 all of which have been resolved by Magistrate Judge Laporte in a timely manner.

