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

THOMAS EUGENE MOORE,

Plaintiff,

v.

BROWN & WILLIAMSON TOBACCO,
CORPORATION, et al.,

Defendants.

No. C 06-2150 SBA (PR)

**ORDER (1) DENYING PLAINTIFF'S
MOTION FOR EXTENSION OF TIME
TO EFFECT SERVICE OF SUMMONS
AND COMPLAINT ON DEFENDANT
LANE LIMITED AND (2) GRANTING IN
PART PLAINTIFF'S MOTION FOR
EXTENSION OF TIME TO FILE
OPPOSITION TO MOTION TO DISMISS**

(Docket nos.62, 68)

10 Plaintiff Thomas Eugene Moore, a state prisoner currently incarcerated at Pelican Bay State
11 Prison, filed this civil action in the Monterey County Superior Court, Moore v. Brown & Williamson
12 Tobacco, Corp., et al., Case No. M76478, alleging various claims, including civil rights violations,
13 arising from Plaintiff's use of tobacco products while incarcerated at Salinas Valley State Prison
14 (SVSP) from June 19, 2001 to July 1, 2005. Plaintiff named as Defendants the following
15 corporations: Lane Limited (LL) and Brown & Williamson Tobacco Corporation (B&W), the alleged
16 tobacco manufacturers; as well as Access SecurePak (Access), the alleged retailer of the tobacco
17 products Plaintiff used. Plaintiff has also named as Defendants various prison officials, who
18 purportedly participated in the supply of tobacco and the denial of Plaintiff's administrative claims,
19 including: SVSP Warden Mike Evans; SVSP Canteen Manager E. Beza; SVSP Procurement
20 Services Officer B. Schneider; SVSP Chief of Inmate Appeals N. Grannis; SVSP Appeals
21 Coordinator S. Gomez; SVSP Correctional Lieutenant C. Blackstone; SVSP Physicians I. Grillo and
22 R. Gibbs; and California Department of Corrections and Rehabilitation (CDCR) Director Jeanne
23 Woodford (hereinafter "remaining Defendants").

24 Before the Court are Plaintiff's motion for extension of time to effect service of summons and
25 complaint on Defendant LL (docket no. 62) and his motion for extension of time to file an opposition
26 to Defendants' motion to dismiss (docket no. 68).

27 **BACKGROUND**

28 In an Order dated November 10, 2008, the Court denied Plaintiff's application for in forma

1 pauperis (IFP) status and dismissed the complaint with leave to amend. The Court dismissed
2 Plaintiff's claim against Defendants Access relating to his use of tobacco products as well as his
3 claims against Defendants Grannis, Blackstone and Gomez relating to the grievance process. All
4 remaining claims were dismissed with leave to amend. The Court also found that Plaintiff was
5 responsible for effecting service within thirty days on Defendants B&W and LL as well as on the
6 remaining Defendants because his IFP application had been denied.

7 In an Order dated November 14, 2008, the Court denied Plaintiff's motion requesting the
8 Clerk of the Court to issue summons and the U.S. Marshal to serve the summons and complaint upon
9 Defendants. The Court directed Plaintiff to follow the procedures to properly serve the
10 aforementioned Defendants outlined in the Court's November 10, 2008 Order. He was also directed
11 to abide by the deadlines previously set in the Court's November 10, 2008 Order.

12 In an Order dated December 16, 2008, the Court granted Plaintiff an extension of time in
13 which Plaintiff to serve the summons and complaint upon the remaining Defendants up to and
14 including January 12, 2009.

15 On December 22, 2008, Plaintiff filed a notice of process service of summons and complaint
16 upon Defendants B&W, Woodson, Beza, Schneider and Gibbs.

17 On January 2, 2009, Plaintiff filed his amendment to the complaint after being granted an
18 extension of time to do so.

19 On January 5, 2009, Defendants B&W and LL filed a motion to dismiss this action "on the
20 basis that Plaintiff has failed to comply with orders of this Court and for insufficiency of service of
21 process and insufficiency of process." (Mot. to Dismiss at 1.)

22 On January 7, 2009, Plaintiff filed a notice of process service of summons and complaint
23 upon Defendant Beza.

24 On January 16, 2007, Plaintiff filed a motion for extension of time to effect service of
25 summons and complaint on Defendant LL.

26 On January 23, 2009, the Court dismissed Plaintiff's amended deliberate indifference,
27 supervisory liability and equal protection claims. Thus, the Court noted that the only Defendants
28 remaining in this action were B&W and LL. Plaintiff was informed that his opposition to Defendants

1 B&W's and LL's motion to dismiss was due on February 6, 2009.

2 On January 27, 2009, Defendants B&W and LL filed an opposition to Plaintiff's motion for
3 extension of time to effect service of summons and complaint on Defendant LL.

4 On January 29, 2009, Plaintiff filed a "Notice of the Incorrect Address [sic] of Defendants
5 Brown & Williamson Tobacco Corp. and E. Beza."

6 On February 6, 2009, Plaintiff filed a motion for extension of time to file an opposition to
7 Defendants' motion to dismiss.

8 Also on February 6, 2009, Plaintiff filed a "Notice of the Current Addresses [of] Defendants
9 Brown & Williamson Tobacco Corp. and Lane Limited."

10 **DISCUSSION**

11 Plaintiff now requests an extension up to and including February 12, 2009 in order to serve
12 the summons and complaint upon the Defendant LL. Plaintiff claims that he "has been diligent in
13 attempting to serve process upon Defendant Lane Limited." (Mot. for EOT to Serve Def. LL at 2.)
14 However, the record shows that Plaintiff only began to seek help from the prison librarian on
15 December 10, 2008, the deadline for serving Defendant LL. Plaintiff claims that on December 10,
16 2008, he "gave a written request to the prison senior librarian Mrs. McCumsey in order to obtain the
17 name and address of the person who can accept process service of the summons and complaint on
18 behalf of Defendant Lane Limited in this case at hand, . . . but Mrs. McCumsey failed to contact the
19 plaintiff." (Id.) Plaintiff claims he sent Mrs. McCumsey a second request on December 22, 2008.
20 Plaintiff alleges that on January 6, 2009, "Mrs. McCumsey returned the request with a response that
21 she was not able to obtain the process service information." (Id.) Defendant LL argues that Plaintiff
22 "has not acted reasonably in light of the Court's directives of November 10." (Opp'n to Mot. for EOT
23 to Serve Def. LL at 2.) The Court finds that Plaintiff did not act diligently to serve Defendant LL by
24 the Court-ordered deadline of December 10, 2008. Furthermore, the Court has warned Defendant
25 that "no further extensions of time will be granted in this case absent exigent circumstances." (Nov.
26 10, 2008 Order at 15.) Plaintiff has failed to allege that his failure to serve Defendant LL was due to
27 excusable neglect or exigent circumstances. Accordingly, the Court DENIES Plaintiff's motion for
28

1 extension of time to effect service of summons and complaint on Defendant LL (docket no. 62).

2 Plaintiff also requests an extension of time to file an opposition to Defendants' motion to
3 dismiss up to and including March 6, 2009. Again, Plaintiff has failed to allege that his failure to
4 filed a timely opposition was due to exigent circumstances. Nevertheless, having read and
5 considered Plaintiff's request and the accompanying declaration filed by Plaintiff, the Court finds that
6 a brief extension of time is appropriate. Accordingly, IT IS HEREBY ORDERED that Plaintiff's
7 request for an extension of time to file an opposition to Defendants' motion to dismiss (docket no. 68)
8 is GRANTED in part. The time in which Plaintiff must file his response to Defendants' motion to
9 dismiss will be extended up to and including **February 20, 2009**.

10 CONCLUSION

11 For the foregoing reasons, the Court orders as follows:

12 1. Plaintiff's motion for extension of time to effect service of summons and complaint on
13 Defendant LL (docket no. 62) is DENIED.


14 2. Plaintiff's request for an extension of time to file an opposition to Defendants' motion
15 to dismiss (docket no. 68) is GRANTED part. Plaintiff must file his response to Defendants' motion
16 to dismiss no later than **February 20, 2009**. If Defendants wish to file a reply brief, they shall do so
17 no later than **fifteen (15) days** after the date Plaintiff's opposition is filed. The motion shall be
18 deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless
19 the Court so orders at a later date. The Court will resolve the motion to dismiss in a separate written
20 Order.

21 3. Because this case has been pending for almost three years, **no further extensions of**
22 **time will be granted in this case absent exigent circumstances.**

23 4. This Order terminates Docket nos. 62 and 68.

24 IT IS SO ORDERED.

25 DATED: 2/13/09

26 
27 SAUNDRA BROWN ARMSTRONG
28 United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 MOORE et al,

5 Plaintiff,

6 v.

7 BROWN & WILLIAMSON TOBACCO,
8 CORPORATION et al,

9 Defendant.

Case Number: CV06-02150 SBA

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on February 13, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
15 in the Clerk's office.

16 Thomas Eugene Moore D-62389
17 Pelican Bay State Prison
18 P.O. Box 7500
19 Crescent City, CA 95532

20 Dated: February 13, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk