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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISIAH LUCAS, JR.,

No. C 07-1673 CW (PR)

Plaintiff,

ORDER DENYING PLAINTIFF'S
SECOND MOTION TO COMPEL AND
DENYING HIS MOTION TO STAY

v.

LT. SILVA, et al.,

(Docket nos. 70, 71)

Defendants.

_____ /

INTRODUCTION

Plaintiff Isiah Lucas, Jr., a state prisoner incarcerated at California State Prison - Solano (CTF), filed this pro se civil rights action under 42 U.S.C. § 1983, alleging that CTF prison officials were deliberately indifferent to his serious medical needs while he was incarcerated there in 2006. Plaintiff specifically alleges that Defendants assigned him to an upper bunk, despite the fact that he had a chrono for a lower bunk due to back discomfort and knee problems.

BACKGROUND

On November 16, 2010, Plaintiff filed a motion to compel in which he sought various discovery responses, including the time he was admitted into the "X-Wing" on July 8, 2006 and the identities of various CTF prison officials who worked in the areas where he was housed in 2006.

In an Order dated November 23, 2010, the Court denied Plaintiff's motion to compel because (1) he did not serve Defendants, through counsel, with a copy of his discovery requests

United States District Court
For the Northern District of California

1 in accordance with the Federal Rules of Civil Procedure; and
2 (2) his other discovery requests were made to non-parties.

3 On December 16, 2010, Defendants' counsel, Attorney M. Grigg,
4 deposed Plaintiff. On December 31, 2010, Plaintiff received a copy
5 of the transcript of the deposition.

6 On January 16, 2011, Plaintiff mailed a letter with his
7 discovery requests to Attorney Grigg, seeking the information
8 requested in the November 16, 2010 motion to compel, as well as
9 other information regarding the inmate capacity and the number of
10 cells at CTF.

11 On January 21, 2011, Attorney Grigg replied to Plaintiff's
12 discovery requests. Attorney Grigg requested that Plaintiff comply
13 with the Federal Rules of Civil Procedure and that he "state what
14 it is that [he] seek[s] very clearly, precisely, and plainly."
15 (Mot. to Compel Disc. at 8.) Nothing in the record indicates that
16 Plaintiff submitted more specific discovery requests to Attorney
17 Grigg.

18 On January 27, 2011, Defendants Warden B. Curry, Captain T.
19 Jarvis, Sergeant I. Guerra, Associate Warden D. Silva, Sergeant M.
20 Miranda, Sergeant M. Knedler and Officers N. McGriff, G. Lopez and
21 J. Childers filed a motion for summary judgment. In the Court's
22 November 12, 2010 Order, the deadline for Plaintiff's opposition
23 had been set for February 28, 2011.

24 On February 10, 2011, Plaintiff filed a motion to stay
25 proceedings in order for him to review the December 16, 2010
26 deposition, to obtain unspecified medical records, and to request
27 discovery from Defendants. (Mot. to Stay at 2.) Plaintiff claims
28 he has "not -- had ample time to review and/or make any needed

1 changes" to his deposition under Rule 30(e) of the Federal Rules of
2 Civil Procedure. (Id. at 1.) He also alleges that he "has been
3 trying to obtain that of his medical records now for approx. some
4 6-to-8 months, with all endeavors [sic] thus far being
5 unavailing" (Id.) Finally, Plaintiff claims he intends to
6 add new Defendants to this action, but he has not been able to
7 obtain the names of these new Defendants.

8 On February 11, 2011, Defendants filed an opposition to
9 Plaintiff's motion to stay proceedings. Defendants argue that
10 Plaintiff "offers no affidavit or declaration, does not specify
11 what facts further discovery would reveal, and does not explain how
12 such facts even theoretically might preclude summary judgment."
13 (Defs.' Opp'n at 3.) Specifically, Defendants argue that
14 Plaintiff's motion to stay does not satisfy the prerequisites of
15 Federal Rule of Civil Procedure 56(d),¹ which provides that if a
16 party opposing summary judgment demonstrates a need for further
17 discovery in order to obtain facts essential to justify the party's
18 opposition, the trial court may 1) defer considering the motion for
19 summary judgment or deny it; 2) allow time to take discovery; or
20 3) issue any other appropriate order. See Fed. R. Civ. P. 56(d);
21 Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998).

22 Also on February 11, 2011, Plaintiff filed a second motion to
23 compel, in which he again seeks the names of certain CTF prison
24 officials who worked in the areas where he was housed in 2006,
25

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27 ¹ Former Federal Rule of Civil Procedure 56(f) was amended in
28 2010. It is now set forth in Rule 56(d). "Subdivision (d) carries
forward without substantial change the provisions of former
subdivision (f)." Fed. R. Civ. P. 56 advisory committee's note.

1 including:

- 2 a) Correctional Officers, that was assigned to "C-Wing"
3 as unit housing officers, from the span of "April
4 20, 2006 -- thru to June 5, 2006." This will
5 include that of both "2nd & 3rd Watch --
6 Correctional Officers;" and
7
8 b) Correctional Officers, that was assigned to "D-Wing"
9 as unit housing officers, from the span of June 5,
10 2006 -- thru to July 8, 2006." This will include
11 that of both "2nd & 3rd Watch -- Correctional
12 Officers."

9 (Mot. to Compel Disc. at 2.) Plaintiff also seeks a copy of the
10 "Log Book" at "X-Wing," in order to find out the "time he was
11 logged in (initially) on July 8, 2006" (Id.) Finally,
12 Plaintiff seeks copy of form "CDC-154"² in order "to support his
13 claim in showing the duty of the Defendants, simple, had to do in
14 order to make a bed move" (Id.)

15 For the reasons discussed below, the Court DENIES Plaintiff's
16 second motion to compel and DENIES his motion to stay.

17 DISCUSSION

18 Summary judgment is disfavored where relevant evidence remains
19 to be discovered, particularly in cases involving confined pro se
20 plaintiffs. Jones v. Blanas, 393 F.3d 918, 930 (9th Cir. 2004);
21 Klinge v. Eikenberry, 849 F.2d 409, 412 (9th Cir. 1988). When a
22 party moves for summary judgment before the opposing party has had
23 a "realistic opportunity to pursue discovery relating to its theory
24 of the case, district courts should grant any [Rule 56(d)] motion
25 fairly freely." Burlington Northern Santa Fe R. Co. v. The
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28 ² "CDC-154" is a medical transport form.

1 Assiniboine, 323 F.3d 767, 774 (9th Cir. 2003). As such, summary
2 judgment in the face of requests for additional discovery in cases
3 involving pro se plaintiffs is appropriate only where such
4 discovery would be "fruitless" with respect to the proof of a
5 viable claim. Jones, 393 F.3d at 930; Klinge, 849 F.2d at 412.

6 Rule 56(d) requires an affidavit which sets forth the
7 information sought and how it would preclude summary judgment by
8 creating a genuine issue of material fact. See Hall v. Hawaii, 791
9 F.2d 759, 761 (9th Cir. 1986). The Ninth Circuit has held that a
10 court is free to construe a discovery motion as a request under and
11 in compliance with former Rule 56(f). Hancock v. Montgomery Ward
12 Long Term Disability Trust, 787 F.2d 1302, 1306 n.1 (9th Cir.
13 1986).

14 In making a Rule 56(d) motion, a party opposing summary
15 judgment must make clear "what information is sought and how it
16 would preclude summary judgment." Margolis, 140 F.3d at 853
17 (district court correctly denied motion for continuance to engage
18 in further discovery under former Rule 56(f) where plaintiff did
19 not provide any basis or factual support for his assertions that
20 further discovery would lead to the facts and testimony he
21 described, and his assertions appeared based on nothing more than
22 "wild speculation"). The Ninth Circuit has stated that, under
23 former Rule 56(f), "the party seeking a continuance bears the
24 burden to show what specific facts it hopes to discover that will
25 raise an issue of material fact." Continental Maritime v. Pacific
26 Coast Metal Trades, 817 F.2d 1391, 1395 (9th Cir. 1987).

27 Under Rule 56(d), the plaintiff must also demonstrate how
28

1 "additional discovery would have revealed specific facts precluding
2 summary judgment." See Tatum v. City and County of S.F., 441 F.3d
3 1090, 1101 (9th Cir. 2006).

4 Here, Plaintiff has not met his burden under Rule 56(d).
5 Plaintiff fails to show how the information sought will reveal
6 specific, material facts precluding summary judgment. Plaintiff
7 only states in conclusory fashion that the information sought will
8 support his claims in his complaint or, as explained below, will
9 allow him to raise new claims against additional Defendants. Such
10 conclusory allegations are not sufficient under Rule 56(d).

11 In addition, Plaintiff's individual requests do not show
12 adequate cause to grant the motion to stay. First, he seeks
13 additional time to review the transcript of his deposition.
14 Plaintiff concedes that he received a copy of the transcript on
15 December 31, 2010; therefore, he has had more than the thirty-day
16 time frame required under Rule 30(e) to review the transcript.

17 Plaintiff's motion to compel is not timely or properly made.
18 Discovery requests are to be made directly to Defendants through
19 their attorneys, in accordance with the Federal Rules of Civil
20 Procedure. Defendants are then required to respond timely by
21 fulfilling the requests and/or objecting. If Defendants do not
22 respond timely or sufficiently, Plaintiff may then file a motion to
23 compel with the Court and serve it on Defendants' counsel.
24 (Ordinarily parties are required to meet and confer before a motion
25 to compel may be filed, but the Court will excuse that requirement
26 because Plaintiff is incarcerated.)
27

28 Here, the record shows that Plaintiff attempted initially to

1 send his discovery requests to Defendants' attorney; however,
2 Attorney Grigg responded by asking Plaintiff to make his requests
3 more specific, pursuant to the Federal Rules of Civil Procedure
4 relating to discovery. Instead of responding to Attorney Grigg,
5 Plaintiff filed the present motion to compel. First, Plaintiff
6 added new items to his discovery requests -- including, the log
7 book from "X-Wing" and a form entitled "CDC-154" -- which were not
8 previously presented to Defendants.³ Therefore, Plaintiff's motion
9 to compel is DENIED as to the form entitled "CDC-154" because he
10 did not request that form directly from Defendants. In addition,
11 Plaintiff's remaining discovery requests are too broad. For
12 example, Plaintiff seeks his "medical records." (Mot. to Stay at
13 1, Mot. to Compel Disc. at 2.) He also seeks the names of various
14 CTF prison officials from the "C-Wing" and "D-Wing." (Mot. to
15 Compel. Disc at 2.) Because these discovery requests are overly
16 broad on their face and he did not re-submit them to Defendants
17 with more specificity as requested, Plaintiff's motion to compel
18 (docket no. 71) as to these discovery requests is DENIED.

19 Because Plaintiff has not shown that relevant facts remain to
20 be discovered in order to oppose summary judgment, the denial of a
21 continuance is appropriate under the standards contained in Rule
22 56(d) and is not a violation of Plaintiff's due process rights.
23 Therefore, the Court also DENIES his motion to stay (docket no.
24 70). However, the Court finds that a brief extension of time for
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27 ³ In his January 16, 2011 letter to Attorney Grigg containing
28 various discovery requests, Plaintiff indicated that he was seeking
the time he was "admitted [sic] to 'X-Wing;'" however, he did not
specify that this information was located in the log book.

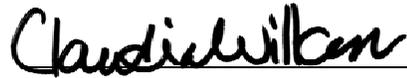
1 Plaintiff to file his opposition is appropriate. Plaintiff's
2 opposition to the motion for summary judgment shall be filed with
3 the Court and served on Defendants no later than March 7, 2011.
4 Defendants shall file their reply no later than fifteen (15) days
5 after the date Plaintiff's opposition is filed.

6 No further extensions of time will be granted in this case
7 absent exigent circumstances.

8 This Order terminates Docket nos. 70 and 71.

9 IT IS SO ORDERED.

10 Dated: 2/22/2011



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 ISIAH LUCAS JR.,
6

Case Number: CV07-01673 CW

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.
9

10 M. MIRANDA et al,
11

Defendant.
12 _____ /

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

15 That on February 22, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
17 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
18 located in the Clerk's office.

19
20 Isiah Lucas E-91878
21 R.J. Donovan Correctional Facility
22 P.O. Box 799001
23 1-2-104
24 480 Alta Road
25 San Diego, CA 92179-9001

Dated: February 22, 2011

Richard W. Wieking, Clerk

By: Nikki Riley, Deputy Clerk