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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISAAH N. WILLIAMS,

No. C 07-04464 CW (PR)

Plaintiff,

ORDER DENYING WITHOUT PREJUDICE
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND SUPPLEMENTAL MOTION;
AND SETTING NEW BRIEFING SCHEDULE

v.

D. WILLIAMS,

Defendant.

BACKGROUND

The following background has been taken from the Court's
December 9, 2010 Order:

Plaintiff Isaiah N. Williams, a state prisoner, has
filed a pro se civil rights action pursuant to 42 U.S.C.
§ 1983 alleging constitutional rights violations while
incarcerated at Pelican Bay State Prison (PBSP).

In a January 21, 2010 Order, the Court found that
Plaintiff's allegations stated cognizable Eighth
Amendment, retaliation and due process claims against
Defendant. The Court dismissed Plaintiff's equal
protection cause of action for failure to state a claim.
The Court characterized Plaintiff's Eighth Amendment
claim as one of deliberate indifference to safety. The
Court inadvertently failed to mention Plaintiff's
allegations of excessive force as part of his Eighth
Amendment claim.

On March 24, 2010, Defendant filed her answer to
the complaint, in which she denied, among other things,
that she used excessive force. (Answer at 3.)

On June 10, 2010, Plaintiff filed a "Motion for
Appointment of Counsel, Motion for Temporary Appointment
of Counsel, Motion for Postponement of Deposition"
(docket no. 39).

On June 30, 2010, Defendant filed a motion for
summary judgment as to the claims of deliberate
indifference to safety, retaliation and due process on
the grounds that: (1) she was not deliberately
indifferent to Plaintiff's safety; (2) she did not
retaliate against Plaintiff for exercising his rights;
(3) she did not prevent his presence at the disciplinary

1 hearing; and (4) she is entitled to qualified immunity.
2 (Mot. Summ. for J. at 3.)

3 Perhaps because the Court failed to mention
4 excessive force as part of Plaintiff's cognizable Eighth
5 Amendment claim, Defendant did not specifically move on
6 that theory. Therefore, Defendant may file a supplement
7 to the motion for summary judgment if she believes the
8 excessive force claim can be resolved by summary
9 judgment.

10 On September 23, 2010, Plaintiff filed a "Motion
11 for an Order Compelling Discovery" (docket no. 51).
12 Plaintiff also filed a "Motion for Stay Summary Judgment
13 and/or to Delay/Extend Deadline for Plaintiff's Response
14 to Defendant's Motion for Summary Judgment" (docket no.
15 50). On October 19, 2010, Defendant filed an opposition
16 to Plaintiff's motions.

17 (Dec. 9, 2010 Order at 1-2.)

18 In its December 9, 2010 Order, the Court denied in part and
19 granted in part Plaintiff's discovery motion. The discovery matter
20 was referred to Magistrate Judge Laurel Beeler of the Oakland
21 Division of this Court. The Court also granted Plaintiff's stay
22 motion, denied Plaintiff's motion for appointment of counsel, and
23 set a new briefing schedule.

24 On January 6, 2011, Defendant filed her supplement to her
25 motion for summary judgment, relating to the excessive force claim.
26 Plaintiff's opposition to the supplemental motion as well as the
27 original motion for summary judgment was due on February 3, 2011.
28 To date, it has not been filed.

On January 7, 2011, Magistrate Judge Beeler issued an "Order
Re Discovery Submitted for In Camera Review," directing Defendant
to "submit a letter brief identifying the privileges and/or
objections she is asserting in conjunction with the amended
responses and answers she has submitted to this Court for in camera
review." (Jan. 7, 2011 Order at 2.) The letter brief was due on

1 January 27, 2011.

2 On January 18, 2011, Magistrate Judge Beeler granted Defendant
3 an extension of time to file her letter brief.

4 On January 25, 2011, Defendant filed her letter brief.

5 On February 23, 2011, Magistrate Judge Beeler issued a
6 "Amended Second Order Re Discovery Submitted for In Camera Review,"
7 stating that Defendant "may file another letter brief with specific
8 objections and legal argument no later than March 4, 2011." (Feb.
9 23, 2011 Order at 8.)

10 On March 4, 2011, Defendant filed her second letter brief and
11 a proposed "Stipulated Protective Order."

12 To date, the discovery matter is still pending before
13 Magistrate Judge Beeler. As mentioned above, Plaintiff has not
14 filed an opposition to Defendant's motion for summary judgment
15 because he allegedly has been hampered in the preparation of the
16 opposition as Defendant never responded to his discovery requests,
17 which is the subject of the present discovery matter before
18 Magistrate Judge Beeler. Nor has Plaintiff filed a response to
19 Defendant's supplement to her motion for summary judgment, which
20 the Court assumes is due to the same reason.

21 DISCUSSION

22 Rule 56(d) of the Federal Rules of Civil Procedure provides a
23 procedure by which a party may avoid summary judgment when such
24 party has not had sufficient opportunity to discover affirmative
25 evidence necessary to oppose the motion. See Garrett v. San
26 Francisco, 818 F. 2d 1515, 1518 (9th Cir. 1987).¹ In particular,

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28 ¹ Garrett cites Rule 56(f), the subsection in which the provisions pertaining to a party's inability to present facts essential to justify its opposition formerly were set forth; as of

1 Rule 56(d) provides that a court may deny a summary judgment motion
2 and permit the opposing party to conduct discovery where it appears
3 that the opposing party, in the absence of such discovery, is
4 unable to present facts essential to opposing the motion. Fed. R.
5 Civ. P. 56(d). A pending discovery motion is sufficient to raise a
6 question as to whether the party opposing summary judgment should
7 be permitted additional discovery, even if no request under Rule
8 56(d) has been made. See Garrett, 818 F.2d at 1518.

9 The Ninth Circuit has made clear that in cases involving pro
10 se prisoners, summary judgment is not favored when discovery
11 requests for relevant evidence are pending. In particular, the
12 Ninth Circuit has noted:

13 Under Rule 56(f), the court may postpone ruling on a
14 summary judgment motion where the nonmoving party needs
15 "additional discovery to explore 'facts essential to
16 justify the party's opposition.'" Crawford-El v.
17 Britton, 523 U.S. 574, 599, n. 20, 118 S.Ct. 1584, 140
18 L.Ed.2d 759 (1998) (quoting Fed. R. Civ. Pro. 56(f)).
19 Though the conduct of discovery is generally left to a
20 district court's discretion, summary judgment is
21 disfavored where relevant evidence remains to be
22 discovered, particularly in cases involving confined pro
23 se plaintiffs. Klinge v. Eikenberry, 849 F.2d 409, 412
(9th Cir. 1988); Harris v. Pate, 440 F.2d 315, 318 (7th
24 Cir. 1971) (Stevens, J.) (observing that the combined
25 disabilities of self-representation and confinement
26 hinder a plaintiff's ability to gather evidence). Thus
27 summary judgment in the face of requests for additional
28 discovery is appropriate only where such discovery would
be "fruitless" with respect to the proof of a viable
claim. Klinge, 849 F.2d at 412.

23 Jones v. Blanas, 393 F.3d 918, 930 (9th Cir. 2004).

24 The Court has previously found that the information sought by
25 Plaintiff's outstanding discovery requests is relevant to the
26 matters at issue herein, and at least some of Plaintiff's requests

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28 December 1, 2010, the applicable provision is Rule 56(d). See Fed.
R. Civ. P. 56.

1 appear likely to lead to discovery that would not be fruitless with
2 respect to proof of his Eighth Amendment, retaliation and due
3 process claims.

4 As noted above, the discovery matter is still pending before
5 Judge Beeler. Consequently, the Court will deny Defendant's motion
6 for summary judgment and supplemental motion (docket nos. 43, 55)
7 without prejudice to Defendant filing a renewed motion for summary
8 judgment once the pending discovery matters have been resolved.
9 See Fed. R. Civ. P. 56(d)(1).

10 CONCLUSION

11 For the reasons stated above, the Court orders as follows:

12 1. Defendant's motion for summary judgment and supplemental
13 motion (docket nos. 43, 55) are DENIED without prejudice.

14 2. The parties shall abide by the following briefing
15 schedule:

16 a. No later than seven days after the discovery matter
17 is resolved by Magistrate Judge Beeler, Defendant shall file a
18 notice of renewal of her motion for summary judgment.

19 b. Plaintiff's opposition to the renewed motion for
20 summary judgment shall be filed with the Court and served on
21 Defendant no later than thirty days after the date on which
22 Defendant files notice of her renewed motion.

23 c. Defendant shall file a reply brief no later than
24 fifteen days after the date Plaintiff's opposition is filed.

25 d. The renewed motion for summary judgment shall be
26 deemed submitted as of the date the reply brief is due.

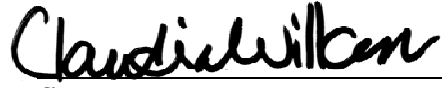
27 3. The Clerk of the Court shall provide a copy of this Order
28 to Magistrate Judge Beeler.

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4. This Order terminates Docket nos. 43 and 55.

IT IS SO ORDERED.

Dated: 3/7/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 ISAIAH N WILLIAMS,

5 Plaintiff,

6 v.

7 D WILLIAMS et al,

8 Defendant.

Case Number: CV07-04464 CW

CERTIFICATE OF SERVICE

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

11 That on March 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
13 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15 Isaiah Noel Williams K-33769
16 Pelican Bay State Prison
17 P.O. Box 7000
18 5905 Lake Earl Drive
19 Crescent City, CA 95531

20 Dated: March 7, 2011

21 Richard W. Wieking, Clerk
22 By: Nikki Riley, Deputy Clerk
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United States District Court
For the Northern District of California