

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TERRY DON EVANS,	)	Civil No. 06cv877 JM(RBB)
)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION FOR DISCOVERY [DOC. NO.
v.	)	111], APPLICATION FOR SERVICE
	)	OF PROCESS [DOC. NO. 115], EX
COUNTY OF SAN DIEGO; WILLIAM B.	)	PARTE APPLICATION TO VACATE
KOLENDER, Sheriff; DR. EARL	)	THE MOTION FILING DATE [DOC.
GOLDSTEIN, County Sheriff's	)	NO. 117], AND GRANTING IN PART
Medical Director; BRUCE LEICHT,	)	PLAINTIFF'S APPLICATION FOR
Medical Administrator,	)	ENLARGEMENT OF TIME TO FILE
	)	OPPOSITION TO DEFENDANTS'
Defendants.	)	MOTION FOR SUMMARY JUDGMENT
	)	[DOC. NO. 119]

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 on April 13, 2006 [doc. no. 1]. On September 1, 2006, Evans filed an Amended Complaint [doc. no. 11] naming John/Jane Doe #6, Chief Medical Executive as a defendant, and on January 8, 2007, he filed a Second Amended Complaint [doc. no. 18] naming John/Jane Doe #1, Chief Medical Officer as a defendant. On September 11, 2008, Evans filed a Declaration for Entry of Default against Defendant John/Jane Doe #1, Chief Medical Officer [doc. no. 70], and on September 15, 2008, Dr. Earl Goldstein filed an Answer to

1 Plaintiff's Second Amended Complaint [doc. no. 69]. Evans also
2 submitted a Declaration for Entry of Default against Bruce Leicht,
3 Medical Administrator [doc. no. 74], which was filed nunc pro tunc
4 to September 23, 2008. Bruce Leicht filed an Answer to Plaintiff's
5 Second Amended Complaint on October 2, 2008 [doc. no. 75]. On
6 January 8, 2009, the Court denied Plaintiff's requests for default
7 against Defendants Leicht and Goldstein and granted Evans leave to
8 file a third amended complaint [doc. no. 103]. His Third Amended
9 Complaint naming Defendants Leicht and Goldstein was filed nunc pro
10 tunc to January 27, 2009, [doc. no. 108].

11 On February 19, 2009, Plaintiff's Motion for Discovery was
12 filed; Evans requests that the Court reopen or enlarge the time for
13 discovery in light of his Third Amended Complaint [doc. no. 111].
14 Defendants filed an Opposition to Plaintiff's Motion for Extension
15 of Discovery Cutoffs [doc. no. 118].

16 Evans's Application for Service of Process - Summons and Third
17 Amended Complaint was filed nunc pro tunc to February 19, 2009, it
18 requests that the Court direct the U.S. Marshals Service to
19 complete serve of process on Bruce Leicht and Dr. Earl Goldstein
20 [doc. no. 115]. Plaintiff also filed an Ex Parte Application to
21 Vacate the Motion Filing Date, requesting a sixty-day extension of
22 the March 2, 2009, deadline to file pretrial motions [doc. no.
23 117]. On March 11, 2009, Plaintiff filed an Application for
24 Enlargement of Time to File [an] Opposition to Defendants['] Motion
25 for Summary Judgment [doc. no. 119].

26
27
28

1 **I. Plaintiff's Requests to Reopen and Enlarge Time For**
2 **Discovery and to Enlarge Time to File Pretrial Motions**

3 Evans requests that the Court alter the Case Management
4 Conference Order's discovery deadlines in light of his Third
5 Amended Complaint naming Leicht and Goldstein as defendants. (Mot.
6 Discovery Attach. #2 Mem. P. & A. 3-4.) He also asks the Court to
7 vacate or extend the pretrial motion filing deadline and refers to
8 the Court's prior Order which extended the filing deadline to March
9 2, 2009. (Ex Parte Application Vacate Mot. Filing Deadline 2;
10 Order Granting Ex Parte Application Vacate Mot. Filing Deadline 1.)
11 The Order stated, "The Court will reset the deadline once the Court
12 rules on Plaintiff's motions for default and for leave to file a
13 third amended complaint." (Order Granting Ex Parte Application
14 Vacate Mot. Filing Deadline 1.)

15 Defendants oppose extension of discovery cutoffs because
16 although Evans "recently added Bruce Leicht and Dr. Earl Goldstein
17 as defendants, . . . Plaintiff had been discussing adding them for
18 months, and Plaintiff knew their identities and positions several
19 months ago." (Opp'n Pl.'s Mot. Extension Discovery Cutoffs 1.)
20 Defendants claim that Evans could have propounded discovery
21 regarding Leicht and Goldstein before they were named as
22 defendants, and "even though Plaintiff was granted leave to file a
23 third amended complaint until January 30, 2009, over 30 (thirty)
24 days have already passed since that date, and Plaintiff has still
25 not propounded any discovery." (Id. at 1-2.)

26 The Court has already found that Evans knew the identities of
27 these individuals for a significant amount of time.

28

1 As early as May 29, 2007, Evans was aware of
2 Leicht's identity and position as Medical Services
3 Administrator for the San Diego County Sheriff's
4 Department as evidenced by a letter from County Counsel
5 to Plaintiff asking him to cease contact with Leicht and
6 instead direct all communications to Defendants'
7 attorney.

8 (Order Den. Pl.'s Decls. Entry Default 9.) With regard to
9 Goldstein, the Court explained, "Even if Evans was not aware of
10 Goldstein's identity by the beginning of September, he was formally
11 provided Goldstein's and Leicht's names and titles on September 15,
12 2008." (Id. at 10.) Additionally, Leicht and Goldstein both
13 voluntarily appeared in this case by filing answers without being
14 named as defendants first. Leicht filed an Answer on September 25,
15 2008 [doc. no. 69], and Goldstein filed an Answer on October 2,
16 2008 [doc. no. 75].

17 The deadline for all discovery was December 1, 2008, which was
18 about two months after both Leicht and Goldstein answered. (Case
19 Management Conference Order 1). The deadline for written discovery
20 was October 6, 2008. (Id. at 2.) The deadline to file pretrial
21 motions was March 2, 2009, close to five months after Leicht and
22 Goldstein answered. (Order Granting Ex Parte Application Vacate
23 Mot. Filing Deadline 1.) Plaintiff had ample time after learning
24 the identities of Leicht and Goldstein to complete discovery and
25 file any pretrial motions. Furthermore, Evans has not explained
26 why he has not taken any discovery from Goldstein or Leicht, either
27 as defendants or third parties. Plaintiff has not submitted nor
28 described the discovery he proposes to take or the motions he
29 proposes to file. In short, he has not shown good cause to alter
30 the discovery cutoffs or the pretrial motion filing deadline.
31 Thus, Plaintiff's Motion for Discovery [doc. no. 111] and

1 Plaintiff's Ex Parte Application to Vacate the Motion Filing Date
2 [doc. no. 117] are **DENIED**.

3 **II. Application for Service of Process**

4 Plaintiff also requests that the Court issue an order
5 directing the U.S. Marshals Service to complete service of process
6 of his Third Amended Complaint on Defendants Leicht and Goldstein.
7 (Mot. Application Service Process - Summons & Third Am. Compl. 2.)
8 Leicht's and Goldstein's voluntarily appearances in this case make
9 service of the Third Amended Complaint on them by the U.S. Marshals
10 unnecessary. Beecher v. Wallace, 381 F.2d 372, 373 (9th Cir. 1967)
11 (explaining that "service of process (in the absence of a voluntary
12 appearance or a conscious waiver) is an indispensable prerequisite
13 to the court's jurisdiction to proceed[.]"); see also Liao v.
14 Ashcroft, No. C 08-2776 PJH, 2009 WL 636191, at *3 (N.D. Cal. Mar.
15 11, 2009). Thus, the Court **DENIES** Plaintiff's Motion as moot [doc.
16 no. 115].

17 **III. Application for Enlargement of Time to File Opposition**
18 **to Defendants' Motion for Summary Judgment**

19 The initial Complaint was filed on April 13, 2006 [doc. no.
20 1], making this case nearly three years old. The Court has granted
21 multiple requests for extensions and enlargements of time, as well
22 as permitted Plaintiff to file multiple amended complaints.
23 Defendants have filed a Motion for Summary Judgment which was set
24 for hearing on April 6, 2009. (Mot. Summ. J. 1.) Evans now
25 requests an extension of time to file his opposition to Defendants'
26 Motion for Summary Judgment to June 5, 2009, citing his outstanding
27 motions and explaining that he "is in the process of obtaining
28 needed affidavits, authenticated and relevant material documents

1 and/or declarations from medical and other professionals”
2 (Pl.’s Application Enlargement Time Opp’n Defs. Mot. Summ. J. 2.)
3 The final pretrial conference in this case is currently set before
4 United States District Judge Jeffrey T. Miller on May 1, 2009, with
5 a trial to begin June 1, 2009. (Case Management Conference Order
6 6).

7 Plaintiff’s Application for Enlargement of Time to File [an]
8 Opposition to Defendants[’] Motion for Summary Judgment [doc. no.
9 119] is **GRANTED** in part. Evans may file any opposition to the
10 Motion for Summary Judgment no later than May 5, 2009. Defendants
11 may file a reply no later than May 22, 2009. The parties are
12 warned to proceed with this case with the expectation that no other
13 requests for extensions or enlargements of time will be granted.

14 **CONCLUSION**

15 Plaintiff’s Motion for Discovery [doc. no. 111], Ex Parte
16 Application to Vacate the Motion Filing Date [doc. no. 117], and
17 Application for Service of Process [doc. no. 115] are **DENIED**. The
18 Court **GRANTS** in part Plaintiff’s Application for Enlargement of
19 Time to File [an] Opposition to Defendants[’] Motion for Summary
20 Judgment [doc. no. 119]; Evans may file any opposition no later
21 than May 5, 2009. Defendants may file a reply no later May 22,
22 2009. The hearing on Defendants’ Motion for Summary Judgment
23 currently set for April 6, 2009, at 10:00 a.m. is vacated and reset
24 for June 1, 2009, at 10:00 a.m.

25 The pretrial conference date of May 1, 2009, and trial date of
26 June 1, 2009, currently set on Judge Miller’s calendar are vacated.

27

28

1 The mandatory settlement conference set for April 3, 2009, at 10:00
2 a.m. is vacated and reset for September 2, 2009, at 8:30 a.m.

3 **IT IS SO ORDERED.**

4

5 DATE: April 2, 2009


RUBEN B. BROOKS
United States Magistrate Judge

6

7 cc: Judge Miller
8 All Parties of Record

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28