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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN B. KENNEY,

Plaintiff,

vs.

THE CITY OF SAN DIEGO &
FEDERAL & PRIVATE
CONTRACTOR INTELLIGENCE
COMMUNITY AND SECURITY
POLICE - STATE INDUSTRIAL
COMPLEX CONSPIRATORS, SAN
DIEGO POLICE DEP'T, (SDPD)...., et
al.,

Defendants.

CASE NO. 13cv248 WQH (JLB)

ORDER

HAYES, Judge:

The matters before the Court are: (1) Plaintiff's "Ex Parte Motion For Leave Of Court To Allow Plaintiff to File Exhibits That Are Not Able To Be E-Filed" (ECF No. 340); (2) Plaintiff's "Ex Parte Motion For Continuance Until Motion To Amend Is Ruled Upon &/or If Unfavorable To Plaintiff, To File His Opposition Of Disputed Facts To Defendants' Motion For Summary Or Partial Summary Judgment Fourteen (14) Days After That Decision" (ECF No. 341); (3) Plaintiff's "Ex Parte Motion For Continuance Of Motion For Summary Or Partial Summary Judgment For Discovery Of 'Facts Unavailable' Pursuant To Federal Rules of Civil Procedure 56; Especially FRCP 56(d); Or Alternatively Additional 14 Days From Ruling Thereof To 'Dispute' With So Many 'Facts Unavailable' Thus Each Due An Explanation Of Perfidy & Obstruction"

1 (ECF No. 343);(4) Plaintiff’s “Ex Parte Motion For Clarification On Two Pending And
2 One Denied Motions of 8/25/2015 and Extension Of Time–3 Days From Ruling On
3 This Motion If Unfavorable To Submit Responses to Defendants’ MSJ” (ECF No. 347);
4 and (5) Plaintiff’s “Ex Parte Motion For Clarification On Two Pending And One
5 Denied Motions of 8/25/2015 and Extension Of Time Time–3 Days From Ruling On
6 This Motion If Unfavorable To Submit Responses to Defendants’ MSJ” (ECF No. 349).

7 **Background**

8 On January 30, 2013, Plaintiff John B. Kenney, proceeding *pro se*, filed a
9 Complaint in this Court. (ECF No. 1). On September 20, 2013, the Court granted in
10 part and denied in part the motion to dismiss the Complaint filed by Defendants City
11 of San Diego (“City”), San Diego Police Department (“SDPD”), William Lansdowne,
12 Jerry Sanders, Scott Thompson, Kaseyelee Lawrence, David Stum, and Jan Goldsmith
13 (collectively, “City Defendants”). (ECF No. 20). In the same Order, the Court granted
14 the motion to dismiss filed by the San Diego Sheriff’s Department (“Sheriff’s
15 Department”). *Id.*

16 On October 21, 2013, Plaintiff filed a First Amended Complaint. (ECF No. 21).
17 On January 28, 2014, the Court granted the motions to dismiss portions of the First
18 Amended Complaint filed by the City Defendants and the Sheriff’s Department. (ECF
19 No. 33). In the January 28, 2014 Order, the Court listed nine causes of action against
20 certain City Defendants which were not dismissed. *See id.* at 22-23.

21 On June 30, 2014, the Court issued an Order which dismissed claims against
22 certain Defendants without prejudice and stated, “[a]ny further amendment or
23 supplement to the operative pleading must be done by filing a motion for leave to
24 amend the First Amended Complaint, accompanied by a copy of the proposed amended
25 pleading, which shall be entitled ‘Second Amended Complaint.’” (ECF No. 228 at 11).

26 On October 27, 2014, Plaintiff filed an Ex Parte Motion for Leave to Amend the
27 First Amended Complaint. (ECF No. 287). On January 15, 2015, the Court issued an
28 Order denying Plaintiff’s Ex Parte Motion for Leave to Amend (ECF No. 287), because

1 “[t]his Court has previously ruled on the matters presented in the FAC” and “Plaintiff
2 has not shown good cause to support the filing of the proposed SAC in this case.” (ECF
3 No. 294).

4 On July 17, 2015, Plaintiff filed the Motion for Leave to Amend (ECF No. 20)
5 and the “Ex Parte Motion to Substitute ‘Doe’ Defendants & Motion for Clarification
6 on Whether These Substitutions May Supersede & Replace His Motion To Amend The
7 First Amended Complaint” (ECF No. 321).

8 On August 13, 2015, Defendants Kaseylee Lawrence, Scott Thompson, David
9 Stum, City of San Diego, and San Diego Police Department each filed separate Motions
10 for full or partial summary judgment. (ECF Nos. 330-33).

11 On August 25, 2015, the Court issued an Order denying Plaintiff’s Motion for
12 Leave to Amend (ECF No. 20) and “Ex Parte Motion to Substitute ‘Doe’ Defendants
13 & Motion for Clarification on Whether These Substitutions May Supersede & Replace
14 His Motion To Amend The First Amended Complaint” (ECF No. 321). (ECF No. 344).

15
16 On August 25, 2015, Plaintiff filed the “Ex Parte Motion For Leave Of Court To
17 Allow Plaintiff to File Exhibits That Are Not Able To Be E-Filed” (ECF No. 340),
18 Plaintiff’s “Ex Parte Motion For Continuance Until Motion To Amend Is Ruled Upon
19 &/or If Unfavorable To Plaintiff, To File His Opposition Of Disputed Facts To
20 Defendants’ Motion For Summary Or Partial Summary Judgment Fourteen (14) Days
21 After That Decision” (ECF No. 341), and Plaintiff’s “Ex Parte Motion For Continuance
22 Of Motion For Summary or Partial Summary Judgment For Discovery Of ‘Facts
23 Unavailable’ Pursuant To Federal Rules of Civil Procedure 56; Especially FRCP 56(d);
24 Or Alternatively Additional 14 Days From Ruling Thereof To ‘Dispute’ With So Many
25 ‘Facts Unavailable’ Thus Each Due An Explanation Of Perfidy & Obstruction” (ECF
26 No. 343). Defendants filed responses. (ECF Nos. 345, 346).

27 On August 31, 2015 and September 1, 2015, Plaintiff filed two motions entitled
28 “Ex Parte Motion For Clarification On Two Pending And One Denied Motions of

1 8/25/2015 and Extension Of Time Time–3 Days From Ruling On This Motion If
2 Unfavorable To Submit Responses to Defendants’ MSJ.” (ECF Nos. 347, 349).
3 Defendants filed responses. (ECF Nos. 348, 350).

4 **I. Plaintiff’s Motions**

5 **A. “Ex Parte Motion For Leave Of Court To Allow Plaintiff to File**
6 **Exhibits That Are Not Able To Be E-Filed” (ECF No. 340)**

7 Plaintiff requests leave to allow for the nonelectronic filing of electronic memory
8 containing video & other electronic files in support of his motion because the files are
9 unable to be uploaded to the Court’s electronic filing system. Defendants’ do not
10 oppose Plaintiff’s motion. Plaintiff’s motion is granted.

11 **B. Plaintiff’s “Ex Parte Motion For Continuance Until Motion To**
12 **Amend Is Ruled Upon &/or If Unfavorable To Plaintiff, To File His**
13 **Opposition Of Disputed Facts To Defendants’ Motion For Summary**
14 **Or Partial Summary Judgment Fourteen (14) Days After That**
15 **Decision” (ECF No. 341) and Plaintiff’s “Ex Parte Motion For**
16 **Continuance Of Motion For Summary or Partial Summary Judgment**
17 **For Discovery Of ‘Facts Unavailable’ Pursuant To Federal Rules of**
18 **Civil Procedure 56; Especially FRCP 56(d); Or Alternatively**
19 **Additional 14 Days From Ruling Thereof To ‘Dispute’ With So Many**
20 **‘Facts Unavailable’ Thus Each Due An Explanation Of Perfidy &**
21 **Obstruction” (ECF No. 343)**

22 Plaintiff requests a continuance until Plaintiff’s motion to amend has been
23 granted and sanctions, or “should that ruling be adverse to Plaintiff, that the time to
24 oppose ... be continued until fourteen (14) days after such ruling.” (ECF Nos. 341 at
25 2, 343 at 2).

26 Federal Rule of Civil Procedure 56(d) authorizes the court to defer consideration
27 of a motion for summary judgment and allow a party “time to obtain affidavits or
28 declarations or to take discovery” where “a nonmovant shows by affidavits or

1 declaration that, for specified reasons, it cannot present facts essential to justify its
2 opposition.” Fed. R. Civ. P. 56(d). “The burden is on the party seeking additional
3 discovery to proffer sufficient facts to show that the evidence sought exists, ..., and that
4 it would prevent summary judgment.” *Nidds v. Schindler Elevator Corp.*, 113 F.3d
5 912, 921 (9th Cir.1996) (citing *Conkle v. Jeong*, 73 F.3d 909, 914 (9th Cir.1995)). “The
6 district court does not abuse its discretion by denying further discovery if the movant
7 has failed diligently to pursue discovery in the past.” *Conkle*, at 914 (quoting
8 *California Union Ins. Co. v. American Diversified Sav. Bank*, 914 F.2d 1271, 1278 (9th
9 Cir.1990).

10 Plaintiff’s affidavit states in part that:

11 I, John B. Kenney, Plaintiff, do declare that Defendants’ “Facts” are
12 “Unavailable” pursuant to Rule 56(c) & (d), because Defendants
13 improperly hid them until 6/2/2015, thus Plaintiff has been barred from
14 making true discovery requests: (1) I, John B. Kenney, Plaintiff, hereby
15 declare, “I hope for & need “Further Discovery” of these “Doe”
16 Defendants; (2) They do exist, and moreover, (3) The further “Facts” they
17 will reveal are “Essential” to, my, John B. Kenney’s, the Plaintiff’s,
18 Case”....

19 (ECF Nos. 341-2 at 6, 343-2 at 3). Plaintiff’s affidavit further states that:

20 Plaintiff has extraordinary good cause as he served Defendants with
21 multiple Discovery Requests on or about January 20, 2015, & has
22 diligently pursued the task of completing discovery on all Defendants.
23 Defendants improperly held “Responses” postmarked “03/25/2015” &
24 illegally failed to make many responses until 6/2/2015, a mere 11 days
25 prior to effective Discovery cut-off.

26 (ECF Nos. 341-2 at 2, 343-2 at 2)

27 Plaintiff’s request for continuance based on the need to conduct more discovery
28 as to the newly added Doe Defendants is denied on grounds that Plaintiff’s motion to
substitute Doe Defendants has been denied. Plaintiff’s request for a continuance based
on the need to conduct further discovery as to the current Defendants is denied on
grounds that Plaintiff has failed to proffer sufficient facts to show that the evidence
sought exists, and that it would prevent summary judgment. Plaintiff’s request for an
additional fourteen days to file an opposition to Defendants’ motions for summary
judgment is granted.

1 **C. Plaintiff’s “Ex Parte Motion For Clarification On Two Pending And**
2 **One Denied Motions of 8/25/2015 and Extension Of Time Time–3**
3 **Days From Ruling On This Motion If Unfavorable To Submit**
4 **Responses to Defendants’ MSJ” (ECF Nos. 347, 349)**

5 Plaintiff’s Ex Parte motions seek clarification of Plaintiff’s three motions ruled
6 on in this order (ECF Nos. 340, 341, 343). Plaintiff’s motions for clarification and
7 extension of time (ECF Nos. 347, 349) are denied as moot.

8 **Conclusion**

9 IT IS HEREBY ORDERED that Plaintiff’s “Ex Parte Motion For Leave Of Court
10 To Allow Plaintiff to File Exhibits That Are Not Able To Be E-Filed” (ECF No. 340)
11 is GRANTED.


12 IT IS FURTHER ORDERED that Plaintiff’s “Ex Parte Motion For Continuance
13 Until Motion To Amend Is Ruled Upon &/or If Unfavorable To Plaintiff, To File His
14 Opposition Of Disputed Facts To Defendants’ Motion For Summary Or Partial
15 Summary Judgment Fourteen (14) Days After That Decision” (ECF No. 341) and
16 Plaintiff’s “Ex Parte Motion For Continuance Of Motion For Summary or Partial
17 Summary Judgment For Discovery Of ‘Facts Unavailable’ Pursuant To Federal Rules
18 of Civil Procedure 56; Especially FRCP 56(d); Or Alternatively Additional 14 Days
19 From Ruling Thereof To ‘Dispute’ With So Many ‘Facts Unavailable’ Thus Each Due
20 An Explanation Of Perfidy & Obstruction” (ECF No. 343) are DENIED in part and
21 GRANTED in part. Plaintiff’s response to Defendants’ motions for summary judgment
22 must be filed by September 18, 2015. Any reply must be filed by October 9, 2015.

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IT IS FURTHER ORDERED that Plaintiff’s “Ex Parte Motion For Clarification On Two Pending And One Denied Motions of 8/25/2015 and Extension Of Time Time–3 Days From Ruling On This Motion If Unfavorable To Submit Responses to Defendants’ MSJ” (ECF Nos. 347, 349) are DENIED AS MOOT.

DATED: September 3, 2015


WILLIAM Q. HAYES
United States District Judge