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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GERALD WILSON,
CDCR #B-93800,

Plaintiff,

vs.

A. CUEVAS; M. MOYA; J. OLIVO;
M.A. MENDOZA,

Defendants.

Case No.: 3:16-cv-2100-BTM-DHB

**ORDER DENYING MOTION FOR
STAY AND GRANTING
EXTENSION OF TIME TO FILE
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Gerald Wilson (“Plaintiff”) is currently incarcerated at Kern Valley State Prison and is proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Currently pending before this Court is Defendants’ Motion for Summary Judgment. (ECF No. 62.)

On January 16, 2019, the Court issued a notice pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc) and *Klinge v. Eikenberry*, 849 F.2d 409 (9th Cir.

1 1988). (ECF No. 64.) In this notice, the Court informed Plaintiff that he must file an
2 opposition, or a notice of non-opposition, to Defendants’ Motion by March 1, 2019. (*Id.*
3 at 2.)

4 However, on February 20, 2019, Plaintiff filed a “Motion to Stay” the filing of an
5 opposition on the ground that there was outstanding discovery due by Defendants. (ECF
6 No. 69.) Following a hearing before all parties, Magistrate Judge Michael Berg found
7 that Plaintiff was entitled to additional discovery by Defendants. (ECF No. 74).
8 Defendants were ordered to “supplement their responses” to the discovery propounded by
9 Plaintiff by May 9, 2019. (*Id.* at 3.)

10 Federal Rule of Civil Procedure 56(d) provides that:

11 If a nonmovant shows by affidavit or declaration that,
12 for specified reasons, it cannot present facts essential
13 to justify its opposition, the court may:

- 14 (1) defer considering the motion or deny it;
- 15 (2) allow time to obtain affidavits or declarations or to take discovery; or
- 16 (3) issue any other appropriate order.

17 FED.R.CIV.P. 56(d).

18 A court may postpone ruling on a summary judgment motion where the non-
19 moving party needs “additional discovery to explore ‘facts essential to justify the party’s
20 opposition.’” *Jones v. Blanas*, 393 F.3d 918, 930 (9th Cir. 2004) (quoting *Crawford-El v.*
21 *Britton*, 523 U.S. 574, 599 n. 20 (1998) (setting forth standard of review under former
22 FED.R.CIV.P. 56(f)).

23 Here, while the Court denies Plaintiff’s request for a “stay,” the Court will grant
24 Plaintiff additional time to file an opposition to Defendants’ Motion for Summary
25 Judgment.

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1 **Conclusion and Order**

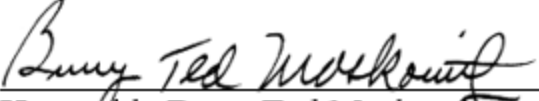
2 Accordingly, the Court **DENIES** Plaintiff's Motion to Stay (ECF No. 69) but
3 **GRANTS** an extension of time pursuant to FED.R.CIV.P. 56(d) to file an opposition to
4 Defendants' Summary Judgment.

5 As a result, the Court hereby re-sets Defendants' Motion for Summary Judgment
6 (ECF No. 62) for hearing on **Friday, June 21, 2019**. Plaintiff's Opposition (including
7 any supporting documents) must be filed with the Court and served on all parties by
8 **Friday, June 7, 2019**. If Plaintiff does file and serve an Opposition, Defendants must
9 file and serve their Reply to that Opposition by **Friday, June 14, 2019**.

10 At the time appointed for hearing, the Court will, in its discretion, consider
11 Defendants Motion for Summary Judgment pursuant to FED.R.CIV.P. 56 as submitted on
12 the papers, and will issue its written opinion soon thereafter. *See* S. D. CAL. CIVLR
13 7.1(d)(1). Thus, unless otherwise ordered, no appearances are required and no oral
14 argument will be heard.

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16 **IT IS SO ORDERED.**

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18 Dated: April 25, 2019

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20 Honorable Barry Ted Moskowitz
21 United States District Judge
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