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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RICKY LEWIS,

Plaintiff,

v.

HOWARD SKOLNIK, *et al.*,

Defendants.

Case No. 2:09-CV-02393-KJD-GWF

ORDER

Before the Court is Plaintiff’s Motion for Summary Judgment (#29). Defendants Cheryl Burson, Greg Cox, Clarence King, Howard Skolnik, Lavert Taylor, Brian Williams (collectively “Defendants”) filed an opposition (#33).

Also before the Court is Defendants’ Motion to Extend the Deadline for Filing Motions for Summary Judgment (#40).

I. Background

Plaintiff is a *pro se* prisoner pursuing a § 1983 claim against prison officials based on an alleged failure to provide kosher meals. This Complaint in this case was filed in July 2010. Defendants filed a Motion to Dismiss (#8), but soon filed a Motion to Withdraw arguments they presented in the Motion to Dismiss (#15). On January 26, 2011, the Court issued an Order (#21) granting the Motion to Withdraw and denying the Motion to Dismiss as moot.

1 Defendants filed a Second Motion to Dismiss (#22) which was granted in part and denied in
2 part in the Court's August 10, 2011 Order (#30). However, on August 9, 2011, the day before the
3 Court issued its order on the Second Motion to Dismiss, Plaintiff filed the instant Motion for
4 Summary Judgment. On August 10, 2011, Defendants filed their Answer (#31) and on August 25,
5 2011 the Court issued a Scheduling Order (#32) setting November 23, 2011 as the discovery cut-off,
6 and December 23, 2011 as the deadline for motions for summary judgment.

7 Defendants were delayed in their efforts to depose Plaintiff, who is incarcerated, and the
8 Court issued an order (#39) extending the discovery deadline in the Scheduling Order to December
9 23, 2011. Defendants' counsel, Ms. Krause, took Plaintiff's deposition on December 19, 2011.
10 Through no fault of her own, Ms. Krause was unable to obtain a copy of the transcript before the
11 deadline to file dispositive motions. Based on this delay, Defendants request that the deadline for
12 filing motions for summary judgment be moved to March 9, 2012.

13 II. Discussion

14 Fed. R. of Civ. P 56(d) permits a nonmovant to show by affidavit or declaration that it cannot
15 present facts essential to justify its opposition. When this occurs, the Court may, *inter alia*, deny the
16 motion for summary judgment or issue any other appropriate order. When a Motion for Summary
17 Judgment is filed "before a party has had any realistic opportunity to pursue discovery relating to its
18 theory of the case, district courts should grant any [Rule 56(d)] motion fairly freely." Burlington
19 Northern Santa Fe R. Co. v. Assiniboine and Sioux Tribes of Fort Peck Reservation, 323 F.3d 767,
20 774 (9th Cir. 2003)

21 Defendants argue that Plaintiff's motion was premature since it was filed prior to a decision
22 on the Motion to Dismiss, prior to answering the complaint, and prior to any discovery in this case.
23 Defendants' attorney has provided an affidavit stating that Defendants were unable to effectively
24 respond to Plaintiff's motion without the benefit of further discovery, including Plaintiff's
25 deposition. Additionally, Defendants argue that Plaintiff's motion failed to comply with Local Rule
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1 56-1 which requires a concise statement setting forth each fact that the movant claims is not at issue
2 and the evidence supporting that contention.

3 Based on the procedural history of this case and an examination of Plaintiff's Motion, the
4 Court finds that good cause exists to deny Plaintiff's Motion for Summary Judgment pursuant to
5 Rule 56(d). Now that discovery is complete, Defendants will be afforded an opportunity to
6 effectively oppose any motion filed by the Plaintiff. Accordingly, Plaintiff may re-file a motion for
7 summary judgment that complies in every respect with both Federal and Local Rules.

8 III. Conclusion

9 **IT IS HEREBY ORDERED THAT** Plaintiff's Motion for Summary Judgment (#29) is
10 **DENIED** pursuant to Fed. R. Civ. P. 56(d).

11 **IT IS FURTHER ORDERED THAT** Defendants' Motion to Extend the Deadline for Filing
12 Motions for Summary Judgment (#40) is **GRANTED**.

13 **IT IS FURTHER ORDERED THAT** the parties shall file any summary judgment motions
14 no later than March 9, 2012.

15 DATED this 30th day of January 2012.

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19 Kent J. Dawson
20 United States District Judge
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