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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TARA O'GRADY-SULLIVAN,
an individual,

Plaintiff,

v.

THE STATE OF NEVADA, et al.,

Defendants.

Case No. 2:11-cv-00839-MMD-CWH

ORDER

(Def.'s Motion for Summary Judgment
– dkt. no. 57;
Def.'s Redacted Motion for Summary
Judgment – dkt. no. 61;
Plf.'s Motion for Leave to File Excess
Pages – dkt. no. 74)

I. SUMMARY

Before the Court are Defendants' Motions for Summary Judgment (dkt. nos. 57 and 61), as well as Plaintiff Tara O'Grady-Sullivan's Motion for Permission to File Overlength Combined Opposition to Defendants' Motion for Summary Judgment and Joinder (dkt. no. 74). Because significant discovery remained to be conducted after the filing of Defendants' Motion, the Court denies the Motion pursuant to Fed. R. Civ. P. 56(d).

II. BACKGROUND

This case arises out of allegations that various law enforcement defendants violated Plaintiff's constitutional and state rights during the course of her roadside detention, arrest, confinement, and subsequent release. (See dkt. no. 1-1.) The relevant factual background is summarized in the Court's December 15, 2011, Order and will not be recounted here. (Dkt. no. 39.)

1 After the Court's Order granting in part and denying in part Defendants' motion to
2 dismiss, and upon leave of Court, Plaintiff filed her Amended Complaint on April 4,
3 2012. (See dkt. no. 48.) While discovery was ongoing, Defendants filed under seal
4 their Motion for Summary Judgment. (See dkt. nos. 57 and 62.) Plaintiff filed her
5 Response alongside her Motion for Permission to File Overlength Opposition. (See dkt.
6 nos. 71 and 74.) In her Response, Plaintiff argues that significant discovery has yet to
7 be completed, and that Defendants' Motion should be denied on Rule 56(d) grounds.
8 The Motion for Summary Judgment was filed on May 15, 2012, over three months in
9 advance of the then-operative September 3, 2012, discovery cut-off. (See dkt. no. 51.)

10 In the interim period, Defendants sought a stay of discovery pending this Court's
11 ruling on their Motion for Summary Judgment. (See dkt. nos. 65 and 66.) That request
12 was denied (see dkt. no. 78), though the discovery cut-off was once again extended to
13 November 2, 2012 (see dkt. no. 88).

14 **III. LEGAL STANDARD**

15 The purpose of summary judgment is to avoid unnecessary trials when there is
16 no dispute as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,
17 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
18 pleadings, the discovery and disclosure materials on file, and any affidavits "show there
19 is no genuine issue as to any material fact and that the movant is entitled to judgment
20 as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is
21 "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder
22 could find for the nonmoving party and a dispute is "material" if it could affect the
23 outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
24 242, 248-49 (1986). Where reasonable minds could differ on the material facts at issue,
25 however, summary judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d
26 439, 441 (9th Cir. 1995). "The amount of evidence necessary to raise a genuine issue
27 of material fact is enough 'to require a jury or judge to resolve the parties' differing
28 versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir.

1 1983) (*quoting First Nat'l Bank v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). In
2 evaluating a summary judgment motion, a court views all facts and draws all inferences
3 in the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach &*
4 *Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

5 The moving party bears the burden of showing that there are no genuine issues
6 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). "In
7 order to carry its burden of production, the moving party must either produce evidence
8 negating an essential element of the nonmoving party's claim or defense or show that
9 the nonmoving party does not have enough evidence of an essential element to carry its
10 ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
11 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56's
12 requirements, the burden shifts to the party resisting the motion to "set forth specific
13 facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. The
14 nonmoving party "may not rely on denials in the pleadings but must produce specific
15 evidence, through affidavits or admissible discovery material, to show that the dispute
16 exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do
17 more than simply show that there is some metaphysical doubt as to the material facts."
18 *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). "The
19 mere existence of a scintilla of evidence in support of the plaintiff's position will be
20 insufficient." *Anderson*, 477 U.S. at 252.

21 Under Fed. R. Civ. P. 56(d), if, in response to a summary judgment motion, "a
22 nonmovant shows by affidavit or declaration that, for specified reasons, it cannot
23 present facts essential to justify its opposition," the Court may defer consideration of the
24 motion, deny the motion, allow the parties time to complete additional discovery, or
25 grant other appropriate relief. The party requesting additional time to conduct discovery
26 to oppose summary judgment "must show: (1) it has set forth in affidavit form the
27 specific facts it hopes to elicit from further discovery; (2) the facts sought exist; and (3)
28 the sought-after facts are essential to oppose summary judgment." *Family Home & Fin.*

1 *Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008). If the
2 nonmovant does not satisfy these requirements, the Court may rule on summary
3 judgment without granting additional discovery. *Id.* Rule 56(d) has been read as
4 “requiring, rather than merely permitting, discovery ‘where the nonmoving party has not
5 had the opportunity to discover information that is essential to its opposition.’”
6 *Metabolife Intern., Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001) (*quoting Anderson*,
7 477 U.S. at 250 n. 5).

8 **IV. DISCUSSION**

9 Plaintiff’s counsel, Lisa Rasmussen, appended a declaration in support of
10 Plaintiff’s Response describing the state of discovery in the case, and documents how
11 discovery yet to be conducted is essential to Plaintiff’s case and demonstrating why
12 Plaintiff cannot present facts essential to opposition to summary judgment. In particular,
13 at the time of Defendant’s Motion, no depositions of any individual Defendant had been
14 conducted. In addition, Plaintiff propounded written discovery requests on or near June
15 1, 2012, which remained unanswered at the time Plaintiff filed her Response. (*See*,
16 *e.g.*, dkt. no. 71-A.) Plaintiff also retained a police practice expert in support of her
17 action, but requires additional discovery in order to provide the expert with a complete
18 record to issue a final expert report. (*See* dkt. no. 71-K.) As represented by the parties
19 during a hearing before Magistrate Judge Hoffman, significant outstanding discovery
20 remained at the time the parties requested an extension of discovery on September 7,
21 2012. (*See* dkt. no. 88.) Defendants do not address the Rule 56(d) question in their
22 Reply or Joinder to the Reply. (*See* dkt. nos. 90 and 91.)

23 In light of discovery yet to be completed at the time of the Motion’s briefing, the
24 Court finds that Plaintiff cannot adequately oppose Defendants’ Motion for Summary
25 Judgment.


26 **V. CONCLUSION**

27 Accordingly, it is HEREBY ORDERED that Defendants’ Motions for Summary
28 Judgment (dkt. nos. 57 and 61) are DENIED.

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IT IS FURTHER ORDERED that Plaintiff's Motion for Permission to File Overlength Combined Opposition to Defendants' Motion for Summary Judgment and Joinder (dkt. no. 74) is DENIED.

DATED THIS 7th day of March 2013.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE