

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 15, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAY HYMAS, d/b/a DOSMEN
FARMS,

No. 4:16-cv-05091-SMJ

Plaintiff,

**ORDER DENYING MOTION TO
RECONSIDER**

v.

UNITED STATES DEPARTMENT OF
INTERIOR, I to X DOES, DAVID L.
BERNHARDT, Secretary of the United
States Department of Interior, and
AURELIA SKIPWITH, Director of the
United States Fish and Wildlife Service,

Defendants.

Before the Court, without oral argument, is Defendants’ Motion for Reconsideration on Plaintiff’s Motion to Reset Briefing Schedule, ECF No. 154. Defendants seek reconsideration of the Court’s May 5, 2020 Order Granting Motion to Continue Summary Judgment Hearing and Reset Briefing Schedule, ECF No. 152. Having reviewed the motion and the file in this matter, the Court is fully informed and denies the motion

The Court issued a Scheduling Order in this case on February 25, 2020. ECF No. 145. On February 27, 2020, Plaintiff filed an *Ex Parte* Motion for Pro Bono

1 Counsel. ECF No. 147. The Court granted the motion and requested the Federal Bar
2 Association for the Eastern District of Washington recommend *pro bono* counsel.
3 ECF No. 148. In that Order, the Court expressly cautioned Plaintiff that the
4 Scheduling Order remained in effect and that all parties were expected to comply
5 with the deadlines it set forth. ECF No. 148 at 2. Despite this, Plaintiff failed to file
6 a response to Defendants' renewed motion for summary judgment or to file his own
7 motion for summary judgment by the deadlines set forth in the scheduling order.
8 *See* ECF No. 145 at 2. Counsel was appointed to represent Plaintiff and appeared
9 on April 30, 2020, after both deadlines had passed. ECF Nos. 149, 150. Plaintiff,
10 then represented by counsel, filed a Motion to Continue Summary Judgment
11 Hearing and Reset Briefing Schedule. ECF No. 151. Defendants opposed the
12 continuance. ECF No. 151 at 2; ECF No. 149. On May 5, 2020, the Court granted
13 the requested continuance.

14 Defendants seek reconsideration of the May 5, 2020 Order granting a
15 continuance because Defendants' timely response to the motion to continue was
16 being processed at the time the Court's order was entered. ECF No. 154. In their
17 response, Defendants identified Plaintiff's repeated failures throughout this case to
18 comply with deadlines set forth in this Court's Orders or in the Local Civil Rules
19 and noted that Plaintiff had failed to explain those failures. *Id.* at 2–3. Defendants
20 also cited the Court's cautionary language in the Scheduling Order, ECF No. 145,

1 and Order Granting Plaintiff's *Ex Parte* Motion for Pro Bono Counsel and
2 Requesting Recommendation for Appointment of *Pro Bono* Counsel, ECF No. 148.
3 ECF No. 153 at 2. Finally, Defendants argue that Plaintiff's filing of two new cases,
4 one of which is before this Court, reflects that Plaintiff has abandoned this litigation.
5 *Id.* at 3.

6 However, each of the facts raised by Defendants, with the exception of
7 Plaintiff's filing a case not before this Court, were known to the Court at the time
8 of the Order granting a continuance. *See* ECF No. 149. The Court considered these
9 facts when granting the continuance. Further, denying the requested continuance
10 would result in serious prejudice to Plaintiff as it would preclude Plaintiff from both
11 responding to Defendants' motion for summary judgment and submitting his own
12 arguments for summary judgment in his favor. Due to Plaintiff's *pro se* status at the
13 time of his prior failures, the Court does not find it appropriate to impose such a
14 drastic sanction for failing to comply with deadlines. The Court notes that, as
15 Plaintiff is now represented, any further delays will not be subject to similar
16 leniency. The motion is denied.

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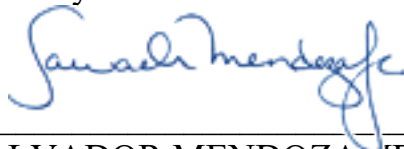
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1 Accordingly, **IT IS HEREBY ORDERED:**

2 Defendants' Motion for Reconsideration on Plaintiff's Motion to Reset
3 Briefing Schedule, **ECF No. 154**, is **DENIED**.

4 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
5 provide copies to all counsel.

6 **DATED** this 15th day of June 2020.

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8 SALVADOR MENDOZA, JR.
9 United States District Judge