

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARREL PATRICK WILLIS.

Plaintiff,

V.

NICK KISER, et al.,

Defendants.

CASE NO. 3:17-cv-05373-BHS-JRC

ORDER ON MOTION FOR EXTENSION

The District Court has referred this 42 U.S.C. § 1983 action to United States Magistrate J. Richard Creatura. Currently pending before the Court is Plaintiff's "Letter/Request for Extension of Time to Complete Discovery," which the Court interprets as a motion for extension. 66.

The Court notes that plaintiff filed his motion for extension before the Court entered its report and recommendation addressing defendants' motion for summary judgment. *See* Dkts. 66, 76. The Court should have addressed this motion before entering its report and recommendation, but failed to do so because of an administrative error.

1 Therefore, the Court has evaluated the motion in retrospect to determine if it would have
2 changed this Court's recommendations in any way. After completing that analysis, this Court
3 concludes that it would have denied the motion even if it had made a ruling before entering its
4 report and recommendation, and, therefore, the Court is not extending the deadlines, or changing
5 its Report and Recommendation. Thus, plaintiff's case was not prejudiced by the Court's
6 oversight.

7 Plaintiff's motion for extension appears to make two similar, but distinguishable,
8 requests. First, plaintiff appears to request additional time to respond to defendants pending
9 motion for summary judgment. Dkt. 66. However, plaintiff has now filed a response to the
10 motion for summary judgment, Dkt. 69, and the Court has already considered the response
11 before it entered a report and recommendation addressing the motion for summary judgment.
12 Dkt. 76. Therefore, insofar as plaintiff requested an extension to respond to the motion for
13 summary judgment, plaintiff's motion is denied as moot.

14 Second, plaintiff asked that the Court stay defendants' motion for summary judgment and
15 allow additional time for discovery. Dkt. 66. Federal Rule of Civil Procedure 56(d) provides that
16 a non-moving party may seek a continuance of a summary judgment motion if the party shows
17 that, for specified reasons, it cannot present facts essential to justify opposition to the pending
18 summary judgment motion. The party requesting a continuance must show that: "(1) it has set
19 forth in affidavit form the specific facts it hopes to elicit from further discovery; (2) the facts
20 sought exist; and (3) the sought after facts are essential to oppose summary judgment." *Family*
21 *Home and Finance Center, Inc. v. Federal Home Loan Morg. Corp.*, 525 F.3d 822, 823 (9th Cir.
22 2008). Failure to comply with these requirements is a proper ground to deny discovery and

1 proceed on summary judgment. *See Weinberg v. Whatcom County*, 241 F.3d 746, 751 (9th Cir.
2 2001).

3 Here, plaintiff failed to adhere to the requirements of Rule 56(d). He did not submit an
4 affidavit or declaration indicating what specific facts he hopes to elicit through additional
5 discovery, he did not explain why additional discovery was necessary to properly prepare an
6 opposition to summary judgment. *See* Dkt. 66. Rather, he has summarily requested that the Court
7 stay a decision as to defendants' summary judgment motion until additional discovery can be
8 pursued. Thus, plaintiff failed to adhere to the requirements of Rule 56(d). Therefore, plaintiff's
9 motion for extension is denied.

10 In light of this Court's evaluation of plaintiff's motion for extension, it is not inclined to
11 change any portion of the Report and Recommendation previously filed on December 28, 2019.
12 Dkt. 76.

13 Dated this 10th day of January, 2019.

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17 J. Richard Creatura
18 United States Magistrate Judge
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