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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 **Nyles Lawayne Watson,**

12 **Plaintiff,**

13 **v.**

14 **D.K. Sisto, et al.,**

15 **Defendant.**
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Case No. CIV S-07-1871 LKK GGH P

**MOTION FOR DENIAL OR
CONTINUANCE OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT UNDER RULE 56(f)**

1 **I. INTRODUCTION.**

2 Plaintiff Nyles LaWayne Watson (“Watson”) brings this Motion for Denial or
 3 Continuance of Defendants’ Motion for Summary Judgment pursuant to Rule 56(f) of the Federal
 4 Rules of Civil Procedure. In support, Watson submits the Declaration of James P. Baker (“Baker
 5 Declaration”), which demonstrates the incomplete nature of discovery conducted in this case.
 6 Watson requests under Rule 56(f) that the court deny defendants’ motion so that Watson may
 7 seek meaningful discovery and file a motion for leave to file an amended complaint.

8 **II. BACKGROUND.**

9 Watson, acting pro se, filed his complaint under 42 U.S.C. § 1983 on August 28, 2007.
 10 (*See Baker Decl. ¶ 2.*) He immediately sought appointment of counsel, and renewed his request
 11 on two additional occasions during the pendency of this litigation. (*See Baker Decl. ¶ 9.*)
 12 Without the assistance of counsel, Watson litigated this action for more than a year. During that
 13 period, Watson timely sought discovery from defendants, placed considerable evidence of his
 14 claim on the record, moved for a preliminary injunction to address his interim harm, and filed a
 15 motion to compel the production of documents that defendants refused to produce. (*See Baker*
 16 *Decl. ¶¶ 4, 5, 7.*)

17 In the meantime, defendants turned over negligible discovery and filed pro forma
 18 oppositions to Watson’s motions. (*See Baker Decl. ¶¶ 4, 5, 7.*) After the Court ordered
 19 defendants to supplement their opposition to Watson’s motion for injunctive relief to address the
 20 failure of California State Prison-Solano (“CSP-Solano”) personnel to abide by defendants’ own
 21 medical recommendations, defendants purported to reevaluate Watson’s medical needs and then
 22 rewrote those recommendations to match the precise level of care that Watson complained was
 23 inadequate. (*See Baker Decl. ¶ 6.*) On November 11, 2008, before the discovery period had
 24 closed and while Watson’s motion to compel the production of documents was still pending,
 25 defendants Dennis K. Sisto, Alvaro C. Traquina, M.D., Richard Tan, M.D., Jason Rohrer, M.D.,
 26 and Alfredo Noriega, M.D. prematurely moved for summary judgment. (*See Baker Decl. ¶ 8.*)

27 Only after defendants had filed their motion for summary judgment, and after the initial
 28 discovery deadline of December 3, 2008 had passed, was counsel appointed for Watson. (*See*

Order of December 23, 2008, Docket No. 48.) In the same order appointing counsel, the Court vacated Watson's pending motions, including his motion to compel, without prejudice to their renewal. (*Id.*) Newly appointed counsel promptly contacted defense counsel to request that they stipulate to a stay of the proceedings and an extension of the discovery deadlines pending counsel's investigation of Watson's claims. (*See Baker Decl.* ¶ 11.) Although counsel for defendant Binoye Naku, M.D. communicated her willingness to stipulate to a reasonable extension of the discovery deadlines, counsel for defendants Sisto, Traquina, Tan, Rohrer, and Noriega refused. (*See Baker Decl.* ¶ 11.)

III. ARGUMENT.

A. The Legal Standard For Rule 56(f).

Where a party opposing a motion for summary judgment has had insufficient opportunity to engage in discovery, "the court may: (1) deny the motion; (2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or (3) issue any other just order." Fed. R. Civ. Proc. 56(f). Therefore, this Court may deny defendants' motion for summary judgment if it believes that Watson needs "additional discovery to explore 'facts essential to justify [his] opposition.'" *Jones v. Blanas*, 393 F.3d 918, 930 (9th Cir. 2004) (citing to *Crawford-El v. Britton*, 523 U.S. 574, 599 n.20 (1998) and noting that "summary judgment is disfavored where relevant evidence remains to be discovered, particularly in cases involving confined pro se plaintiffs"). Although the decision under Rule 56(f) is discretionary with the trial court, the Court of Appeals for the Ninth Circuit has interpreted Supreme Court precedent on Rule 56(f) "as requiring, rather than merely permitting, discovery 'where the nonmoving party has not had the opportunity to discover information that is essential to its opposition.'" *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832 (9th Cir. 2001) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986)). Put another way, if a party has not had a "realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any Rule 56(f) motion fairly freely." *Burlington N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 773-74 (9th Cir. 2003).

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1 **B. Defendants Have Failed To Turn Over Meaningful Discovery Despite**
 2 **Watson's Diligent Pursuit Of Discovery.**

3 Since filing this lawsuit, Watson has diligently abided by his discovery obligations.
 4 Despite his status as a confined pro se plaintiff, Watson caused interrogatories and document
 5 requests to be served on defendants in a timely fashion. (*See Baker Decl. ¶ 4.*) In response to
 6 those requests, defendants have failed to produce any documents beyond publicly available
 7 information regarding the physician defendants' medical qualifications and a single policy
 8 manual regarding the provision of medical treatment at CSP-SOLANO. (*See Baker Decl. ¶ 4.*)
 9 Similarly, defendants have objected to many of Watson's interrogatories on account of their form.
 10 (*See Baker Decl. ¶ 4.*) Denied access to meaningful discovery, Watson appropriately filed a
 11 motion to compel in August 2008. (*See Baker Decl. ¶ 7.*) Nonetheless, with full knowledge of
 12 the ongoing discovery dispute, defendants Sisto, Traquina, Tan, Rohrer, and Noriega prematurely
 13 moved for summary judgment more than two months before the discovery completion date. (*See*
 14 *Baker Decl. ¶ 8.*)

15 As set forth in the accompanying declaration, Watson has identified specific information
 16 that he believes will provide relevant evidence supporting his claims if the discovery deadline is
 17 extended. Specifically, Watson seeks records regarding his requests for medical treatment and
 18 the treatment subsequently provided, data regarding the medical treatment provided to prisoners
 19 with similar medical conditions, information relating to the prison's policies and procedures for
 20 the provision of medical treatment, information relating to defendants' medical training, records
 21 of complaints and grievances filed against the defendants, records of Watson's alleged
 22 noncompliance with treatment recommendations, and information regarding the retaliatory
 23 actions taken against Watson after filing this action. (*See Baker Decl. ¶ 12.*) This information,
 24 all of which is in defendants' control, is highly relevant to Watson's claims that defendants have
 25 acted with deliberate indifference to his serious medical needs. Defendants' failure to turn over
 26 relevant discovery, though perhaps unsurprising in light of the California prison system's well-
 27 documented failure to take seriously the medical needs of inmates, *see Plata v. Schwarzenegger*,
 28 No. C01-1351 TEH, 2005 WL 2932253, at *1 (N.D. Cal. Oct. 3, 2005) (appointing a receiver

1 because the California “prison system is unable to function effectively and suffers a lack of will
2 with respect to prisoner medical care”), belies their contention that summary judgment is
3 appropriate and supports Watson’s motion for a denial of that motion under Rule 56(f).

4 C. **This Court Should Grant The Rule 56(f) Motion To Provide Watson With An**
5 **Opportunity To Engage In Meaningful Discovery.**

6 Courts in this District have not hesitated to grant Rule 56(f) motions in situations where
7 incarcerated pro se litigants have had insufficient opportunity to take meaningful discovery. *See*
8 *Young v. Pulsipher*, No. CIV S-03-2225 GEB KJM P, 2007 WL 404908, at *10-*12 (E.D. Cal.
9 Feb. 2, 2007) (granting plaintiff prisoner’s Rule 56(f) motion and denying defendant’s Rule 56
10 motion); *Martin v. Viles*, No. CIV S-04-0756 LKK JFM P, 2006 WL 2385180 (E.D. Cal. Aug.
11 17, 2006) (granting plaintiff prisoner’s Rule 56(f) motion pending resolution of discovery
12 disputes). Similarly, Watson was without counsel throughout the discovery period and at the time
13 defendants filed their motion for summary judgment. As the Court of Appeals for the Ninth
14 Circuit has recognized, summary judgment in these circumstances would be particularly
15 inappropriate considering Watson’s circumstances. 393 F.3d at 930.

16 Moreover, defendants’ minimal production of discovery prior to the filing of their motion
17 for summary judgment supports Watson’s request for significant additional discovery under Rule
18 56(f). As the Court of Appeals for the Ninth Circuit has explained, in the absence of any
19 meaningful discovery, “the party making a Rule 56(f) motion cannot be expected to frame its
20 motion with great specificity as to the kind of discovery likely to turn up useful information, as
21 the ground for such specificity has not yet been laid.” *Burlington N. Santa Fe R.R. Co. v.*
22 *Assiniboine and Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 774 (9th Cir. 2003)
23 (concluding that district court abused its discretion by denying Rule 56(f) motion before any
24 discovery had taken place). Accordingly, Watson should be provided an opportunity to conduct
25 broad additional discovery with the assistance of his newly appointed counsel.

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1 **IV. CONCLUSION.**

2 For the reasons stated above, Watson respectfully requests that the Court deny or continue
3 defendants' motion for summary judgment and extend the discovery schedule, so that Watson
4 may have the benefit of meaningful discovery and seek leave to file an amended complaint.

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6 Dated: January 27, 2009

Respectfully Submitted,

7 Jones Day

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9 By: /s/ James P. Baker
10 James P. Baker

11 Attorneys for Plaintiff
12 Nyles Lawayne Watson
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