

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Carr v. Balaji

Carr v. Balaji · No. 2:19-cv-00688-TLN-EFB (PC) · Decided August 2, 2023

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ARTHUR CARR, No. 2:19-cv-00688-TLN-EFB (PC) 12 Plaintiff, 13 v.
ORDER 14 A. BALAJI, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding
without counsel in an action brought pursuant to 42 18 U.S.C. § 1983. Currently before the court
are several motions filed by plaintiff objecting to the 19 withdrawal of his former counsel,
Chijioke Ikonte, and seeking modification of the schedule to 20 allow him to file a second
amended complaint, seek discovery from defendants, and file an 21 opposition to the pending
motion for summary judgment.

ECF Nos. 79-82. Defendants have 22 filed no response to plaintiff’s filings. For the reasons that
follow, the court will modify the 23 schedule to allow plaintiff additional time for discovery and to
oppose the summary judgment 24 motion, but the court will deny plaintiff’s requests for leave to
file a second amended complaint 25 and for an order directing one of Ikonte’s law firm colleagues
to represent plaintiff.

26 I. Plaintiff’s Motion to Modify the Discovery Schedule 27 Plaintiff initiated this action with the
filing of a pro se complaint. ECF No. 1. On October 28 28, 2020, the court granted plaintiff’s
request to substitute Mr. Ikonte in as his counsel. ECF No. 1 28.

The discovery and scheduling order issued on October 18, 2021, providing a discovery 2 deadline
of February 18, 2022. ECF No. 55. That deadline was later extended by the court to 3 September
15, 2022. ECF No. 61. Defendants filed a motion for summary judgment on February 4 28, 2023,
which remains pending. ECF No. 68.

On June 9, 2023, the court granted Mr. Ikonte’s 5 motion to withdraw as plaintiff’s counsel. ECF
No. 78. 6 Federal Rule of Civil Procedure 16(b)(4) provides: “A schedule may be modified only
for 7 good cause and with the judge’s consent.” Courts considering a request to modify a schedule
8 under Rule 16(b)(4) look primarily to the whether the party seeking modification could not 9
reasonably meet the deadline despite his diligence.

Johnson v. Mammoth Recreations, 975 F.2d 10 604, 609 (9th Cir. 1992). While the focus is
primarily on the moving party’s diligence, “the 11 existence or degree of prejudice to the party
opposing the motion might supply additional reasons 12 to deny” the requested modification. Id.

13 The court must consider additional factors where, as here, additional discovery is 14 requested by an incarcerated, pro se plaintiff facing a summary judgment motion.

Jones v. 15 Blanas, 393 F.3d 918, 930 (9th Cir. 2004). “Though the conduct of discovery is generally left to 16 a district court’s discretion, summary judgment is disfavored where relevant evidence remains to 17 be discovered, particularly in cases involving confined pro se plaintiffs.” Jones, 393 F.3d at 930 18 (citing Klingele v. Eikenberry, 849 F.2d 409, 412 (9th Cir.

1988)). “Thus summary judgment in 19 the face of requests for additional discovery is appropriate only where such discovery would be 20 ‘fruitless’ with respect to the proof of a viable claim.” Id. (quoting Klingele, 849 F.2d at 412). 21 Plaintiff states that Mr. Ikonte has provided him with minimal discovery responses, and 22 plaintiff suspects that Mr. Ikonte failed to diligently propound discovery.

In light of the pending 23 summary judgment motion and Mr. Ikonte’s withdrawal following an apparent breakdown of 24 communication between he and plaintiff, the court will grant plaintiff’s request to modify the 25 schedule to allow him an opportunity to propound discovery requests on defendants and to 26 prepare an opposition to the pending summary judgment motion.

27 //// 28 //// 1 II. Issues Regarding Counsel 2 Plaintiff objects to his counsel’s withdrawal from the case. ECF Nos. 80, 81, 82. 3 However, the court has already granted counsel’s request to withdraw, and plaintiff’s filings do 4 not alter the court’s opinion as to the propriety of his withdrawal. Indeed, those filings 5 underscore the deterioration of the relationship between plaintiff and Mr. Ikonte.

Plaintiff 6 requests that the court order another attorney from Mr. Ikonte’s firm to represent him. District 7 courts lack authority to require counsel to represent prisoners in § 1983 cases. Mallard v. United 8 States Dist. Court, 490 U.S. 296, 298 (1989).

In exceptional circumstances, the court may 9 request an attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); 10 Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 11 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court 12 must consider the likelihood of success on the merits as well as the ability of the plaintiff to 13 articulate his claims pro se in light of the complexity of the legal issues involved.

Palmer v. 14 Valdez, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there 15 are no exceptional circumstances in this case. 16 III. Request for Leave to File a Second Amended Complaint 17 In one of his recent filings, plaintiff states briefly that he would like leave to file a second 18 amended complaint to assert new claims that “relate back” to his original claims.

ECF No. 81. 19 Plaintiff does not specify what these new claims are, nor has he provided the court with a copy of 20 the proposed second amended complaint as the court's local rules require. E.D. Cal. L.R. 137(c). 21 Without the proposed amended complaint or an explanation of the claims plaintiff seeks to add, 22 the court cannot conduct the analyses required to determine the propriety of allowing the 23 amendment.

See *Johnson v. Mammoth Recreations*, 975 F.2d 604, 607-09 (9th Cir. 1992). 24 Accordingly, the court will deny leave to amend without prejudice. 25 //// 26 //// 27 //// 28 //// 1 IV. Order 2 In accordance with the above, it is hereby ORDERED that: 3 1. Plaintiff's motion to modify the schedule, asserted in ECF Nos. 79 through 82, is 4 GRANTED: 5 A. Plaintiff shall have until October 2, 2023 to conduct discovery.

6 B. Plaintiff shall have until October 16, 2023 to file any motions to compel 7 discovery responses. Any such motion must identify the discovery responses 8 which are the subject of the motion. 9 C. Plaintiff shall file his opposition to the pending motion for summary 10 judgment on or before October 30, 2023. 11 D. The court will schedule pretrial proceedings, if necessary, upon the 12 resolution of any pretrial motions filed.

Requests to modify this schedule 13 will be looked upon with disfavor and must be supported by good cause 14 pursuant to Fed. R. Civ. P. 16(b). 15 2. Plaintiffs request for leave to file a second amended complaint, asserted in ECF No. 16 81, is DENIED without prejudice. 17 3. Plaintiff's request for an order compelling an attorney from Chiyioke Ikonte's law firm 18 to represent him, asserted in ECF No. 81, is DENIED.

19 4. The Clerk of Court is directed to terminate the motions appearing at ECF Nos. 79, 81, 20 and 82. 21 22 | Dated: August 2, 2023. ☐☐ PDEA EDMUND F. BRENNAN 23 UNITED STATES MAGISTRATE JUDGE 24 25 26 27 28