

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SCOTT A. WILSON, M.D. :
 :
 v. : C.A. No. 15-101S
 :
 UTC LABORATORIES, LLC, :
 et al. :

MEMORANDUM AND ORDER

Pending before this Court are Motions for Summary Judgment filed by Defendant Syntactx LLC and Defendant UTC Laboratories, LLC d/b/a Renaissance Rx. (Document Nos. 20 and 23). Plaintiff has not filed a substantive opposition to either Motion. Rather, Plaintiff moves the Court pursuant to Rule 56(d), Fed. R. Civ. P., to either deny or defer consideration of the Motions because he cannot present facts essential to justify opposition to the Motions. (Document Nos. 26 and 31). Alternatively, in the event Plaintiff is denied relief under Rule 56(d), he requests “additional time during which the Plaintiff may otherwise address, respond and/or object” to the Defendants’ Motions. Id.

Pursuant to Rule 56(d), Plaintiff bears the burden of showing that, “for specified reasons, [he] cannot present facts essential to justify [his] opposition.” To succeed, he “must submit to the trial court an affidavit or other authoritative document showing (i) good cause for his inability to have discovered or marshalled the necessary facts earlier in the proceedings; (ii) a plausible basis for believing that additional facts probably exist and can be retrieved within a reasonable time; and (iii) an explanation of how those facts, if collected, will suffice to defeat the pending summary judgment motion.” Rivera-Torres v. Rey-Hernandez, 502 F.3d 7, 10 (1st Cir. 2007). In addition, he “must

demonstrate that [he] was diligent in pursuing discovery before the summary judgment initiative surfaced.” Century Indem. Co. v. Liberty Mut. Ins. Co., 708 F. Supp 2d 202, 214 (D.R.I. 2010) (quoting C.B. Trucking, Inc. v. Waste Mgmt., Inc., 137 F.3d 41, 44 (1st Cir. 1998)). The Rule is intended to provide an additional safeguard against premature grant of summary judgment. See Price v. G.M. Corp., 931 F.2d 162, 164 (1st Cir. 1991).

Plaintiff has not made a sufficient showing to utilize this procedural escape hatch. First, Plaintiff offers no valid excuse for his failure to diligently pursue discovery. On June 30, 2015, the Court entered a Scheduling Order providing for a generous ten-month period to conduct factual discovery which was subsequently extended by three months. (Document Nos. 15 and 16). It is undisputed that Plaintiff did not serve any discovery requests until over one year from the filing of this lawsuit and less than forty-five days before the close of discovery.

Second, Defendants discussed their defenses and intention to move for summary judgment at the Rule 16 Conference on June 29, 2015 and thus their Motions should have come as no surprise to Plaintiff.

Third, Chief Judge Smith held a summary judgment conference on May 4, 2016 and, after hearing from both sides, granted Defendants leave to file their Motions. In addition, on June 3, 2016, Chief Judge Smith granted Defendants’ Joint Motion to Stay Discovery pending disposition of such Summary Judgment Motions over Plaintiff’s objection, and based on Defendants’ assertion that “the issues that will be presented in their [Summary Judgment] Motions will not be dependent upon discovery, other than the pending Requests for Admissions, that they will present pure questions of law, and that discovery will not be necessary to the adjudication of those claims.” (Document No. 17 at p. 1). Presumably, the parties fully apprised Chief Judge Smith of the status

of discovery and the legal issues to be presented in Defendants' Motion, and he saw fit to entertain the Motions and stay discovery. Plaintiff's Rule 56(d) opposition is essentially an effort to seek reconsideration of those previously-adjudicated issues.

This is not a case where Defendants have tried to jump the gun and prematurely seek summary judgment at an early stage of the case. They filed their Motions at the tail end of the factual discovery period and did so with leave from the Court. In addition, they filed a properly-supported Motion to Stay Discovery which was granted by the Court.

For the foregoing reasons, I find that Plaintiff's request under Rule 56(d) to deny or defer consideration of Defendants' Summary Judgment Motions pending further factual discovery is not properly supported and thus it is DENIED. Plaintiff's alternative request for additional time to respond to Defendants' Motions is, however, GRANTED. Plaintiff shall file his responses to Defendants' Summary Judgment Motions by September 30, 2016; and Defendants may reply by October 7, 2016.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
September 13, 2016