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5	UNITED STATES DISTRICT COURT	
6	EASTERN DISTRICT OF CALIFORNIA	
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<u>8</u>	MICHAEL RANGEL,	1:15-cv-01349-DAD-MJS (PC)
9	Plaintiff,	ORDER
10	٧.	(1) GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME; AND
11	CHEN, et al.,	(2) DENYING PLAINTIFF'S MOTION
12	Defendant.	REQUESTING MORE TIME FOR DISCOVERY
13		(ECF Nos. 29, 30)
14		THIRTY (30) DAY DEADLINE
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17	Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil	
18	rights action brought pursuant to 28 U.S.C. § 1983. This matter proceeds on Plaintiff's	
19	original complaint against Defendant Nurse A. Manasrah on an Eighth Amendment	
20	medical indifference claim.	
21	On February 7, 2017, Defendant filed a motion for summary judgment. Plaintiff	
22	now moves for an extension of time to file an opposition to Defendant's motion. (ECF	
23	No. 29.) He also moves for additional time to conduct discovery pursuant to Federal Rule	
24	of Civil Procedure "56(f)." (ECF No. 30.) The Court construes this latter motion as one	
25	brought pursuant to Rule 56(d).1	
26	"Rule 56(d) 'provides a device for litigants to avoid summary judgment when they	
27	¹ Rule 56(d) does not provide the relief that Plaintiff seeks. Instead, it authorizes a court to grant summary judgment independent of a motion. 1	
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have not had sufficient time to develop affirmative evidence." Atigeo LLC v. Offshore 1 Ltd., 2014 WL 1494062, at *3 (W.D. Wash. Apr. 16, 2014) (guoting United States v. 2 Kitsap Physicians Serv., 314 F.3d 995, 1000 (9th Cir. 2002)). Federal Rule of Civil 3 Procedure 56(d) provides, "[i]f a nonmovant shows by affidavit or declaration that, for 4 specified reasons, it cannot present facts essential to justify its opposition, the court 5 may" defer considering the motion, deny the motion, allow time to obtain affidavits or 6 declarations to take discovery, or "issue any other appropriate order." Fed. R. Civ. P. 7 56(d). Rule 56(d) requires the nonmovant to show "(1) it has set forth in affidavit form 8 specific facts it hopes to elicit from further discovery; (2) the facts sought exist; and (3) 9 the sought-after facts are essential to oppose summary judgment." Family Home & Fin. 10 Ctr., Inc. v. Fed. Home Loan Mortg. Corp., 525 F.3d 822, 827 (9th Cir. 2008) (holding 11 that the district court did not abuse its discretion in denying a continuance where the 12 facts sought through further discovery were only "generically relevant" and the 13 nonmoving party failed to show how the evidence was "essential" to oppose summary 14 judgment). The party requesting a continuance must explain how the specific facts that it 15 seeks would preclude summary judgment. Tatum v. City & Cty. of S.F., 441 F.3d 1090, 16 1100-01 (9th Cir. 2006) (citing California v. Campbell, 138 F.3d 772, 779 (9th Cir. 17 1998)).² The Ninth Circuit's general rule is that "[a] continuance of a motion for summary 18 judgment for purposes of discovery should be granted almost as a matter of course 19 unless the non-moving party has not diligently pursued discovery of the evidence." 20 Atigeo, 2014 WL 1494062, at *3. 21

Plaintiff proffers two reasons in support of his motion to conduct additional discovery to oppose Defendant's motion for summary judgment. First, he claims that additional time is needed because he is proceeding in pro per and only recently learned what an interrogatory was. Next, he claims that he now "sees that he has a lot of work to

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 ² On December 1, 2010, Federal Rule of Civil Procedure 56(f) was renumbered and is now Federal Rule of Civil Procedure 56(d). The advisory committee's notes to Rule 56 regarding the 2010 amendments state that "[s]ubdivision (d) carries forward without substantial change the provisions of former subdivision (f)." Fed. R. Civ. P. 56 advisory committee's notes. Thus, the cited authorities that refer to Rule 56(f) provide guidance on matters related to the current Rule 56(d). Id.

do in the preparation of his Opposition Motion," including researching applicable law and gathering evidence. 2

On review, the undersigned concludes that Plaintiff is not entitled to relief under 3 Rule 56(d). His motion is not accompanied by an affidavit setting forth the specific facts 4 he hopes to elicit from discovery, and he fails to explain how the sought-after facts are 5 essential to oppose summary judgment. As for Plaintiff's proper status, it is true that the 6 Ninth Circuit has repeatedly cautioned that pro se litigants must be treated with liberality. 7 See, e.g., Waters v. Young, 100 F.3d 1437, 1441 (9th Cir. 1996) ("As a general matter, 8 this court has long sought to ensure that pro se litigants do not unwittingly fall victim to 9 procedural requirements that they may, with some assistance from the court, be able to 10 satisfy.") Nonetheless, pro se litigants must follow the same rules of procedure that 11 govern other litigants. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), overruled on 12 other grounds, Lacey v. Maricopa County, 693 F.3d 896 (9th Cir. 2012) (en banc). 13 "Ignorance of court rules does not constitute excusable neglect, even if the litigant 14 appears pro se." Swimmer v. IRS, 811 F.2d 1343, 1345 (9th Cir. 1987), abrogated on 15 other grounds by Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382 (9th Cir. 1997). 16 Finally, Plaintiff has not demonstrated diligence in seeking any discovery during the 17 open discovery period. 18 Accordingly, it is HEREBY ORDERED that:

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- 1. Plaintiff's motion for extension of time (ECF No. 29) is GRANTED. Plaintiff shall file his opposition within thirty days from the date of this Order; and 2. Plaintiff's motion for additional time to conduct discovery (ECF No. 30) is
 - DENIED.

IT IS SO ORDERED.

Dated: March 27, 2017

Is Michael I.

UNITED STATES MÁGISTRATE JUDGE

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