

1 have not had sufficient time to develop affirmative evidence.” Atigeo LLC v. Offshore
2 Ltd., 2014 WL 1494062, at *3 (W.D. Wash. Apr. 16, 2014) (quoting United States v.
3 Kitsap Physicians Serv., 314 F.3d 995, 1000 (9th Cir. 2002)). Federal Rule of Civil
4 Procedure 56(d) provides, “[i]f a nonmovant shows by affidavit or declaration that, for
5 specified reasons, it cannot present facts essential to justify its opposition, the court
6 may” defer considering the motion, deny the motion, allow time to obtain affidavits or
7 declarations to take discovery, or “issue any other appropriate order.” Fed. R. Civ. P.
8 56(d). Rule 56(d) requires the nonmovant to show “(1) it has set forth in affidavit form
9 specific facts it hopes to elicit from further discovery; (2) the facts sought exist; and (3)
10 the sought-after facts are essential to oppose summary judgment.” Family Home & Fin.
11 Ctr., Inc. v. Fed. Home Loan Mortg. Corp., 525 F.3d 822, 827 (9th Cir. 2008) (holding
12 that the district court did not abuse its discretion in denying a continuance where the
13 facts sought through further discovery were only “generically relevant” and the
14 nonmoving party failed to show how the evidence was “essential” to oppose summary
15 judgment). The party requesting a continuance must explain how the specific facts that it
16 seeks would preclude summary judgment. Tatum v. City & Cty. of S.F., 441 F.3d 1090,
17 1100-01 (9th Cir. 2006) (citing California v. Campbell, 138 F.3d 772, 779 (9th Cir.
18 1998)).² The Ninth Circuit's general rule is that “[a] continuance of a motion for summary
19 judgment for purposes of discovery should be granted almost as a matter of course
20 unless the non-moving party has not diligently pursued discovery of the evidence.”
21 Atigeo, 2014 WL 1494062, at *3.

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

26 ² On December 1, 2010, Federal Rule of Civil Procedure 56(f) was renumbered and is now Federal Rule
27 of Civil Procedure 56(d). The advisory committee's notes to Rule 56 regarding the 2010 amendments state
28 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.

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

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

19 Accordingly, it is HEREBY ORDERED that:

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

24 IT IS SO ORDERED.

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26 Dated: March 27, 2017

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE