



1 Federal Rule of Civil Procedure 56(d) provides that:

2 If a nonmovant shows by affidavit or declaration that,  
3 for specified reasons, it cannot present facts essential  
4 to justify its opposition, the court may: (1) defer  
5 considering the motion or deny it; (2) allow time to  
6 obtain affidavits or declarations or to take discovery;  
7 or (3) issue any other appropriate order.

8 Fed. R. Civ. P. 56(d). For a court to grant a Rule 56(d)  
9 continuance, the party requesting it "must show (1) that they  
10 have set forth in affidavit form the specific facts that they  
11 hope to elicit from further discovery, (2) that the facts sought  
12 exist, and (3) that these sought-after facts are 'essential' to  
13 resist the summary judgment motion." California v. Campbell, 138  
14 F.3d 772, 779 (9th Cir. 1998). A court "should continue a  
15 summary judgment motion upon a good faith showing by affidavit  
16 that the continuance is needed to obtain facts essential to  
17 preclude summary judgment." Id.

18 Plaintiff's request, along with the declaration by  
19 plaintiff's counsel Thomas T. Loder, meets this standard. While  
20 defendants argue that plaintiff has already had the opportunity  
21 to conduct discovery, requests under Rule 56(d) must be liberally  
22 construed. See Visa Int'l Sys. Ass'n v. Bankcard Holders of Am.,  
23 784 F.2d 1472, 1475 (9th Cir. 1986). Here, plaintiff was  
24 entitled to rely on the Status (Pretrial Scheduling) Order  
25 (Docket No. 87), which sets August 26, 2011, as the discovery  
26 completion date.

27 THEREFORE, in order to afford plaintiff the full  
28 benefit of the discovery time allowed in the scheduling order,

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1 IT IS HEREBY ORDERED that defendants' motion for summary judgment  
2 is DENIED without prejudice to being renewed after August 26,  
3 2011.<sup>2</sup>

4 DATED: May 4, 2011

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6 WILLIAM B. SHUBB  
7 UNITED STATES DISTRICT JUDGE  
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27 <sup>2</sup> Plaintiff seeks an award of fees and costs associated  
28 with bringing this ex parte application, but provides no legal  
basis for its request. Accordingly, the court will not award  
fees and costs.