



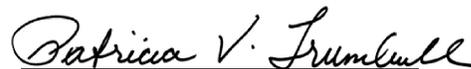
1 authority each side seeks to submit, the court finds the interests of justice are best served by  
2 continuing the hearing to allow proper briefing and consideration of those matters. While  
3 Defendants are correct in noting that Plaintiffs failed to obtain leave of court to submit the additional  
4 deposition transcript, had Plaintiffs sought such leave it would have been granted.<sup>2</sup> Thus, the court  
5 finds that excluding the transcript would not be consistent with the long standing public policy  
6 favoring resolution of disputes on the merits rather than technicalities.<sup>3</sup> See, e.g., *Foman v. Davis*,  
7 371 U.S. 178, 181 (1962) (“It is too late in the day and entirely contrary to the spirit of the Federal  
8 Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere  
9 technicalities”).

10 IT IS FURTHER ORDERED that, no later than February 10, 2009, Plaintiffs shall file a  
11 declaration authenticating the Deposition Transcript of Kayla Rodrigues Plaintiffs filed on January  
12 26, 2009, along with a short supplemental brief explaining how portions of the transcript supports  
13 Plaintiffs’ opposition to Defendants’ motion for summary judgment. Plaintiffs shall also address the  
14 import, if any, of the recent case *Pearson v. Callahan*, 555 U.S. \_\_\_\_ (2009) (Slip Op. 07-751,  
15 January 21, 2009), which Defendants notified the court of on January 29, 2009 (*see* Docket no. 86).

16 IT IS FURTHER ORDERED that, no later than February 24, 2009, Defendants may file a  
17 supplemental reply, responding to Plaintiffs’ supplemental briefing.

18 IT IS FURTHER ORDERED that the pretrial conference and trial dates are VACATED. The  
19 court will hold a trial scheduling conference on March 3, 2009, after oral argument on Defendants’  
20 motion for summary judgment.

21 Dated: 1/30/09

22   
23 PATRICIA V. TRUMBULL  
24 United States Magistrate Judge

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25 <sup>2</sup> This is not a situation where a party belatedly files evidence that could have been filed  
26 with their briefs. Here, the delay was caused by an opponent’s unsuccessful motion to preclude the  
27 deposition in question. Because of the delay caused by that motion, the deposition did not even occur  
until after the briefing on summary judgment was complete.

28 <sup>3</sup> Plaintiffs are cautioned, however, that the court expects the parties to comply with this  
court’s Civil Local Rules. Repeated failures to follow the local rules may well result in sanctions or  
other adverse actions.