



1 the parties' initial disclosures were due and before the discovery plan was due." More  
2 specifically, Plaintiff asserts the current summary judgment briefing schedule does not  
3 allow Plaintiff time to receive responses to written discovery before the November 22,  
4 2013 opposition deadline.

5 In opposition, CafePress argues Plaintiff's request is really a request for open-  
6 ended discovery and a three-month delay. CafePress argues only a short continuance  
7 of the current summary judgment briefing schedule and hearing is required to provide  
8 Plaintiff sufficient time to take discovery relevant to opposing CafePress's Motion for  
9 Summary Judgment. CafePress states a willingness to move the response deadline to  
10 January 10, 2014, the reply deadline to January 24, 2014, and the hearing to February  
11 7, 2014.

12 The Court finds that, given CafePress's filing of its Motion for Summary  
13 Judgment before the parties were permitted to take discovery, the Court finds  
14 CafePress's Motion for Summary Judgment to be premature. See Burlington N. Santa  
15 Fe R. Co. v. Assiniboine & Sioux Tribes, 323 F.3d 767, 773 (9th Cir. 2003) ("Where  
16 . . . a summary judgment motion is filed so early in the litigation, before a party has had  
17 any realistic opportunity to pursue discovery relating to its theory the case, district  
18 courts should grant any Rule 56(f) motion fairly and freely.") And while the Court  
19 recognizes CafePress's concern that Plaintiff is seeking discovery beyond the scope  
20 necessary to respond to CafePress's Motion for Summary Judgment, the Court is not  
21 now prepared—in ruling on an ex parte motion to continue a briefing schedule and  
22 hearing date—to limit discovery in any way. In any event, matters regarding the scope  
23 of discovery are more properly raised before the magistrate judge assigned to each  
24 case.

25 Given the foregoing, the Court finds it appropriate to continue the briefing  
26 schedule and hearing date for CafePress's Motion for Summary Judgment as follows:  
27 any response to CafePress's Motion for Summary Judgment shall be filed on or before  
28 **January 24, 2014**; any reply shall be filed on or before **February 7, 2014**; and the

1 hearing on CafePress's Motion for Summary Judgment is **CONTINUED** from January  
2 17, 2014, to **February 28, 2014, at 1:30 p.m.**

3 **IT IS SO ORDERED.**

4 DATED: November 19, 2013

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6 HON. GONZALO P. CURIEL  
7 United States District Judge  
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