

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 10-cv-00023-LTB-KMT

VINCENT E. WELLS,

Plaintiff,

v.

STEPHEN R. KREBS, M.D., Medical Director, Physician health Partners,
JOSEPH FORTUNATO, M.D., Sterling Correctional Facility,
BARRY GOLDSMITH, M.D., Sterling Correctional Facility,
PAULA FRANZ, M.D., Medical Director, Colorado Department of Corrections,
JO ANNE STOCK, P.C., Sterling Correctional Facility,
BEVERLY DOWIS, Health Service Administrator, and
CHERYL SMITH, Clinical Chief of Operations, Colorado Department of Corrections,

Defendants.

MINUTE ORDER

ORDER ENTERED BY MAGISTRATE JUDGE KATHLEEN M. TAFOYA

“Plaintiff’s Motion Requesting the Court to Postpone Defendants’ Summary Judgment Until Discovery Has Been Completed” (Doc. No. 70, filed July 12, 2010) is DENIED. The court recognizes that summary judgment is not appropriate if adequate time for discovery has not passed and that the nonmovant may oppose summary judgment by seeking additional time for discovery and a continuance. *See* Fed. R. Civ. P. 56(f); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 326 (1986). However, to present such a claim, the nonmoving party must submit an affidavit which demonstrates that the nonmovant is unable to respond to the motion for summary judgment and that postponing a ruling on the motion will enable him to rebut the motion. *See* Fed. R. Civ. P. 56(f); *see also Trask v. Franco*, 446 F.3d 1036, 1042 (10th Cir.2006) (Rule 56(f) affidavit must “explain[] why facts precluding summary judgment cannot be presented . . . includ[ing] identifying the probable facts not available and what steps have been taken to obtain these facts” and “how additional time will enable [the nonmovant] to rebut the movant’s allegations of no genuine issue of material fact.”). On August 2, 2010, Plaintiff filed a 25-page response to Defendants’ Motion for Summary Judgment. (Doc. No. 82.) Plaintiff did not file a Rule 56(f) affidavit, nor has Plaintiff given any information as to probable

facts not available, what steps have been taken to obtain these facts, or how additional time will enable Plaintiff to rebut Defendants' allegations of no genuine issue of material fact.

Dated: August 3, 2010