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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HOLLY A. NEILL, an individual; CORI
MULSOFF, an individual; BRENDA JONES,
an individual,

Plaintiffs,

v.

ALL PRIDE FITNESS OF WASHOUGAL,
LLC, a Washington Limited Liability
Corporation; CHINDIANAOPPLIS, a
Washington Limited Liability Corporation;
NILE PLOUFFE, an individual,

Defendants.

Case No. C08-5424RJB

ORDER GRANTING PLAINTIFFS'
MOTION FOR CONTINUANCE OF
DEFENDANTS' SUMMARY
JUDGMENT MOTION

This matter comes before the Court on Plaintiffs' Motion for Continuance. Dkt. 64. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

On April 2, 2009, Defendants filed a Motion for Summary Judgment. Dkt. 58. Plaintiffs filed the instant Motion to Continue the Summary Judgment Motion on April 6, 2009, arguing that parties are in the process of discovery on the issues raised in the Summary Judgment Motion. Dkt. 64. Defendants respond and state that they do not oppose a six week continuance of the Summary Judgment Motion. Dkt. 70. Plaintiffs file a Reply. Dkt. 75. Plaintiffs argue that rather than

1 calendar the Summary Judgment Motion for six weeks out, it should be denied without prejudice and
2 brought after discovery is complete. *Id.* Plaintiffs express concern that discovery on these issues
3 may not be complete in time to properly respond if the Summary Judgment Motion is noted when
4 Defendants propose.

5 Fed. R. Civ. P. 56(f), “When Affidavits Are Unavailable,” provides that:

6 If a party opposing the motion shows by affidavit that, for specified reasons, it cannot
7 present facts essential to justify its opposition, the court may:

- 8 (1) deny the motion;
- 9 (2) order a continuance to enable affidavits to be obtained, depositions to be
10 taken, or other discovery to be undertaken; or
- 11 (3) issue any other just order.

12 Plaintiffs’ Motion for a Continuance pursuant to Fed. R. Civ. P. 56 (f) should be granted, and
13 Defendant’s Motion for Summary Judgment denied without prejudice. Parties agree that they have
14 a great deal of discovery yet to do on the issues raised in the Summary Judgment Motion.

15 Parties make reference to discovery issues and the failure to disclose material facts to the
16 Court, however no motion appears to have been made by either party. If the parties intend to make a
17 motion, they should follow the Local and Federal Rules of Civil Procedure.

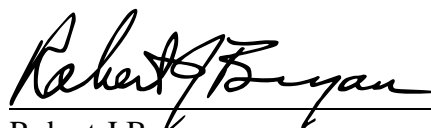
18 **ORDER**

19 Therefore, it is hereby **ORDERED** that:

- 20 • Plaintiffs’ Motion for a Continuance (Dkt. 64) is **GRANTED**,
- 21 • Defendants’ Motion for Summary Judgment (Dkt. 58) is **DENIED WITHOUT**
22 **PREJUDICE** pursuant to Fed. R. Civ. P. 56 (f).

23 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of
24 record and to any party appearing *pro se* at said party’s last known address.

25 DATED this 20th day of April, 2009.

26 

Robert J Bryan
United States District Judge