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2
3 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 WILLIAM DAVENPORT,

6 Plaintiffs,

No. C10-5583 BHS/KLS

7 v.

ORDER DENYING MOTION FOR RULE
56(F) CONTINUANCE

8 KELLY CUNNINGHAM, DAROLD
9 WEEKS, CATHY HARRIS, RANDALL
10 GRIFFITH, BARBARA BOARDMAN,
11 LINDA BRYANT, WILLIE
STODDARD, HENRY RICHARDS, and
UNIDENTIFIED MED DISPENSING
NURSES,

12 Defendants.

13
14 Before the Court is Plaintiff William Davenport’s “Opposition to States Motion for
15 Summary Judgment.” ECF No. 44. Plaintiff does not rebut any arguments made in Defendants’
16 motion for summary judgment nor does he produce any evidence in opposition. Instead, he
17 argues that now is not the appropriate time for summary judgment as the Defendants have failed
18 to comply with his discovery requests. *Id.* For the reasons set forth below, this argument is
19 rejected.

20
21 **BACKGROUND**

22 Defendants sent responses to Plaintiff’s discovery requests to him. The responses were
23 contained on a CD, which according to rules of the Special Commitment Center (SCC) must be
24 scanned. Plaintiff rejected and sent back the CD to Defendants’ counsel because he objected to
25 having the CD scanned by the SCC mailroom supervisor. ECF No. 45, p. 2. According to
26 Plaintiff, he was told he could not have the CD because he does not own a computer. However,

1 Plaintiff asserts that he was attempting to purchase a computer (which he expected to have by
2 August 15, 2011), and requested that the summary judgment motions (the Court assumes
3 Plaintiff is also referring to Defendant Griffith's motion which has already been granted), be
4 denied, that discovery be extended, and that Defendants be ordered to produce discovery. ECF
5 No. 44, p. 4.

6
7 Plaintiff has not filed a motion to produce any discovery and includes no certification that
8 he has in good faith conferred or attempted to confer with the SCC Defendants' counsel in an
9 effort to secure the information or material without court intervention. Fed. R. Civ. P.

10 37(a)(2)(B). More importantly, Plaintiff fails to demonstrate that there are specific facts he
11 hopes to discover if granted a continuance that will raise a genuine issue of material fact. Rule
12 56(f) of the Federal Rules of Civil Procedure provides:

13
14 If a party opposing the motion [for summary judgment] shows by affidavit that,
15 for specified reasons, it cannot present facts essential to justify its opposition, the
16 court may:

- 17 (1) deny the motion;
18 (2) order a continuance to enable affidavits to be obtained, depositions to be
19 taken, or other discovery to be undertaken; or
20 (3) issue any other just order.

21 A party seeking a continuance under Rule 56(f) must demonstrate that there are specific
22 facts he hopes to discover if granted a continuance that will raise a genuine issue of material fact.
23 *Harris v. Duty Free Shoppers Ltd. Partnership*, 940 F.2d 1272, 1276 (9th Cir.1991); *Carpenter*
24 *v. Universal Star Shipping, S.A.*, 924 F.2d 1539, 1547 (9th Cir.1991). "The burden is on the
25 party seeking to conduct additional discovery to put forth sufficient facts to show that the
26 evidence sought exists." *Volk v. D.A. Davidson & Co.*, 816 F.2d 1406, 1416 (9th Cir.1987). *See*

1 also *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100 (9th Cir.2006); *California*
2 *v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998) (party opposing on Rule 56(f) grounds needs to
3 state the specific facts he hopes to elicit from further discovery, that the facts sought exist and
4 that the sought-after facts are essential to resisting the summary judgment motion); *Hancock v.*
5 *Montgomery Ward Long Term Disability Trust*, 787 F.2d 1302, 1306 n. 1 (9th Cir.1986) (holding
6 that the party opposing summary judgment “has the burden under Rule 56(f) to show what facts
7 he hopes to discover to raise an issue of material fact”).
8

9 Plaintiff has detailed no facts that he hopes to discovery that are essential to resisting the
10 summary judgment motion. His request for continuance of the summary judgment motion is not
11 well taken.

12 Accordingly, it is **ORDERED**:

13 (1) Plaintiff’s motion to compel discovery and/or continue the Defendants’ motion
14 for summary judgment (ECF No. 44) is **DENIED**.
15

16 (2) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.
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18 **DATED** this 19th day of September, 2011.

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20 
21 Karen L. Strombom
22 United States Magistrate Judge
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