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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JUSTIN FREGOSI,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,

Defendants.

CASE NO. 3:18-cv-5440-RJB

ORDER ON PLAINTIFF’S
MOTION FOR A CONTINUANCE

This matter comes before the Court on Plaintiff’s Motion for Continuance of Defendants’ Motion Summary Judgment and Qualified Immunity. Dkt. 34. The Court has considered the pleadings filed regarding the motion and the remainder of the record herein.

On June 4, 2018, Plaintiff filed this case and moved to proceed in forma pauperis (“IFP”). Dkt. 1 and 1-1. Plaintiff’s IFP application was granted. Dkt. 3. On August 14, 2018, Plaintiff filed an amended complaint and asserts, in part, that the Defendants violated his due process rights when Christie Dotson and Jamie Young, both Department of Health and Human Services social workers, testified and/or filed pleadings in state court that Plaintiff had a prior child abuse conviction which resulted in his children being placed in foster care. Dkt. 13. Plaintiff claims that he had no such conviction, and while one of his children was in foster care, the child was abused. *Id.*

1 On May 16, 2019, the Defendants filed a motion for summary judgment, seeking
2 dismissal of the case. Dkt. 27. The motion for summary judgment is noted for consideration on
3 June 7, 2019. Plaintiff now files a motion to continue the motion for summary judgment. Dkt.
4 34. For the reasons provided below, the Plaintiff's motion should be granted (Dkt. 34), a brief
5 continuance given, and the summary judgment motion should be renoted for June 14, 2019.

6 **MOTION FOR A CONTINUANCE.** Under Fed. R. Civ. P. 56 (d):

7 If a nonmovant shows by affidavit or declaration that, for specified reasons, it
8 cannot present facts essential to justify its opposition [to a motion for summary
9 judgment], the court may: (1) defer considering the motion or deny it; (2) allow
time to obtain affidavits or declarations or to take discovery; or (3) issue any other
appropriate order.

10 "A party seeking additional discovery under Rule 56 (d) must explain what further discovery
11 would reveal that is essential to justify its opposition' to the motion for summary judgment."
12 *Stevens v. Corelogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018)(*cert. denied*, 139 S. Ct. 1222
13 (2019)(*internal quotation marks and citation omitted*). "In particular, the requesting party must
14 show that: (1) it has set forth in affidavit form the specific facts it hopes to elicit from further
15 discovery; (2) the facts sought exist; and (3) the sought-after facts are essential to oppose
16 summary judgment." *Id.* (*internal quotation marks and citation omitted*).

17 Plaintiff's motion for a continuance (Dkt. 17) should be granted and the motion for
18 summary judgment (Dkt. 27) should be renoted for June 14, 2019. In Plaintiff's May 22, 2019
19 motion, the Plaintiff states that on May 21, 2019 he contacted the Montana Department of
20 Family Services caseworker, Lisa Hardy, who the Defendants maintain gave them information
21 about the Plaintiff prior child abuse conviction. Dkt. 34. According to the Plaintiff, Ms. Hardy
22 told him that she did not tell the Defendants that he went to prison for felony child abuse. *Id.* He
23 asserts that he also talked with a Wyoming assistant attorney general who indicated that they
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1 were willing to submit something to the Washington court. *Id.* Over two weeks have passed
2 since the Plaintiff alleges the conversation with Ms. Hardy occurred. While it is not wholly
3 apparent that these facts are essential to oppose summary judgment, in the interest of fully and
4 fairly considering all issues in the case, a brief continuance is warranted. This continuance
5 should only be for one week because the discovery deadline has past and the dispositive motions
6 deadline expires today. The case is set to go to trial on September 3, 2019.

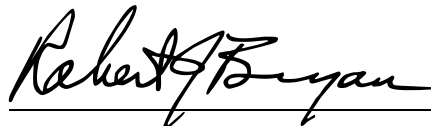
7 If he so chooses, the Plaintiff may supplement his response to the motion for summary on
8 or before June 10, 2019. Defendant's reply, if any, should be filed by June 14, 2019.

9 **ORDER**

- 10 • Plaintiff's Motion for Continuance of Defendants' Motion Summary Judgment
11 and Qualified Immunity (Dkt. 34) **IS GRANTED**;
- 12 • The Defendants' Motion for Summary and Qualified Immunity (Dkt. 27) **IS**
13 **RENOTED** for **June 14, 2019**;
- 14 ○ If he so chooses, the Plaintiff may supplement his response to the motion
15 for summary on or before **June 10, 2019**; and
16 ○ Defendant's reply, if any, shall be filed by **June 14, 2019**.

17 The Clerk is directed to send copies of this Order to all counsel of record and to any party
18 appearing *pro se* at said party's last known address.

19 Dated this 5th day of June, 2019.

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21 ROBERT J. BRYAN
22 United States District Judge
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