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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>MICHAEL HOLMBERG,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ELDON VAIL, Secretary DOC; et al.,</p> <p>Defendants - Appellees.</p> |
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No. 12-36001

D.C. No. 3:11-cv-05449-BHS

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Washington state prisoner Michael Holmberg appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging that defendant Sullivan unlawfully restricted his outgoing mail. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion discovery issues.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

United States v. Kitsap Physicians Serv., 314 F.3d 995, 1000 (9th Cir. 2002). We affirm.

The district court did not abuse its discretion by denying Holmberg's motion to compel additional discovery or his request to continue defendants' summary judgment motion until he received additional discovery because Holmberg failed to show how the additional discovery was necessary to defeat summary judgment.

See Blough v. Holland Realty, Inc., 574 F.3d 1084, 1091 (9th Cir. 2009) (denial of continuance to conduct further discovery appropriate when the district court considers the merits of the motion and concludes that there is no point to pursuing the requested discovery); *Tatum v. City & County of San Francisco*, 441 F.3d 1090, 1100-01 (9th Cir. 2006) (requirements for obtaining additional discovery under former Fed. R. Civ. P. 56(f)); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (describing trial court's broad discretion to deny a motion to compel).

We reject Holmberg's contentions regarding the applicability of *Garrett v. City & County of San Francisco*, 818 F.2d 1515 (9th Cir. 1987), and the district court's revocation of his in forma pauperis status.

AFFIRMED.