

1
2 **UNITED STATES DISTRICT COURT**
3 **EASTERN DISTRICT OF CALIFORNIA**
4

5 **DIANE GOINS and WESLEY**
6 **RENTFROW,**

7 **Plaintiffs**

8 **v.**

9 **COUNT OF MERCED, et al.,**

10 **Defendants**

CASE NO. 1:13-CV-1245 AWI SKO

ORDER ON PLAINTIFFS' EX PARTE
APPLICATION, ORDER VACATING
CURRENT DATES, and ORDER ON
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

(Doc. Nos. 63, 67)

11
12 Trial in this matter is set for February 23, 2016.

13 On August 14, 2015, a consent order was signed by the Court that substitute Plaintiffs'
14 former counsel, Mr. William Smith, for current, Ms. Kay Parker.

15 On September 21, 2015, Defendants filed a motion for summary judgment. See Doc. No.
16 63. Hearing on this motion is set for October 26, 2015.

17 Also on September 21, 2015, Plaintiffs filed an ex parte application to continue the
18 discovery, dispositive motions, pre-trial, and trial dates. See Doc. No. 67. Plaintiffs' counsel
19 explains in part that: Mr. Smith was essentially medically incapacitated from late June 2015 to his
20 death in late July 2015, extensive discovery has occurred but is incomplete, Ms. Parker has been
21 asked to take care of Mr. Smith's cases and clients, Ms. Parker retrieved the paperwork for this
22 case in late August 2015, and Ms. Parker requires additional time to familiarize herself with this
23 case (and others) in order to prepare for trial, complete discovery, oppose summary judgment, etc.
24 See id. Plaintiffs' counsel requests a 60 day continuance to oppose summary judgment, and a 90
25 to 120 day continuance to prepare for trial and address outstanding discovery issues. See id. It
26 appears that defense counsel is not amenable to a continuance of any kind. See id.
27

28 After considering Plaintiffs' application and the reasons surrounding the substitution of

1 counsel, as well as the Court's calendar and trial schedule for February 2016, the Court finds that
2 the circumstances of this case warrant granting the application in general, so that Ms. Parker can
3 get up to speed with the nature of the case and any pending matters. However, the Court will not
4 set any new dates at this time or make specific rulings about any particular outstanding issues.
5 Instead, the Court will refer the matter to Magistrate Judge Oberto for entry of a new scheduling
6 order. The parties should be prepared to address all discovery, motion practice, and trial related
7 issues before Magistrate Judge Oberto.

8 Additionally, because a new scheduling order will be entered, the time for opposing
9 summary judgment will certainly be affected. Although the 60 days requested by Ms. Parker may
10 be a sufficient continuance, the Court instead will deny Defendants' motion for summary
11 judgment without prejudice to re-noticing at a later time.

12
13 ORDER

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiffs' ex parte application to continue (Doc. No. 67) is GRANTED in general;
16 2. All currently set dates and deadlines, including the October 23, 2015 summary judgment
17 hearing date and the February 23, 2016 trial date, are VACATED;
18 3. Within ten (10) days of service of this order, the parties are to contact Magistrate Judge
19 Oberto for the purpose of setting a new scheduling conference date so that a new
20 scheduling order may be entered; and
21 4. Defendants' motion for summary judgment (Doc. No. 63) is DENIED without prejudice to
22 re-noticing, in compliance with the dates that will be set in the new scheduling order.¹

23
24 IT IS SO ORDERED.

25 Dated: September 22, 2015


26 _____
27 SENIOR DISTRICT JUDGE

28 _____
¹ The Court emphasizes that this is an administrative denial only, and it does not reflect on the merits in any way.