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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHUKWUEMEKA NDULUE,
Plaintiff,
v.

NO. CIV. 2:08-1696 WBS KJM

ORDER

FREMONT-RIDEOUT HEALTH GROUP;
LEONARD MARKS; PUSHPA RAMAN;
CHERRY ANN WY; ARUM KUMAR;
HARRY WANDER; and MAX LINS,
Defendants.

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Plaintiff has moved to continue the trial date in this action to either December 14, 2010 or January 19, 2011. Defendants oppose the motion.

The original trial date of June 22, 2010 was continued to September 14, 2010 by this court's order of May 5, 2010. (Docket No. 211.) Plaintiff's attorney, Michael J. Khouri represents that he will likely be engaged in another trial in the

1 case of People v. Tam Nguyen on September 14, 2010.

2 Plaintiffs's attorney states that he scheduled all
3 other matters on his calendar, as well as his vacation, on the
4 assumption that the case would proceed to trial on the originally
5 scheduled date of June 22, 2010, and that the trial date was
6 continued on the court's own motion "as a result of Defendants'
7 voluminous motions for summary judgment." Contrary to the
8 asserted understanding of plaintiff's counsel, the trial date was
9 not continued because of defendants' motions. The court could
10 have easily heard and decided all of defendants' pretrial motions
11 without the need for a continuance were it not for plaintiff's
12 patently unacceptable declarations and exhibits submitted in
13 opposition to defendants' motions.

14 As this court previously explained, "[a] trial court
15 can only consider admissible evidence in ruling on a motion for
16 summary judgment." Orr v. Bank of Am., NT & SA, 285 F.3d 764,
17 773 (9th Cir. 2002) (internal citations omitted). After
18 receiving defendants' objections to plaintiff's evidence supplied
19 in opposition to the motions for summary judgment, many of which
20 appeared to be meritorious, the court generously granted
21 plaintiff an opportunity to resubmit his briefs and evidence to
22 take defendants' evidentiary objections into account. (Docket
23 No. 211.) That is what necessitated the continuance of the trial
24 date.

25 Despite being afforded the latitude by the court to
26 amend his exhibits and declarations, plaintiff by and large
27 squandered that opportunity by making only minimal changes to his
28 evidence and failing to account for most, if not all, of

1 defendants' objections. Many statements in the declarations
2 supplied to the court were blatantly hearsay, obviously lacked
3 foundation, and were clearly not properly authenticated. (See
4 Docket No. 223 at 3-5.) Even with the knowledge that defendants
5 had previously objected to those statements, plaintiff did not so
6 much as attempt to change the wording of his declarations or file
7 properly authenticated documents.

8 It is disturbing to say the least that plaintiff's
9 attorney would cause the court to reschedule the trial in order
10 to allow him to cure obvious defects in his pleadings, make no
11 effort to cure most of those defects, and then ask for the court
12 for a further continuance of the trial as a result of that
13 rescheduling.

14 Plaintiff's counsel was well-aware of the new trial
15 date in this matter as of May 5, 2010, when the court issued its
16 Order continuing the trial date. Presumably, plaintiff's counsel
17 was also aware of the trial date in People v. Tam Nguyen at that
18 time as well. Despite this knowledge, counsel failed to mention
19 any concerns with the trial date until now, almost two months
20 later and less than two weeks before the Final Pretrial
21 Conference. Counsel's lack of diligence in seeking a continuance
22 undermines his ability to show good cause to move the trial date
23 at this time. See Johnson v. Mammoth Recreations, Inc., 975 F.2d
24 604, 609 (9th Cir. 1992).

25 Furthermore, Mr. Khouri has another attorney in his
26 office, Ashley K. Nguyen, who he felt was sufficiently qualified
27 and capable to appear and argue on an important dispositive
28 motion. Given Ms. Nguyen's demonstrated competence and

1 familiarity with the facts and issues of this case and the amount
2 of time left before trial, the court sees no reason why Ms.
3 Nguyen should not be able to cover for Mr. Khouri at plaintiff's
4 trial if the need arises. Plaintiff has accordingly failed to
5 show good cause to continue the trial in this mater.

6 IT IS THEREFORE ORDERED that plaintiff's motion for a
7 continuance be, and the same hereby is, DENIED without prejudice.
8 If plaintiff's attorney is actually in trial in the case of
9 People v. Tam Nguyen (not in some case rescheduled by plaintiff's
10 attorney in the meantime) as of September 14, 2010, the court
11 will reconsider a request to continue the trial date at that
12 time.

13 DATED: June 30, 2010

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15 WILLIAM B. SHUBB
16 UNITED STATES DISTRICT JUDGE
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