

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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VICTORIA McCARTHY, KATHERINE NO. CIV. 2:09-2495 WBS DAD
SCHMITT,

Plaintiffs,

ORDER RE: EX PARTE APPLICATION
TO CONTINUE MOTION

v.

R.J. REYNOLDS TOBACCO CO., and
DOES 1-10,

Defendants.

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On July 11, 2011, defendant filed a post-trial motion, (Docket No. 117), that included citations to two LexisNexis cases, Estate of Gonzalez v. Hickman, 2007 U.S. Dist. LEXIS 84390 (C.D. Cal. June 28, 2007), and Davis v. Harris, 2006 U.S. Dist. LEXIS 88000 (C.D. Ill. Dec. 5, 2006). Plaintiffs' counsel apparently does not have a subscription to LexisNexis. Plaintiffs' counsel filed an opposition to the motion on August 15, 2011, (Docket No. 139), and on the same day asked defense counsel for copies of the two cases, which defense counsel

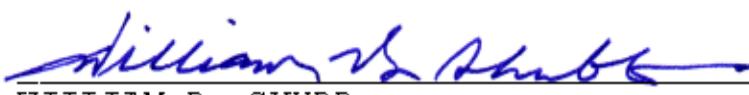
1 provided. (Mehta Decl. ¶ 5 (Docket No. 141-1).) On August 17,
2 2011, plaintiffs' counsel filed an ex parte application seeking a
3 one-week postponement of the hearing on defendant's post-trial
4 motion, an opportunity to file a second opposition, and an order
5 requiring defendant to provide to plaintiffs the two cases.
6 (Docket No. 140.) Plaintiffs' counsel did not provide an
7 explanation for his failure to request the cases until this time,
8 twelve days before the hearing on defendant's motion.

9 Plaintiffs' counsel was apparently unable to find the
10 two cases by searching by case name on Westlaw, where the court
11 was easily able to find both cases, or by searching on Google
12 Scholar, where the court was able to find Davis v. Harris, or by
13 paying for access to LexisNexis. Plaintiffs' counsel also
14 apparently failed to take advantage of the free LexisNexis
15 service provided in the Sacramento County Public Law Library.

16 Any competent attorney should be able to get access to
17 these cases, especially one who has held himself out as
18 exceptionally competent in this field to the extent of requesting
19 attorney's fees at an hourly rate of \$375.00. The court will not
20 postpone the hearing simply because plaintiffs' counsel cannot
21 perform the basic legal research. Any legal argument regarding
22 the cases can be made at the hearing on defendant's motion.

23 Plaintiffs' ex parte application to continue
24 defendant's motion is therefore DENIED.

25 DATED: August 18, 2011

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27 WILLIAM B. SHUBB
28 UNITED STATES DISTRICT JUDGE