

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL IMPEY,

Plaintiff,

v.

THE OFFICE DEPOT, INC.

Defendant.

No. C-09-01973 EDL

**ORDER GRANTING IN PART AND DENYING
IN PART MOTION TO CONTINUE TRIAL**

On February 9, 2011, this case was set for a pre-trial conference on August 9 and trial on September 6. On July 14, Defendant moved for a continuance of the trial date to either September 12 or October 17. This Court agreed to decide the motion on shortened time on the papers, and ordered the parties to address exactly how much time they anticipate needing for trial, and whether they would consider stipulating to have another judge of this District take the jury's verdict if deliberations continue past September 22, when the Court becomes unavailable.

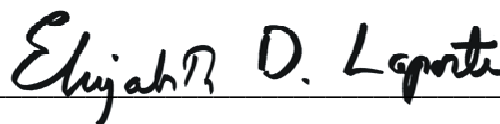
Defendant seeks a continuance of the trial date, which has been set for over five months, because it is the day after Labor Day and an attorney assigned to the case on April 1 has pre-existing travel plans. While Defendant states some confusion about whether the trial was going to proceed on September 6 due to communications with the clerk's office, the Court never ordered a continuance of the September 6 trial date, trial was always set for the day after Labor Day, and the attorney with the conflict was substituted in on April 1, well after the trial date was set. Thus, Defendant's showing of good cause for a continuance at this late date is weak.

1 Plaintiff opposes the motion because he believes trial will take a minimum of 10 and perhaps
2 15 days for trial and because he has listed 22 witnesses in his pre-trial papers. The Court set a 10
3 day limit on trial in its case management order after consultation with the parties, no good cause has
4 been shown for increasing the length of trial and the Court does not believe that more than 10 days is
5 required to try this case. Regarding Plaintiff's witnesses, Defendant points out that nine of
6 Plaintiff's witnesses are listed on the same topic so some of them may well be excluded as
7 duplicative. Further, of the remaining 13 witnesses, 11 overlap with Defendant's witnesses so this
8 will cut down on the time required.

9 In light of the foregoing, the Court Orders that trial of this matter shall be limited to ten court
10 days. The allocation and schedule of these ten court days will be determined at the pre-trial
11 conference. Trial shall begin on September 6, 2011 as scheduled. On September 6, jury selection
12 will be conducted and opening statements will be presented, but no client representatives or other
13 witnesses need to be present and no witness testimony will be taken. There will be no trial on
14 September 7, and witness testimony will begin on September 8. This will allow witnesses and client
15 representatives to travel two days after the Labor Day holiday if they prefer, and will provide ten
16 days for trial and two days for jury deliberation with Judge Laporte available. Should the jury
17 deliberate beyond September 22 when the Court becomes unavailable, another judge will accept the
18 verdict.

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20 **IT IS SO ORDERED.**

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23 Dated: July 20, 2011

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25 ELIZABETH D. LAPORTE
26 United States Magistrate Judge
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