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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION
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8 FRANK SCHAFFNER,
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10 Plaintiff,

11 vs.

12 CROWN EQUIPMENT CORPORATION dba
13 CROWN LIFT TRUCKS; NORTH WEST
14 HANDLING SYSTEMS, INC.,

15 Defendants.

16 NORTH WEST HANDLING SYSTEMS, INC.,

17 Cross-Claimant,

18 vs.

19 CROWN EQUIPMENT CORPORATION dba
20 CROWN LIFT TRUCKS; NORTH WEST
21 HANDLING SYSTEMS, INC.,

22 Cross-Defendants.

Case No: C 09-00284 SBA

**ORDER DENYING PLAINTIFF'S EX
PARTE APPLICATION FOR ORDER
SHORTENING TIME FOR
HEARING ON MOTION TO
CONTINUE TRIAL DATE**

Dkt. 142, 146

23 On November 21, 2011, Plaintiff filed a Motion to Continue the Trial Date along
24 with an Ex Parte Application to Shorten Time for Hearing of Motion to Continue Trial
25 Date. Dkt. 142, 146.¹ In his application to shorten time, Plaintiff seeks to have his motion
26 to continue trial heard on November 23, 2011—in other words, on *two days* notice.
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28 ¹ The trial date is February 22, 2012. Dkt. 128.

1 Plaintiff's ex parte application is wholly improper. Under Civil Local Rule 6-3(c),
2 Defendants have *four days* from the filing of an application for an order shortening time to
3 file a response. In addition, a party opposing a noticed motion has *two weeks* to file its
4 response thereto. Id. 7-3(a). By seeking to have his motion to continue the trial date heard
5 on two days notice, Plaintiff's application effectively deprives Defendants of the
6 opportunity to respond to either the ex parte application or the motion.

7 The above notwithstanding, Plaintiff's ex parte application for an order shortening
8 time is unnecessary because Plaintiff should not have filed a *noticed* motion to continue the
9 trial date in the first instance. Civil Local Rule 6-1 provides:

10 A Court order is required for any enlargement or shortening of
11 time that alters *an event or deadline already fixed by Court*
12 *order* or that involves papers required to be filed or lodged with
13 the Court (other than an initial response to the complaint). A
14 request for a Court order enlarging or shortening time may be
made by written stipulation pursuant to Civil L.R. 6-2 or *motion*
pursuant to Civil L.R. 6-3. Any stipulated request or motion
which affects a hearing or proceeding on the Court's calendar
must be filed no later than 14 days before the scheduled event.

15 Civ. L.R. 6-1(b) (emphasis added). Thus, to the extent Plaintiff desires to continue the trial
16 date—i.e., “an event ... fixed by the Court,” he should have filed a motion to change time
17 under Rule 6-3, not a noticed motion under Civil Local Rule 7-2. The Court therefore
18 strikes Plaintiff's procedurally improper motion to continue trial date without prejudice to
19 resubmitting said motion in accordance with Rule 6-3. See Grove v. Wells Fargo Fin. Cal.,
20 Inc., 606 F.3d 577, 582 (9th Cir. 2010) (upholding district court's denial of motion to tax
21 costs which was not in compliance with the court's local rules). Accordingly,

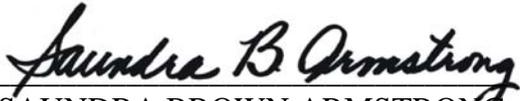
22 IT IS HEREBY ORDERED THAT:

- 23 1. Plaintiff's Ex Parte Application to Shorten Time for Hearing of Motion to
24 Continue Trial Date is DENIED.
- 25 2. Plaintiff's Motion to Continue Trial Date, Dkt. 142, including supporting
26 exhibits, is STRICKEN from the record.
- 27 3. This Order terminates Docket 142 and 146.

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IT IS SO ORDERED.

Dated: December 2, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge