IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Darla Padgett, et al.,

Plaintiffs,

v.

Brian Loventhal, et al.,

Defendants.

_____/

NO. C 04-03946 JW

ORDER DENYING PLAINTIFFS' *EX PARTE* APPLICATION FOR ORDER SHORTENING TIME

Presently before the Court is Plaintiffs' *Ex Parte* Application for Order Shortening Time for Plaintiffs' Renewed Motion for Judgment as a Matter of Law; or in The Alternative, Request for New Trial. (hereafter, "Application," Docket Item No. 865.) Plaintiffs seek to have their pending motions heard prior to the September 28, 2009 scheduled hearing. Defendants filed a timely opposition. (See Docket Item No. 880.)

Plaintiffs contend that not hearing their motion for judgment as a matter of law will prejudice all parties in that they will incur greater expense and, should the Court decide to grant a new trial, witnesses' availability and memories will be at risk. (Application at 3.)

Ordinarily, a motion may not be heard "less than 35 days after service of the motion." Civ. L.R. 7-2(a). However, a court may modify its schedule "for good cause." Fed. R. Civ. P. 16(b)(4).

Here, Plaintiffs and Defendant Loventhal have noticed post-trial motions for September 28, 2009. (See Docket Item Nos. 859, 868.) In light of the Court's preference for hearing both matters in a single hearing, and the Court's current schedule, the Court finds that it cannot shorten the time for hearing Plaintiffs' and Defendant Loventhal's pending motions.

Accordingly, the Court DENIES Plaintiffs' *Ex Parte* Application for Order Shortening Time for Plaintiffs' Renewed Motion for Judgment as a Matter of Law; or in The Alternative, Request for New Trial.

Dated: July 2, 2009

JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Andrew Vinson Stearns astearns@loboinc.com
Joseph C. Howard jhoward@hrmrlaw.com
M. Jeffery Kallis M_J_Kallis@Kallislaw.org
Thomas H R Denver tdenver@mediationmasters.com

Dated: July 2, 2009

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy