

United States District Court
For the Northern District of California

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E-Filed 5/21/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUAN CERVANTES, RAFAEL
ARVIZU, NICOLAS GOMEZ, CESAR
NAVA, and ALEJANDRO CRUZ-
SANDOVAL, on behalf of themselves
and all others similarly situated,

No. 5:08 CV 4798 RS

Plaintiffs,

**ORDER CONTINUING HEARING
DATE AND EXTENDING BRIEFING
SCHEDULE**

v.

A.C.F. CUSTOM CONCRETE
CONSTRUCTION, INC., ART C. FISHER,
and DOES 1 through 20, inclusive,

Defendants.

THIS MATTER is before the Court on plaintiffs' motion to change time. On May 1, 2009, defendants filed a summary judgment motion, which they noticed for hearing on June 24, 2009—well beyond the 35-day minimum notice period prescribed by Civil Local Rule 7-2. Motion for Summary Judgment, filed May 1, 2009. Accordingly, under the local rules, plaintiff's opposition is currently due on June 3, 2009, and defendants' reply is due June 10, 2009. *See* Rule 7-3(b) & (c) (providing that the opposition is due 21 days before the motion hearing and the reply is due 14 days before the motion hearing).

On May 11, 2009, plaintiffs moved to continue the hearing date because plaintiffs' counsel has previously made plans to be out of the country on June 24 and will not return until July 5. Plaintiffs request the hearing date be moved to September 2009. Defendants, who oppose plaintiffs'

1 motion to change time, consent to the summary judgment hearing's postponement, but only until
2 July. Defendants' proposal appears more reasonable, and accordingly, the summary judgment
3 hearing in this case will be continued until Wednesday, July 29, 2009, at 9:30 a.m, in Courtroom 4,
4 5th Floor, United States Courthouse, San Jose, California.

5 Counsel state they are unable to agree on a briefing schedule for the summary judgment
6 motion. Civil Local Rule 7-7(d), which governs orders for continuance of motion hearings, states:

7 Unless the order for continuance specifies otherwise, the entry of an order continuing
8 the hearing of a motion automatically extends the time for filing and serving
9 opposing papers or reply papers to 21 and 14 days, respectively, preceding the new
10 hearing date, unless the date for filing the papers has already passed prior to the date
11 of the order for continuance.

12 In this case, Rule 7-7(d) would make the opposition due July 8 and the reply due July 15. Plaintiffs
13 note, however, that the 60 day opt-in notice period in this case ends on July 4. Accordingly, the
14 Court will extend the briefing schedule by five days to give plaintiffs' counsel more time to prepare
15 his opposition following the July 4 deadline. Thus, the opposition will be due July 13. Defendants'
16 reply deadline will also be extended five days, to July 20.

17 Accordingly, plaintiffs' motion to change time is granted. Defendants' summary judgment
18 motion will be heard on July 29, 2009. Plaintiffs' opposition deadline is extended to July 13, 2009,
19 and defendants' reply deadline is extended to July 20, 2009.

20 IT IS SO ORDERED.

21 Dated: 5/21/09

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23 RICHARD SEEBORG
24 United States Magistrate Judge

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