

1 Benjamin L. Ratliff, Esq. Bar No. 113708

2 THE LAW FIRM OF
3 WEAKLEY, RATLIFF,
4 ARENDT & McGUIRE, LLP
1630 East Shaw Avenue, Suite 176
Fresno, California 93710

5 Telephone: (559) 221-5256
6 Facsimile: (559) 221-5262

7 Attorneys for Defendants TOMMY JONES

SUPERIOR COURT OF
CALIFORNIA, COUNTY OF
MERCED

FILED by **FAX**

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED

9
10 EUGENE FORTE,

11 Plaintiff

12 vs.

13 TOMMY JONES,

14
15 Defendant.

) CASE NO. 150880
)
) **DEFENDANT, TOMMY JONES,**
) **RESPONSE TO PLAINTIFFS MOTION**
) **FOR LEAVE TO FILE FIRST AMENDED**
) **COMPLAINT AND REQUEST FOR**
) **CONTINUANCE OF TRIAL DATE**
)
) Date: September 12 2008
) Time: 8:15 p.m.
) Dept.: 4
) Trial: December 16, 2008

16
17 Complaint Filed: December 18, 2007

18 Defendant Tommy Jones submits the following response to plaintiff's Motion For Leave
19 to File First Amended Complaint.

20 **I.**
21 **REQUEST FOR CONTINUANCE OF TRIAL DATE OR IN THE ALTERNATIVE TO**
22 **SET CASE MANAGEMENT CONFERENCE**

23 Given that the law favors allowing a plaintiff to amend his complaint, defendant has no
24 opposition to the court granting plaintiff's motion. However, defendant has filed a motion for
25 summary judgment based on the original complaint and the current trial date of December 16,
26 2008. The hearing on the motion is scheduled for November 14, 2008. Because the FAC will
27 supercede the original complaint, defendant will have to file a new responsive pleading and a new
28 motion for summary judgment addressing the FAC. *Tidwell v. Hendricks* (1954) 124 Cal. App. 2nd

1 Benjamin L. Ratliff, Esq. Bar No. 113708

2 THE LAW FIRM OF
3 WEAKLEY, RATLIFF,
4 ARENDT & McGUIRE, LLP
1630 East Shaw Avenue, Suite 176
Fresno, California 93710

5 Telephone: (559) 221-5256
6 Facsimile: (559) 221-5262

7 Attorneys for Defendants TOMMY JONES

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED

9
10 EUGENE FORTE,

11 Plaintiff

12 vs.

13 TOMMY JONES,

14
15 Defendant.

) CASE NO. 150880
)
) **DEFENDANT, TOMMY JONES,**
) **RESPONSE TO PLAINTIFFS MOTION**
) **FOR LEAVE TO FILE FIRST AMENDED**
) **COMPLAINT AND REQUEST FOR**
) **CONTINUANCE OF TRIAL DATE**
)
) Date: September 12 2008
) Time: 8:15 p.m.
) Dept.: 4
) Trial: December 16, 2008

16
17 Complaint Filed: December 18, 2007

18 Defendant Tommy Jones submits the following response to plaintiff's Motion For Leave
19 to File First Amended Complaint.

20 I.
21 **REQUEST FOR CONTINUANCE OF TRIAL DATE OR IN THE ALTERNATIVE TO**
22 **SET CASE MANAGEMENT CONFERENCE**

23 Given that the law favors allowing a plaintiff to amend his complaint, defendant has no
24 opposition to the court granting plaintiff's motion. However, defendant has filed a motion for
25 summary judgment based on the original complaint and the current trial date of December 16,
26 2008. The hearing on the motion is scheduled for November 14, 2008. Because the FAC will
27 supercede the original complaint, defendant will have to file a new responsive pleading and a new
28 motion for summary judgment addressing the FAC. *Tidwell v. Hendricks* (1954) 124 Cal. App. 2nd

1 64. Code of Civil Procedure section 437c requires that plaintiff be given notice of the motion at
2 least 75 days prior to the motion being heard. Such notice would not be possible given the current
3 trial date and retaining the current trial date would deprive defendant of his right to file a motion
4 for summary judgment as to the FAC.


5 CCP 473(a)(1) gives the court authority to grant leave to amend a complaint on such ground
6 as may be proper. The court may continue the trial date as a condition of granting a plaintiff's
7 motion to amend. See also *Honig v. Financial Corp. Of Am.* (1992) 6 C.A.4th 960, 967. It is
8 submitted therefore, that a continuance of current trial date would be fair, proper and comport with
9 the principles of procedural due process.

10 **II.**
11 **CONCLUSION**

12 For the reasons abovementioned, defendant respectfully requests that the current trial date
13 be continued or that the case be rescheduled for a case management conference so as to schedule
14 a new trial date.

15 DATED: August 29, 2008

WEAKLEY, RATLIFF, ARENDT & McGUIRE, LLP

16
17
18 By: 
19 Benjamin L. Ratliff
20 Attorney for Defendant
21 Tommy Jones
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, the undersigned, hereby certify that I am employed in the County of Fresno, State of California, over the age of eighteen years and not a party to the within action; my business address is 1630 East Shaw Avenue, Suite 176, Fresno, California 93710.

On the date set forth below, I placed in a sealed envelope and served a true copy of the within

**DEFENDANT, TOMMY JONES, RESPONSE TO PLAINTIFFS MOTION
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AND
REQUEST FOR CONTINUANCE OF TRIAL DATE**

addressed as follows:

Mr. Eugene Forte
688 Birch Court
Los Banos, California 93635
(209) 829-1116
Plaintiff In Pro Per

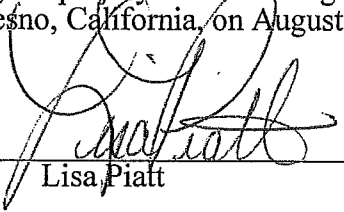
BY MAIL I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited in the ordinary course of business.

I caused each envelope, with postage fully prepaid, to be placed in the United States mail, at Fresno, California.

BY HAND I hand delivered each envelope to the office listed above.

BY FACSIMILE I served the above-mentioned document from Facsimile Machine No.: (559) 221-5262 to the interested parties at the facsimile numbers listed above.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed at Fresno, California, on August 29, 2008.



Lisa Piatt

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 1023
DESTINATION ADDRESS 18003503917
PSWD/SUBADDRESS
DESTINATION ID
ST. TIME 08/29 10:12
USAGE T 02' 19
PGS. 4
RESULT OK

MC-005

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Benjamin L. Ratliff, No. 113708 WEAKLEY, RATLIFF, ARENDT & MCGUIRE 1630 East Shaw Ave., Suite 176 Fresno, California 93710 TELEPHONE NO.: (559) 221-5256 FAX NO. (Optional): (559) 221-5262 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Defendant Tommy Jones	FOR COURT USE ONLY CASE NUMBER: 150880
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED STREET ADDRESS: 627 West 21st Street MAILING ADDRESS: Merced, California 95434 CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: EUGENE FORTE DEFENDANT/RESPONDENT: TOMMY JONES, et al.	
FACSIMILE TRANSMISSION COVER SHEET	

TO THE COURT:

1. Please file the following transmitted documents in the order listed below:

Document name	No. of pages
Defendant Tommy Jones Response to Plaintiff's Motion for Leave to File First Amended Complaint and Request for Continuance of Trial Date	3

2. Processing instructions consisting of: _____ pages are also transmitted.

3. Fee required Filing fee Fax fee (Cal. Rules of Court, rule 10.815)

a. Credit card payment I authorize the above fees and any amount imposed by the card issuer or draft purchaser to be charged to the following account:

VISA MASTERCARD Account No.:

Expiration date:

OFFICIAL PAYMENTS CORP.



FAX FILING RECEIPT CONFIRMATION

Sequence Number	Pages	Fax Number	Date & Time	Credit Card	Exp. Date
917002717	4	559-221-5262	8/29/08 10:17:02 AM	5 ... 8833	08/2008

You have faxed your document to: **Merced Co Superior Court-Unlimited Civil**
Through the Automated Fax Filing System
Automated Fax Filing System Fax Number 1-800-350-3917

AFFS will charge a \$25.00 processing fee for filings rejected by the courts
AFFS will charge a \$10.00 processing fee for invalid credit card transactions

Special instructions for Merced Co Superior Court-Unlimited Civil: There are no special filing instructions for this court.

FAX SUBJECT TO CONFIRMATION BY COURT - Approval is done daily but can take up to 2 business days depending on the Court. Once the document is approved, the Automated Fax Filing System will fax a conformed face sheet and charge receipt back to the registered fax number.

For a list of participating courts and their respective fax numbers, call 1-800-322-4945 and select option #3 or visit <http://www.officialpayments.com/faxfile.jsp>