

**NOTICE:**

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-5487 (Department 47) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 2.02(D).

**Department 47  
Superior Court of California  
720 Ninth Street  
Roland L. Candee, Judge  
S. Jacobs/P. Banks, Clerk  
None, Bailiff**

**Friday, March 23, 2007, 9:30 AM**

Item 1 **04AS02796 DEAN A. DOGLIETTO, ET AL VS. AT SYSTEMS, INC.**

Nature of Proceeding: Motion To Continue Trial

Filed By:

Good cause appearing, defendant AT Systems West Inc.'s motion to continue trial and settlement conference in this class action case currently set for May 8, 2007 and April 10, 2007, respectively, is GRANTED. This matter will be placed upon the May 7, 2007 trial setting calendar to be heard at 10:00 a.m. in Department 47.

Defendant seeks a continuance on the ground that a California Supreme Court decision which should be decided by June could have a significant impact on this case. The Supreme Court case is Murphy v. Kenneth Cole Productions, Inc. No. S140308. The case presents the issue of whether Labor Code 226.7 payments should be characterized as a penalty or as wages. If the former, the statute of limitations is one year. If the latter the statute of limitations would be four years. According to defendant this determination would have a significant impact on the way the case would be tried, the amount and type of evidence presented, the length of the trial and the amount of damages claimed.

Plaintiff opposes a continuance on the ground that defendant did not seek a continuance in timely fashion, that class members would suffer prejudice by having to continue to endure allegedly improper conditions in the work place and that the case could easily be tried before the Supreme Court issues its decision.

The Supreme Court announced the date for argument in Cole in early February. The argument was set for March 7. Plaintiff filed the instant motion on February 28. With respect to the possible on going harm suffered by class members, the court finds that no decision has yet been made upon these conditions. Accordingly, the court cannot determine at this point that their continued application would constitute prejudice. Finally, the court is persuaded that if a brief continuance can clarify and perhaps resolve a significant issue in the case, then such a continuance is appropriate.

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Item 2 **06AS00005 KATHY NOBLET VS BETTI ANDERS, ET AL**

Nature of Proceeding: Motion To Continue Trial

Filed By:

Good cause appearing, and the parties having stipulated thereto, defendants' motion to continue trial currently set for April 9, 2007 is GRANTED. This matter shall be placed upon the May 7, 2007 trial setting calendar to be heard at 10:00 a.m. in Department 47.

The court finds good cause to continue trial based upon the stipulation of the parties, the parties need for additional time to conclude a corporate audit and the parties desire to defer additional discovery, if any, until the conclusion of the audit.

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Item 3    **06AS00067        MALAQUIAS MEJIA ET AL VS. LOZA TRUCKING ET AL**

Nature of Proceeding: Motion To Bifurcate

Filed By:

This matter is dropped from calendar per request of moving party.

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Item 4    **06AS00067        MALAQUIAS MEJIA ET AL VS. LOZA TRUCKING ET AL**

Nature of Proceeding: Motion To Bifurcate

Filed By:

This matter has been dropped at the request of the moving party.

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Item 5    **06AS03068        ROBERT CRAGGS, ET AL VS. DAIMLCHRYSLER CORPORATION, ETAL**

Nature of Proceeding: Motion For Preference

Filed By:

Good cause appearing, plaintiffs' motion for a trial preference pursuant to CCP 36(a) is GRANTED. This matter shall be placed upon the May 7, 2007 trial setting calendar to be heard at 9:00 a.m. in Department 47. Pursuant to CCP 36(f) this matter must be given a trial date on or before July 21, 2007.

Under CCP 36(a) a party is entitled to a trial preference if: (1) the party is over 70, (2) the party has a substantial interest in the litigation and (3) the party's health is such that preference is necessary to prevent prejudicing the party's interest in the litigation. In this case it is not disputed that both plaintiffs are over the age of 70 and have a substantial interest in the litigation. The only dispute concerns plaintiffs' health.

Reviewing the declarations of plaintiffs' treating physician and the declaration of attorney C. Jean Cain filed together with the reply brief, the court is persuaded that plaintiffs' health condition is such that preference is necessary. The court notes that because the declaration of counsel was offered for the first time in reply it continued the current hearing date and afforded defendant an opportunity to respond to the reply. It does not appear that defendant has filed any additional response. The court further notes that under CCP 36.5 an attorney may file an affidavit regarding a party's medical condition for purposes of CCP 36.

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