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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PUNAOFO TSUGITO TILEI,)	1:06-cv-0776 OWW GSA PC
)	
Plaintiff,)	ORDER VACATING TRIAL AND
)	EXTENDING TIME FOR
v.)	PLAINTIFF TO RESPOND TO
)	ORDER TO SHOW CAUSE
T. WAN, et al.,)	
)	THIRTY DAY DEADLINE
Defendants.)	
)	JURY TRIAL PREVIOUSLY
)	SCHEDULED FOR AUGUST 2,
)	2011 HAS BEEN VACATED

This matter was set for jury trial on Tuesday, August 2, 2011 at 9:00 a.m. in Courtroom 3 before District Judge Oliver W. Wanger. On July 15, 2011, the Court entered an order requiring Plaintiff to file a declaration by July 25, 2011, showing cause why this case should not be dismissed for Plaintiff's failure to prosecute. (Doc. 121.) On July 25, 2011, the Court received a declaration by a non-party to this action, notifying the Court that Plaintiff is suffering from a debilitating medical condition which has caused him to remain bedridden for eight months. The non-party requests that Plaintiff's jury trial be extended and that counsel be appointed.

This action has been pending for more than five years. The

1 Court cannot hold this case in abeyance indefinitely based on
2 Plaintiff's inability to prosecute. A presumption of injury
3 arises from the occurrence of unreasonable delay in prosecuting
4 an action. *In re Phenylpropanolamine (PPA) Products Liability*
5 *Litigation*, 460 F.3d 1217, 1227 (9th Cir. 2006) (citing
6 *Moneymaker v. CoBen (In re Eisen)*, 31 F.3d 1447, 1453 (9th Cir.
7 1994)). Moreover, Plaintiff may not rely on another person who
8 is a non-attorney and a non-party to litigate on Plaintiff's
9 behalf.

10 Good cause appearing, the jury trial scheduled for August 2,
11 2011 in this action has been vacated, and Plaintiff shall be
12 granted an extension of time to respond to the Court's order to
13 show cause. Within thirty days, Plaintiff must file a
14 declaration signed under penalty of perjury with Plaintiff's
15 original signature, either (1) notifying the Court that he
16 intends to proceed with this action, or (2) requesting voluntary
17 dismissal of this action. If Plaintiff intends to proceed with
18 this action, he must also inform the Court of his ability to
19 comply with court orders, meet case deadlines, and otherwise
20 prosecute this action, including his ability to prepare for
21 trial.

22 Accordingly, based on the foregoing, IT IS HEREBY ORDERED
23 that:

24 1. The jury trial in this action, scheduled for August 2,
25 2011 at 9:00 a.m. before District Judge Oliver W. Wanger, has
26 been VACATED;

27 2. Plaintiff is GRANTED an extension of time in which to
28 respond to the Court's order to show cause of July 15, 2011;

1 3. Within thirty days of the date of service of this
2 order, Plaintiff shall file a declaration as instructed by this
3 order, either (1) notifying the Court that he intends to proceed
4 with this action, or (2) requesting voluntary dismissal of this
5 action; and

6 4. Plaintiff's failure to comply with this order may
7 result in the dismissal of this action.

8
9 IT IS SO ORDERED.

10 Dated: August 17, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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