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3 **UNITED STATES DISTRICT COURT**

4 EASTERN DISTRICT OF CALIFORNIA

5 ANTHONY DEAN SLAMA,

CASE NO. 1:08-cv-00810-AWI-SKO

6
7 Plaintiff,

**ORDER DISCHARGING ORDER TO
SHOW CAUSE**

8 v.

(Docket No. 125)

9 CITY OF MADERA, et al.,

**ORDER DENYING PLAINTIFF'S
MOTION REQUESTING LEAVE OF
COURT TO ENGAGE IN
SETTLEMENT DISCUSSIONS
BEFORE THE TRIAL DATE IS SET**

10
11 Defendants.

(Docket No. 123)

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13 **ORDER SETTING PRE-TRIAL
CONFERENCE AND TRIAL DATES**

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15 **ORDER REQUIRING DEFENDANTS
TO FILE A STATUS UPDATE RE:
WILLINGNESS TO PARTICIPATE
IN SETTLEMENT CONFERENCE**

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20 **I. INTRODUCTION**

21 On June 26, 2012, the Court issued an order denying in part Defendants' motion for summary
22 judgment, finding that there were material facts in dispute as to Plaintiff's claims for arrest without
23 probable cause and excessive force. (Doc. 122.) The Court ordered the parties to "contact the
24 Magistrate Judge within 30 days of service of this order for the purpose of setting a pre-trial
25 conference date and a trial date." (Doc. 122, 18:17-18.)

26 On July 26, 2012, Plaintiff filed a "Motion and Request to Seek Leave of the Court to
27 Potentially Resolve and/or Settle with the Defendants Without Issuing a Full Trial in Conjunction
28 With Reasonable Attempts to Obtain Counsel" and an "Acknowledgment of Order on Summary

1 Judgment and Contact as Requested by the Trial Court for the Purposes of Setting Pre-Trial
2 Conference and Trial Date." (Docs. 123, 124.) Plaintiff acknowledged that the Court's June 26,
3 2012, order denying in part Defendants' motion for summary judgment required the parties to contact
4 the Court to set the pre-trial conference and trial dates, and indicated that he was seeking leave of
5 the Court to resolve and/or settle the case with Defendants without the issuance of a full trial
6 schedule. (Docs. 123, 124.)

7 On August 10, 2012, the Court issued an Order to Show Cause as to why Defendants' counsel
8 should not be sanctioned for failing to comply with the June 26, 2012, Court order requiring
9 Defendants to contact the Court regarding dates for the pre-trial conference and trial. (Doc. 125.)
10 Defendants were also ordered to file a status report proposing those dates and indicating whether
11 they believe, in good faith, that a settlement is a possibility in this action and whether they were
12 interested in participating in a settlement conference. (Doc. 125.)

13 On August 13, 2012, Defendants filed the Declaration of Gregory L. Myers, the Declaration
14 of Lisa M. Piatt, and a Status Report in response to the Court's Order to Show Cause. (Docs. 126,
15 128, 130.)

16 Accordingly, the Court DISCHARGES the Order to Show Cause, DENIES Plaintiff's request
17 that a trial date not be set at this time, SETS the pre-trial conference and trial dates, and ORDERS
18 Defendants to file a status update by no later than September 12, 2012, indicating whether they are
19 interested in participating in a settlement conference.

20 II. DISCUSSION

21 A. Order Discharging Order to Show Cause

22 On June 26, 2012, Chief District Judge Anthony W. Ishii denied in part Defendants' motion
23 for summary judgment and further ordered that "[t]he parties shall contact the Magistrate Judge
24 within 30 days of service of this order for the purpose of setting a pre-trial conference date and a trial
25 date." (Doc. 122, 18:17-18.) Plaintiff, who is currently incarcerated and is appearing pro se,
26 contacted the Court as ordered. (Docs. 123, 124.) Defendants, however, failed to file any
27 information on the docket and did not directly contact the Magistrate Judge assigned to this case;
28 thus, it appeared that Defendants had failed to contact the Court.

1 On August 13, 2012, Defendants filed the Declaration of Gregory L. Myers, Defendant's
2 counsel, and the Declaration of Lisa M. Piatt, Mr. Bradley's secretary. (Docs. 126, 128.) Ms. Piatt
3 declares that on July 26, 2012, she contacted the assistant for Magistrate Judge Gary S. Austin via
4 e-mail and proposed dates for the pre-trial conference and the trial. (Doc. 128, 1:20-26.) It is
5 unclear why Magistrate Judge Austin's staff was contacted, since this action was reassigned from
6 Magistrate Judge Austin to Magistrate Judge Sheila K. Oberto over two years prior on April 14,
7 2010. (Doc. 55.) Ms. Piatt declares that she was informed that the case was assigned to Judge
8 Oberto and that the proposed dates would be forwarded to Judge Oberto's staff. (Doc. 128, 2:1-4.)
9 Ms. Piatt does not indicate that she followed up with Judge Oberto's staff regarding scheduling in
10 this action.¹ (See Doc. 128.) Further, Defendants filed nothing; thus, the docket does not reflect
11 Defendants' efforts to comply with Chief District Judge Ishii's June 26, 2012, Order.² As such,
12 Defendants did not contact Judge Oberto's chambers directly to propose dates as required in the
13 Court's June 26, 2012, Order, and a review of the docket did not establish that Defendants made any
14 contact with the Court.

15 Nonetheless, as it appears that Defendant's counsel did, in fact, contact a Magistrate Judge
16 to propose dates, albeit the wrong Magistrate Judge, the Court DISCHARGES the Order to Show
17 Cause.

18 **B. Order Denying Plaintiff's Motion Requesting Leave of Court to Engage in Settlement**
19 **Discussions Before a Trial Date is Set**

20 On July 26, 2012, Plaintiff filed a "Motion and Request to Seek Leave of the Court to
21 Potentially Resolve and/or Settle with the Defendants Without Issuing a Full Trial in Conjunction
22 With Reasonable Attempts to Obtain Counsel." (Doc. 123.) Plaintiff appears to be requesting that
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24

25 ¹ It is noted that Ms. Piatt has misspelled the name of Judge Oberto's courtroom deputy, Alice Timken (see
26 Doc. 128, 2:4-6.), and, as such, if Ms. Piatt had attempted to contact Ms. Timken directly via e-mail, such misspelling
would have prevented an e-mail from being received by Ms. Timken.

27 ² While undocumented contact with the Court may sometimes appear to be an efficient way to accomplish case
28 management tasks, such contact can lead to frustrating and time consuming misunderstandings when complying with
express orders. Often, the best method of contacting the Court is to **file** statements or requests.

1 the Court wait 60-90 days before setting a trial date to allow the parties to engage in settlement
2 negotiations. (Doc. 123, 2:16-18.)

3 While the Court does not wish to discourage the parties from engaging in settlement
4 discussions, it is also prudent that the pre-trial conference and trial dates be set in the event that any
5 such settlement discussions should fail – especially in light of the age and procedural posture of this
6 action. As such, to the extent that Plaintiff is requesting that the Court postpone setting the pre-trial
7 conference and trial dates, that request is DENIED. However, the Court will leave time between the
8 present date and the future trial date to allow the parties to engage in settlement negotiations should
9 they desire to do so.

10 **C. Order Setting Pre-Trial Conference and Trial Dates**

11 On August 13, 2012, pursuant to the Court's August 10, 2012, order, Defendants filed a status
12 report proposing dates for the pre-trial conference of January 3 or 11, 2013, and for the trial of
13 February 4-13 or 18-22, 2013. (Doc. 130.) Defendants, however, did not allow sufficient time
14 between the proposed pre-trial conference date and the trial date to allow for Chief District Judge
15 Ishii's impacted schedule. As such, based upon Defendants' proposed pre-trial conference date of
16 January 11, 2013, the Court SETS the following schedule:

17 Pre-trial Conference Date: January 11, 2013

18 Commencement of Trial Date: March 5, 2013

19 **D. Order Requiring Defendants to File a Status Update Regarding Willingness to**
20 **Participate in Settlement Conference**

21 As noted above, on July 26, 2012, Plaintiff filed a "Motion and Request to Seek Leave of the
22 Court to Potentially Resolve and/or Settle with the Defendants Without Issuing a Full Trial in
23 Conjunction With Reasonable Attempts to Obtain Counsel." (Doc. 123.) It appears that Plaintiff
24 is requesting that a settlement conference be held in this action. The Court's August 10, 2012, Order
25 required that Defendants file a status update indicating whether they believe, in good faith, that
26 settlement in this case is a possibility and whether they are interested in participating in a settlement
27 conference. (Doc. 125.)

1 On August 13, 2012, Defendants filed a Status Report indicating that "[a] discussion has
2 taken place with a representative from the City of Madera" and that "any final decisions regarding
3 settlement lies with the City Council for the City of Madera." (Doc. 130, 1:21-22.) Defendants
4 indicate that "[t]he issue of the potential settlement of this case will be brought before the City
5 Council in [a] closed session on September 5, 2012," and that after that session, Defendants will file
6 an update "advising the Court if settlement is a possibility and if they are interested in participating
7 in a settlement conference." (Doc. 130, 1:23-2:1.)

8 As such, the Court ORDERS Defendants to file an updated status report regarding their
9 willingness to participate in a settlement conference by no later than September 12, 2012.

10 **III. CONCLUSION AND ORDER**

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Court's August 10, 2012, Order to Show (Doc. 125) is DISCHARGED;
- 13 2. Plaintiff's "Motion and Request to Seek Leave of the Court to Potentially Resolve
14 and/or Settle with the Defendants Without Issuing a Full Trial in Conjunction With
15 Reasonable Attempts to Obtain Counsel" (Doc. 123) is DENIED to the extent that
16 Plaintiff is requesting that the Court delay setting the pre-trial conference and trial
17 dates;
- 18 3. The pre-trial conference date is SET for January 11, 2013, and the trial
19 commencement date is SET for March 5, 2013, before Chief District Judge Anthony
20 W. Ishii; and
- 21 4. Defendants shall FILE a status report by no later than September 12, 2012,
22 indicating their willingness to participate in a settlement conference.

23
24 IT IS SO ORDERED.

25 **Dated: August 28, 2012**

25 **/s/ Sheila K. Oberto**
26 **UNITED STATES MAGISTRATE JUDGE**