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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CASE NO09-CV-0443.- LJO

Larry D. Thomas

Plaintiff,

ORDER OF CONTEMPT

vs.

ORDER OF DISMISSAL

Hector Robles, J. Negrete, H. Smith, J. Garza,  
L. Lozano, T. Reyna, C. Horton, M. Alvarez,  
S. Wilson, and B. Teesdale

Defendants.

FACTUAL BASIS

On December 13, 2011, the above-captioned matter came to the Court to commence a jury trial. Plaintiff Thomas, Pro Se, is a state prisoner in the custody of the California Department of Corrections and Rehabilitation, serving a life term for murder (only relevant to the issue of available effective remedies for the behavior below-described).

The plaintiff brought an action pursuant to 42 U.S.C. 1983, claiming both excessive force and failure to intervene. The ten captioned Defendants remained for the purpose of trial.

The jury was selected, , but as the trial progressed, the Plaintiff became progressively more annoyed with the requirements of the Federal Rules of Evidence, illustrating his frustration in the form of sneers directed at the Court. The Court ignored the sneers, except to use the actionable conduct to explain the rules, expecting the disrespectful conduct to subside as the rules were explained to the Plaintiff.

The Plaintiff then began to comment on the answers of witnesses, and then attempted to testify with prefaces before actually asking questions. He was admonished several times for this conduct, each

1 time resulting in lengthy, sneering glares directed at the Court.

2         The Plaintiff thereafter began to have significant periods of total silence between questions, some  
3 as long as 60 seconds. When this conduct first began, the Court first thought that the Plaintiff had  
4 completed questioning and asked whether or not he had other questions. Each time the Plaintiff  
5 responded that he did. On several occasions, the Court admonished the Plaintiff that he had to stop the  
6 lengthy and unexplained periods of silence between his questions, and needed to use the valuable time  
7 in the courtroom wisely. Each time, the Plaintiff responded with a further sneer, coupled with a loud  
8 and belligerent statement that he was doing the best he could. The conduct continued and became so  
9 disruptive due to the delays to the trial that, outside the presence of the jury, yet on the record, the Court  
10 explained that the Plaintiff was expected to have prepared for trial before the trial commenced, and that  
11 it was not permissible to prepare between questions. It was further explained that if the Plaintiff's tactics  
12 of simply sitting at counsel table silently while all in the courtroom waited for a question continued, that  
13 the Court would look to defense counsel and inquire whether or not he had any further questions, and  
14 thereafter that witness would be finished with testimony. The plaintiff attempted to excuse his conduct  
15 by claiming that the defendants were "lying" and his need to "get around the lies" was causing the delay.  
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17         After a recess was taken, a treating nurse was called as the last witness of the day. After a delay  
18 of an estimated minute between questions, the Court asked the Plaintiff "Anything else?". The Plaintiff  
19 looked up with a look of disdain for the Court, and said "Yes." He then looked away from the Court,  
20 followed by another lengthy period of silence. The Court then asked: "What's your next question,  
21 please?" There was no response to the Court's inquiry, followed by another lengthy pause of silence.  
22 The Court did what it had told the Plaintiff it would do, and asked the defense counsel if he had any  
23 questions of the witness. Counsel indicated that he did not, and the Court excused the witness.  
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25         It was at this point that the Plaintiff began his out-of-control behavior, escalating the volume of  
26 his voice, shaking his finger at the Court, and interrupting the Court as it attempted to regain control of  
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1 the courtroom. The Court told the Plaintiff that it was not going to argue with the Plaintiff, repeating the  
2 statement four times, but the Plaintiff would not stop his behavior. The jury was sent to the jury room  
3 so the matter could be taken care of outside of its presence. Once the jury left the courtroom, the Court  
4 began to explain to the Plaintiff in a calm, yet direct and firm manner that the Plaintiff was not running  
5 the courtroom, intending to explain to the Plaintiff what would happen if he continued with his  
6 contemptuous behavior. The Plaintiff was agitated, disrespectful and belligerent in demeanor, and would  
7 not allow the Court to finish its statements. When the Plaintiff shouted that he was “getting pissed off,”  
8 and asked why the Court felt he should not be able to get “pissed off,” the Court began to answer the  
9 question. Again, the Court was interrupted by the ranting of the Plaintiff, telling the Court that “You  
10 doing [sic] just fucking over me every kind of way you can.”  
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12 The Court concluded that it would be futile to attempt to talk over the Plaintiff, or to attempt in  
13 any way to stop his contemptuous and out-of-control behavior. In considering remedies available to the  
14 Court for the immediate and ongoing and uncontrollable contemptuous behavior, it was clear that the  
15 usual remedies available to a Court under the circumstances (such as a stern lecture, a monetary fine,  
16 a jail sentence and/or some sort of evidentiary preclusion) would all be without effect. The Plaintiff is  
17 currently serving a life term, and pursuant to the Plaintiff’s testimony at trial, has been living in  
18 Administrative Segregation for several years.  
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20 The Court also concluded that to attempt to make a record at that time would be futile, and it  
21 would prepare the instant written order as soon as the transcript from the proceeding had been prepared  
22 (less than ½ day later).  
23

24 The Court dismissed the case and asked that the Plaintiff be removed from the courtroom. As  
25 attempts were being made to remove the Plaintiff, he escalated his screaming as follows:

26 “Fuck all you faggot ass Mexicans and white motherfuckers. Fuck all you  
27 motherfuckers. Suck this black dick. That’s how I feel. Yeah. That’s for  
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1 everybody that called me a nigger and heard them call me a nigger. That's  
2 how I feel."

3 Turning to the correctional officer who he had punched in the face during the incident at the prison,  
4 causing a fracture of the orbit (eye socket), a fractured nose, and a torn rotator cuff of the shoulder, he  
5 yelled:

6 "I'm glad you got your bitch ass knocked out, Horace. Sorry motherfucker.

7 You worked in the MTA for three years. You don't even know what a medical  
8 emergency is. Sorry motherfucker. Man, I never seen nobody so sorry in my life."

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11 Turning then to the Court, he yelled:

12 "Fuck you, Judge. You bitch."

13 He was finally removed from the courtroom and returned to prison. The jury was brought back into the  
14 courtroom and they were discharged.

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16 The above scenario describes the conduct that occurred in open court, on the record, during the  
17 jury trial in the above-captioned matter on December 13, 2011 that was both heard and seen by the  
18 undersigned, such conduct having been committed in the Court's presence. The Court so certifies.  
19 Because of the foregoing conduct, which obstructed and disrupted the court in its attempt at the  
20 administration of justice, the case was dismissed.

21  
22 A court of the United States has the power to punish contempt of its authority by the misbehavior  
23 of a person in its presence that obstructs the administration of justice or by disobedience to the courts  
24 lawful order. 18 U.S.C. § 401. Courts also have inherent power to punish contempt of their authority.  
25 In re Terry, 128 U.S. 289, 302-303, 9 S. Ct. 77, 79 (1888). Where conduct occurs in the presence of the  
26 court that disrupts and frustrates an ongoing proceeding summary contempt is "available to vindicate the  
27 authority of the court." United States v. Wilson, 421 U.S. 309, 316, 95 S. Ct. 1802, 1806 (1975).

1 Conduct that obstructs the district court judge in the administration of his judicial duties may be punished,  
2 and where the conduct is wilful, it is punishable as criminal contempt. In re Gustafson, 650 F.2d 1017,  
3 1020 (9th Cir. 1981).

4 The District Court “may summarily punish a person who commits criminal contempt in its  
5 presence if the judge saw or heard the contemptuous conduct.” Fed. R. Crim. P. 42(b). Where the  
6 requirements of Rule 42(b) are satisfied the trial court has the discretion to invoke summary procedures.  
7 In re Gustafson, 650 F.2d at 1021. “This discretionary power is not to be exercised by the district court  
8 except in limited circumstances after dispassionate consideration.’ Id. Rule 42(b) is to be applied where  
9 “the contemtor’s conduct is such an open, serious threat to orderly procedure that instant and summary  
10 punishment, as distinguished from due and deliberate procedures is necessary.” Id. at 1022 (internal  
11 punctuation and citations omitted).

12 Despite the Court’s efforts to regain control of the proceedings, Plaintiff’s refusal to stop arguing  
13 with the court left no alternative but to summarily punish in order to promote the judicial function. In  
14 re Gustafson, 650 F.2d at 1023.

15 Finally, as discussed above there are no alternative sanctions which are satisfactory. Monetary  
16 sanctions are not available given that Plaintiff is incarcerated and proceeding in forma pauperis, making  
17 the imposition of such sanctions of no consequence.

18 The case was dismissed due to the Plaintiff’s out-of-control, contemptuous behavior.

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23 IT IS SO ORDERED.

24 **Dated: December 14, 2011**

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE