

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

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LARRY D. THOMAS,

CASE NO. 1:09-cv-00443-LJO-BAM PC

Plaintiff,

ORDER SETTING TELEPHONIC HEARING
FOR WEDNESDAY, DECEMBER 7, 2011 AT
8:00 A.M.

v.

HECTOR ROBLES, et al.,

Defendants.

_____ /

Plaintiff Larry D. Thomas (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is confirmed for trial on December 13, 2011, at 8:30 a.m. before the Honorable Lawrence J. O’Neill. In preparing this action for trial the Court has reviewed Plaintiff’s complaint and it appears that Plaintiff failed to file this action within the time lines established by the California State Tort Claim Act.

The Tort Claims Act requires that a tort claim against a public entity or its employees be presented to the California Victim Compensation and Government Claims Board, formerly known as the State Board of Control, no more than six months after the cause of action accrues. Cal. Gov’t Code §§ 905.2, 910, 911.2, 945.4, 950-950.2 (West 2010). Presentation of a written claim, and action on or rejection of the claim are conditions precedent to suit. State v. Superior Court of Kings County (Bodde), 32 Cal.4th 1234, 1240 (2004); Shirk v. Vista Unified School District, 42 Cal.4th 201, 209 (2007). Compliance with the Tort Claims Act is an element of the cause of action, Bodde, 32 Cal.4th at 1240, is required, and “failure to file a claim is fatal to a cause of action.” Hacienda

1 La Puente Unified School Dist. Of Los Angeles v. Honig, 976 F.2d 487, 495 (9th Cir. 1992); City
2 of San Jose v. Superior Court, 12 Cal.3d 447, 454 (1974).

3 Pursuant to California Government Code Section 945.6(a)(2) an action must be commenced
4 within six months of the date of the written notice is personally delivered or deposited in the mail.
5 Plaintiff's notice is dated August 29, 2008, and his complaint in this action was not filed until March
6 10, 2009. Accordingly, it appears to the Court that Plaintiff has failed to comply with the
7 requirements of the Tort Claim Act and which is fatal to his state law claims. Accordingly, a
8 telephonic trial confirmation hearing shall be held on Wednesday, December 7, 2011, at 8:00 a.m.
9 in Courtroom 4 before the Honorable Lawrence O'Neill.

10 Based on the foregoing it is HEREBY ORDERED that:

- 11 1. This matter is set for telephonic hearing before the Honorable Lawrence J. O'Neill
12 on **December 7, 2011, at 8:00 a.m.** in Courtroom 4 (LJO); and
- 13 2. Counsel for Defendants is required to arrange for the participation of Plaintiff in the
14 telephonic trial confirmation hearing and to initiate the telephonic hearing at **(559)**
15 **499-5680.**

16 IT IS SO ORDERED.

17 **Dated: December 2, 2011**

17 /s/ **Barbara A. McAuliffe**
18 **UNITED STATES MAGISTRATE JUDGE**