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1 2 3 4 5 UNITED STATES DISTRICT COURT 6 EASTERN DISTRICT OF CALIFORNIA 7 8 WILLIAM P. GARCIA, CASE NO. 1:10-cv-00447-LJO-DLB PC 9 Plaintiff, ORDER DISCHARGING ORDER TO SHOW CAUSE (ECF No. 86) 10 v. ORDER VACATING SECOND 11 KEN CLARK, et al., SCHEDULING ORDER (ECF No. 74) Defendants. 12 ORDER REQUIRING PLAINTIFF TO FILE DECLARATION REGARDING 13 PLAINTIFF'S ABILITY TO PRESENT CASE (ECF No. 88) 14 15 Plaintiff William P. Garcia ("Plaintiff") is a prisoner in the custody of the California 16 Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se in this civil action 17 pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's first amended complaint, filed May 24, 2010, against Defendants K. Allison, F. Diaz, D. Ibarra, S. Knight, C. Palmer, R. 18 19 Santos, R. Tolson, K. Turner, and C. Walters for violation of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Religious Land Use and 20 21 Institutionalized Persons Act of 2000. 22 On August 24, 2012, United States Magistrate Judge Dennis Beck issued a Second 23 Scheduling Order. A telephonic trial confirmation hearing was scheduled for February 7, 2013 at 8:30 a.m. Plaintiff was provided until January 17, 2013 by which to file his pretrial statement in 24 25 this matter. Plaintiff did not comply. On January 29, 2013, the Court issued an order to show 26 cause why this action should not be dismissed for failure to obey a court order. On February 7, 27 2013, Plaintiff filed his response. Accordingly, the order to show cause is discharged.

Plaintiff declares the following. Plaintiff contends that Plaintiff suffers from severe nerve

damage. He was receiving gabapentin/neurontin until a year ago when it was discontinued because other prisoners engaged in illegal sale of the drug. Plaintiff has been in constant pain since that time. He eventually received methadone, which helps with his pain, but does not fully alleviate it. The severe pain goes from his body to his brain and caused him to not have "clear thoughts." Plaintiff received the second scheduling order, but did not even realize that he had received it, and put it away. Plaintiff continues to suffer from the severe nerve pain. Plaintiff calls his failure to file a pretrial statement an inadvertent mistake and asks for the Court to grant him leave to comply with the order.

The Court finds good cause has been presented, and this action will proceed. The Court will direct the United States Magistrate Judge to issue a new Second Scheduling Order. Based on Plaintiff's representations concerning his health issues, the Court will also require Plaintiff to submit a declaration concerning Plaintiff's ability to adequately litigate this action. This declaration should be entitled "Declaration Regarding Ability to Present Case." This declaration will be sealed.

Accordingly, it is HEREBY ORDERED that

- 1. The order to show cause, issued January 29, 2013, is discharged;
- 2. The Second Scheduling Order, issued August 24, 2012, is vacated. The United States Magistrate Judge will issue an amended Second Scheduling Order;
- 3. Plaintiff is required to file within **twenty-one (21) days** from the date of service of this order a declaration concerning his ability to litigate this case. This declaration will be sealed.

IT IS SO ORDERED.

Dated: February 8, 2013 /s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE