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3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
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6 JAMES CRANE,
7 Plaintiff,
8 v.
9 JAMES A. YATES, et al.,
10 Defendants.
11

1:10cv02373 LJO DLB PC

ORDER VACATING ORDER
TO SHOW CAUSE AND DENYING
DEFENDANT'S MOTION TO DISMISS
(Documents 68, 71)

ORDER GRANTING DEFENDANT A FOUR-
DAY EXTENSION OF TIME TO FILE
PRETRIAL STATEMENT

Telephonic Trial Confirmation
Hearing: May 9, 2013, at 8:30 a.m. in
Courtroom 4 (LJO)

Jury Trial: June 18, 2013, at 8:30 a.m. in
Courtroom 4 (LJO)

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16 Plaintiff James Crane ("Plaintiff") is a California state prisoner proceeding pro se and in
17 forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. This action is proceeding on
18 Plaintiff's Eighth Amendment excessive force claim against Defendant Aguirre. The telephonic trial
19 confirmation hearing is set for May 9, 2013, and trial is currently set for June 18, 2013.

20 On April 16, 2013, the Court issued an Order to Show Cause why this action should not be
21 dismissed for Plaintiff's failure to file a timely pretrial statement. Also on April 16, 2013, Defendant
22 filed a Motion to Dismiss based on Plaintiff's failure to follow the Court's order and file a pretrial
23 statement.

24 However, on April 15, 2013, the Court received Plaintiff's pretrial statement. Although the
25 statement was docketed on April 16, 2013, it was placed in the mail on April 9, 2013. Pursuant to
26 the prison mailbox rule, the statement is deemed filed on the date the prisoner delivered it to prison
27 authorities for mailing. Houston v. Lack, 487 U.S. 266, 270 (1988); Douglas v. Noelle, 567 F.3d
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1 1103, 1107 (9th Cir. 2009).

2 Therefore, Plaintiff's pretrial statement is timely and the Order to Show Cause is
3 VACATED. Defendant's Motion to Dismiss is DENIED. However, Defendant will receive a four-
4 day extension of time within which to file a pretrial statement. Defendant's pretrial statement is due
5 on or before April 29, 2013.

6 The telephonic trial confirmation hearing remains on calendar for May 9, 2013, at 8:30 a.m.

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9 IT IS SO ORDERED.

10 Dated: April 16, 2013

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