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

EUGENE FORTE)	1:11-cv-0718 AWI BAM
)	
Plaintiff,)	ORDER VACATING TRIAL
)	DATE AND PRETRIAL DATE
v.)	PENDING REVIEW AND
)	EVALUATION OF ISSUES
TOMMY JONES, an individual, and)	RAISED IN PRETRIAL
DOES 1-100, et al.,)	STATEMENTS
)	
Defendants.)	

The court is in receipt of the pretrial statements by the parties filed in anticipation of the pretrial conference currently scheduled to be held on Wednesday, March 27, 2013. An issue has been raised in both statements concerning what the court understands is a currently pending determination of Plaintiff’s mental competency to stand trial in the criminal case or cases now pending before the Merced County Superior Court. In their pretrial statement under Disputed Evidentiary Issues, Defendants state that Plaintiff’s competence to present evidence or stand trial is at issue. Doc. # 44 at 3:12. Plaintiff’s pretrial statement anticipates Defendants’ disputed evidentiary issue and Plaintiff states his opposition to any reference to the mental competency determination on the ground that such determination is currently under appeal and that, in any event, it has no relevance to the incident that gives rise to Plaintiff’s action.

The court has not had the opportunity to consider the issue of mental competency in any depth as it may impact this case, but it is evident upon even cursory examination that this is an issue that is poorly suited to determination on the eve of trial by way of motions in limine. Resolution of the issue of mental competency must be accomplished well before

1 trial because the failure to do so could legitimately be claimed by either side to have
2 prejudiced their right to a fair trial on the merits. Plaintiff's pretrial statement suggests, but
3 does not directly state, that the issue of Plaintiff's mental competence has been determined by
4 the trial court and is currently on appeal. See Doc. # 48 at 10:8-9. The court, however, has
5 not been informed that the criminal cases currently pending in the state court have been
6 resolved on that or any other basis, so the court assumes the issue is still pending.

7 As the court has informed the parties by email, this order will vacate the currently
8 pending dates for pretrial conference and the trial. The court will set a further status
9 conference for Tuesday, May 28, 2013, at 1:30 p.m. in courtroom 2. Should the issue of
10 Plaintiff's competency be resolved at any time prior to May 28, 2013, either party may notify
11 the court to advance the status conference. In any case, both parties will be ordered to file
12 separate status updates not later than Friday, May 17, 2013, at 4:00 p.m.

13
14 THEREFORE, in accord with the foregoing, it is hereby ORDERED that:

- 15 1. The pretrial conference currently set for Wednesday, March 27, 2013, is hereby
16 VACATED and no party shall appear at that time.
- 17 2. The dated currently set for Trial and all associated dates are hereby VACATED.
- 18 3. Both parties shall file and serve status reports regarding the issue of determination of
19 Plaintiff's mental competency not later than 4:00 p.m. Friday, May 17, 2013. The
20 parties shall not file opposition to the other party's status report.
- 21 4. Status conference is hereby set for Tuesday, May 28, 2013, at 1:30 p.m.

22 Alternatively, the parties may agree to appear telephonically any day following May
23 28, 2013, by mutual agreement and upon notice to the court.

24 IT IS SO ORDERED.

25 Dated: March 26, 2013



26 _____
27 SENIOR DISTRICT JUDGE
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