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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

PERRY C. BUTLER,	)	Case No.: 1:11-cv-0723-MJS
	)	
Plaintiff,	)	
	)	ORDER DENYING MOTION REQUESTING
v.	)	COURT ISSUE ORDER ON MOTION TO
	)	VACATE
DR. O. ONYEJIE,	)	
	)	(ECF No. 88)
Defendant.	)	
	)	
	)	

Plaintiff Perry C. Butler (“Plaintiff”) is a former state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The parties have consented to Magistrate Judge jurisdiction. (ECF Nos. 32, 44.)

On April 7, 2014, the Court dismissed the action based on Plaintiff's failure to file a pretrial statement. (ECF No. 88.) The Court ordered Plaintiff to file a pretrial statement on or before February 28, 2014. (ECF No. 79.) He failed to do so. The Court issued an order to show cause, directing Plaintiff to file by March 28, 2014 a pretrial statement or show cause why the case should not be dismissed. (ECF No. 83.) Plaintiff did not respond, and on April 7, 2014, the Court dismissed the case.

On August 13, 2015, Plaintiff filed a motion requesting the Court rule on his motion to vacate the Court's prior ruling. (ECF No. 88.) He asserts that the motion to vacate was filed

1 on March 6, 2015, and has been pending for over 120 days. (Id.) The Court has no record of  
2 a motion to vacate being filed in this case in March, 2015. As the Court is not in possession  
3 of the motion to vacate it is unable to provide a ruling as requested by Plaintiff.

4 Accordingly, the request for the Court to issue a ruling on the motion to vacate is  
5 denied without prejudice. Should Plaintiff desire the Court to vacate its dismissal of the  
6 complaint, he may prepare and file another motion to vacate, and the Court will address and  
7 rule on the motion at its earliest convenience.

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9 IT IS SO ORDERED.

10 Dated: October 23, 2015

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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