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

RICHARD CHARLES HANNA,  
Plaintiff,  
v.  
COUNTY OF MARIPOSA, et al.,  
Defendants.

Case No. 1:12-cv-01885-AWI-SAB  
ORDER SETTING EVIDENTIARY HEARING

On November 12, 2013, District Judge Anthony W. Ishii issued an order relating this action to Hanna v. Mariposa County Sheriff Dept., No. 1:12-cv-00501-AWI-SAB (E.D. Cal.), and the action was referred to the undersigned to determine if the dismissal of this action with prejudice should be set aside. On November 14, 2013, the undersigned issued an order requiring Plaintiff’s counsel, Eugene Action, to file a response to Plaintiff’s allegation that this action was dismissed without his consent or permission. Mr. Action filed a response on November 27, 2013. Plaintiff filed a reply on December 6, 2013. On December 16, 2013, Mr. Action filed a response to the Court’s request for a copy of the power of attorney in place at the time of the dismissal of the action.

Having reviewed the declarations of the parties, the dispositive issue in this matter is whether Plaintiff was informed of and consented to the dismissal of Hanna v. County of Mariposa, 1:12-cv-01885-AWI-SAB. Mr. Action and Ms. Ritter submit affidavits stating that the

1 settlement of the action was discussed with Plaintiff who consented to the dismissal. Plaintiff  
2 submits declarations stating that he did not consent to the dismissal. Therefore, the Court shall  
3 hold an evidentiary hearing to determine whether the dismissal of this action should be set aside  
4 under Fed. R. Civ. P. 60(b) which provides relief from final judgment for numerous reasons,  
5 including as relevant here, mistake, surprise or any other reason that justifies relief.

6 Plaintiff is advised that, as the party seeking relief from the judgment, he has the burden  
7 of demonstrating that such relief is appropriate. Bailey v. U.S., 250 F.R.D. 446, 448 (D. Ariz.  
8 2008). Therefore, the burden will be on Plaintiff to present evidence during the hearing to prove  
9 his claim that he was unaware of and did not consent to the dismissal of this action. This includes  
10 the presentation of any documentary evidence, as well as securing the attendance of witnesses,  
11 either voluntarily or by subpoena, to testify on his behalf.

12 Mr. Action is ordered to attend the hearing as he will be required to testify to the events  
13 that led to the dismissal of this action. Defendants and Mr. Action may also present evidence at  
14 the hearing in support of the voluntary dismissal of this action and are required to take steps  
15 necessary to obtain the attendance of such witnesses.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. An evidentiary hearing to determine if Plaintiff is entitled to relief from the entry  
18 of judgment in this action is set before the undersigned on March 13, 2014, at  
19 10:00 a.m. in Courtroom 9; and
- 20 2. The parties shall file and serve their witness and exhibit lists on or before March 3,  
21 2014.

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23 IT IS SO ORDERED.

24 Dated: January 13, 2014

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UNITED STATES MAGISTRATE JUDGE