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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOMINIC HANNA,

Plaintiff,

v.

FRESNO COUNTY, et al.,

Defendants.

Case No. 1:14-CV-00142-LJO-SKO

**EX PARTE MOTION TO CONTINUE
MANDATORY SCHEDULING
CONFERENCE AND PROPOSED
ORDER**

As more fully described in the Petition for Appointment of Guardian ad Litem, plaintiff, Dominic Hanna, has profound physical and mental impairments requiring total care, including bipolar disorder and psychosis, dementia, inability to stand, sit or walk, and he is incapable of making rational decisions regarding his legal and personal affairs. He has been in a state of incompetence since suffering anoxic brain damage resulting from his second suicide attempt in the Fresno County Jail on February 9,

1 2012. He has never had a conservator and he had no guardian ad litem until this Court
2 granted Kathy Henderson's request for such appointment on February 5, 2014.

3 An Application for Leave to Present a Late Claim for Damages pursuant to
4 California Government Code § 910 was filed with the Fresno County Board of
5 Supervisors on January 30, 2014. In order to avoid statute of limitations issues,
6 the instant federal lawsuit was filed on February 3, 2014, and summonses were
7 issued on February 7. The County of Fresno rejected the Application for Leave
8 to Present a Late Claim for Damages on March 18, noting that plaintiff had six
9 months to file in the Fresno County Superior Court a Petition for Relief regarding
10 the claim presentation. The Petition for Relief was filed on April 8, and the matter
11 is now set for a hearing on Tuesday, May 8, 2014, and the County has been
12 noticed and served with all the relevant pleadings.

13 The Mandatory Scheduling Conference is currently set for May 15. Doc. No.
14 7. Pursuant to the Federal Rules of Civil Procedure, Rule 4(m) [time limit for
15 service], plaintiff has 120 days (June 3, 2014) to serve the defendants. Further,
16 under Rule 16(b)(2), the Court can hold the mandatory scheduling conference
17 within 120 days after any of the defendants have been served.

18 Counsel for plaintiff are awaiting the outcome of the Petition for Relief on
19 the damages claim presentation before serving any of the summonses. This will
20 allow plaintiff to amend the complaint if necessary and to avoid any issue over
21 whether a state damages claim has been filed and considered by the County of

1 Fresno. Whatever the outcome of the state Petition for Relief, the defendants
2 will be served on or before June 3, 2014.

3 The holding of a Scheduling Conference rests in the sound discretion of
4 the trial court. *Hayden v. Chalfant Press, Inc.*, 281 F.2d 543, 545, (9th Cir.
5 1960). Consequently, plaintiff respectfully requests that the Mandatory
6 Scheduling Conference be reset from May 15 to a date after June 3, 2014, in
7 order to allow plaintiff to resolve the matter of the state law damages claim,
8 amend the complaint if necessary, and serve each of the defendants in this
9 action.

10 Dated: April 9, 2014

Respectfully submitted,

11 */s/ Robert Navarro*

12 ROBERT NAVARRO

Attorneys for Dominic Hanna

13 **ORDER**

14 IT IS HEREBY ORDERED that the Mandatory Scheduling Conference in
15 the above-entitled matter now set for May 15, 2014, shall be vacated and
16 rescheduled for June 19, 2014, at 9:45 a.m.

17
18 IT IS SO ORDERED.

19 Dated: April 14, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE