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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 DEVONTE B. HARRIS,

12 Plaintiff,

13 vs.

14 GERMAN, et al.,

15 Defendants.
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1:15-cv-01462-ADA-GSA-PC

**ORDER VACATING PRETRIAL
CONFERENCE SCHEDULED FOR
SEPTEMBER 26, 2022 AT 1:30 P.M.**

VACATED

**Pretrial Conference
September 26, 2022 at 1:30 p.m.
Before District Judge Ana de Alba**

18 Devonte B. Harris (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
19 with this civil rights action pursuant to 42 U.S.C. § 1983. This action now proceeds with
20 Plaintiff’s First Amended Complaint filed on March 14, 2016, against defendants Correctional
21 Officer (C/O) Humberto German, C/O Philip Holguin, and C/O R. Burnitzki (collectively,
22 “Defendants”), for use of excessive force in violation of the Eighth Amendment; and against
23 defendant C/O Philip Holguin for retaliation in violation of the First Amendment.¹ (ECF No. 8.)

24 On March 3, 2021, the court issued the Second Scheduling Order (“Order”), scheduling
25 a Telephonic Trial Confirmation Hearing (hereinafter “Pretrial Conference”) for September 26,
26 2022 at 1:30 p.m., before District Judge Dale A. Drozd. (ECF No. 110.) Pursuant to the Order,
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28 ¹ On January 17, 2018, the court dismissed all other claims and defendants from this action, based
on Plaintiff’s failure to state a claim. (ECF No. 31.)

1 Plaintiff was required to file his pretrial statement by July 26, 2022, and Defendants were
2 required to file their pretrial statement by August 22, 2022. (Id.) Jury trial for this case was not
3 scheduled.

4 The July 26, 2022 deadline expired yet Plaintiff has failed to file his pretrial statement.
5 On August 5, 2022, the Court issued an order requiring Plaintiff to show cause within 20 days
6 why this case should not be dismissed based on Plaintiff's failure to file his pretrial statement.
7 (ECF No. 114.) On August 22, 2022, Defendants filed their pretrial statement. (ECF No. 115.)

8 On August 24, 2022, due to the appointment of District Judge Ana de Alba to the bench
9 of the Eastern District of California, this case was reassigned from District Judge Dale A. Drozd
10 to District Judge Ana de Alba. (ECF No. 116.)

11 On August 31, 2022, Plaintiff filed a motion for extension of time to respond to the
12 August 5, 2022 order to show cause. (ECF No. 117.) Plaintiff declares that he did not have
13 access to the law library before the July 26, 2022 deadline to file his pretrial statement expired.
14 (Declaration of Devonte Harris, ECF No. 117 at 2 ¶ 2.) On September 2, 2022, Defendants
15 submitted the Declaration of Litigation Coordinator P. Williams, providing evidence that
16 Plaintiff had attended the law library at Corcoran State Prison on nine dates between June 9, 2022
17 and August 15, 2022. (ECF No. 118 at 2 ¶ 4 & Exhibit A.) As of the date of this order, Plaintiff
18 has not filed a reply.

19 Due to the near approach of the Pretrial Conference on September 26, 2022 at 1:30 p.m.,
20 and Plaintiff's failure to file his pretrial statement, the Court finds good cause to vacate the
21 Pretrial Conference, to be re-scheduled at a later time if needed.

22 Accordingly, the court **HEREBY ORDERS** that the Pretrial Conference scheduled for
23 September 26, 2022, at 1:30 p.m. before District Judge Ana de Alba is VACATED.

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25 IT IS SO ORDERED.

26 Dated: September 12, 2022

/s/ Gary S. Austin
27 UNITED STATES MAGISTRATE JUDGE
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