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## UNITED STATES DISTRICT COURT

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## FOR THE EASTERN DISTRICT OF CALIFORNIA

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JERRY DILLINGHAM,

No. 18-cv-00579-DAD-EPG (PC)

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Plaintiff,

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v.

ORDER VACATING JURY TRIAL AND  
DISMISSING THIS CASE DUE TO  
PLAINTIFF'S FAILURE TO OBEY A  
COURT ORDER AND FAILURE TO  
PROSECUTE

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F. GARCIA,

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Defendant.

(Doc. No. 198)

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This case is scheduled for jury trial commencing tomorrow, May 17, 2022 at 8:30 a.m.

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The history of this case and the court's efforts to assist plaintiff in bringing his case to trial have

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been well documented in the court's previous orders. (*See, e.g.*, Doc. Nos. 51, 55, 68, 112, 137,

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152, 178, 181, 189, 190, 191, 198.) These efforts include, but are not limited to, appointing

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plaintiff counsel to assist him at settlement conferences, offering to appoint standby counsel to

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assist plaintiff at trial, consistently inquiring with the *pro-bono* bar of this court as to the

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availability of counsel to assist plaintiff, conducting numerous video conferences with plaintiff to

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discuss options with respect to the trial of this action, offering to conduct a bench trial in order to

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assist plaintiff, and granting plaintiff many opportunities to continue advancing this case despite

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his regular failures to appear at pretrial hearings.

1 In its most recent order, the court denied plaintiff's motion to participate in the May 17,  
2 2022 jury trial in this case solely by telephone or via video or Zoom because plaintiff had not  
3 shown good cause or compelling circumstances that would warrant such remote participation,  
4 particularly in light of the fact that he was representing himself in this action and was not merely  
5 requesting to testify by way of video or Zoom. (Doc. No. 198.) In that motion, plaintiff had  
6 informed the court that he would not otherwise be personally present for the jury trial set in this  
7 case. (Doc. No. 196.) Because his motion appeared to indicate that he did not intend to appear at  
8 his scheduled trial, the court ordered plaintiff to notify the court in writing by 5:00 p.m. on  
9 Friday, May 13, 2022 whether he intended to be personally present in the courtroom of the  
10 undersigned to proceed with the jury trial in this case on May 17, 2022. (*Id.* at 3.) Plaintiff was  
11 served with the court's order both by way of mail and via e-mail at his e-mail address of record,  
12 through which the court has routinely communicated with plaintiff during these proceedings due  
13 to his expressed difficulty with communicating with the court. (*Id.*) Plaintiff was explicitly  
14 warned that his failure to notify the court of his intent to proceed in person would result in the  
15 issuance of an order finding that plaintiff had declined to personally appear at his trial and  
16 dismissing this case due to plaintiff's failure to prosecute. (*Id.*) Nonetheless, plaintiff has neither  
17 notified the court of his intent to personally appear at trial nor has he filed anything on the docket  
18 in this action suggesting as much.

19 The court has now waited until 12:30 p.m. on Monday, May 16, 2022, and still plaintiff  
20 has not contacted the court in any manner in response to the court's latest order. Court staff has  
21 inquired with the Clerk's Office, the court's Jury Administrator, and the chambers of the other  
22 judges of the court, because plaintiff at times throughout these proceedings has called and left  
23 messages with those offices for the undersigned. In making those inquiries, the court has  
24 confirmed that plaintiff has not contacted this court in any way, nor has he withdrawn his latest  
25 representation that he will not appear for trial or in any other way indicated that he does, in fact,

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1 intend to appear for trial tomorrow morning.<sup>1</sup> The undersigned has simply run out of options and  
2 must take plaintiff at his word that he will not appear for trial. The court cannot justify  
3 inconveniencing the 50 prospective jurors who are otherwise being called upon to report to the  
4 courthouse for the jury trial on the morning of May 17, 2022, if plaintiff has no intention of  
5 personally appearing for trial as ordered. (*Id.*)

6 Accordingly,

- 7 1. The jury trial in this case set for May 17, 2022 is hereby vacated;
- 8 2. This case is dismissed due to plaintiff's failure to prosecute and failure to follow a  
9 court order; and
- 10 3. The Clerk of the Court is directed to close this case.

11 IT IS SO ORDERED.

12 Dated: May 16, 2022

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15 UNITED STATES DISTRICT JUDGE

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27 <sup>1</sup> As a result of those inquiries the court did learn that the court received from plaintiff today  
28 objections to pending findings and recommendation in another case he has brought in this court,  
*Dillingham vs J. Garcia, Anytime!, et al.*, 19-cv-461-AWI-GSA, but no filing in this action was  
received today by the court.