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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PIERRE EVANS SIMMONS,

Plaintiff,

No. CIV S-05-1625 KJM P

vs.

ROBERTS,

Defendant.

ORDER

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Plaintiff is a California prisoner proceeding with counsel with an action for violation of civil rights under 42 U.S.C. § 1983. On February 23, 2010, counsel for plaintiff filed a motion in which he asks that the court reinstate the writ of habeas corpus ad testificandum for Andrew Vance that was vacated on February 19, 2010. The court vacated the writ because Mr. Vance informed the court on February 8, 2010 that he does not wish to testify and he believes he has no relevant testimony, and plaintiff failed to respond to the court’s order to show cause why, in light of Mr. Vance’s representation, the writ should not be vacated.

Counsel for plaintiff asserts he did not respond to the court’s order to show cause in a timely manner because he was unable to access his e-mail between the time the order to show cause was issued and the writ of habeas corpus ad testificandum for Vance was vacated, a period of approximately seven days.

1 A court may reconsider a ruling under either Federal Rule of Civil Procedure
2 59(e) or 60(b). See Sch. Dist. Number. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255,
3 1262 (9th Cir. 1993). “Reconsideration is appropriate if the district court (1) is presented with
4 newly discovered evidence, (2) committed clear error or the initial decision was manifestly
5 unjust, or (3) if there is an intervening change in controlling law.” Id. at 1263.

6 The court finds no cause to reconsider the order vacating the writ of habeas corpus
7 ad testificandum for inmate Vance primarily because plaintiff has failed to show any reason why
8 Vance should be compelled to testify. Furthermore, being without e-mail access for a week is
9 not a valid excuse for missing a court deadline, and it is not the first time plaintiff’s counsel has
10 provided this explanation for missing a deadline. Attorneys registered with the court’s CM/ECF
11 system must be diligent in making sure lines of e-mail communication are open at all times; if
12 they are not for a brief period, it is counsel’s obligation to notify the court and discuss alternative,
13 interim means of communication. Local Rules 133, 135.

14 While it is not clear, it appears from the document filed by counsel for plaintiff on
15 February 23, 2010 that counsel seeks a continuance of the trial date. However, counsel has not
16 shown any cause for a continuance.

17 Accordingly, IT IS HEREBY ORDERED that all of the requests made by counsel
18 for plaintiff in the document filed February 23, 2010 are denied.

19 DATED: March 2, 2010.

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22 U.S. MAGISTRATE JUDGE
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