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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL D. BIRD,
Plaintiff
v.
FOSS MARITIME CO., et al.,
Defendants.

No. C 07-5776 WDB

ORDER FOLLOWING FURTHER
CASE MANAGEMENT
CONFERENCE

On November 3, 2008, the Court conducted a Further Case Management Conference ("CMC") in this matter. For reasons more fully explained on the record, the Court ORDERS as follows:

1. Plaintiff appeared pro se but continues his attempt to secure counsel. Attorney Robert H. Klein appeared specially for Plaintiff at the CMC and informed the Court that he was still investigating and deciding whether he wanted to represent Plaintiff. If Mr. Klein chooses to represent Plaintiff in this action, Mr. Klein must file the appropriate documents notifying the Court of his appearance **by no later Friday, November 14, 2008.**

2. During his special appearance on behalf of Mr. Bird, Mr. Klein informed the Court that the Court's Order of February 13, 2008, granting Defendants' unopposed Motion to Dismiss Plaintiff's First Cause of Action, should be revisited, because the authority upon which the Motion relied was reversed by the Seventh Circuit. The Court did not rule on whether it would reconsider its

1 Order on the Motion to Dismiss. However, if Mr. Klein decides to represent
2 Plaintiff in this action, then **by no later than Wednesday, November 19, 2008,**
3 Mr. Klein must file a Motion to Reconsider the Court's February 13, 2008, Order
4 Granting Defendants' Motion to Dismiss the First Cause of Action. This Motion
5 must address the following: (a) Why the opinion by the Seventh Circuit was not
6 brought to the Court's attention sooner;¹ (b) Why it is not unfair and prejudicial to
7 the Defendants for the Court to reconsider, nearly a year later, its Order on the
8 unopposed Motion to Dismiss; and (c) What is the substantive change in the law
9 resulting from the Seventh Circuit's Opinion and why should this Court honor that
10 substantive change?

11 If Mr. Klein files a Motion to Reconsider by November 19, 2008, then
12 Defendants' counsel must file an Opposition by no later than December 3, 2008. If
13 Mr. Klein chooses to file a Reply, he must do so by no later than December 10,
14 2008. **On Tuesday, December 16, 2008, at 1:30 p.m.,** the Court will hold a
15 hearing on the Motion to Reconsider.

16 3. Alternatively, if Mr. Klein does not enter an appearance to represent
17 Plaintiff by November 14, 2008, and, thus, also does not file a Motion to
18 Reconsider, the Court will not hold a hearing on December 16, 2008. Instead, soon
19 after November 14, 2008, a member of the undersigned's staff will contact
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26 If this portion of the Motion requires Mr. Bird to reveal confidential
27 communications that he had with his former lawyer, the Court rules in advance
28 that the disclosure of such communications will not result in a waiver of the
attorney/client privilege.

1 the parties to arrange for a telephonic status conference with the undersigned to
2 discuss the best way to proceed.

3 IT IS SO ORDERED.

4 Dated: November 5, 2008



WAYNE D. BRAZIL
United States Magistrate Judge

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