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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAMICHAEL D. BIRD,  
Plaintiff  
v.  
FOSS MARITIME CO., et al.,  
Defendants.

No. C 07-5776 WDB

ORDER FOLLOWING FURTHER  
CASE MANAGEMENT  
CONFERENCE

On November 24, 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 and confirmed on the record that attorney Robert H. Klein, who appeared specially for Plaintiff at the last CMC, has decided not to represent Plaintiff in this action.
2. During his special appearance at the last conference 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 decide at the last conference whether it would reconsider its Order on the Motion to Dismiss. Mr. Bird confirmed on the record at this hearing that he would like to go forward with a Motion to Reconsider.

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

10           Defendants' counsel must file an Opposition to Plaintiff's Motion by no later  
11 than December 26, 2008. If Plaintiff chooses to file a Reply, he must do so by no  
12 later than January 7, 2009.

13           **On Monday, January, 12, 2009, at 1:30 p.m.**, the Court will hold a hearing  
14 on the Motion to Reconsider. Mr. Bird and counsel for Defendants may appear by  
15 phone, provided each informs the undersigned by calling (510) 637-3324 by no  
16 later than **January 9, 2009**.

17           If the Court grants Plaintiff's Motion to Reconsider, Defendants alerted the  
18 Court that they are very likely to challenge all of Plaintiff's claims on a causation  
19 theory. Independent of whether Defendants do that, each party must be prepared to  
20 discuss at the hearing on January 12, 2009, the most sensible way to proceed in this  
21 litigation.

22           3. **By no later than December 5, 2008**, Plaintiff also must file an  
23 Amended Complaint to make clear the legal and factual allegations at issue.  
24 Plaintiff should keep in mind that each allegation in his Amended Complaint must  
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1 have a sufficient evidentiary predicate to satisfy Rule 11 in the Federal Rules of  
2 Civil Procedure.

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4 IT IS SO ORDERED.

5 Dated: November 24, 2008



WAYNE D. BRAZIL  
United States Magistrate Judge

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