

United States District Court  
For the Northern District of California

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

MICHAEL DEARING,  
Plaintiff,  
v.  
CORRECTIONAL OFFICER MACHADO, et  
al.,  
Defendants.

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No. C-08-1712 MMC

**ORDER GRANTING BARTKO, ZANKEL,  
TARRANT & MILLER’S MOTION TO  
WITHDRAW; DENYING PLAINTIFF’S  
MOTION TO TERMINATE AND FOR  
OTHER RELIEF; VACATING OCTOBER  
14, 2011 HEARING; DIRECTIONS TO  
CLERK**

Before the Court is the “Motion to Withdraw as Attorneys of Record,” filed September 8, 2011 by Bartko, Zankel, Tarrant & Miller (“Bartko”), counsel of record for plaintiff Michael Dearing (“Dearing”). No opposition or other response thereto has been filed.

Also before the Court is Dearing’s “Motion for Order Terminating Brian Villarreal’s Pro Bono Representation; Release of Client File; and a Pretrial Preparation Order,” filed pro se on September 6, 2011. Bartko has filed a response. Additionally, defendant O. Machado has filed a response, in which defendant Godinez has joined and to which Dearing has filed a reply.

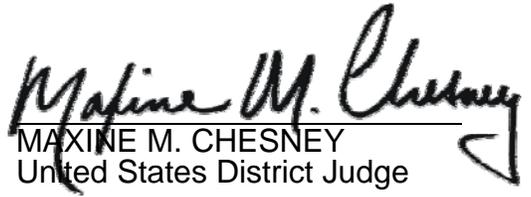
Having read and considered the above-referenced filings, the Court deems the matters suitable for decision on the parties’ respective written submissions, VACATES the hearing scheduled for October 14, 2011, and rules as follows:



1 Dearing fails to show any cognizable basis exists to set aside the dismissal. As defendant  
2 Machado has shown, the parties have an enforceable settlement, the terms of which were  
3 placed on the record in open court. (See Villarreal Decl. Ex. C.) As the Ninth Circuit has  
4 observed, courts “cannot countenance a plaintiff’s agreeing to settle a case in open court,  
5 then subsequently disavowing the settlement when it suits [him].” See Doi v. Halekulani  
6 Corp., 276 F.3d 1131, 1141 (9th Cir. 2002).<sup>2</sup>

7 **IT IS SO ORDERED.**

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9 Dated: October 7, 2011

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11 MAXINE M. CHESNEY  
12 United States District Judge

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<sup>2</sup>In his response to Dearing’s motion, Machado includes a request that the Court  
27 direct Dearing to comply with the parties’ settlement agreement. The request will be  
28 addressed in connection with the Court’s consideration of defendants’ “Joint Administrative  
Motion to Change Time to Comply with Court’s Order of Dismissal,” filed October 7, 2011,  
which motion likewise seeks such relief.