

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DARION EDWARDS,
Plaintiff,

v.

ALAMEDA-CONTRA COSTA TRANSIT
DISTRICT, et al.,
Defendants.

Case No. [15-cv-05778-VC](#)

**ORDER TO SHOW CAUSE RE
DISMISSAL FOR FAILURE TO
PROSECUTE; SANCTIONS**

The plaintiff, Darion Edwards, and his counsel, Na'il Benjamin, are ordered to show cause why the case should not be dismissed for failure to prosecute, or why they should otherwise not be sanctioned for their continued failure to diligently prosecute this case.

On March 7, 2018, Edwards filed an ex parte motion to continue the pretrial and trial dates in this case because Benjamin is in trial in *Yashchuk v. City Dental* in Alameda County Superior Court. Dkt. No. 105. This motion was filed three days before the date of the pretrial conference, and it was the first time this conflict was brought to the Court's attention, despite repeated efforts to discern Benjamin's trial schedule, as described below.

In advance of the first pretrial conference in this case, which was held in June 2017, Benjamin failed to comply with this Court's Standing Order on Civil Trials by not appropriately meeting and conferring with opposing counsel and submitting inadequate pretrial filings. Dkt. No. 61. After the Court issued an order to show cause, Benjamin was sanctioned and referred to the Northern District of California's Standing Committee on Professional Conduct. Dkt. Nos. 64, 74. At a case management conference on July 26, 2017, Benjamin asked for the trial to be continued, and the Court requested (multiple times) a list of Benjamin's pending trial dates to

determine his availability. Dkt. Nos. 79, 82. Benjamin's list did not mention the Yashchuk trial. Dkt. No. 85. Based on the schedule Benjamin submitted, trial in this case was scheduled for February 20, 2018. Dkt. No. 89.

In January 2018, the Court scheduled a case management conference. Dkt. No. 91. In the parties' case management statement, Benjamin said that his previously-submitted list of trial dates failed to include a trial that had been set for February 26, 2018 in San Francisco Superior Court and that therefore he would be unavailable for trial in this case. Dkt. No. 92. Benjamin was not present for the case management conference, but an attorney from his law firm told the Court that the San Francisco Superior Court case might resolve. Nevertheless, Edwards's lawyer asked for a continuance of the Edwards trial to early March. The Court denied the continuance, confirming the February 20, 2018 trial date, but informed the parties that the Court's criminal trial schedule could cause the Edwards trial to be rescheduled. Dkt. No. 94. On January 31, 2018, the Court rescheduled the trial to March 19, 2018 in light of the Court's criminal trial calendar and Edwards's lawyer's representations at the case management conference. Dkt. No. 95.

And yet, on February 1, 2018, Edwards filed an ex parte motion to continue the trial dates again – this time on the basis of a trial in the Northern District of California in *Barbara v. Here North America*. Again, Benjamin said that the July 2017 list of trial dates had been inaccurate – it had said that *Barbara* would begin on March 19, 2019 even though the *Barbara* trial had been set for March 19, 2018. The filing also said that Benjamin had been denied a continuance of the February 26, 2018 trial in San Francisco Superior Court. Dkt. Nos. 96, 97.

On March 7, 2018, Edwards filed another ex parte motion to continue the pretrial and trial dates on the basis of an ongoing trial in Alameda County Superior Court called *Yashchuk v. City Dental* that began on March 5, 2018. This is the first mention of this particular conflict, and it came on the eve of trial. In the motion, Benjamin also says that he is scheduled for trial in *Lee v. Alameda Health System* starting on April 16, 2018 and trial in *Hill v. Willis* starting on April 23, 2018, both in Alameda County Superior Court. Dkt. No. 105. It appears from the public

docket for Lee v. Alameda Health System that there is at least one pending sanctions motion against Benjamin in that case, and it is not clear whether it will be proceeding to trial as scheduled. Without any explanation, Edwards's ex parte motion also attaches a declaration from Allyssa Villanueva, an attorney at Benjamin's law firm, that was filed in Hill v. Willis seeking a continuance of the trial date in that case. Dkt. No. 106. Although it's not clear why this declaration was provided, it appears that Benjamin's practice of seeking continuances of his trial dates is not limited to the Edwards case. Generally speaking, it appears that Benjamin has spent no effort preparing for trial in this case, while spending a tremendous amount of effort trying to avoid going to trial.


In light of this ongoing inability to be available for Court-ordered trial dates, Edwards and Benjamin are ordered to show cause why the case should not be dismissed for failure to prosecute, and why they should not be subject to monetary sanctions pursuant to Federal Rule of Civil Procedure 11, 28 U.S.C. § 1927, and/or the Court's inherent authority. Edwards must explain why he should not be held responsible for his counsel's dilatory conduct in this case.

Both Edwards and Benjamin are ordered to file written responses to this order by March 13, 2018. If the defendants wish to file a response, they may do so by March 15, 2018. Any reply must be filed by March 16, 2018. A hearing on the order to show cause will take place on March 19, 2018 at 1:30 pm. Both Edwards and Benjamin must personally appear at this hearing in person, and if they fail to do so, the case will be dismissed for failure to prosecute.

Given the position that Edwards and Benjamin have put the Court in, and to avoid disrupting an ongoing trial, the pretrial conference will be continued to March 19, 2018 at 1:30 pm. Jury selection will take place on March 20, 2018 at 8:30 am and trial will begin immediately afterward on the same day.

IT IS SO ORDERED.

Dated: March 9, 2018



VINCE CHHABRIA
United States District Judge