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28UNITED STATES DISTRICT COURT  
For the Northern District of California

UNITED STATES DISTRICT COURT  
Northern District of California  
**Oakland Division**

JOSE HIGAREDA GOMEZ,

No. C 07-00005 LB

Plaintiff,

**SCHEDULING AND SETTLEMENT  
CONFERENCE REFERRAL ORDER**

v.

CITY OF FREMONT *et al.*,Defendants.  

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On January 28, 2010, the Court held a status conference. Before the conference, and at the Court's request, the defendants filed a status report detailing the case developments since the last status conference held before Magistrate Judge Brazil on May 21, 2009, and addressing outstanding discovery issues and anticipated pre-trial motions.<sup>1</sup> (Dkt. #52) After considering the status report and the parties' representations at the status conference, the Court orders the following:

**I. ISSUES REGARDING REPRESENTATION AND NEXT STATUS CONFERENCE**

A. During the status conference, plaintiff's counsel notified the Court generally that questions existed regarding their continued representation of plaintiff in this lawsuit. The case history and docket show no substantive activity for nearly eight months before the January status

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<sup>1</sup>Although the Court's Order Setting Status Conference (Dkt. #51) required the parties to submit a *joint* status report, only Defendants' counsel signed the Status Report on file. During the status conference, however, the parties stated that they met and conferred regarding the status report and that the report reflected their discussions.

1 conference. While it is important to keep the case on track, the Court afforded plaintiff's counsel an  
2 opportunity to contact plaintiff to resolve issues about representation, noted that any motion to  
3 withdraw should comply with Civil Local Rule 11-5's requirements, and set a further status  
4 conference regarding representation for **April 1, 2010, at 11:00 a.m.** That time period also allows  
5 the defendants to finalize the discovery needed for substantive motions.

6 B. On February 23, 2010, plaintiff's counsel filed a motion to withdraw. (Dkt. # 54.)  
7 The Court will address the motion at the April hearing but notes now that the motion refers only to a  
8 "prospective attorney" and is not accompanied by the simultaneous notice of appearance of  
9 substitute counsel or a *pro se* plaintiff contemplated by Civil Local Rule 11-5. *See also* Dkt. # 54-2  
10 (declaration establishes that plaintiff has not obtained counsel yet). The Court further directs  
11 plaintiff's counsel to Civil Local Rule 11-5(b), **Conditional Withdrawal**. Because plaintiff's  
12 participation will be critical to addressing this issue, the Court **ORDERS** that **plaintiff must attend**  
13 **the April 1, 2010 status conference.**

14 C. The Court **FURTHER ORDERS** that the parties shall file a joint status report by  
15 **March 30, 2010**, regarding these issues and any other developments since the January 28 hearing.

## 16 II. SETTLEMENT CONFERENCE

17 A. In the Status Report filed on January 21, 2010, the defendants stated that "the parties  
18 attended an ENE that was not successful in resolving the case. The parties have engaged in  
19 settlement negotiations that did not resolve the case." (Dkt. # 52 at 2-3.) An earlier status  
20 conference statement states that (1) the parties conducted a mediation before court-appointed  
21 mediator Howard Janssen on May 1, 2009, (2) the day before, plaintiff's counsel informed defense  
22 counsel that plaintiff would not be able to attend because he needed to visit his ailing mother in  
23 Mexico, and (3) according to the defense, the mediation was unsuccessful, in part because plaintiff  
24 was unable to attend and participate. (*See* Dkt. #45 at 3.)

25 B. Because the Court finds that another attempt at settlement discussions would be  
26 beneficial at this stage in the case, the Court **ORDERS** that the parties appear for a settlement  
27 conference before Magistrate Judge Maria-Elena James before the April status conference. Counsel  
28 will be contacted by that judge's chambers with a date and time for the conference.

1 **III. DISPOSITIVE MOTIONS**

2 A. In their January status report and at the conference, the defendants stated that they  
3 intended to file a motion for summary judgment. The Court set the deadline for the defendants to  
4 serve and file their summary judgment motion for **May 6, 2010**. Plaintiff shall serve and file his  
5 Opposition brief by **May 27, 2010**. The defendants' Reply shall be due on **June 3, 2010**.

6 B. The hearing on the summary judgment motion is set for **June 17, 2010, at 11:00 a.m.**

7 **IV. DISCOVERY**

8 A. All non-expert discovery in this matter shall be completed by **August 12, 2010**.

9 B. All expert disclosures required by the Federal Rules of Civil Procedure shall be made  
10 by **September 9, 2010**.

11 C. All discovery from experts shall be completed by **October 7, 2010**.

12 **V. TRIAL AND PRETRIAL CONFERENCE**

13 A. Trial in this matter is set for **December 2, 2010**.

14 B. The Courts sets a pretrial conference in this matter for **November 18, 2010, at 1:30**  
15 **p.m.** The Court will issue an order prior to this date with detailed information about what materials  
16 the parties will be required to file.

17 **VI. CONSENT TO THIS COURT'S JURISDICTION**

18 A. By stipulation filed March 26, 2007, the parties consented to proceed before a United  
19 States Magistrate Judge as to all proceedings in the case, including trial and entry of final judgment.  
20 The parties asked for the matter to be assigned to Magistrate Judge Brazil or, if he was not available,  
21 the next available magistrate judge. The case was assigned to Judge Brazil. (Dkt. # 8.)

22 B. At the January 28, 2010, status conference, the parties affirmed on the record their  
23 intent to consent to proceed before this Court. More specifically, under 28 U.S.C. § 636(c), the  
24 magistrate judges of this district court are designated to conduct any and all proceedings in a civil  
25 case, including trial and entry of final judgment, upon the parties' consent. An appeal from a  
26 magistrate judge may be taken directly to the United States Court of Appeals for the Ninth Circuit in  
27 the same manner as an appeal from any other judgment of a district court. The parties have a right to  
28 have their case assigned to a United States District Judge for trial and disposition but informed this

1 Court on January 28 that they consent to its jurisdiction. Accordingly, and to provide a clear record,  
2 the parties are directed to file a written consent to proceed before this Court within seven days from  
3 the date of this order. A draft consent is attached to this order.

4 **IT IS SO ORDERED.**

5 Dated: March 6, 2010



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6 LAUREL BEELER  
7 United States Magistrate Judge

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UNITED STATES DISTRICT COURT  
Northern District of California  
**Oakland Division**

JOSE HIGAREDA GOMEZ,

No. C 07-00005 LB

Plaintiff,

**CONSENT TO PROCEED BEFORE A  
UNITED STATES MAGISTRATE  
JUDGE**

v.

CITY OF FREMONT *et al.*,

Defendants.

\_\_\_\_\_ /  
In accordance with the provisions of Title 28, U.S.C. § 636(c), the undersigned parties hereby consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, and the entry of a final judgment. Appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

Dated: \_\_\_\_\_

BERTRAND, FOX & ELLIOT

By: \_\_\_\_\_

GREGORY M. FOX  
MARTINE N. D'AGOSTINO  
Attorneys for Defendants City of Fremont,  
Fremont Police Chief Craig Steckler, and  
Officers Timothy Baldocchi and Matthew  
Snelson

Dated: \_\_\_\_\_

LAW OFFICES OF STEVEN R. JACOBSEN

By: \_\_\_\_\_

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