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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RONALD LEE ROSS,

Plaintiff,

vs.

MR. MIKE HETTICHER, Local President,
American Postal Workers Union, Local 1056,

Defendant.

Case No: C 08-4534 SBA

**ORDER VACATING OSC,
RESCHEDULING CASE
MANAGEMENT CONFERENCE AND
REFERRING MATTER FOR AN
EARLY MANDATORY SETTLEMENT
CONFERENCE**

On June 1, 2009, this Court issued an Order to Show Cause (“OSC”) why this case should not be dismissed due to (1) Plaintiff’s failure to set up a telephonic Case Management Conference for May 27, 2009 at 3:30 p.m. as ordered and (2) his apparent failure to effect service consistent with Federal Rule of Civil Procedure 4(m), which requires that service of process be effectuated on the Defendant within 120 days after the filing of the complaint. Plaintiff’s response to the OSC states that he, in fact, had arranged for the conference call but that Defendant (who like Plaintiff, also appears to be pro se) claimed he was not available. In addition, Plaintiff claims that he mailed the complaint and summons to the Defendant.

The Court is satisfied, based on Plaintiff’s submission, that his failure to properly set up the conference call for the Case Management Conference was the result of excusable neglect. The record also indicates that Plaintiff has attempted to serve Defendant with the complaint and has made an effort to notify him of this action.¹ However, Plaintiff has not filed a proof of service with the Court. Federal Rule of Civil Procedure 4(l) provides that “[u]nless service is waived, proof of service must be made to the court.” Therefore, Plaintiff must immediately file a proof of service in

¹ The Court makes no finding as to whether Plaintiff’s purported service of the summons and complaint complies with the applicable rules of procedure.

1 a manner consistent with the requirements of Rule 4.² Plaintiff should be aware that although he is
2 representing himself in this action, he is expected to comply with all applicable procedural rules.
3 See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Plaintiff is warned that the failure to
4 comply with the orders and rules of this Court may be considered grounds for dismissal of the
5 action, with prejudice. See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995); Ferdik v.
6 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992). Accordingly,

7 IT IS HEREBY ORDERED THAT:


8 1. The OSC issued on June 1, 2009 (Docket 17) and the court appearance on the OSC
9 previously scheduled for July 15, 2009 are VACATED.

10 2. The parties shall appear *by telephone* for a Case Management Conference on
11 **Wednesday October 7, 2009 at 2:45 p.m.** The parties shall *meet and confer* prior to the
12 conference and shall prepare a joint Case Management Conference Statement which shall be filed
13 no later than ten (10) days prior to the Case Management Conference that complies with the
14 Standing Order for All Judges of the Northern District of California and the Standing Order of this
15 Court. Plaintiff shall be responsible for filing the statement as well as for arranging the conference
16 call. All parties shall be on the line and shall call (510) 637-3559 at the above indicated date and
17 time.

18 3. The instant action is referred to Magistrate Judge Maria Elena James for an early
19 mandatory settlement conference. Magistrate Judge James will notify the parties regarding the date
20 and time of the settlement conference. The parties are directed to comply with all instructions
21 issued by Magistrate Judge James. The failure to do so may result in the imposition of sanctions,
22 up to and including the dismissal of the action or the entry of a default judgment, depending on the
23 nature and circumstances of the violation.

24 IT IS SO ORDERED.

25 Dated: July 14, 2009

26 
27 Mon. Sandra Brown Armstrong
28 United States District Judge

28 ² The Court also notes that Plaintiff failed to file the required certification of ADR
procedures (Docket 2), and therefore, he must do so immediately.

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ROSS et al,

5 Plaintiff,

6 v.

7 HETTICHER et al,

8 Defendant.

9 _____/

10 Case Number: CV08-04534 SBA

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on July 15, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Ronald Lee Ross
19 725 Walnut Drive
20 Rio Dell, CA 95562

21 Dated: July 15, 2009

22 Richard W. Wieking, Clerk

23 By: LISA R CLARK, Deputy Clerk

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