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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION  
 10

11 SEAN BARNETT,

12 Plaintiff,

13 vs.

14 SAL MARTINEZ, #782; LEVY BARNES,  
 #820; CASEY TINLOY, #587; JUSTIN GEBB,  
 #111; ROBERT ANDERSON, #787; CYNTHIA  
 15 VERBIS, #800; MONICA MOLTHEN, #705;  
 16 GUADALUPE OCHOA, #765; JESUS  
 GUTIERREZ, #737; MICHELLE OTT, #793;  
 17 And Does 1 to 50,

18 Defendants.

Case No.: C09-05605 CW

**APPLICATION FOR ORDER PERMITTING  
 APPEARANCE BY TELEPHONE OF  
 DEFENDANT BARNES AT MEDIATION;  
 ORDER**

19  
 20 On or about December 28, 2010 the undersigned attorney Gregory M. Fox filed an  
 21 appearance and notice of representation of the individual defendant Levy Barnes in this matter  
 22 because of a conflict that arose with his representation by the Office of the Attorney General. This  
 23 matter is scheduled for a mediation hearing before the Court Appointed Mediator on Monday  
 24 February 28, 2011. It is respectfully requested that the Court excuse defendant Barnes from  
 25 personally attending the mediation because he no longer works for the Department of Alcohol and  
 26 Beverage Control (for reasons unrelated to this lawsuit); he is living in Sacramento; he is self  
 27 employed; and is only involved as a named defendant because on the day of the incident he was  
 28 present when other agents arrested the plaintiff. He has filed answers to interrogatories under oath

1 that he did not arrest plaintiff or use any force on plaintiff. Mr. Barnes has no settlement authority  
2 because that is the responsibility of the Office of Attorney General and the Department of Alcohol  
3 and Beverage Control. He is available to attend by telephone if necessary. This request is respectfully  
4 made given the economic hardship on the part of Mr. Barnes to forgo a day of self-employed work  
5 and travel from Sacramento to the mediation.

6 Respectfully submitted.

7 Dated: February 23, 2011

8 BERTRAND, FOX & ELLIOT

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10 By: \_\_\_\_\_  
11 Gregory M. Fox  
12 Attorneys for Defendant LEVY BARNES

13 ORDER

14 GOOD CAUSE APPEARING the application is denied as moot. In future, such applications  
15 should be made to the mediator or the ADR Magistrate Judge.

16 SO ORDERED.

17 Dated: March 1, 2011

18 By:  \_\_\_\_\_  
19 UNITED STATES DISTRICT COURT JUDGE