

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

3  
4 OKSANA CLEM,

5                                    Plaintiff,

6                                    v.

7 BARNEYS NEW YORK, INC.,

8                                    Defendant.

No. C 11-3952 CW

ORDER CONCERNING  
PLAINTIFF'S  
COUNSEL'S NOTICE  
OF SUBSTITUTION  
AND THE PARTIES'  
OVERDUE MEDIATION

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11                                    On June 14, 2012, Plaintiff's counsel filed a notice of  
12 substitution, seeking to withdraw as counsel in this action and  
13 let Plaintiff represent herself, as well as a notice asserting a  
14 lien against any recovery obtained by Plaintiff for the value of  
15 his services. In response, the Court issued an order stating that  
16 it would not allow the substitution of Plaintiff in pro per until  
17 after she and her counsel have attempted in good faith to mediate  
18 the case. At that time, a mediation was scheduled for June 19,  
2012 at 10:00 am.

19

20                                    On June 18, 2012, at about 2:41 pm, Plaintiff's counsel filed  
21 a document captioned, "Ex parte application re substitution of  
22 counsel & mediation attendance." Plaintiff's counsel did not make  
23 a specific request or submit a proposed order, but informed the  
24 Court that Plaintiff would be unable to attend the June 19, 2012  
25 mediation session, and stated that he would attend unless the  
26 Court ordered otherwise. At about 4:00 pm on the same day,  
27 counsel for Defendant submitted an ex parte application to  
28 postpone the mediation. Shortly thereafter the ADR Department

1 issued notices canceling the mediation and scheduling an ADR  
2 telephone conference call with the parties on June 25, 2012 at  
3 2:30 pm. On June 19, 2012, the ADR Department cancelled the June  
4 25, 2012 telephone conference.

5 The Court's case management order set a deadline for the  
6 parties to complete court-connected mediation by April 12, 2012.  
7 Docket No. 21. The mediator Jonathan Gross was assigned in  
8 December 2011, but the parties delayed mediation until a date was  
9 set for April 16, 2012. The mediation was then rescheduled on  
10 April 3, 2012, May 18, 2012 and again on June 18, 2012. During  
11 this time, the parties have never submitted a stipulated request  
12 to extend the Court's deadline, as required by this Court's Local  
13 Rule 6-1(b).


14 As the Court previously ordered, substitution of counsel will  
15 not be granted until the parties have participated in good faith  
16 in mediation. The ADR department shall reinstate the ADR phone  
17 conference for June 25, 2012 at 2:30 pm or shortly thereafter.  
18 The parties, including Plaintiff's counsel and Plaintiff herself,  
19 shall participate in the conference and shall promptly reschedule  
20 the mediation. If Plaintiff does not participate personally in  
21 the phone conference, this action will be dismissed for failure to  
22 prosecute. If Plaintiff agrees to a mediation date and then does  
23 not appear, the case will be dismissed for failure to prosecute  
24 and Plaintiff will be ordered to pay Defendant's attorney's  
25 expenses. On June 26, 2012, the parties shall submit a joint  
26 status report indicating the date and time of their mediation.

27 Plaintiff's counsel shall serve a copy of this order on  
28 Plaintiff, as well as any instructions by ADR about participation

1 in the telephone conference and copies of all future filings on  
2 the electronic docket, including text entries. The clerk shall  
3 serve a copy of this order on the ADR department and the mediator.

4 IT IS SO ORDERED.

5  
6 Dated: 6/20/2012

  
7 CLAUDIA WILKEN  
8 United States District Judge

9  
10 cc: ADR; Jonathan Gross