

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

3 EDWARD RAY, JR.,

No. C 11-5550 YGR (PR)

4 Plaintiff,

v.

**ORDER DISCHARGING ORDER TO SHOW  
CAUSE; IMPOSING SANCTIONS; AND GIVING  
FURTHER DIRECTIONS TO DEFENDANTS'  
ATTORNEY AND THE OAKLAND CITY  
ATTORNEY'S OFFICE**

5 A. LEAL, et al.,

6 Defendants. /

7  
8 This is a *pro se* prisoner action under 42 U.S.C. § 1983 against Oakland Police Department  
9 Officers A. Leal, Francis and M. Ziebrath. Plaintiff alleges that these Defendants used excessive  
10 force when they arrested him on August 27, 2006. In an Order dated February 19, 2013, the Court  
11 found that Plaintiff's complaint stated a cognizable claim against Defendants Leal, Francis, and  
12 Ziebrath for a Fourth Amendment violation. The Court served these Defendants and set a briefing  
13 schedule for the motion for summary judgment.

14 In an Order dated May 13, 2014, the Court granted Defendants' request for a second  
15 extension of time to file a motion for summary judgment. Dkt. 30 at 3. The Court directed  
16 Defendants' attorney, Arlene M. Rosen, Esq. from the Oakland City Attorney's Office, to file a  
17 motion for summary judgment no later than June 16, 2014. *Id.* at 5. The Court notes that it granted  
18 Attorney Rosen one previous extension of time to file a dispositive motion, and that it specifically  
19 warned her of the risk of the imposition of monetary sanctions if the February 7, 2014 deadline was  
20 not met. Dkt. 25 at 2. Because Attorney Rosen did not meet the February 7, 2014 deadline, the  
21 Court included in its Order dated May 13, 2014, an order to show cause why monetary sanctions  
22 should not be issued and stated as follows:

23 Defendants' attorney, Arlene M. Rosen, Esq., is ORDERED TO SHOW CAUSE  
24 why she should not be sanctioned in an amount of \$150.00 for failing to meet the  
25 February 7, 2014 deadline to file a dispositive motion, as explained above. A  
26 hearing on this Order to Show Cause will be held on **Friday, June 13, 2014** on the  
27 Court's 9:01 a.m. Calendar, in the Federal Courthouse, 1301 Clay Street, Oakland,  
28 California, in Courtroom 5. Attorney Rosen must file a written response to this  
Order to Show Cause by **Friday, May 23, 2014**, if she contests it. A telephonic  
appearance by Plaintiff may be permitted at the hearing if it goes forward. Once the  
Court reviews the written response, it will determine whether to vacate the hearing  
or proceed. Attorney Rosen must personally appear at the hearing. She must also  
provide a copy of this Order and her response to her supervisor and certify the same  
to the Court. Dkt. 30 at 5.

1 Attorney Rosen did not file a timely response on May 23, 2014. Instead, on May 30, 2014,  
2 she filed a response stating that she had not read the May 13, 2014 Order until that day; therefore,  
3 her response was late. Dkt. 32 at 2. She also apologized for the "oversights in failing to calendar  
4 relevant court-ordered dates" and claimed that any resulting delay or "inconvenience [her]  
5 oversights have caused" was "not intentional." *Id.* Plaintiff filed his response on June 9, 2014. Dkt.  
6 34.


7 On June 13, 2014, the parties appeared before the undersigned Judge. The Court noted that  
8 Attorney Rosen had not certified that a copy of the May 13, 2014 Order was provided to her  
9 supervisor. Attorney Rosen informed the Court that her supervisor was given a copy of the May 13,  
10 2014 Order. After considering the explanations Attorney Rosen expressed in open court (as well as  
11 those submitted in her May 30, 2014 response), the Court assesses a sanction of \$150 to be paid to  
12 Plaintiff. The Court notes that the sanction is not being assessed personally on Attorney Rosen as an  
13 individual but, on her employer, the Oakland City Attorney's Office. Attorney Rosen and the  
14 Oakland City Attorney's Office, i.e., Attorney Rosen's supervisors, are admonished to *carefully read*  
15 *and comply with* all Orders issued in all cases before the undersigned Judge. For example, Attorney  
16 Rosen was directed to submit a timely motion for summary judgment by June 16, 2014.<sup>1</sup>

17 No later than **thirty (30) days** of the date of this Order: (1) the \$150 sanction shall be paid to  
18 Plaintiff with proof of such payment to be certified to the Court; and (2) the Oakland City Attorney's  
19 Office shall file a response addressing the calendaring issues that, in part, led to the delays in this  
20 matter.

21 Accordingly, the Order to Show Cause in its May 13, 2014 Order is hereby discharged.

22 IT IS SO ORDERED.

23 DATED: June 18, 2014

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE

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27 <sup>1</sup> Attorney Rosen has filed a timely motion for summary judgment on June 16, 2014. Dkt.  
28 35. Attorney Rosen also informed the Court that she is aware that only remaining unserved  
defendant, Officer Francis, has been served. However, she has not appeared on his behalf because  
Defendant Francis has not yet contacted her office. The Court informed her that Defendant Francis  
would be in default if his answer is not filed by June 20, 2014.