

1
2
3
4
5
6
7
8
9
10
11
12
13

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

DAVID O. BACA,

Plaintiff,

vs.

STATE OF CALIFORNIA, DEPARTMENT
OF CALIFORNIA HIGHWAY PATROL,
SERGEANT GRIMES, SERGEANT TRUE,
OFFICER B. RODGERS, OFFICER M.
WILSON, OFFICER C. RANDALL,
OFFICER B. JEFFERS, OFFICER B.
PHILLIPS, and DOES 1-10,

Defendants.

Case No: C 13-02968 SBA

**ORDER VACATING ORDER TO
SHOW CAUSE RE DISMISSAL
AND ORDER OF REFERENCE
FOR MEDIATION**

14
15
16
17
18
19

Plaintiff David O. Baca brings the instant civil rights action under 42 U.S.C. § 1983 against the State of California and various California Highway Patrol officers. On March 31, 2015, the Court issued an Order to Show Cause Re Dismissal (“OSC”) directing Plaintiff to show cause why the action should not be dismissed. The OSC was based on Plaintiff’s second failure to comply with the Court’s Order requiring the parties to file a joint statement regarding settlement. Dkt. 89.

20
21
22
23
24
25
26

On April 6, 2015, Plaintiff’s counsel timely filed a response to the OSC in which he fully acknowledges his failure to comply with the Court’s order. Counsel attributes such non-compliance to his involvement in overlapping federal trials, an unexpected office move, emergency and ex parte writ proceedings in state court matters, and general miscommunication within his office. Based on the representations of counsel and the extenuating circumstances presented, the Court finds that dismissal is not warranted. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992).

27
28

Plaintiff has indicated his willingness and desire to participate in an ENE/Mediation proceeding before attorney Louis A. Leone, who was previously appointed by the Court’s

1 ADR Department. To that end, Plaintiff proposes a referral to Mr. Leone. Defendants have
2 interposed no objection to Plaintiff's request. Accordingly,

3 IT IS HEREBY ORDERED THAT:

4 1. The OSC is VACATED.


5 2. Within one week of the date this order is filed, the parties shall schedule an
6 ENE/Mediation session with Mr. Leone. Upon scheduling the session with Mr. Leone, the
7 parties shall forthwith jointly file a written notice indicating the agreed-upon date. The
8 ENE/Mediation process shall be completed within forty-five (45) days of the date this order
9 is filed. The Court strongly encourages the parties to work diligently and in good faith to
10 reach a mutually-agreeable resolution of the claims alleged in this action.

11 3. To facilitate the foregoing, the Case Management Conference presently
12 scheduled for April 29, 2015, is CONTINUED to June 24, 2015 at 2:30 p.m. At least seven
13 (7) calendar days prior to the CMC, the parties shall meet and confer and file a Joint CMC
14 Statement. The Statement shall comply with the Standing Order for All Judges of the
15 Northern District of California and the Standing Orders of this Court.¹ Plaintiff's counsel
16 shall be responsible for filing the Joint CMC Statement and setting up the conference call.
17 At the date and time indicated above, Plaintiff's counsel shall call (510) 879-3550 with all
18 parties on the line. NO PARTY SHALL OTHERWISE CONTACT CHAMBERS
19 DIRECTLY WITHOUT PRIOR AUTHORIZATION OF THE COURT.

20 4. In the event the parties reach a settlement and file a stipulation for dismissal
21 under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) prior to the CMC, the CMC will
22 automatically be vacated and no appearance will be required.

23 IT IS SO ORDERED.

24 Dated: 4/15/15


SAUNDRA BROWN ARMSTRONG
United States District Judge

25
26
27
28 ¹ <http://www.cand.uscourts.gov/sbaorders>.