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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN WHITAKER,
Plaintiff,
v.
GOT PHO CORPORATION,
Defendant.

Case No. 21-cv-02998-PJH

**ORDER VACATING EXISTING
DEADLINES, CONDITIONALLY
DISMISSING ACTION, AND SETTING
DEADLINE TO FILE ANY MOTION
FOR ATTORNEY'S FEES AND COSTS**

Re: Dkt. No. 9

The court is in receipt of plaintiff's notice of settlement. Dkt. 9. In it, plaintiff states that the parties have reached a partial settlement in this action with respect to damages only. Id. Plaintiff signals that the parties have not reached such settlement with respect to attorney's fees and costs and that he intends to file a motion for such expenses. Id. In light of the parties' partial settlement, plaintiff requests that the court vacate all existing deadlines "with the expectation" that the parties will file a joint stipulation for dismissal at some time after a motion for attorney's fees and costs is "heard and settlement is funded." Id.

The court hereby **VACATES** all existing deadlines in this action. However, the court will not permit this action to languish on its docket pending plaintiff's indefinite intention to file a motion for attorney's fees and costs. Because Civil Local Rule 54 allows 14 days from the entry of judgment or dismissal for the filing of a motion for attorney's fees and/or costs, such motion need not precede the conclusion of this case. Thus, the court **ORDERS** that this case is dismissed **without** prejudice; provided, however that if any party hereto shall certify to this court, within 60 days, with proof of service thereof on the opposing party, that the agreed consideration for said settlement

1 has not been delivered over, the foregoing order shall stand vacated and this case shall
2 forthwith be restored to the calendar to be set for trial.

3 If no certification is filed, after passage of 60 days, the dismissal shall be **with**
4 prejudice. The parties may, of course, substitute a dismissal with prejudice at any time
5 during this 60-day period. Plaintiff shall file his motion for attorney's fees and costs **within**
6 **14 days after expiration of this 60-day period**, unless the parties stipulate to a later
7 deadline.

8 **IT IS SO ORDERED.**

9 Dated: June 4, 2021

10 /s/ Phyllis J. Hamilton
11 PHYLLIS J. HAMILTON
12 United States District Judge

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