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E-FILED - 9/11/08

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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12 RORY DWAYNE JOSHUA,

No. C 07-0422 RMW (PR)

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Plaintiff,

ORDER TO SHOW CAUSE RE.
DISMISSAL FOR FAILURE TO
PROSECUTE; DENYING MOTION TO
CONSOLIDATE

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v.

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C. LEE, et al.,

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Defendants.

(Docket No. 9)

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Plaintiff filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983. At the time he filed the complaint, he was in custody in a California prison, but he has since been released. The court ordered service of the complaint on the named defendants, and defendants filed an answer. On February 12, 2008, the court referred the instant action for settlement pursuant to the court's Pro Se Prisoner Settlement Program. Magistrate Judge Nandor Vadas then set a settlement conference for June 19, 2008.

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Defendants have filed a motion to dismiss the case for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. According to the declaration submitted by defense counsel, defense counsel, a representative from the California Department of Corrections, and one of the defendants, Dr. Lee, appeared at the settlement conference. Plaintiff, who was out of custody at the time, did not appear, contrary to the order by Judge Vadas. In addition, plaintiff did not appear

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1 at a properly noticed deposition by defendants, nor did he respond to previous correspondence from
2 defense counsel attempting to schedule the deposition at a mutually convenient time. Plaintiff also
3 did not timely responded to discovery requests mailed to him. Within **30 days** of the date this order
4 is filed, plaintiff shall SHOW CAUSE why, on the basis of his failure to appear at the settlement
5 conference, his failure to appear at his deposition, and/or his failure to respond to discovery, the
6 above-described conduct, this action should not be dismissed for failure to prosecute pursuant to
7 Rule 41(b).

8 Plaintiff's motion to consolidate this case with an unrelated case pending in the Eastern
9 District of California is DENIED.

10 This order terminates Docket No. 9.

11 IT IS SO ORDERED.

12 Dated: 9/10/08



RONALD M. WHYTE
United States District Judge

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