

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-FILED - 12/9/08

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

RORY DWAYNE JOSHUA,

Plaintiff,

v.

C. LEE, et al.,

Defendants.

No. C 07-0422 RMW (PR)

ORDER GRANTING MOTION TO DISMISS
FOR FAILURE TO PROSECUTE

(Docket No. 27)

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 and Magistrate Judge Nandor Vadas set a settlement conference for June 19, 2008.

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 at a properly noticed deposition by defendants, nor did he respond to previous correspondence from

1 defense counsel attempting to schedule the deposition at a mutually convenient time. Plaintiff also
2 did not timely responded to discovery requests mailed to him.

3 On September 11, 2008, this court ordered the plaintiff to show cause within 30 days of the
4 filing date of the order why, on the basis of his failure to appear at the settlement conference, his
5 failure to appear at his deposition, and/or his failure to respond to discovery, the above-described
6 conduct, this action should not be dismissed for failure to prosecute pursuant to Rule 41(b). To date,
7 no response has been filed or received by this court.

8 Accordingly, the instant action is DISMISSED without prejudice for failure to prosecute
9 pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The clerk shall terminate any
10 pending motions and close the file.

11 IT IS SO ORDERED.

12 Dated: 12/5/08



RONALD M. WHYTE
United States District Judge

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28