

United States District Court
For the Northern District of California

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSE SANTIAGO,)	Case No.: C 10-2526 PSG
)	
Plaintiff,)	ORDER RE MOTION TO DISMISS
)	
v.)	(Re: Docket No. 51)
)	
PAUL GARDENER, dba, WHOLE)	
HOUSE BUILDING SUPPLY,)	
)	
Defendant.)	

On September 6, 2011, Adam Wang (“Wang”), counsel for Plaintiff Jose Santiago (“Santiago”) and Katherine Clark (“Clark”), counsel for Defendant Paul Gardener, dba Whole House Building Supply (“Gardener”), appeared for a final pretrial conference. Unfortunately, the court was unable to proceed with pretrial matters as scheduled. The reason is that the parties failed to file in a timely manner all materials necessary for a productive conference,¹ including trial briefs, proposed voir dire and verdict forms, a joint pretrial statement, and motions *in limine*.² In particular, Wang failed to comply with the court’s standing order to meet and confer with Gardener and Clark, failed to meet multiple pretrial filing deadlines, and ultimately filed his pretrial materials late and up

¹ The court recognizes that Gardener, acting at the time in *pro se*, made multiple efforts to meet and confer with Wang, and ultimately filed a separate pretrial conference statement, trial exhibits, and proposed jury voir dire. *See* Docket Nos. 44, 45.

² *See* Standing Order for Civil Practice in Cases Assigned for all Purposes to Magistrate Judge Paul S. Grewal (December 2010).

1 to the last minute.³

2 In view of Wang's intransigence in working with Gardener to meet deadlines and apparent
3 lack of good faith in preparing for trial, Gardener filed a motion to dismiss and motion for sanctions
4 pursuant to Fed. R. Civ. P. 16(f) and 37(b)(2)(C). The court has taken Gardener's motion under
5 submission and will allow Santiago and Wang until Friday, September 9, 2011 at 5:00 p.m. to file a
6 written response. The court will hear oral argument on the motion to dismiss at hearing on Tuesday,
7 September 16, 2011 at 2:00 p.m. Until resolution of the motion to dismiss, the court will stay
8 Gardener's deadlines to submit remaining pretrial materials. The trial date remains September 19,
9 2011.

10
11 Dated: September 8, 2011

12 
13 PAUL S. GREWAL
14 United States Magistrate Judge

15
16
17
18
19
20
21
22
23
24
25
26 _____
27 ³ Based on the court's standing order and the pretrial conference calendar date of September 6,
28 2011, Wang should have met and conferred with Gardener by August 16, 2011, filed a trial brief and
motions *in limine* by August 29, and together with Gardener, filed a joint pretrial conference statement
by August 29, 2011. Instead, Wang filed his trial brief on September 6, 2011 minutes before the pretrial
conference time, a motion *in limine* on September 2, 2011, and a separate pretrial conference statement
on August 29, 2011. See Docket Nos. 42-48, 53.