

1 District of California. As a result, on March 4, 2013, this Court ordered Plaintiff to file a Joint
2 Case Management Statement by noon on March 5, 2013. ECF No. 9.

3 Third, Plaintiff had failed to comply with Civil Local Rule 16-10's requirement that
4 "[r]equests to participate in the conference by telephone must be filed and served at least 7 days
5 before the conference or in accordance with the Standing Orders of the assigned Judge." N.D. Cal.
6 Civil L. Rule 16-10.

7 Finally, Plaintiff did not appear at the Case Management Conference on March 6, 2013 at
8 2:00 p.m. despite the fact that the Court had denied Plaintiff's Ex Parte Motion to Continue the
9 Case Management Conference that Plaintiff had filed less than an hour and a half before the Case
10 Management Conference.

11 The March 6, 2013 Order to Show Cause informed Plaintiff that failure to respond to the
12 Order to Show Cause by March 13, 2013 and failure to appear at the March 20, 2013 Order to
13 Show Cause hearing would result in dismissal of this case with prejudice for failure to prosecute.
14 ECF No. 17.

15 On March 13, 2013, Plaintiff filed a Response to the Order to Show Cause in which he
16 explained that Defendants Enrique Serrano Castro and Rosalinda Reynoso had in fact been served
17 on February 26, 2013, although Proofs of Service were not filed until March 6, 2013. ECF No. 19.
18 Plaintiff's counsel, Mr. Thomas P. Riley, also submitted a Declaration from his Senior
19 Administrative Assistant, Ms. Stefanie M. Martinez, outlining Mr. Riley's office's practice of
20 deferring service of suit papers. Ms. Martinez's Declaration identified three reasons for this
21 practice: (1) because defense attorneys "comb the public records and notify defendants of pending
22 law suits," Mr. Riley's office is able to settle many cases "without the expense of service"; (2) Mr.
23 Riley's office waits to confirm that defendants do not have any recent bankruptcy filings or "other
24 issues" before incurring the cost of service; and (3) the large volume of Mr. Riley's practice and
25 the desire to avoid using a multitude of process servers. Decl. of Stefanie M. Martinez in Support
26 of Plaintiff's Response to the Court's Order to Show Cause Dated March 6, 2013, ECF No. 22.

27 At the March 20, 2013 hearing on the Order to Show Cause, Mr. Riley recognized that his
28 office's practice has resulted in frequent ex parte requests to continue Case Management

1 Conferences and to extend time to complete service, creating a significant burden for this Court.
2 As a result, Mr. Riley represented to the Court that he would change his office's practice for all
3 cases in the San Jose Division of the Northern District of California, to ensure that service is
4 attempted promptly after filing suit. He also represented that he would ensure filing of proof of
5 service within three days after a defendant is served. Mr. Riley further represented that he will
6 comply with this Court's Standing Orders and Civil Local Rules.

7 At the March 20, 2013 hearing on the Order to Show Cause, the Court GRANTED
8 Plaintiff's oral motion to dismiss Defendant Avila Tule from this action without prejudice.
9 Plaintiff shall serve a copy of this Order on Defendant Daniel Avila Tule.

10 As for Defendants Enrique Serrano Castro and Rosalinda Reynoso, the Court declines to
11 dismiss this case for failure to prosecute based upon Plaintiff's timely service of process on these
12 two Defendants, Plaintiff's timely response to the Order to Show Cause, and Plaintiff's appearance
13 at the Order to Show Cause hearing. An initial Case Management Conference shall take place on
14 June 19, 2013, at 2:00 p.m. Plaintiff is ordered to serve a copy of this Order on Defendants Castro
15 and Reynoso.

16 **IT IS SO ORDERED.**

17 Dated: March 25, 2013



18 LUCY H. KOH
19 United States District Judge
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