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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 PHILLIP JESSE MENDOZA,  
12 Plaintiff,  
13 v.  
14 COUNTY OF SAN DIEGO; SHERIFF'S  
15 DEPUTY JAMES GIVENS; and DOES  
16 1-50, inclusive,  
17 Defendants.

Case No.: 17cv1349-W (NLS)

**ORDER:**

**(1) VACATING SHOW CAUSE  
HEARING;**

**(2) REGARDING ORDER TO SHOW  
CAUSE AND ISSUING MONETARY  
SANCTIONS;**

**(3) RESETTING EARLY NEUTRAL  
EVALUATION CONFERENCE**

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20 **I. BACKGROUND**

21 On May 2, 2018, the Court issued an Order to Show Cause (“OSC”) due to  
22 Plaintiff Phillip Jesse Mendoza’s failure to personally appear at the Early Neutral  
23 Evaluation Conference (“ENE”) scheduled for that same day. ECF No. 12. Pursuant to  
24 that order, both Plaintiff and his counsel filed declarations outlining their reasons for  
25 Plaintiff’s absence at the ENE. ECF Nos. 14, 15. In addition, Defendants filed a  
26 declaration outlining the costs they incurred in preparing for and attending the ENE.  
27 ECF No. 16.  
28

1 Plaintiff's counsel explains in his declaration that he was not aware that he had to  
2 personally produce his client for the ENE, even when he had full settlement authority.  
3 ECF No. 14 at ¶ 2. Counsel attributes this error to his unfamiliarity with federal practice,  
4 but concedes that he did not read the court's order setting the ENE, which set forth the  
5 personal appearance requirements for the conference. *Id.* Plaintiff explains in his  
6 declaration that he failed to personally appear because his attorney failed to tell him that  
7 he needed to appear. ECF No. 15 at ¶ 3. Plaintiff explains that he does have a full time  
8 construction job that does not afford him any time off. *Id.* at ¶ 4.

9 Defendants submitted a declaration outlining the costs they incurred in preparing  
10 for and attending the ENE. ECF No. 16. Defendants' counsel states that his hourly rate  
11 is \$236.00 and he spent 8.0 hours total in connection with the ENE. *Id.* at ¶ 4. This  
12 includes time spent: (1) meeting with Deputy Givens (1.0); (2) preparing memo for and  
13 attending Case Evaluation Committee meeting (to determine settlement authority for  
14 ENE) (4.0); (3) preparing ENE brief (1.1); (4) reviewing file to prepare for ENE (0.4); (5)  
15 conference with Plaintiff's counsel regarding ENE (0.2); and attending the ENE (1.3).  
16 *Id.* Counsel also states that his paralegal billed 3.8 hours to assist him in preparing for  
17 the ENE. *Id.* at ¶ 5. In addition, the County paid Deputy Givens \$199.38 to attend the  
18 ENE as he was off duty and paid overtime to attend. *Id.*, Ex. A at ¶ 3.

## 19 II. DISCUSSION

20 Courts are "endowed with inherent powers which are necessary to the conduct of  
21 their business, including the power to sanction." *Yagman v. Republic Ins.*, 987 F.2d 622,  
22 628 (9th Cir. 1993). A court has the inherent authority to issue sanctions against parties  
23 and non-parties to an action based on their conduct. *In re Rainbow Magazine, Inc.*, 77  
24 F.3d 278, 282 (9th Cir. 1996). Additionally, under Federal Rule of Civil Procedure 16(f),  
25 the Court may issue "any just orders," including Rule 37 sanctions, "if a party or its  
26 attorney . . . fails to appear at a scheduling or other pretrial conference." Fed. R. Civ. P.  
27 16(f)(1)(A). Furthermore, "the court must order the party, its attorney, or both to pay the  
28 reasonable expenses—including attorney's fees—incurred because of any noncompliance

1 . . . unless the noncompliance was substantially justified or other circumstances make an  
2 award of expenses unjust.” Fed. R. Civ. P. 16(f)(2); *see also Sedgwick v. Unknown K-9*  
3 *Handler*, 2013 U.S. Dist. LEXIS 77063, \*11-12 (S.D. Cal. Apr. 23, 2013) (citing Ninth  
4 Circuit cases demonstrating the circuit court has repeatedly upheld monetary sanctions  
5 imposed for failure to comply with orders regarding settlement conferences).

6 Having read the parties’ declarations, the Court finds sanctions should be issued  
7 against Plaintiff’s counsel for failing to produce his client for the ENE. While the Court  
8 acknowledges that Plaintiff’s counsel is sufficiently apologetic for his error and for the  
9 burden he placed on the Court and Defendants, he admits that the error arose from his  
10 failure to read the Court’s order. This does not amount to substantial justification.

11 As to the amount of the sanction, the Court finds it appropriate to award  
12 Defendants their costs incurred to personally appear at the ENE. This amount includes  
13 Defendants’ counsel’s 1.3 hours at a rate of \$236.00 per hour, for a total of \$306.80, and  
14 the \$199.38 paid to Deputy Givens. As for the time that Defendants’ counsel and his  
15 paralegal spent preparing for the ENE, the Court declines to award fees associated with  
16 these tasks as it was not a wasted effort and they will not need to be performed again for  
17 the rescheduled ENE. However, the Court will award Defendants an additional hour of  
18 counsel’s time in order to prepare for the rescheduled ENE. Thus, in total, the Court  
19 levies sanctions against Plaintiff’s counsel in the amount of \$742.18.

