

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

ANAKA HUNTER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:12-CV-4 ERW
	)	
CITY OF SALEM, MISSOURI, et al.,	)	
	)	
Defendants.	)	

**MOTION TO VACATE ORDER REFERRING CASE TO ALTERNATIVE DISPUTE RESOLUTION**

Comes now Plaintiff, by counsel, and moves this Court for entry of an order vacating the referral to mediation in this case. In support, Plaintiff states:

1. On November 2, 2012, this Court entered its order referring this case to alternative dispute resolution. (Doc. # 40). The timing of the referral was established in the case management order because, at the time of the Rule 16 conference, the parties believed mediation might be useful in resolving this matter at that stage of the case.

2. Because of delays from Defendants in responding to proposed dates for mediation, an extension to complete mediation was required and mediation in this case is not scheduled to be held on April 30, 2013. (Doc. # 53).

3. The parties have had significant settlement discussions. Mediation is no longer a feasible manner of resolving this case for several reasons. First, Plaintiff seeks nominal damages of \$1.00 and a permanent injunction, but the parties have a fundamental disagreement as to the underlying legal issues in the case. Because the dispute between the parties is entirely a question of law, the parties will be unable to settle this case without resolution of the legal issue by this Court. Second, the parties have placed certain preconditions on settlement that will not be

satisfied prior to the scheduled mediation. Thus, it is apparent that mediation here would be futile and serve nothing more than to add to the parties' expenses. Third, Plaintiff agreed to mediation with the understanding that it would be completed prior to the deadline for dispositive motions; however, that is not what has occurred.

4. Plaintiff has moved for summary judgment (Doc. #54), which places squarely before this Court the dispute of law that has frustrated the parties' good faith settlement efforts. In the alternate to vacating the referral to mediation, this Court should amend the order so that mediation occurs after this Court has considered summary judgment issues.

WHEREFORE Plaintiff respectfully requests this Court enter an order vacating the referral to mediation in this case and allow such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Anthony E. Rothert  
ANTHONY E. ROTHERT, #44827MO  
GRANT R. DOTY, #60788MO  
AMERICAN CIVIL LIBERTIES UNION OF  
EASTERN MISSOURI  
454 Whittier Street  
St. Louis, Missouri 63108  
(314) 652-3114  
FAX: (314) 652-3112  
tony@aclu-em.org  
grant@aclu-em.org

DANIEL MACH  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
915 15th Street NW  
Washington, DC 20005  
(202) 675-2330  
FAX: (202) 546-0738

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and a copy was made available electronically to all electronic filing participants.

/s/ Anthony E. Rothert