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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 Isaac Wolf,
17 Plaintiff,
18 v.
19 University Professional & Technical
20 Employees, Communications Workers of
21 America Local 9119 et al.,
22 Defendants.

Case No. 3:19-cv-02881-WHA

**PLAINTIFF'S REPSONSE TO THE
ORDER TO SHOW CAUSE**

1 Attorneys Brian K. Kelsey, Reilly Stephens, and Mark W. Bucher hereby file their
2 response to this Court's Order of August 22, 2019 (Dkt. 44) to show cause why this case
3 should not be dismissed for lack of prosecution due to their failure to appear for the Case
4 Management Conference on August 22, 2019.

5 1. On August 14, 2019, counsel for plaintiff met and conferred by phone with
6 counsel for the Defendants, with the goal of submitting a Joint Case Management
7 Statement by this Court's deadline of August 15, 2019.

8 2. Counsel for all parties agreed that the manner by which to proceed would be
9 to submit to this Court a stipulation and motion to continue the Case Management
10 Conference until after the adjudication of the Defendants' pending Motions to Dismiss.

11 3. Consistent with this agreement, on August 15, 2019, the parties submitted to
12 this Court their Stipulations and Motion to Continue the Case Management Conference
13 (Dkt. 41).

14 4. Because of the unanimous agreement of the parties, counsel for Plaintiff
15 assumed, in error, that the motion was likely to be granted and, therefore, did not make
16 advanced preparations for appearance at the Case Management Conference.

17 5. In particular, the entry made on counsel's internal deadlines calendar noted
18 generally a possible hearing, not noting a particular time, and included a question mark,
19 signifying uncertainty as to whether a hearing existed to attend to that day.

20 6. On August 16, 2019, this Court issued an Order denying the parties' Motion
21 to Continue (Dkt. 42).

22 7. In adherence to this Court's order denying the motion, on August 19, 2019
23 Plaintiff's counsel drafted and circulated to Defense counsel a Case Management
24 Statement, which the parties were able to come to agreement on and submit on August 20,
25 2019.

26 8. While Plaintiff's counsel, therefore, took steps to provide this Court with the
27 necessary statement for its consideration at the Case Management Conference, counsel
28 neglected to update the internal scheduling calendar to reflect the fact that the hearing was

1 going forward or to note at what time it was to be held and how to call in to the Court.

2 9. In addition, Plaintiff's counsel relied on the hired services of a California
3 paralegal for backup of calendared events and to receive notices from the Court for
4 Attorney Mark W. Bucher; however, the paralegal left employment with her law firm
5 shortly before the Case Management Conference.

6 10. Due to this error in administration, Plaintiff's counsel failed to fulfill their
7 responsibilities to the Court and failed to appear for the Case Management Conference.

8 11. Plaintiff's counsel are truly sorry for their error and are sorely ashamed that
9 their mistake did not show this Court the due respect that it deserves.

10 12. Attorney Brian K. Kelsey has been admitted to the bar of the Supreme Court
11 of Tennessee since 2003 and has never before missed a conference or hearing set by any
12 court. In his sixteen years practicing law, he has never been subject to sanction or
13 discipline by the bar of any court. He apologizes profusely to the Court for his error.

14 13. Attorney Reilly Stephens has been admitted to the bar of the Court of
15 Appeals of Maryland since December, 2017, and has not in that time been subject to
16 sanction or discipline by the bar of any court. This is the first time he has failed to appear
17 at a conference for one of his clients. He apologizes profusely to the Court for his error.

18 14. Attorney Mark W. Bucher has been admitted to the bar of the Supreme Court
19 of California since 2000 and has not in that time been subject to sanction or discipline by
20 the bar of any court. This is the first time he has failed to appear at a conference for one of
21 his clients. He apologizes profusely to the Court for his error.

22 15. Plaintiff's counsel would like to inform the Court that they have taken
23 affirmative steps to ensure that such a grave error never again occurs in the future. First,
24 in California they have spoken with the California law firm that they had contracted with
25 and have received assurance that the replacement paralegal will monitor court dockets as a
26 backup for them.

27 16. Second, in the home office of counsel *Pro Hac Vice* in Chicago, they hired
28 their first paralegal to monitor case calendars as a backup just yesterday, after an

1 extensive search in part as a result of this error. They humbly ask that their *Pro Hac Vice*
2 status not be revoked.

3 17. Plaintiff's counsel, however, admit that it was their own conduct in this
4 matter that did not meet the professional standards they strive for and that this Court
5 expects. They humbly ask this Court's grace in forgiving their error and that they not be
6 referred to the Court's Standing Committee on Professional Conduct.

7 18. Plaintiff's counsel wish to emphasize that the failures identified by this Court
8 in its order to show cause were the fault of counsel and in no way the fault of Plaintiff,
9 Isaac Wolf. Counsel beseeches this Court not to deprive Mr. Wolf of a ruling in his case
10 on the basis of counsel's error.

11 The undersigned counsel declare under oath that the above described facts and
12 circumstances are a true and correct description of events.

13 Dated: September 19, 2019

14 Respectfully submitted,

15 /s/ Mark W. Bucher

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