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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8
9 ROBERTO A. SOTELO,

CASE NO. 1:08-cv-01342-LJO-SKO

10 Plaintiff,

ORDER OVERRULING OBJECTIONS TO
ORDER RE SETTLEMENT CONFERENCE

11 v.

(Doc. 96)

12 T. BIRRING, et al.,

13 Defendants.
14 _____/

15 This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff Roberto A. Sotelo,
16 a state prisoner proceeding with counsel. On June 12, 2012, Defendants Birring, Das, Diep, and
17 Coleman filed objections to the Magistrate Judge's order re settlement conference, filed on June 11,
18 2012. Defendants "object to being ordered to a settlement conference at all and in front of
19 Magistrate Oberto," because service has not yet been effected on Defendant Green and Defendants
20 are not waiving their claim of disqualification should Magistrate Judge Oberto conduct the
21 settlement conference. (Doc. 96, 1:18-19.)

22 The settlement conference at issue was set pursuant to the scheduling order filed on February
23 3, 2012. The Court is disinclined to view with favor an eleventh hour objection which was not
24 submitted until counsel received the order regarding the requirements for the upcoming settlement
25 conference. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992) ("A
26 scheduling order is not a frivolous piece of paper, idly entered. . .").

27 Defendants' unsupported objection to attending a settlement conference on the basis that
28 Defendant Green has not yet been served is overruled. Fed. R. Civ. P. 16(b)(4). If the parties wish

1 to file a motion seeking modification of the scheduling order, they may do so, but Defendants'
2 objection is misplaced.

3 Next, it is the standard practice of the Eastern District of California to set the settlement
4 conference before the Magistrate Judge in non-consent cases. Local Rules 302(c)(12). The trial
5 judge may not conduct the settlement conference in the absence of a waiver. Local Rules 240(a)(16),
6 270. Defendants have not consented to Magistrate Judge Oberto for all purposes and therefore, the
7 settlement conference is properly set before Magistrate Judge Oberto. If Defendants believe they
8 may consent and they consider it prudent for that reason to seek the assignment of a different
9 Magistrate Judge, they may make that request, but their objection as set forth is without merit.

10 For the foregoing reasons, Defendants' objections are HEREBY OVERRULED.

11 IT IS SO ORDERED.

12 **Dated: June 19, 2012**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE