

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAMONT SHEPARD,

Plaintiff,

v.

BASS, et al.,

Defendants.

CASE NO. 1:10-cv-00754-LJO-BAM PC

ORDER VACATING NOVEMBER 27, 2012,
SETTLEMENT CONFERENCE AND
DIRECTING THE CLERK'S OFFICE TO
FORWARD A CONSENT /DECLINE FORM TO
DEFENDANT

FIFTEEN DAY DEADLINE

Plaintiff Lamont Shepard ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following resolution of the parties' cross-motions for summary judgment, this action is now proceeding on Plaintiff's complaint, filed April 30, 2010, against Defendant Bass for excessive force in violation of the Eighth Amendment. (ECF No. 62.) This action is currently set for a settlement conference on November 27, 2012, and jury trial on December 11, 2012.

The parties have submitted confidential settlement statements which have been reviewed by the undersigned. Based upon the confidential settlement statements, the Court finds that this action is not amendable to settlement and it would not be beneficial for the parties to incur the costs and expenditure of time to appear for the settlement conference. Accordingly, the settlement conference set for November 27, 2012, at 9:30 a.m. in Courtroom 8 shall be vacated.

This action is set for jury trial on December 11, 2012, at 8:30 a.m., before the Hon. Lawrence J. O'Neill. A United States Magistrate Judge is available to conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local

1 Rule 73-305. Any appeal from a judgment entered by a United States Magistrate Judge is taken
2 directly to the United States Court of Appeal for the Ninth Circuit. Because of the extraordinarily
3 high case load in this district, this court has United States Magistrate Judges conduct trials in civil
4 rights actions concerning prison conditions whenever possible. Having a Magistrate Judge preside
5 over the trial makes it far more likely a case will proceed on the scheduled trial date, and the trial
6 will not be delayed by other matters.

7 Plaintiff consented to the jurisdiction of the Magistrate Judge on May 10, 2010. (ECF No.
8 5.) Defendant declined jurisdiction on May 6, 2011. (ECF No. 26.) The court shall direct the Clerk
9 of the Court to provide Defendant with a consent/decline form. Within fifteen days, Defendant shall
10 inform the court whether he consents to or declines Magistrate Judge Jurisdiction by filling out the
11 form and returning it to the court. While consenting to Magistrate Judge jurisdiction will most likely
12 expedite resolution of this action, Defendant is hereby advised that no adverse substantive
13 consequences will result if he withholds consent.

14 Based on the foregoing, IT IS HEREBY ORDERED that:

- 15 1. The settlement conference set for November 27, 2012, at 9:30 a.m. in Courtroom 8
16 is VACATED;
- 17 2. The Clerk's Office is directed to send a consent/decline form to Defendant; and
- 18 3. Within fifteen days from the date of service of this order, Defendant shall return the
19 consent/decline form.

20 IT IS SO ORDERED.

21 **Dated: November 6, 2012**

22 **/s/ Barbara A. McAuliffe**
23 **UNITED STATES MAGISTRATE JUDGE**
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