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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
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7 ESS'NN A. AUBERT,

8 Plaintiff,

9 v.

10 E. MADRUGA, et al.,

11 Defendants.

1:13-cv-01659-DAD-EPG (PC)

ORDER VACATING ORDER & WRIT OF  
HABEAS CORPUS AD TESTIFICANDUM  
TO TRANSPORT ESS'NN A. AUBERT,  
CDC # V77688, PLAINTIFF

(ECF No. 58)

ORDER VACATING SCHEDULING  
CONFERENCE ON NOVEMBER 1, 2016,  
AT 11:00 AM BEFORE MAGISTRATE  
JUDGE ERICA P. GROSJEAN

(ECF Nos. 56, 57)

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16 Ess'nn Aubert ("Plaintiff") is a prisoner proceeding *pro se* and *in forma pauperis* in this  
17 civil rights action filed pursuant to 42 U.S.C. § 1983.

18 On September 28, 2016, the Court held a status conference to set the remaining dates in  
19 this case. The Court set the pretrial conference on December 5, 2016, and the trial on January  
20 31, 2017. (ECF No. 57). During the status conference, the Court and parties also set a  
21 settlement conference. According to the ECRO recording, the Court discussed the selection of  
22 judge for the settlement conference as follows:<sup>1</sup>

23 Judge Grosjean: I am going to require a [settlement conference].... I could do  
24 this, but I'm also ok giving it to another judge.... For what it's worth, I'm not  
25 going to have any more role in your proceedings, so in that way I don't think  
26 that there's a conflict if I preside over it because I'm not making any further  
27 decisions, but I want to make sure that the parties are comfortable. So, let me

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<sup>1</sup> "Ums" and duplicate words have been omitted.

1 start. Mr. Aubert, do you have a preference whether it's me or another  
2 magistrate judge to conduct your settlement conference?

3 Mr. Aubert: It's alright... if you preside over it.

4 Judge Grosjean: Ok

5 Mr. Aubert: If it's alright with the defense.

6 Judge Grosjean: Ok. Defense, do you have a preference?

7 Mr. Rhoan: No your honor, I don't.

8 Judge Grosjean: Ok. I guess lets schedule it with me....

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10 The Court proceeded to set the settlement conference for November 1, 2016, at 11:00  
11 a.m. before herself. (ECF Nos. 56, 57)

12 On October 4, 2016, the Court issued an Order & Writ of Habeas Corpus Ad  
13 Testificandum to Transport Ess'nn A. Aubert, CDC # V77688, Plaintiff (ECF No. 58), so that  
14 Plaintiff could attend the settlement conference in person.

15 On October 17, 2016, Defendants filed "Objections to Magistrate Judge Grosjean  
16 Serving as Settlement Judge." (ECF No. 61). That objection stated as follows:

17 Defendants object to the Magistrate Judge serving as settlement judge in this  
18 case. According to this Court's Local Rules, all parties must affirmatively  
19 request in writing that the assigned Magistrate Judge participate in the  
20 settlement conference and waive any claim of disqualification. E.D. Cal. R.  
21 270(b). Absent such writing, the assigned Magistrate Judge shall not conduct  
22 the settlement conference. . . . .

23 Defendants hereby request that this matter be scheduled for a settlement  
24 conference on a difference dates before a different judge.

25 (ECF No. 61).<sup>2</sup>

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26 <sup>2</sup> Local Rule 270(b) provides: "Unless all the parties affirmatively request that the  
27 assigned Judge or Magistrate Judge participate in the conference and waive in writing any  
28 claim of disqualification on that basis to act as Judge or Magistrate Judge in the action  
thereafter, the assigned Judge or Magistrate Judge shall not conduct the settlement conference.  
See L.R. 240(a)(16)." Notably, this rule does not state that "all parties must affirmatively  
request in writing that the assigned Magistrate Judge participate in the settlement conference,"  
but it does require that a waiver be in writing.

1 As noted at the conference, Magistrate Judge Grosjean has no further role in this case,  
2 which is set for trial before District Judge Dale A. Drozd. Defendants voiced no preference or  
3 objection at the status conference to Magistrate Judge Grosjean's participation, and did not  
4 object to the scheduling order or issuance of the writ for transportation of Plaintiff. It is  
5 arguable that Defendants have waived any objection to Magistrate Judge Grosjean's role in the  
6 settlement conference.

7 Nevertheless, the Court has no desire to conduct a settlement conference over a party's  
8 objection. Accordingly, the Court will vacate its order setting the settlement conference and  
9 vacate the writ requiring Plaintiff's attendance. Magistrate Judge Michael J. Seng has agreed to  
10 serve as settlement conference judge in lieu of Magistrate Judge Grosjean.

11 It bears noting, however, that Magistrate Judges in this jurisdiction conduct settlement  
12 conferences voluntarily solely to assist the parties in reaching a resolution. They are not  
13 required to do so. Other jurisdictions require that parties pay for the assistance of professionals  
14 to mediate their settlement conferences. Defendants' change of heart with trial so near,  
15 combined with insistence on a new date without any proposed date, is inconvenient for the  
16 Magistrate Judges as well as the inmate Plaintiff and the California Department of Corrections  
17 and Rehabilitation, which requires significant advance notice in order to facilitate Plaintiff's  
18 attendance at the settlement conference.

19 Accordingly, IT IS ORDERED that:

- 20 - The Order & Writ of Habeas Corpus Ad Testificandum to Transport Ess'nn A.  
21 Aubert, CDC # V77688, Plaintiff (ECF No. 58) is VACATED.  
22 - The settlement conference scheduled for November 1, 2016, at 11:00 a.m. (ECF  
23 Nos. 56, 57), is VACATED. All other dates remain unchanged, including the  
24 remaining dates in the October 3, 2016 scheduling order (ECF No. 57).

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- 1 - Defense counsel shall coordinate with the chambers of Magistrate Judge Michael J.  
2 Seng and Plaintiff to schedule a mutually agreeable date and time for the settlement  
3 conference, and arrange for issuance of a new writ sufficiently in advance of the  
4 new date.

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6 IT IS SO ORDERED.

7 Dated: October 20, 2016

8 /s/ Eric P. Grogan  
9 UNITED STATES MAGISTRATE JUDGE  
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