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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EFREN DANIELLE BULLARD,

Plaintiff,

v.

BENSON, et al.,

Defendants.

Case No. 1:17-cv-0328-NONE-HBK (PC)

ORDER DENYING AND GRANTING
INAPRT DEFENDANTS' MOTION TO
EXCUSE DEFENDANTS FROM
ATTENDING SETTLEMENT
CONFERENCE

(Doc. No. 103).

Pending before the Court is a Motion to Excuse Defendants from Attending the Settlement Conference, and supporting declaration from attorney Sloan, filed January 28, 2021. (*See* Doc. No. 103, Motion; Doc. No. 103-1, Decl. Sloan).

A settlement conference is currently scheduled to occur on March 25, 2021. *See* Doc. No. 101. Defendants note that the court's order setting the settlement conference requires the three individual defendants to attend the conference, unless the court otherwise permits in advance to have a party not to attend. Motion at 1 (citing Doc. No. 101). Defendants correctly submit that Fed. R. Civ. P. 16(c)(1) provides the Court *may* require individual defendants attend pre-trial

1 conferences and settlement conferences, but further point out that historically in the Eastern District
2 of California individual defendants have *not* attended prisoner settlement conferences because the
3 individual defendants are not necessary for effective settlement negotiations. *Id.* at 3 (emphasis
4 added); *see also* Dec. Sloan at 1-2. Nor are the individual defendants' presence required to have
5 an effective settlement agreement. *Id.* Additionally, defendants note that the CDCR is responsible
6 for paying any settlement sums, alleviating the need for the individual defendants to be present, or
7 to authorize settlement. Motion at 1-2; *see also* Decl. Sloan at 1-2. Based on the foregoing
8 defendants request to be excused. Motion at 3 (citing *United States v. U.S. Dist. Court for Northern*
9 *Mariana Islands*, 694 F.3d at 1061 (9th Cir. 2012) (finding district court abused its discretion when
10 requiring person with full settlement authority to attend pretrial conference where settlement was
11 discussed).

12 The Ninth Circuit Court of Appeals in *Northern Marianna Islands* ultimately agreed with the
13 Fifth Circuit Court of Appeals to find where there has been no record of dilatory or evasive tactics
14 by either party that the district court "should take a 'practical approach' to determine whether to
15 require the government to send a representative with full settlement authority to a pretrial
16 conference and should consider less drastic steps before doing so," considering whether a
17 representative may be effectively available during a settlement conference without physical
18 attendance.) *Id.* at 1061. The court is sensitive to defendant's position that the individual
19 defendants have not historically been required to attend settlement conferences in prisoner cases in
20 the Eastern District of California. However, *United States v. U.S. Dist. Court for Northern Mariana*
21 *Islands* supports this court's decision to require certain if the defendants attend the settlement
22 conference by zoom. Unlike *Marianna Islands*, the instant case has been pending for four years.
23 Also, a prior settlement conference in this case before another magistrate judge already resulted in
24 an *impasse*. *See* docket; *see also* Doc. No. 59 (settlement conference), Doc. No. 63 (writ for
25 prisoner plaintiff transport); Doc. No. 65 (noting *impasse* from settlement). This court believes that
26 the parties' view of the case may be altered during a face-to-face conference, albeit by zoom due
27 to the covid-19 pandemic, and other courts have agreed with this view. *See generally Pitman v.*
28 *Brinker Intern, Inc.*, 216 F.R.D. 481, 486 (D. Az. July 8, 2003) (requesting representative with full

1 settlement authority, not capped authority and the parties to attend); *Bartholomew v. Burger King*
2 *Corp.*, Case No. 11-00613 -JMS-BMK, 2014 WL 7419854 *2 (D. Hawaii, Dec. 30, 2014). The
3 court finds the benefits of bringing the parties to the table so-to-speak on zoom for a settlement
4 conference outweigh the burden and is practical. Having reviewed the record, the court finds
5 having the ability to speak to defendants Kister-Cooper and Benson necessary for the court to be
6 able to effectively and accurately mediate any settlement of this matter. The court will excuse
7 defendant David's attendance from the March 25, 2021 settlement conference.

8 Accordingly, it is **ORDERED**:

9 Defendants' Motion to Excuse Defendants from Attending Settlement Conference (Doc. No.
10 103) is **GRANTED in part and DENIED in part**. Defendant David is excused from appearing
11 at the March 25, 2021 settlement conference. Defendants Kister-Cooper and Benson are required
12 to appear by zoom for the March 25, 2021 settlement conference. It is the court's preference that
13 defendants Kister-Cooper and Benson appear by zoom, but the court will permit their attendance
14 telephonically if zoom is physically not available. Counsel should contact chambers ([kdunbar-](mailto:kdunbar-kari@caed.uscourts.gov)
15 kari@caed.uscourts.gov) at least 24 hours before the scheduled settlement conference if either
16 defendant Kister-Cooper or Benson will not be appearing by zoom.

17
18 IT IS SO ORDERED.

19 Dated: March 17, 2021

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21 HELENA M. BARCH-KUCHTA
22 UNITED STATES MAGISTRATE JUDGE
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