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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SCOTT BARBOUR,
Plaintiff,
v.
UNITED STATES OF AMERICA,
Defendant.

Case No. 1:18-cv-00246-NONE-BAM (PC)

ORDER REFERRING CASE TO POST-
SCREENING ADR AND STAYING CASE

Hearing: **Settlement Conference**
Date: **April 29, 2021**
Time: **10:00 a.m. (PST) / 1:00 p.m. (EST)**
Judge: **Stanley A. Boone**
Location: **via Zoom Videoconference**

Plaintiff Scott Barbour (“Plaintiff”) is a federal prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b). Defendant United States of America has answered the complaint. (ECF No. 44.)

Because it takes years to get to trial, the Court has identified this case as an appropriate case for post-screening ADR (Alternative Dispute Resolution), which is an effort to resolve such cases more expeditiously and less expensively. No claims, defenses, or objections shall be waived by the parties’ participation. In appropriate cases, defense counsel from the California State Attorney General’s Office has agreed to participate in these early settlements.

As set forth in the screening order, Plaintiff has stated a cognizable civil rights claim. But, stating a cognizable claim does not mean Plaintiff will prevail at trial. Thus, the Court stays this action to allow the parties to investigate Plaintiff’s claims, meet and confer, and then participate in a

1 settlement conference.

2 Therefore, this case will be referred to Magistrate Judge Stanley A. Boone to conduct a **video**
3 **settlement conference, via the Zoom videoconferencing application**, on April 29, 2021, at 10:00
4 a.m. (PST) / 1:00 p.m. (EST). The Court will issue any necessary transportation order in due course.

5 Counsel for Defendant shall contact Courtroom Deputy, Mamie Hernandez, at (559) 499-5672
6 or mhernandez@caed.uscourts.gov for the video and dial-in information, including any necessary
7 passcodes, for all parties. Counsel for Defendant is also required to arrange for Plaintiff's
8 participation by contacting the Litigation Coordinator at the institution where Plaintiff is housed,
9 ensuring that the institution has the necessary technology available, and providing the necessary Zoom
10 contact information.

11 In issuing this order, there is a presumption that this case will proceed to a settlement
12 conference.¹ However, if after investigating Plaintiff's claims and speaking with Plaintiff, and after
13 conferring with others, defense counsel in good faith finds that a settlement conference would be a
14 waste of resources, defense counsel may move to opt out of this early settlement conference. A
15 written notice to opt out must be filed within **thirty (30) days** of the date of the issuance of this order.

16 The parties shall each submit to Judge Boone a confidential settlement conference statement,
17 as described below, to arrive at least seven days (one week) prior to the conference.

18 The Court puts the parties on notice that if Plaintiff has any outstanding criminal restitution
19 obligation, fines and/or penalties, these settlement negotiations shall not be geared towards what the
20 restitution obligation is, but what the value of the case itself is to each side, irrespective of any
21 outstanding restitution obligation.

22 In accordance with the above, IT IS HEREBY ORDERED that:

- 23 1. This action is STAYED to allow the parties an opportunity to settle their dispute before the
24 discovery process begins. Except as provided herein or by subsequent court order, no other
25 pleadings or other documents may be filed in this case during the stay of this action. The
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28 ¹ If the case does not settle, the Court will then lift the stay of its Discovery and Scheduling Order or
issue one forthwith.

1 parties shall not engage in formal discovery, but may engage in informal discovery to
2 prepare for the settlement conference.

- 3 2. This case is set for a **video** settlement conference, **via the Zoom videoconferencing**
4 **application**, before Magistrate Judge Stanley A. Boone on **April 29, 2021, at 10:00 a.m.**
5 **(PST) / 1:00 p.m. (EST)**.
- 6 3. A representative with full and unlimited authority to negotiate and enter into a binding
7 settlement shall attend **via the Zoom videoconferencing application**.²
- 8 4. Within **thirty (30) days** of this order, defense counsel may file a notice advising the Court
9 that they wish to opt-out of this settlement conference by filing a “Notice of Opt-Out and
10 Request to Vacate Settlement Conference.”
- 11 5. If defense counsel does not wish to opt-out, defense counsel shall contact the Litigation
12 Coordinator at the institution where Plaintiff is housed to determine whether the institution
13 has the necessary technology available to accommodate a Zoom video appearance by
14 Plaintiff at this date and time. Within **thirty (30) days** of this order, defense counsel shall
15 file a notice advising the Court whether the institution can accommodate Plaintiff’s
16 appearance.
- 17 6. Those in attendance must be prepared to discuss the claims, defenses and damages. The
18 failure or refusal of any counsel, party or authorized person subject to this order to appear
19 in person may result in the cancellation of the conference and the imposition of sanctions.
20 The manner and timing of Plaintiff’s transportation to and from the conference is within the
21 discretion of CDCR.
- 22 7. Defendants shall provide a confidential settlement statement to the following email
23 address: **saborders@caed.uscourts.gov**. Plaintiff shall mail his confidential settlement
24 statement to U.S. District Court, 2500 Tulare Street, Fresno, California 93721, “**Attention:**
25 **Magistrate Judge Stanley A. Boone.**” The envelope shall be marked “Confidential
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28 ² In light of the coronavirus (COVID-19) outbreak and the evolving coronavirus protocols, the Court may issue an order at a later date requiring the parties to appear in person.

1 Settlement Statement.” Settlement statements shall arrive no later than **April 22, 2021**.
2 Parties shall also file a Notice of Submission of Confidential Settlement Statement (See
3 Local Rule 270(d)). Settlement statements **should not be filed** with the Clerk of the Court
4 **nor served on any other party**. Settlement statements shall be clearly marked
5 “Confidential” with the date and time of the settlement conference indicated prominently
6 thereon.

7 8. The confidential settlement statement shall be **no longer than five pages** in length, typed
8 or neatly printed, and include the following:

9 a. A brief statement of the facts of the case.

10 b. A brief statement of the claims and defenses, i.e., statutory or other grounds upon
11 which the claims are founded; a forthright evaluation of the parties’ likelihood of
12 prevailing on the claims and defenses; and a description of the major issues in
13 dispute.

14 c. An estimate of the cost and time to be expended for further discovery, pretrial, and
15 trial.

16 d. The party’s position on settlement, including present demands and offers and a
17 history of past settlement discussions, offers, and demands.

18 e. A brief statement of each party’s expectations and goals for the settlement
19 conference, including how much a party is willing to accept and/or willing to pay.

20 f. If parties intend to discuss the joint settlement of any other actions or claims not in
21 this suit, give a brief description of each action or claim as set forth above,
22 including case number(s) if applicable.

23 9. If a settlement is reached at any point during the stay of this action, the parties shall file a
24 Notice of Settlement in accordance with Local Rule 160.

25 10. The parties remain obligated to keep the Court informed of their current address at all times
26 during the stay and while the action is pending. Any change of address must be reported
27 promptly to the Court in a separate document captioned for this case and entitled “Notice
28 of Change of Address.” See Local Rule 182(f).

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11. A failure to follow these procedures may result in the imposition of sanctions by the court.

IT IS SO ORDERED.

Dated: February 24, 2021

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE