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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 JERRY DILLINGHAM,

11 Plaintiff,

12 v.

13 N. EMERSON, *et al.*,

14 Defendants.

Case No. 1:18-cv-00507-AWI-SAB (PC)

ORDER REFERRING CASE TO POST-
SCREENING ADR AND STAYING CASE
FOR 120 DAYS

Date: **August 25, 2020**

Time: **9:30 a.m.**

Place: **Courtroom 8 (BAM) Before the
Honorable Barbara A. McAuliffe**

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19 Plaintiff Jerry Dillingham is a state prisoner proceeding *pro se* and *in forma pauperis* in
20 this civil rights action pursuant to 42 U.S.C. § 1983.

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

26 As set forth in the screening order, Plaintiff has stated a cognizable civil rights claim. But,
27 stating a cognizable claim does not mean Plaintiff will prevail at trial. Thus, the Court stays this
28 action for a period of 120 days to allow the parties to investigate Plaintiff's claims, meet and

1 confer, and then participate in a settlement conference.

2 Therefore, this case will be referred to Magistrate Judge Barbara A. McAuliffe to conduct
3 a settlement conference at the United States Courthouse in Fresno, California on **August 25, 2020**
4 at 9:30 a.m. The Court will issue the necessary transportation order in due course.

5 In issuing this order, there is a presumption that this case will proceed to a settlement
6 conference.¹ However, if after investigating Plaintiff's claims and speaking with Plaintiff, and
7 after conferring with others, defense counsel in good faith finds that a settlement conference
8 would be a waste of resources, defense counsel may move to opt out of this early settlement
9 conference. A written notice to opt out must be filed within 30 days of the date of the issuance of
10 this order.

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

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

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

- 18 1. This action is STAYED for 120 days to allow the parties an opportunity to settle
19 their dispute before the discovery process begins. Except as provided herein or by
20 subsequent court order, no other pleadings or other documents may be filed in this
21 case during the stay of this action. The parties shall not engage in formal
22 discovery, but may engage in informal discovery to prepare for the settlement
23 conference.
- 24 2. This case is set for a settlement conference before Magistrate Judge Barbara A.
25 McAuliffe on **August 25, 2020, at 9:30 a.m.**, at the United States Courthouse
26 located at 2500 Tulare Street, Fresno, California.

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28 ¹ If the case does not settle, the Court will then issue the Discovery and Scheduling Order.

3. A representative with full and unlimited authority to negotiate and enter into a binding settlement shall attend in person.
4. Those in attendance must be prepared to discuss the claims, defenses and damages. The failure of any counsel, party or authorized person subject to this order to appear in person may result in the cancellation of the conference and the imposition of sanctions. The manner and timing of Plaintiff's transportation to and from the conference is within the discretion of CDCR.
5. Defendants shall provide a confidential settlement statement to the following email address: bamorders@caed.uscourts.gov. Plaintiff shall mail his confidential settlement statement to U.S. District Court, 2500 Tulare Street, Fresno, California, 93721, "**Attention: Magistrate Judge Barbara A. McAuliffe.**" The envelope shall be marked "Confidential Settlement Statement". Settlement statements shall arrive no later than **August 18, 2020**. Parties shall also file a Notice of Submission of Confidential Settlement Statement (See Local Rule 270(d)). Settlement statements **should not be filed** with the Clerk of the Court **nor served on any other party**. Settlement statements shall be clearly marked "confidential" with the date and time of the settlement conference indicated prominently thereon.
6. The confidential settlement statement shall be **no longer than five pages** in length, typed or neatly printed, and include the following:
 - a. A brief statement of the facts of the case.
 - b. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute.
 - c. An estimate of the cost and time to be expended for further discovery, pretrial, and trial.
 - d. The party's position on settlement, including present demands and offers and a history of past settlement discussions, offers, and demands.

- 1 e. A brief statement of each party's expectations and goals for the settlement
2 conference, including how much a party is willing to accept and/or willing to
3 pay.
- 4 f. If the parties intend to discuss the joint settlement of any other actions or
5 claims not in this suit, give a brief description of each action or claim as set
6 forth above, including case number(s), if applicable.
- 7 7. If a settlement is reached at any point during the stay of this action, the parties
8 shall file a Notice of Settlement in accordance with Local Rule 160.
- 9 8. If the defense counsel wishes to "opt- out" of this settlement for the reasons stated
10 above, counsel must do so within **thirty (30) days** of this order by filing a "Notice
11 of Opt-Out and Request to Vacate Settlement Conference."
- 12 9. The parties remain obligated to keep the court informed of their current address at
13 all times during the stay and while the action is pending. Any change of address
14 must be reported promptly to the court in a separate document captioned for this
15 case and entitled "Notice of Change of Address." See Local Rule 182(f).
- 16 10. A failure to follow these procedures may result in the imposition of sanctions by
17 the court.

18 IT IS SO ORDERED.

19 Dated: April 30, 2020

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22 UNITED STATES MAGISTRATE JUDGE
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