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

XAVIER DMETRI NAILING,

No. 2:09-CV-2475-MCE-CMK

Plaintiff,

vs.

B.D. FOSTERER, et al.,

**ORDER OF REFERRAL FOR  
SETTLEMENT WEEK AND SETTING  
SETTLEMENT CONFERENCE**

Defendants.

\_\_\_\_\_ /

Plaintiff is a former state prisoner proceeding pro se with an action under 42 U.S.C. §1983. This case will be referred to Magistrate Judge Jennifer L. Thurston for the court’s Settlement Week Program to conduct a settlement conference June 10, 2013 at 1:30 p.m. at the U. S. District Court, 510 19<sup>th</sup> Street, Bakersfield, California 93301.

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

1. This case is set for a settlement conference before Magistrate Judge Jennifer L. Thurston on June 10, 2013, at 1:30 p.m. at the U. S. District Court, 510 19<sup>th</sup> Street, Bakersfield, California 93301.

2. Defendants’ motion to vacate the dispositive motion filing deadline pending mediation (Doc. 104) is granted.

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1           3. Plaintiff’s motion for an extension of the dispositive motion filing deadline  
2 (Doc. 101) is denied as unnecessary.

3           4. Defendants’ lead counsel shall attend in person. A person with full and  
4 unlimited authority to negotiate and enter into a binding settlement on defendants’ behalf shall  
5 participate in the settlement conference, but may participate via teleconference.<sup>1</sup>

6           5. Those in attendance must be prepared to discuss the claims, defenses and  
7 damages. The failure of any counsel, party or authorized person subject to this order to appear  
8 may result in the imposition of sanctions. In addition, the conference will not proceed and will  
9 be reset to another date.

10           6. Each party shall provide a confidential settlement conference statement to  
11 Sujean Park, 501 I Street, Suite 4-200, Sacramento, California 95814, or via e-mail at  
12 [spark@caed.uscourts.gov](mailto:spark@caed.uscourts.gov), so they arrive no later than June 3, 2013 and file a Notice of  
13 Submission of Confidential Settlement Conference Statement (See Local Rule 270(d)).

14           Settlement statements **should not be filed** with the Clerk of the court **nor served**  
15 **on any other party**. Settlement statements shall be clearly marked “confidential” with the date  
16 and time of the settlement conference indicated prominently thereon.

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18           <sup>1</sup>While the exercise of its authority is subject to abuse of discretion review, “the district  
19 court has the authority to order parties, including the federal government, to participate in  
20 mandatory settlement conferences... .” United States v. United States District Court for the  
21 Northern Mariana Islands, 694 F.3d 1051, 1053, 1057, 1059 (9<sup>th</sup> Cir. 2012)(“the district court has  
22 broad authority to compel participation in mandatory settlement conference[s].”). The term “full  
23 authority to settle” means that the individuals attending the mediation conference must be  
24 authorized to fully explore settlement options and to agree at that time to any settlement terms  
25 acceptable to the parties. G. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648,  
26 653 (7<sup>th</sup> Cir. 1989), cited with approval in Official Airline Guides, Inc. v. Goss, 6 F. 3d 1385,  
1396 (9<sup>th</sup> Cir. 1993). The individual with full authority to settle must also have “unfettered  
discretion and authority” to change the settlement position of the party, if appropriate. Pittman v.  
Brinker Int’l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003), amended on recon. in part, Pitman v.  
Brinker Int’l, Inc., 2003 WL 23353478 (D. Ariz. 2003). The purpose behind requiring the  
attendance of a person with full settlement authority is that the parties’ view of the case may be  
altered during the face to face conference. Pitman, 216 F.R.D. at 486. An authorization to settle  
for a limited dollar amount or sum certain can be found not to comply with the requirement of  
full authority to settle. Nick v. Morgan’s Foods, Inc., 270 F. 3d 590, 596-97 (8<sup>th</sup> Cir. 2001).

1                   The confidential settlement statement shall be **no longer than three pages** in  
2 length, typed or neatly printed, and include the following:

- 3                   a. A brief statement of the facts of the case.
- 4                   b. A brief statement of the claims and defenses, i.e., statutory or other  
5 grounds upon which the claims are founded; a forthright evaluation of the parties' likelihood of  
6 prevailing on the claims and defenses; and a description of the major issues in dispute.
- 7                   c. A summary of the proceedings to date.
- 8                   d. An estimate of the cost and time to be expended for further discovery,  
9 pretrial, and trial.
- 10                  e. The relief sought.
- 11                  f. The party's position on settlement, including present demands and  
12 offers and a history of past settlement discussions, offers, and demands.
- 13                  g. A brief statement of each party's expectations and goals for the  
14 settlement conference.

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16 DATED: May1, 2013

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18 **CRAIG M. KELLISON**  
19 UNITED STATES MAGISTRATE JUDGE  
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