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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERMAINE PADILLA,

Plaintiff,

v.

JEFFREY BEARD, et al.,

Defendants.

No. 2:14-cv-1118-KJM-CKD

ORDER

Presently before the court is plaintiff's motion to excuse him from appearing in person at the settlement conference before the undersigned scheduled in this action for April 1, 2016, at 9:00 a.m. (ECF No. 107.) Plaintiff contends that his proposed absence from the settlement conference should be excused in light of concerns by plaintiff's mental health treatment team's that plaintiff's travel to Sacramento for the settlement conference would jeopardize the stability of his mental health and an upcoming opportunity for his placement in permanent supportive housing at a board and care facility. (Id.) In support of this argument, plaintiff attaches a declaration of his counsel, Lori Rifkin, which includes a letter from one of plaintiff's treating psychologists. (ECF No. 107-1 ("Rifkin Decl.")). This declaration generally evidences the concerns plaintiff's treating mental health physicians have with the potential negative impact that travel to Sacramento and in-person attendance at the settlement conference will have on plaintiff's mental status. (Id.) Plaintiff claims that, in lieu of attending in person, he can be

1 available by phone for consultation during the settlement conference, and has authorized his  
2 counsel to conduct settlement negotiations on his behalf. (ECF No. 107 at 2.) After considering  
3 plaintiff's motion and the supporting documentation, plaintiff's motion is DENIED for the  
4 reasons discussed below.

5 While the undersigned is sympathetic to the difficulties that in-person attendance may  
6 pose regarding plaintiff's attempts to stabilize his mental health, he has not shown that he is  
7 incompetent to make informed decisions regarding the direction of this action or is otherwise  
8 unable to appropriately engage in the settlement process in person.<sup>1</sup> Indeed, as plaintiff notes in  
9 his motion and his counsel states in her declaration, plaintiff himself has expressed a willingness  
10 to attend the settlement conference in person. (ECF No. 107 at 2; Rifkin Decl. ¶ 5.) Furthermore,  
11 counsel's proposal that plaintiff attend the settlement conference telephonically demonstrates that  
12 plaintiff still has the capacity to engage in and make informed decisions regarding the settlement  
13 process. In addition, plaintiff's counsel indicates that while plaintiff's mental health is still  
14 tenuous, it "has improved since January [, when plaintiff was unable to complete a deposition,]  
15 with more consistent medication" (Rifkin Decl. ¶ 7), further indicating that plaintiff's mental  
16 condition is sufficiently stable such that he can attend the settlement conference in person and  
17 appropriately engage in the process. The undersigned finds that plaintiff's attendance at his own  
18 settlement conference would assist in the settlement process to a degree that his availability by  
19 telephone would not and that the benefit of his in-person attendance outweighs the potential  
20 burden plaintiff demonstrates with regard to the impact on his mental health. Accordingly, the  
21 undersigned finds that plaintiff has failed to provide good cause for his request. Therefore, it is  
22 denied.

23 Nevertheless, while the undersigned finds plaintiff's in-person attendance at the settlement  
24 conference necessary, plaintiff is informed that the undersigned is open to entertaining a properly-  
25 noticed *ex parte* request to briefly continue the April 1, 2016 settlement conference to a later date

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26 <sup>1</sup> Furthermore, the undersigned expresses serious concerns about plaintiff's ability to provide  
27 testimony later on in this action either through deposition or at trial to the extent plaintiff suggests  
28 that his mental status renders him incompetent such that he cannot engage in settlement  
negotiations in person.

1 even at this late hour in order to accommodate plaintiff's mental health care. However, any such  
2 request *must* include attached medical documentation indicating whether plaintiff will likely be  
3 able to stabilize his mental condition such that he could engage in in-person settlement  
4 negotiations at a later time, and, if so, how long plaintiff will likely need to reach a sufficiently  
5 stabilized mental state.


6 Based on the foregoing, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's motion to excuse him from in-person attendance of the April 1, 2016  
8 settlement conference (ECF No. 107) is DENIED.
- 9 2. Plaintiff may still request a brief continuance of the April 1, 2016 settlement  
10 conference provided that such a request includes medical documentation evidencing  
11 whether plaintiff will likely be able to stabilize his mental condition such that he could  
12 engage in in-person settlement negotiations at a later time, and, if so, how long  
13 plaintiff will likely need to reach a sufficiently stabilized mental state.

14 IT IS SO ORDERED.

15 Dated: March 30, 2016

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE