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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WARREN FRANK, JR.,  
Plaintiff,  
v.  
JEFF MACOMBER, et al.,  
Defendants.

No. 2:15-cv-2133 KJM CKD P

ORDER SETTING SETTLEMENT  
CONFERENCE

Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. On May 11, 2018, plaintiff filed a motion requesting a telephonic settlement conference. (ECF No. 72.) The court has determined that this case will benefit from a settlement conference. Therefore, plaintiff’s motion will be partially granted and a settlement conference will be set before the undersigned to occur at the U.S. District Court, 501 I Street, Sacramento, California 95814 in Courtroom #24 on August 29, 2018 at 9:30 a.m.

Parties will be required to file a signed “Waiver of Disqualification” included below, or notice of non-waiver of disqualification, no later than July 1, 2018.

Plaintiff shall have the option to appear at the settlement conference in person or by video conference. In the event video conferencing capabilities are unavailable, plaintiff may appear by telephone. Plaintiff will be required to return the attached form advising the court how he would like to appear at the settlement conference so the court may issue the appropriate orders. A

1 separate order and writ of habeas corpus ad testificandum will issue once it has been determined  
2 how plaintiff will appear.

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

- 4 1. Plaintiff's motion for a telephonic settlement conference is partially granted and this  
5 case is set for a settlement conference before the undersigned to occur on August 29,  
6 2018, at 9:30 a.m. at the U. S. District Court, 501 I Street, Sacramento, California  
7 95814 in Courtroom #24.
- 8 2. The parties are required to file a signed "Waiver of Disqualification," or notice of non-  
9 waiver of disqualification, no later than July 1, 2018.
- 10 3. Plaintiff shall have the choice to attend the settlement conference in person or by  
11 video. Within ten days after the filing date of this order, plaintiff shall return the  
12 attached form notifying the court whether he would like to attend the settlement  
13 conference in person or by video. If plaintiff chooses to appear by video and video  
14 conferencing is not available, he may appear by telephone. If plaintiff does not return  
15 the form telling the court how he would like to attend the settlement conference, the  
16 court will issue orders for plaintiff to appear by video.
- 17 4. Parties are instructed to have a principal with full settlement authority present at the  
18 Settlement Conference or to be fully authorized to settle the matter on any terms. The  
19 individual with full authority to settle must also have "unfettered discretion and  
20 authority" to change the settlement position of the party, if appropriate. The purpose  
21 behind requiring the attendance of a person with full settlement authority is that the  
22 parties' view of the case may be altered during the face to face conference. An  
23 authorization to settle for a limited dollar amount or sum certain can be found not to  
24 comply with the requirement of full authority to settle<sup>1</sup>.

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25  
26 <sup>1</sup> While the exercise of its authority is subject to abuse of discretion review, "the district court has the  
27 authority to order parties, including the federal government, to participate in mandatory settlement  
28 conferences..." United States v. United States District Court for the Northern Mariana Islands, 694 F.3d 1051,  
1053, 1057, 1059 (9<sup>th</sup> Cir. 2012)("the district court has broad authority to compel participation in mandatory  
settlement conference[s]"). The term "full authority to settle" means that the individuals attending the

1 5. Parties are directed to submit confidential settlement statements no later than August  
2 22, 2018 to [ckdorders@caed.uscourts.gov](mailto:ckdorders@caed.uscourts.gov). Plaintiff shall mail his confidential  
3 settlement statement Attn: Magistrate Judge Carolyn K. Delaney, USDC CAED, 501 I  
4 Street, Suite 4-200, Sacramento, California 95814 so it arrives no later than August 22,  
5 2018. The envelope shall be marked “CONFIDENTIAL SETTLEMENT  
6 CONFERENCE STATEMENT.” Parties are also directed to file a “Notice of  
7 Submission of Confidential Settlement Statement” (See L.R. 270(d)).

8  
9 Settlement statements **should not be filed** with the Clerk of the Court **nor served on**  
10 **any other party**. Settlement statements shall be clearly marked “confidential” with  
11 the date and time of the settlement conference indicated prominently thereon.

12  
13 The confidential settlement statement shall be **no longer than five pages** in length,  
14 typed or neatly printed, and include the following:


- 15  
16 a. A brief statement of the facts of the case.  
17 b. A brief statement of the claims and defenses, i.e., statutory or other grounds upon  
18 which the claims are founded; a forthright evaluation of the parties’ likelihood of  
19 prevailing on the claims and defenses; and a description of the major issues in  
20 dispute.  
21 c. A summary of the proceedings to date.  
22 d. An estimate of the cost and time to be expended for further discovery, pretrial, and

23 \_\_\_\_\_  
24 mediation conference must be authorized to fully explore settlement options and to agree at that time to any  
25 settlement terms 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).  
27 The individual with full authority to settle must also have “unfettered discretion and authority” to change the  
28 settlement position of the party, if appropriate. Pitman 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).

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- trial.
  - e. The relief sought.
  - f. The party's position on settlement, including present demands and offers and a history of past settlement discussions, offers, and demands.
  - g. A brief statement of each party's expectations and goals for the settlement conference, including how much a party is willing to accept and/or willing to pay.
6. The deadline for filing dispositive motions is vacated. That deadline will be re-established, if necessary, after the settlement conference.

Dated: June 8, 2018

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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WAIVER OF DISQUALIFICATION

Under Local Rule 270(b) of the Eastern District of California, the parties to the herein action affirmatively request that Magistrate Judge Carolyn K. Delaney participate in the settlement conference scheduled for August 29, 2018. To the extent the parties consent to trial of the case before the assigned Magistrate Judge, they waive any claim of disqualification to the assigned Magistrate Judge trying the case thereafter.

By: \_\_\_\_\_  
Plaintiff  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney for Defendant  
Dated: \_\_\_\_\_

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PLAINTIFF'S NOTICE ON TYPE OF  
APPEARANCE AT SETTLEMENT  
CONFERENCE

Check one:

\_\_\_\_\_ Plaintiff would like to participate in the settlement conference in person.

\_\_\_\_\_ Plaintiff would like to participate in the settlement conference by video/telephone.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Warren Frank, Jr.  
Plaintiff pro se