

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TSHOMBE M. KELLEY,
Plaintiff,
v.
A. HERRERA, et al.,
Defendants.

No. 2:16-cv-1894 JAM CKD P

ORDER SETTING SETTLEMENT
CONFERENCE

Plaintiff is a state prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. The court has determined that this case will benefit from a settlement conference. Therefore, this case will be set for a settlement conference before the undersigned to occur at the U.S. District Court, 501 I Street, Sacramento, California 95814 in Courtroom #24 on April 18, 2017 at 9:30 a.m.

Parties will be required to file a signed “Waiver of Disqualification” (attached below), no later than March 15, 2017, if they wish the undersigned to conduct the settlement conference. If the parties decline, the court will reassign the settlement conference, and may have to select another date.

A separate order and writ of habeas corpus ad testificandum will issue concurrently with this order.

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

- 1 1. This case is set for a settlement conference before the undersigned to occur on April
2 18, 2017, at 9:30 a.m. at the U. S. District Court, 501 I Street, Sacramento, California
3 95814 in Courtroom #24.
- 4 2. Parties are required to file a signed “Waiver of Disqualification,” or notify the court
5 that they do not wish to waive disqualification, no later than March 15, 2017.
- 6 3. Parties are instructed to have a principal with full settlement authority present at the
7 Settlement Conference or to be fully authorized to settle the matter on any terms. The
8 individual with full authority to settle must also have “unfettered discretion and
9 authority” to change the settlement position of the party, if appropriate. The purpose
10 behind requiring the attendance of a person with full settlement authority is that the
11 parties’ view of the case may be altered during the face to face conference. An
12 authorization to settle for a limited dollar amount or sum certain can be found not to
13 comply with the requirement of full authority to settle¹.
- 14 4. Parties are directed to submit confidential settlement statements no later than April 11,
15 2017 to ckdorders@caed.uscourts.gov. Plaintiff shall mail his confidential settlement
16 statement Attn: Magistrate Judge Carolyn K. Delaney, USDC CAED, 501 I Street,
17 Suite 4-200, Sacramento, California 95814 so it arrives no later than April 11, 2017.
18 The envelope shall be marked “CONFIDENTIAL SETTLEMENT CONFERENCE
19 STATEMENT.” If a party desires to share additional confidential information with

20
21 ¹ While the exercise of its authority is subject to abuse of discretion review, “the district court has the
22 authority to order parties, including the federal government, to participate in mandatory settlement
23 conferences... ” United States v. United States District Court for the Northern Mariana Islands, 694 F.3d 1051,
24 1053, 1057, 1059 (9th Cir. 2012)(“the district court has broad authority to compel participation in mandatory
25 settlement conference[s].”). The term “full authority to settle” means that the individuals attending the
26 mediation conference must be authorized to fully explore settlement options and to agree at that time to any
27 settlement terms acceptable to the parties. G. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648,
28 653 (7th Cir. 1989), cited with approval in Official Airline Guides, Inc. v. Goss, 6 F.3d 1385, 1396 (9th 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. 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 (8th Cir. 2001).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

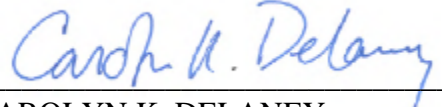
the Court, they may do so pursuant to the provisions of Local Rule 270(d) and (e). Parties are also directed to file a “Notice of Submission of Confidential Settlement Statement” (See L.R. 270(d)).

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.

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. A summary of the proceedings to date.
- d. An estimate of the cost and time to be expended for further discovery, pretrial, and 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.

Dated: February 7, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF CALIFORNIA

TSHOMBE M. KELLEY,
Plaintiff,
v.
A. HERRERA, et al.,
Defendants.

No. 2:16-cv-1894 JAM CKD P

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 April 18, 2017. 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 Defendants

Dated: _____