UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SAM DRAKE,

Plaintiff,

v.

MCCOMAS, *et al.*,

Defendants.

Case No. 1:22-cv-01149-JLT-BAM (PC)

ORDER GRANTING DEFENDANTS' REQUEST TO OPT-OUT OF POST-SCREENING ADR (ECF No. 28)

ORDER LIFTING STAY OF PROCEEDINGS

ORDER VACATING OCTOBER 18, 2023 SETTLEMENT CONFERENCE (ECF No. 26)

ORDER DIRECTING CLERK OF COURT TO ISSUE DISCOVERY AND SCHEDULING ORDER AND CONSENT/DECLINE FORM

Plaintiff Sam Drake ("Plaintiff") is a pretrial detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's first amended complaint against: (1) Defendants Mims and McComas for implementing a facially unconstitutional policy, FCJ Policy #E-120 and #E-410, in violation of the First Amendment; (2) Defendants Enriquez, Keoniyom,1 and Nichols for unconstitutional application of FCJ Policy #E120 and #E-410 to Plaintiff, in violation of the First Amendment; and (3) Defendants Enriquez, Keoniyom, and Nichols for returning Plaintiff's mail without notice, in violation of the Fourteenth Amendment's Due Process Clause.

On July 17, 2023, the Court identified this case as an appropriate case for the post-screening ADR (Alternative Dispute Resolution) project, and stayed the action to allow the

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parties an opportunity to settle their dispute before the discovery process begins. (ECF No. 26.) The Court's order granted Defendants time to investigate and determine whether to opt out of the post-screening ADR project.

On August 15, 2023, Defendants filed a notice opting out of early settlement conference. (ECF No. 28.) Based on defense counsel's review of the pleadings, identification of available defenses, investigation into the facts and circumstances surrounding the case, and discussion of settlement options, Defendants do not believe a settlement conference would be reasonably likely to result in settlement and would therefore be a waste of the Court's resources. (*Id.*) Therefore, the stay is lifted, and the October 18, 2023, settlement conference is vacated. This case is now ready to proceed.

If the parties wish to set a settlement conference with the Court at a later date, they should so inform the Court. However, the parties are also reminded that they are not precluded from negotiating a settlement without judicial assistance.

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants' request to opt out of post-screening early dispute resolution, (ECF No. 28), is GRANTED;
2. The stay of this action, (ECF No. 26), is LIFTED;
3. The October 18, 2023 settlement conference is VACATED;
4. The Clerk of the Court is DIRECTED to issue a discovery and scheduling order and a consent/decline form to the parties; and
5. The parties may proceed with discovery pursuant to the discovery and scheduling order to be issued by separate order.

IT IS SO ORDERED.

Dated: **August 16, 2023**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE