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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICK COLLINS, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,

Defendant.

Case No.: 19cv867-H(MSB)

**NOTICE AND ORDER FOR EARLY
NEUTRAL EVALUATION CONFERENCE
AND CASE MANAGEMENT CONFERENCE**

IT IS HEREBY ORDERED that an Early Neutral Evaluation (“ENE”) of your case will be held on **October 18, 2019**, at **9:30 a.m.** in the chambers of the Honorable Michael S. Berg, United States Magistrate Judge, **located at 221 West Broadway, second floor, San Diego, California, 92101**. Due to the Court’s calendar and in order to encourage maximum participation of all litigants and the Court, good cause appears to set the ENE beyond forty-five days of the filing of the answer. All discussions at the ENE Conference will be informal, off the record, privileged, and confidential. Counsel for any non-English speaking party is responsible for arranging for the appearance of an interpreter at the conference. The following rules and deadlines apply:

1. Personal Appearance of Parties Required: All named parties, party representatives, including claims adjusters for insured defendants, as well as the

1 principal attorney(s) responsible for the litigation, must be present **in person** and legally
2 and factually prepared to discuss and resolve the case. Counsel appearing without their
3 clients (whether or not counsel has been given settlement authority) will be cause for
4 immediate imposition of sanctions and may also result in the immediate termination of
5 the conference.

6 **2. Full Settlement Authority Required:** A party or party representative with
7 full settlement authority¹ must be present at the conference. Retained outside
8 corporate counsel shall not appear on behalf of a corporation as the party
9 representative who has the authority to negotiate and enter into a settlement. A
10 government entity may be excused from this requirement so long as the government
11 attorney who attends the ENE has (1) primary responsibility for handling the case, and
12 (2) authority to negotiate and recommend settlement offers to the government
13 official(s) having ultimate settlement authority.

14 **3. Confidential ENE Statements Required:** No later than **October 11, 2019**,
15 the parties shall submit directly to Magistrate Judge Berg’s chambers (via hand delivery
16 or by e-mail to the Court at efile_berg@casd.uscourts.gov), confidential settlement
17 statements. The ENE statement is limited to **five (5) pages or less, and up to five (5)**
18 **pages of exhibits or declarations**. Each party’s ENE statement must outline (1) the
19 nature of the case and the claims, (2) position on liability or defense, (3) position
20 regarding settlement of the case with a **specific demand/offer for settlement**, and
21 (4) any previous settlement negotiations or mediation efforts.

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24 ¹ “Full settlement authority” means that the individuals at the settlement conference must be
25 authorized to fully explore settlement options and to agree at that time to any settlement terms
26 acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989).
27 The person needs to have “unfettered discretion and authority” to change the settlement position of a
28 party. Pitman v. Brinker Int’l, Inc., 216 F.R.D. 481, 485–86 (D. Ariz. 2003). The purpose of requiring a
person with unlimited settlement authority to attend the conference contemplates that the person’s
view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum
certain of authority is not adequate. See Nick v. Morgan’s Foods, Inc., 270 F.3d 590, 595–97 (8th Cir.
2001).

1 If a specific demand or offer cannot be made at the time the ENE statement is
2 submitted, then the reasons as to why a demand or offer cannot be made must be
3 stated. Further, the party must explain when they will be in a position to state a
4 demand or offer. General statements such as a party will “negotiate in good faith” is
5 not a specific demand or offer. The ENE statement should be submitted confidentially
6 and need not be shared with other parties.

7 **4. New Parties Must be Notified by Plaintiff or Plaintiff’s Counsel:** Plaintiff’s
8 counsel shall give notice of the ENE to parties responding to the complaint after the
9 date of this notice.

10 **5. Case Management Conference:** If the case does not settle during the ENE,
11 the Court will conduct a Case Management Conference. In preparation for this
12 conference, the parties must do the following:

13 a. Meet and confer pursuant to Fed. R. Civ. P. 26(f) no later than
14 **October 4, 2019;**

15 b. File a Joint Discovery Plan no later than **October 11, 2019.**
16 Agreements made in the Joint Discovery Plan will be treated as binding stipulations that
17 are effectively incorporated into the Court’s Case Management Order. The Joint
18 Discovery Plan must be one document and must cover the parties’ views and proposals
19 for each item identified in Fed. R. Civ. P. 26(f)(3). In addition, the Joint Discovery Plan
20 must include the following:

21 i. **Service:** A statement as to whether any parties remain to be
22 served and, if so, a proposed deadline for service;

23 ii. **Amendment of Pleadings:** The extent to which parties, claims, or
24 defenses are expected to be added or dismissed and a proposed deadline for amending
25 the pleadings;

26 iii. **Protective Order:** Whether a protective order is contemplated to
27 cover the exchange of confidential information and, if so, the date by which the
28 proposed order will be submitted to the Court;

1 iv. **Privilege:** The procedure the parties plan to use regarding claims
2 of privilege and whether an order pursuant to Fed. R. Evid. 502 will be sought;

3 v. **Evidence Preservation:** Whether the parties have discussed
4 issues related to the preservation of relevant evidence and if there are areas of
5 disagreement, how the parties are resolving them;

6 vi. **Electronic Discovery:** In addition to the requirements set forth in
7 Fed. R. Civ. P. 26(f)(3)(C), the parties must describe their agreements regarding
8 methodologies for locating and producing electronically stored information and the
9 production of metadata, and must identify any issues or agreements regarding
10 electronically stored information that may not be reasonably accessible (see Fed. R. Civ.
11 P. 26(b)(2)(B));

12 vii. **Discovery:** In addition to the requirements of Fed. R. Civ. P.
13 26(f)(3)(B), the parties must describe the discovery taken to date (if any), any proposed
14 limitations or modifications of the discovery rules, and any identified discovery disputes;
15 and

16 viii. **Related Cases:** Any related cases or proceedings pending before
17 another judge of this court, or before another court or administrative body.

18 c. Exchange initial disclosures pursuant to Rule 26(a)(1)(A-D) no later than
19 **October 11, 2019.**

20 **6. Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires that
21 an ENE take place within forty-five (45) days of the filing of the first answer. Requests to
22 continue ENEs are rarely granted. An ENE may be rescheduled only upon a showing of
23 good cause and adequate notice to the Court. **Absent good cause, requests for**

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1 **continuances will not be considered unless submitted in writing no fewer than seven**
2 **(7) calendar days prior to the scheduled conference.**

3 **IT IS SO ORDERED.**

4 Dated: September 4, 2019

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7 Honorable Michael S. Berg
8 United States Magistrate Judge
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NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE

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4 In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified
5 that a United States Magistrate Judge of this district may, upon the consent of all
6 parties, conduct any or all proceedings, including a jury or non-jury trial, and order the
7 entry of a final judgment. Consent forms are available in the Clerk's Office. Plaintiff or
8 his counsel shall be responsible for obtaining the consent of all parties, should they
9 desire to consent.

10 You should be aware that your decision to consent or not to consent is entirely
11 voluntary and should be communicated solely to the Clerk of Court. Only if all parties
12 consent will the Judge or Magistrate Judge to whom the case has been assigned be
13 informed of your decision.

14 Judgments of United States Magistrate Judges are appealable to the United States
15 Court of Appeals in accordance with this statute and the Federal Rules of Appellate
16 Procedure.