

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
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID HUERTA,

Plaintiff,

v.

NIELSEN, et al.,

Defendants.

Case No.: 18cv1640-MMA-LL

**SCHEDULING ORDER
REGULATING DISCOVERY
AND OTHER PRE-TRIAL
PROCEEDINGS**

On July 8, 2019, the Court held an Early Neutral Evaluation Conference (“ENE”) in the above-entitled action. Settlement of the case could not be reached during the ENE and the Court therefore conducted a Case Management Conference pursuant to Rule 16.1(d) of the Local Rules. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings must be filed by **August 7, 2019**.
2. All fact discovery shall be completed by all parties on or before **November 8, 2019**. "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cut-off date, so that it may be completed by the cut-off date, taking into account the times for service, notice, and response as set forth in the

1 Federal Rules of Civil Procedure.

2 Counsel shall promptly and in good faith meet and confer with regard to all
3 discovery disputes in compliance with Federal Rule of Civil Procedure 37(a)(1) and Civil
4 Local Rule 26.1(a). The Court expects counsel to make every effort to resolve all disputes
5 without court intervention through the meet and confer process. All discovery motions
6 must be filed within 30 days of the service of an objection, answer or response which
7 becomes the subject of dispute or the passage of a discovery due date without response or
8 production, and only after counsel have met and conferred and have reached impasse with
9 regard to the particular issue. The Court's procedures for resolving discovery disputes are
10 set forth in Magistrate Judge Linda Lopez's Civil Chambers Rules, which are posted on
11 the Court's website. **A failure to comply in this regard will result in a waiver of a
12 party's discovery issue. Absent an order of the court, no stipulation continuing or
13 altering this requirement will be recognized by the court.**

14 3. The parties must designate their respective experts in writing by **December**
15 **9, 2019**. The parties must identify any person who may be used at trial to present
16 evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not
17 limited to retained experts. The date for exchange of rebuttal experts must be by
18 **December 23, 2019**. The written designations must include the name, address and
19 telephone number of the expert and a reasonable summary of the testimony the expert is
20 expected to provide. The list must also include the normal rates the expert charges for
21 deposition and trial testimony.

22 4. By **January 23, 2020**, each party must comply with the disclosure
23 provisions in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This
24 disclosure requirement applies to all persons retained or specially employed to provide
25 expert testimony, or whose duties as an employee of the party regularly involve the
26 giving of expert testimony. **Except as provided in the paragraph below, any party
27 that fails to make these disclosures will not, absent substantial justification, be
28 permitted to use evidence or testimony not disclosed at any hearing or at the time of**

1 **trial. In addition, the Court may impose sanctions as permitted by Fed. R. Civ. P.**
2 **37(c).**

3 5. Any party must supplement its disclosure regarding contradictory or rebuttal
4 evidence under Fed. R. Civ. P. 26(a)(2)(D) by **February 6, 2020**.

5 6. All expert discovery must be completed by all parties by **February 24,**
6 **2020**. The parties must comply with the same procedures set forth in the paragraph
7 governing fact discovery.

8 7. Failure to comply with this section or any other discovery order of the court
9 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
10 the introduction of experts or other designated matters in evidence.

11 8. All dispositive pretrial motions, including motions for summary judgment
12 and motions addressing *Daubert* issues, must be filed by **March 24, 2020**.¹ Counsel for
13 the moving party must obtain a motion hearing date from Judge Anello's law clerk. The
14 period of time between the date you request a motion date and the hearing date may vary
15 from one district judge to another. Please plan accordingly. Failure to make a timely
16 request for a motion date may result in the motion not being heard.

17 9. If appropriate, following the filing of an order ruling on a motion for
18 summary judgment or other dispositive pretrial motion, or in the event no such motion is
19 filed, after the expiration of the deadline set forth in paragraph 8, supra, Judge Anello will
20 issue a pretrial scheduling order setting a pretrial conference, trial date, and all related
21 pretrial deadlines. The parties must review and be familiar with Judge Anello's Civil
22 Chambers Rules, which provide additional information regarding pretrial scheduling.

23 10. A Mandatory Settlement Conference shall be conducted on **June 23, 2020** at
24 **1:30 p.m.** in the chambers of Magistrate Judge Linda Lopez located at **221 West**
25 **Broadway, Suite 2140, San Diego, CA 92101**. All discussions at the Mandatory
26

27
28 ¹ This deadline is not applicable to pretrial motions *in limine*. For further information regarding motions
in limine, please refer to Judge Anello's Civil Chambers Rules.

1 Settlement Conference will be informal, off the record, privileged, and confidential.
2 Counsel for any non-English speaking party is responsible for arranging for the
3 appearance of an interpreter at the conference.

4 a. **Personal Appearance of Parties Required:** All parties, adjusters for insured
5 defendants, and other representatives of a party having full and complete authority to enter
6 into a binding settlement, as well as the principal attorneys responsible for the litigation,
7 must be present **in person** and legally and factually prepared to discuss settlement of the
8 case. Counsel appearing without their clients (whether or not counsel has been given
9 settlement authority) will be cause for immediate imposition of sanctions and may also
10 result in the immediate termination of the conference.

11 Unless there is good cause, persons required to attend the conference pursuant to this
12 Order shall not be excused from personal attendance. Requests for excuse from attendance
13 for good cause shall be made in writing at least three (3) court days prior to the conference.
14 Failure to appear in person at the Mandatory Settlement Conference will be grounds for
15 sanctions.

16 b. **Full Settlement Authority Required:** In addition to counsel who will try the
17 case, a party or party representative with full settlement authority² must be present for the
18 conference. In the case of a corporate entity, an authorized representative of the
19 corporation who is not retained outside counsel must be present and must have
20 discretionary authority to commit the company to pay an amount up to the amount of
21 Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement
22 is to have representatives present who can settle the case during the course of the
23

24 ² "Full settlement authority" means that the individuals at the settlement conference must be authorized to
25 explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties.
26 Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have
27 "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Int'l,
28 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 conference without consulting a superior. Counsel for a government entity may be excused
2 from this requirement so long as the government attorney who attends the Mandatory
3 Settlement Conference (1) has primary responsibility for handling the case, and (2) may
4 negotiate settlement offers which the attorney is willing to recommend to the government
5 official having ultimate settlement authority.

6 c. **Confidential Settlement Statements Required:** No later than **June 15,**
7 **2020,** the parties shall submit directly to Magistrate Judge Lopez's chambers (via email
8 address or hand delivery c/o the Clerk's Office) confidential settlement statements no more
9 than ten (10) pages in length. **These confidential statements shall not be filed or served**
10 **on opposing counsel.** Each party's confidential statement must set forth the party's
11 statement of the case, identify controlling legal issues, concisely set out issues of liability
12 and damages, and shall set forth the party's settlement position, including any previous
13 settlement negotiations, mediation sessions, or mediation efforts, the last offer or demand
14 made by that party, and a separate statement of the offer or demand the party is prepared
15 to make at the settlement conference. If a specific demand or offer for settlement cannot
16 be made at the time the brief is submitted, then the reasons therefore must be stated along
17 with a statement as to when the party will be in a position to state a demand or make an
18 offer.

19 General statements that a party will "negotiate in good faith" is not a specific demand
20 or offer contemplated by this Order. It is assumed that all parties will negotiate in good
21 faith.

22 d. **Requests to Continue a Mandatory Settlement Conference:** Any request
23 to continue the Mandatory Settlement Conference or request for relief from any of the
24 provisions or requirements of this Order must be sought by a **written joint motion or ex**
25 **parte application.** The application must (1) be supported by a declaration of counsel
26 setting forth the reasons and justifications for the relief requested, (2) confirm compliance
27 with Civil Local Rule 83.3(h), and (3) report the position of opposing counsel or any
28 unrepresented parties subject to the Order. **Absent good cause, requests for continuances**

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

3 If the case is settled in its entirety before the scheduled date of the conference,
4 counsel and any unrepresented parties must still appear in person, unless a written
5 joint notice confirming the complete settlement of the case is filed no fewer than
6 twenty-four (24) hours before the scheduled conference.

7 11. A post trial settlement conference before a magistrate judge may be held
8 within 30 days of verdict in the case.

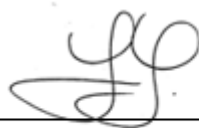
9 12. The dates and times set forth herein will not be modified except for good
10 cause shown.

11 13. Briefs or memoranda in support of or in opposition to any pending motion
12 must not exceed twenty-five (25) pages in length without leave of a district court judge.
13 No reply memorandum will exceed ten (10) pages without leave of a district court judge.
14 Briefs and memoranda exceeding ten (10) pages in length must have a table of contents
15 and a table of authorities cited.

16 14. Plaintiff's counsel must serve a copy of this order on all parties that enter
17 this case hereafter.

18 **IT IS SO ORDERED.**

19 Dated: July 9, 2019

20
21 

22 _____
23 Honorable Linda Lopez
24 United States Magistrate Judge
25
26
27
28