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6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
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9 UNITED STATES OF AMERICA,  
10 Plaintiff,  
11 v.  
12 GREGORY E. GRANTHAM et al.,  
13 Defendants.

Case No.: 17-cv-01104-LAB-JLB

**ORDER GRANTING IN PART AND  
DENYING IN PART THE PARTIES'  
MOTIONS FOR A CONTINUANCE  
OF DEADLINES IN THE ENE  
ORDER**

[ECF Nos. 9 & 12]

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16 The parties' motions to continue the deadlines contained in the Court's August 25,  
17 2017 Order (ECF No. 7) are presently before the Court. (ECF Nos. 9 & 12.) The parties'  
18 motions are **GRANTED in part and DENIED in part**. Accordingly, **IT IS HEREBY**  
19 **ORDERED** that the Court's August 25, 2017 Order (ECF No. 7) is amended as follows:

20 IT IS HEREBY ORDERED that an **Early Neutral Evaluation** ("ENE") of your  
21 case will be held on **December 19, 2017** at **1:45 PM** in the Chambers of Magistrate Judge  
22 Jill L. Burkhardt, Edward J. Schwartz U.S. Courthouse, 221 West Broadway, Suite 5140,  
23 San Diego, California 92101. In the event the case does not settle at the ENE Conference,  
24 a **Case Management Conference** pursuant to Fed. R. Civ. P. 16(b) is **SET for December**  
25 **19, 2017**, and will be held at the conclusion of the ENE Conference.

26 The following are **mandatory** directions for the parties preparing for the ENE  
27 Conference. **Absent express permission obtained from this Court, and**  
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1 notwithstanding the pendency of any motion, counsel shall timely comply with the  
2 dates and deadlines ordered herein.

3 1. **Purpose of Conference:** The purpose of the ENE Conference is to permit an  
4 informal discussion between the attorneys, parties, and the settlement judge of every aspect  
5 of the lawsuit in an effort to achieve an early resolution of the case. All ENE Conference  
6 discussions will be informal, off the record, privileged and confidential. Counsel for any  
7 non-English speaking parties is responsible for arranging for the appearance of an  
8 interpreter at the ENE Conference.

9 2. **Personal Appearance of Parties Required:** All parties, adjusters for insured  
10 defendants, and other representatives of a party having full settlement authority as  
11 explained below, and the principal attorneys responsible for the litigation, must be present  
12 **in person** and legally and factually prepared to discuss settlement of the case. Counsel  
13 appearing without their clients (whether or not counsel has been given settlement authority)  
14 will be cause for immediate imposition of sanctions and may also result in the immediate  
15 termination of the ENE Conference. If each of the principal attorneys responsible for the  
16 litigation is not listed on the docket as an “*ATTORNEY TO BE NOTICED*,” then they each  
17 shall enter their appearance on the docket as soon as practicable, but in no event later than  
18 **ten calendar days** prior to the ENE Conference.

19 Unless there are extraordinary circumstances, persons required to attend the ENE  
20 Conference pursuant to this Order shall not be excused from personal attendance.  
21 **Requests for excuse from attendance for extraordinary circumstances shall be filed**  
22 **as a motion at least ten calendar days prior to the conference.** Failure to appear at the  
23 ENE Conference will be grounds for sanctions.

24 3. **Full Settlement Authority Required:** In addition to counsel who will try the  
25 case, a party or party representative with full settlement authority<sup>1</sup> must be present for the  
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28 <sup>1</sup> “Full settlement authority” means that the individuals at the settlement conference must be authorized to explore settlement options fully and to agree at that time to any settlement terms acceptable

1 ENE Conference. In the case of an entity, an authorized representative of the entity who  
2 is not retained outside counsel must be present and must have discretionary authority to  
3 commit the entity to pay an amount up to the amount of the Plaintiff's prayer (excluding  
4 punitive damages prayers). The purpose of this requirement is to have representatives  
5 present who can settle the case during the course of the ENE Conference without consulting  
6 a superior. **Counsel for a United States government entity** may be excused from this  
7 requirement so long as the government attorney who attends the ENE conference (1) has  
8 primary responsibility for handling the case, and (2) may negotiate settlement offers that  
9 the attorney is willing to recommend to the government official having ultimate settlement  
10 authority.

11 4. **ENE Statements Required:** On or before **December 11, 2017**, the parties  
12 shall lodge statements of **five pages** or less directly to the chambers of Magistrate Judge  
13 Burkhardt outlining the nature of the case, the claims, the defenses, and the parties'  
14 positions regarding settlement of the case. The settlement position must include a specific  
15 and current demand or offer addressing all relief or remedies sought. If a specific demand  
16 or offer cannot be made at the time the brief is submitted, then the reasons therefor must  
17 be stated along with a statement as to when the party will be in a position to state a demand  
18 or offer. A general statement that a party will "negotiate in good faith," "offer a nominal  
19 cash sum," or "be prepared to make an offer at the conference" is not a specific demand or  
20 offer. The statement shall also list all attorney and non-attorney conference attendees for  
21 that side, including the name(s) and title(s)/position(s) of the party/party representative(s)  
22 who will attend and have settlement authority at the conference.

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26 to the parties. *Heileman Brewing Co. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989). The person  
27 needs to have "unfettered discretion and authority" to change the settlement position of a party.  
28 *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 ENE statements shall be lodged via email at efile\_burkhardt@casd.uscourts.gov. If  
2 exhibits are attached and the total submission amounts to more than 20 pages, a hard copy  
3 must also be delivered directly to chambers. **Whether these statements are submitted**  
4 **confidentially or whether they are served on opposing counsel is within the parties'**  
5 **discretion.** Statements of more than five pages will not be considered.

6 5. **Submission of Magistrate Judge Consent Form:** No later than **November**  
7 **6, 2017**, each party shall provide Plaintiff's counsel with an executed copy of the attached  
8 consent form, titled Notice, Consent, and Reference of a Civil Action to a Magistrate Judge.  
9 Pursuant to Civil Local Rule 73.1, if (and only if) **all** parties have consented to the reference  
10 to a magistrate judge, then Plaintiff shall file the consent form(s) **in paper format** at the  
11 Clerk's Office by **November 8, 2017**. If the paper format filing reflects consent by **all**  
12 parties, then the form(s) will be forwarded to the assigned district judge for approval. The  
13 consent form(s) **should not be filed with the court electronically** through its Case  
14 Management/Electronic Case Filing (CM/ECF) system. No consent form will be made  
15 available, nor will its contents be made known to any judicial officer, unless all parties  
16 have consented to the reference to a magistrate judge. The parties are free to withhold  
17 consent without adverse substantive consequences. Questions related to the consent  
18 form(s) should be directed only to the clerk's office at 619-557-5600. Please do not call  
19 chambers' staff with questions related to the consent form(s).

20 6. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel  
21 shall give notice of the ENE Conference and this Order to parties responding to the  
22 complaint after the date of this notice.

23 7. **Case Management Under the Amended Federal Rules:** The parties are  
24 ordered to comply with Fed. R. Civ. P. 26 and proceed with the initial disclosure process  
25 as follows:

- 26 a. The Rule 26(f) conference shall be completed on or before **December 4, 2017**;
- 27 b. The date of initial disclosure pursuant to Rule 26(a)(1)(A-D) shall occur on or  
28 before **November 17, 2017**;

1 c. A **Joint Discovery Plan** shall be filed on the CM/ECF system as well as  
2 lodged with Magistrate Judge Burkhardt by emailing the Plan to  
3 efile\_burkhardt@casd.uscourts.gov, on or before **December 11, 2017**. The  
4 Plan must be one document and must explicitly cover the parties' views and  
5 proposals for each item identified in Fed. R. Civ. P. 26(f)(3). The parties  
6 should consult both Judge Burkhardt's and the assigned District Judge's Civil  
7 Chambers Rules in drafting their Plan. A courtesy paper copy of the Plan  
8 shall be delivered to Judge Burkhardt's Chambers if the Plan with its  
9 attachments exceeds 20 pages. In addition to complying with Chambers  
10 Rules, the Plan must identify whether and what good cause (specific to this  
11 case) exists to modify the Court's tentative schedule for this case. The Court's  
12 **tentative** schedule is as follows:

- 13 i. Filing of motions to amend pleadings and/or add parties: **December 29,**  
14 **2017**;
- 15 ii. Completion of fact and expert witness discovery: **March 23, 2018**;
- 16 iii. The designation and service of expert witness reports: **January 26,**  
17 **2018**;
- 18 iv. The supplemental designation and service of rebuttal expert witness  
19 reports: **February 23, 2017**;
- 20 v. The date by which dispositive motions shall be filed: **February 23,**  
21 **2018**. Motions in limine are to be filed as directed in the Local Rules,  
22 or as otherwise set by the District Judge;
- 23 vi. The date for the Mandatory Settlement Conference: **April 13, 2018**;
- 24 and
- 25 vii. The date for a Pretrial Conference before the District Judge assigned to  
26 the case: **June 25, 2018**.

27 8. **Requests to Continue or Reschedule an ENE Conference**: Local Rule  
28 16.1.c requires that an ENE Conference take place within 45 days of the filing of the first

1 answer. Requests to continue ENE Conferences are rarely granted. However, the Court  
2 will consider formal, filed *ex parte* or joint motions to continue an ENE Conference when  
3 extraordinary circumstances exist that make a continuance appropriate. In and of itself,  
4 having to travel a long distance to appear in person is not “extraordinary.” Absent  
5 extraordinary circumstances, requests for continuances **will not be considered unless filed**  
6 no less than **ten calendar days** prior to the scheduled conference.

7 9. **Settlement Prior to ENE Conference:** The Court encourages the parties to  
8 work on settling the matter in advance of the ENE Conference. In the event that the parties  
9 resolve the matter prior to the day of the ENE Conference, the following procedures must  
10 be followed before the Court will vacate the ENE Conference and excuse the parties from  
11 appearing:

- 12 a. The parties may file a Joint Motion to Dismiss and separately lodge by email  
13 a proposed order to the assigned District Judge.<sup>2</sup> If a Joint Motion to Dismiss  
14 is filed, the Court will vacate the ENE Conference. The parties are  
15 encouraged to contact Judge Burkhardt’s Chambers by telephone to notify the  
16 Court of their pending Joint Motion;
- 17 b. If the parties settle more than 24 hours before the ENE Conference but are not  
18 able to file a Joint Motion to Dismiss, they must file a Notice of Settlement  
19 containing the electronic signatures of counsel for all settling parties and  
20 identifying a date by which the Joint Motion to Dismiss will be filed. The  
21 parties are encouraged to contact Judge Burkhardt’s Chambers by telephone  
22 to notify the Court of their filed Notice of Settlement;
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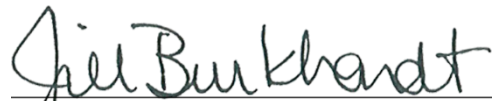
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27 <sup>2</sup> See Electronic Case Filing Administrative Policies and Procedures Manual, United States District  
28 Court for the Southern District of California § 2(h), for the chambers’ official email address and  
procedures on emailing proposed orders.

1 c. If the parties settle less than 24 hours before the conference, counsel for the  
2 settling parties must JOINTLY call chambers and inform the Court of the  
3 settlement **and** receive Court permission to not appear at the ENE Conference.

4 After having reviewed Judge Burkhardt's Civil Chambers Rules, appropriate  
5 questions regarding this case or the mandatory directions set forth herein may be addressed  
6 through a joint call by the parties to Judge Burkhardt's law clerks at (619) 557-6624. For  
7 additional information, please see Judge Burkhardt's Civil Chambers Rules.

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9 Dated: September 8, 2017

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11 Hon. Jill L. Burkhardt  
12 United States Magistrate Judge  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

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UNITED STATES OF AMERICA,  
Plaintiff(s),

v.

GREGORY E. GRANTHAM et al.,  
Defendant(s).

Case No.: 17-cv-01104-LAB-JLB

**NOTICE, CONSENT, AND  
REFERENCE OF A CIVIL ACTION TO  
A MAGISTRATE JUDGE**

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*Notice of a magistrate judge's availability.* A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

*Consent to a magistrate judge's authority.* The following parties  Consent /  Do Not Consent\*

to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Printed Names</i>	<i>Signatures of all parties <u>and</u> counsel for all parties</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**REFERENCE ORDER**

**IT IS ORDERED:** This case is referred to United States Magistrate Judge Jill L. Burkhardt to conduct all proceedings and order entry of a final judgment in accordance with 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and CivLR 73.1.

\_\_\_\_\_  
Date

\_\_\_\_\_  
United States District Judge

\* Pursuant to Civil Local Rule 73.1, if (and only if) all parties have consented to the reference to a magistrate judge, then Plaintiff shall file the consent form(s) in paper format at the Clerk's Office.