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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Michael MANFREDI,

Plaintiff,

v.

ABSOLUTE RESOLUTIONS
INVESTMENTS, LLC, *et al.*,

Defendants.

Case No.: 21-cv-00883-BAS-BGS

**ORDER GRANTING JOINT
MOTION FOR CONTINUANCE OF
EARLY NEUTRAL EVALUATION
CONFERENCE AND CASE
MANAGEMENT CONFERENCE**

[ECF NO. 21]

The parties’¹ Joint Motion to Continue the September 3, 2021 Early Neutral Evaluation and Case Management Conference is currently before the Court. (ECF No. 21.) The parties jointly request that the Early Neutral Evaluation Conference and Case Management Conference (“ENE/CMC”) be continued because Trans Union’s counsel is unavailable on September 3, 2021, due to a scheduling conflict that arose this past week. (*Id.* at 2.) The Joint Motion indicated that “Counsel for Trans Union has conferred with counsel for all Parties, who do not oppose this request” and that “[n]o parties will be prejudiced” due to the continuance of the ENE. (*Id.*)

¹ Only Defendant TransUnion, LLC and Defendant Experian Information Solutions, Inc, remain in the case. Plaintiff has already voluntarily dismissed Defendant Absolute Resolutions Investments, LLC (*See* ECF Nos. 4; 17) and Plaintiff has filed a Notice of Settlement as to Defendant Equifax Information Services, LLC (*See* ECF No. 19).

1 Good cause appearing, the Joint Motion (ECF No. 21) is **GRANTED**. **IT IS**
2 **HEREBY ORDERED** that the ENE/CMC are **CONTINUED** from September 3, 2021 to
3 **October 20, 2021**, at **2:00 pm**. The conference will be held by **video conference**.
4 Instructions regarding the videoconference are included below.

5 **The following are mandatory guidelines for the parties preparing for the Early**
6 **Neutral Evaluation Conference.**

7 1. **Purpose of Conference:** The purpose of the Early Neutral Evaluation
8 Conference (“ENE”) is to hold a serious discussion of every aspect of the lawsuit in an
9 effort to achieve an early resolution of the case. All conference discussions will be off the
10 record, privileged and confidential. Counsel for any non-English speaking parties is
11 responsible for arranging for the appearance of an interpreter at the conference.

12 2. **Personal Appearance of Parties Is Required:** All parties, adjusters for
13 insured defendants, and client representatives must be present and have full and complete
14 authority to enter into a binding settlement at the ENE.² The purpose of this requirement
15 is to have representatives present who can settle the case during the course of the
16 conference without consulting a superior. Counsel for a government entity may be excused
17 from this requirement so long as the government attorney who attends the ENE conference
18 (1) has primary responsibility for handling the case; and (2) may negotiate settlement offers
19 which the attorney is willing to recommend to the government official having ultimate
20 settlement authority. Other parties seeking permission to be excused from attending the
21 ENE in person must follow the procedures outlined in Judge Skomal’s Chambers’ Rules.

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24 ² “Full authority to settle” means that the individuals at the settlement conference must be authorized to
25 fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties.
26 *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person needs to have
27 “unfettered discretion and authority” to change the settlement position of a party. *Pitman v. Brinker Intl.,*
28 *Inc.*, 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The person must be able to bind the party without the
need to call others not present at the conference for authority or approval. The purpose of requiring a
person with unlimited settlement authority to attend the conference includes 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. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

1 (See Judge Skomal’s Chambers’ Rules II.C.) Failure of any of the above parties to appear
2 at the ENE conference without the Court’s permission will be grounds for sanctions. The
3 principal attorneys responsible for the litigation must also be present in person and prepared
4 to discuss all of the **legal and factual** issues in the case.

5 3. **Confidential ENE Statements**³: No later than **October 6, 2021**, the parties
6 may submit confidential statements directly to Judge Skomal. Please also attach relevant
7 exhibits. The statement must address the legal and factual issues in the case and should
8 focus on issues most pertinent to settling the matter. Statements do not need to be filed or
9 served on opposing counsel. The statement must also include any prior settlement offer or
10 demand, as well as the offer or demand the party will make at the ENE. The Court will
11 keep this information confidential unless the party authorizes the Court to share the
12 information with opposing counsel. **ENE statements must be emailed to**
13 **efile_Skomal@casd.uscourts.gov**.

14 4. **New Parties Must Be Notified by Plaintiff’s Counsel**: Plaintiff’s counsel
15 shall give notice of the ENE to parties responding to the complaint after the date of this
16 notice.

17 5. **Case Management Conference**⁴: In the event the case does not settle at the
18 ENE, a Case Management Conference, pursuant to Federal Rule of Civil Procedure 16(b)
19 will be held at the conclusion of the settlement conference.

20 6. **Requests to Continue an ENE Conference**: Requests to continue ENEs are
21 rarely granted. The Court will, however, consider formal motions to continue an ENE
22 when extraordinary circumstances exist and the other party has no objection. If another
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25 ³ The Court notes that the parties have already submitted their ENE statements. To the extent that the
26 parties’ settlement positions change, the parties may submit a one-page supplemental ENE brief by this
27 date.

28 ⁴ The parties have already submitted their Joint Discovery Plan (ECF No. 20) and according to the Court’s
original ENE Order (ECF No. 16 at 3), the parties shall have already complied with the other deadlines
provided for the Case Management Conference.

1 party objects to the continuance, counsel for both parties must call chambers and discuss
2 the matter with the research attorney/law clerk assigned to the case before any motion may
3 be filed. **Any request for a continuance must be made as soon as counsel is aware of**
4 **the circumstances that warrant rescheduling the conference. Requests to continue**
5 **the ENE based on preexisting scheduling conflicts must be raised within 10 days of**
6 **the Court's issuance of this Order.**

7 7. **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 conference, the following procedures must be
10 followed before the Court will vacate the ENE and excuse the parties from appearing:

11 A. The parties may file a Joint Motion to Dismiss and submit a proposed
12 order to the assigned district judge. If a Joint Motion to Dismiss is filed, the Court will
13 immediately vacate the ENE;

14 B. If the parties settle more than 24 hours before the conference but are
15 not able to file a Joint Motion to Dismiss, they must file a Joint Notice of Settlement
16 containing the electronic signatures of counsel for all settling parties and must also identify
17 a date by which the Joint Motion to Dismiss will be filed;

18 C. If the parties settle less than 24 hours before the conference, counsel for
19 the settling parties must JOINTLY call chambers and inform the Court of the settlement
20 and receive Court permission to not appear at the ENE.

21 **Zoom Video Conference Instructions:**

22 8. The Court will use its official Zoom video conferencing account to hold the
23 ENE. IF YOU ARE UNFAMILIAR WITH ZOOM: Zoom is available on computers
24 through a download on the Zoom website (<https://zoom.us/meetings>) or on mobile devices
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1 through the installation of a free app.⁵ Joining a Zoom conference does not require creating
2 a Zoom account, but it does require downloading the .exe file (if using a computer) or the
3 app (if using a mobile device). Participants are encouraged to create an account, install
4 Zoom and familiarize themselves with Zoom in advance of the ENE.⁶ There is a cost-free
5 option for creating a Zoom account.

6 9. Prior to the start of the ENE, the Court will email counsel for each party an
7 invitation to join a Zoom video conference that they must provide to participating client(s).
8 The Court will send the invitation to the email addresses listed for counsel in the case
9 docket. If counsel does not receive an invitation to join the Zoom video conference by
10 **October 19, 2021**, please email chambers at **efile_skomal@casd.uscourts.gov**. Again, if
11 possible, participants are encouraged to use laptops or desktop computers for the video
12 conference, as mobile devices often offer inferior performance. Participants shall join the
13 video conference by following the ZoomGov Meeting hyperlink in the invitation.
14 Participants who do not have Zoom already installed on their device when they click on
15 the ZoomGov Meeting hyperlink will be prompted to download and install Zoom before
16 proceeding. Zoom may then prompt participants to enter the password included in the
17 invitation.⁷ All participants will be placed in a waiting room until the ENE begins.

18 10. Each participant should plan to join the Zoom video conference at least five
19 minutes before the start of the ENE to ensure that the ENE begins promptly at 2:00 PM.
20 The Zoom e-mail invitation may indicate an earlier start time, but the ENE will begin at
21 the Court-scheduled time.

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24 ⁵ If possible, participants are encouraged to use laptops or desktop computers for the video conference,
rather than mobile devices.

25 ⁶ For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>.

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27 ⁷ A Meeting ID will also be included and may be used along with the password to access the conference
28 if necessary.

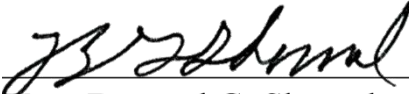
1 11. Zoom’s functionalities will allow the Court to conduct the ENE as it ordinarily
2 would conduct an in-person ENE. The Court may divide participants into separate,
3 confidential sessions, which Zoom calls Breakout Rooms.⁸ In a Breakout Room, the Court
4 will be able to communicate with participants from a single party in confidence. Breakout
5 Rooms will also allow parties and counsel to communicate confidentially without the
6 Court.

7 12. All participants shall display the same level of professionalism during the
8 ENE and be prepared to devote their full attention to the ENE as if they were attending in
9 person, *i.e.*, cannot be driving while speaking to the Court. Because Zoom may quickly
10 deplete the battery of a participant’s device, each participant should ensure that their device
11 is plugged in or that a charging cable is readily available during the video conference.

12 Questions regarding this case or the mandatory guidelines set forth herein may be
13 directed to Judge Skomal’s research attorney at (619) 557-2993. Please consult Judge
14 Skomal’s rules, available on the Court’s website, before contacting chambers with your
15 questions.

16 **IT IS SO ORDERED.**

17 Dated: August 23, 2021

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19 Hon. Bernard G. Skomal
20 United States Magistrate Judge
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28 ⁸ For more information on what to expect when participating in a Zoom Breakout Room, visit:
<https://support.zoom.us/hc/en-us/articles/115005769646>