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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IRONSHORE SPECIALTY
INSURANCE COMPANY,
Plaintiff / Counter-Defendant,
v.
THE CROSBY ESTATE AT RANCHO
SANTA FE MASTER ASSOCIATION,
Defendant / Counter-Claimant.

Case No.: 3:21-cv-01249-WQH-AHG
**ORDER GRANTING JOINT
MOTION TO CONTINUE EARLY
NEUTRAL EVALUATION
CONFERENCE AND CASE
MANAGEMENT CONFERENCE**
[ECF No. 29]

Before the Court is the parties’ joint motion to continue the Early Neutral Evaluation Conference (“ENE”) and Case Management Conference (“CMC”), currently scheduled for December 3, 2021. ECF No. 29.

1 Parties seeking to continue an ENE must demonstrate good cause. ECF No. 24 at 7
2 (“An ENE may be rescheduled only upon a showing of good cause”); Chmb.R. at 2 (stating
3 that any request for continuance requires “[a] showing of good cause for the request”); *see*,
4 *e.g.*, FED. R. CIV. P. 6(b) (“When an act may or must be done within a specified time, the
5 court may, for good cause, extend the time”).

6 “Good cause” is a non-rigorous standard that has been construed broadly across
7 procedural and statutory contexts. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259
8 (9th Cir. 2010). The good cause standard focuses on the diligence of the party seeking to
9 amend the scheduling order and the reasons for seeking modification. *Johnson v. Mammoth*
10 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (“[T]he focus of the inquiry is upon
11 the moving party’s reasons for seeking modification. . . . If that party was not diligent, the
12 inquiry should end.”) (internal citation omitted).

13 The ENE and CMC in this case are scheduled for December 3, 2021. ECF No. 24.
14 Here, counsel for Plaintiff is unavailable on December 3 because he is lead counsel in
15 *Steadfast Insurance v. Community Health Systems*, which is scheduled for a two-week trial
16 commencing on December 6, with jury selection beginning on December 1. ECF No. 29
17 at 2; ECF No. 29-1 at 1–2. Thus, the parties seek to postpone the ENE and CMC. *Id.*

18 The Court appreciates the parties’ thorough motion and attention to the Court’s
19 chambers rules, and finds good cause to continue the ENE, CMC, and related deadlines.
20 As such, the parties’ joint motion is **GRANTED** as follows:

21 1. The ENE, originally rescheduled for December 3, 2021, is hereby **RESET** for
22 **February 2, 2022** at **9:30 a.m.** before Magistrate Judge Allison H. Goddard.

23 2. In accordance with the Local Rules, the Court required in-person attendance
24 of all parties, party representatives, including claims adjusters for insured defendants, and
25 the primary attorney(s) responsible for the litigation. CivLR 16.1(a). Due to the current

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1 COVID-19 public emergency,¹ and upon due consideration, the Court hereby **MODIFIES**
2 the ENE to be via **videoconference** for all attendees.

3 2. **Purpose of the Conference:** The purpose of the ENE is to permit an informal
4 discussion between the attorneys and the settlement judge of every aspect of the lawsuit in
5 an effort to achieve an early resolution of the case. All conference discussions will be
6 informal, off the record, and confidential.

7 3. **Full Settlement Authority Required:** A party or party representative with
8 **full and complete authority to enter into a binding settlement** must be present via
9 videoconference or immediately available to join. Full authority to settle means that a
10 person must be authorized to fully explore settlement options and to agree at that time to
11 any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat*
12 *Corp.*, 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion
13 and authority” to change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*,
14 216 F.R.D. 481, 485–86 (D. Ariz. 2003). Limited or sum certain authority is not adequate.
15 *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 595–97 (8th Cir. 2001). **A person who needs**
16 **to call another person who is not present on the videoconference before agreeing to**
17 **any settlement does not have full authority.**

18 4. **Confidential ENE Statements Required:** No later than **January 26, 2022**,
19 the parties shall submit confidential statements of five (5) pages or less directly to the
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22 ¹ On March 2, 2021, Chief Judge Dana M. Sabraw issued an Order in response to the
23 COVID-19 public emergency (“CJO #62”) which, among other things, suspends the
24 requirement under Civil Local Rule 16.1(a) that ENEs be conducted in person. *See* CJO
25 #62 at 1. CJO #62 is available on the Court website at
26 <https://www.casd.uscourts.gov/assets/pdf/rules/Chief%20Judge%20Order%2062%20-%20Civil%20Case%20Proceedings%20During%20the%20Covid-19%20Public%20Emergency.pdf>. The suspension of the requirement under Civil Local
27 Rule 16.1(a) that ENEs be conducted in person is also reiterated by CJO #62-B, filed
28 on June 11, 2021. CJO #62-B is available on the Court website at
<https://www.casd.uscourts.gov/assets/pdf/rules/Chief%20Judge%20Order%2062-B.pdf>.

1 chambers of Magistrate Judge Goddard outlining the nature of the case, the claims, and the
2 defenses. **These statements shall not be filed or served on opposing counsel.** They shall
3 be lodged via email at efile_goddard@casd.uscourts.gov. The ENE statement is limited to
4 **five (5) pages or less, and up to five (5) pages of exhibits or declarations.** Each party's
5 ENE statement must outline:

- 6 A. the nature of the case and the claims,
- 7 B. position on liability or defense,
- 8 C. position regarding settlement of the case with a **specific**²
9 **demand/offer for settlement**,³ and
- 10 D. any previous settlement negotiations or mediation efforts.
- 11 E. commonalities and differences between this case and
12 Case No. 3:19cv2369-WQH-NLS (S.D. Cal.)

13 5. **Case Management Conference:** In the event the case does not settle at the
14 ENE, the Court will immediately thereafter hold a Case Management Conference (“CMC”)
15 pursuant to Fed. R. Civ. P 16(b). Appearance of the parties at the CMC is not required. The
16 Court orders the following to occur before the CMC:

- 17 A. The parties must meet and confer pursuant to Fed. R. Civ. P. 26(f) no
18 later than **November 2, 2021**.⁴

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21 ² A general statement, such as that a party “will negotiate in good faith,” is a not a specific
22 demand or offer.

23 ³ If a specific demand or offer cannot be made at the time the ENE statement is submitted,
24 then the reasons as to why a demand or offer cannot be made must be stated. Further, the
25 party must explain when they will be in a position to state a demand or offer.

26 ⁴ This deadline remains unchanged from the Court’s September 14 Order rescheduling the
27 ENE, which “provided this secondary deadline in case that first deadline was missed.”
28 ECF No. 24 at 4; *see* ECF No. 20 at 3 (original deadline of September 8, 2021); *see also*
ECF No. 29-1 at ¶ 2 (representing to the Court that “[o]n September 7, 2021, the parties
held their Rule 26(f) conference in this action”).

1 B. The parties must file a Joint Case Management Statement by
2 **January 21, 2022**. The Joint Case Management Statement must
3 address all points in the “Joint Case Management Statement
4 Requirements for Magistrate Judge Allison H. Goddard,” which can
5 be found on the court website at:
6 [https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Join](https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf)
7 [t%20Case%20Management%20Statement%20Rules.pdf](https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf).

8 C. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by
9 **November 16, 2021**.⁵

10 6. **Appearances via Videoconference Required:** All named parties, party
11 representatives, including claims adjusters for insured defendants, as well as principal
12 attorney(s) responsible for the litigation must attend the ENE via videoconference. All who
13 attend the ENE must be legally and factually prepared to discuss and resolve the case.
14 Counsel appearing without their clients (whether or not counsel has been given settlement
15 authority) will be subject to immediate imposition of sanctions. To facilitate the
16 videoconference ENE, the Court hereby orders as follows:

17 A. The Court will use its official Zoom video conferencing account to hold
18 the ENE. **If you are unfamiliar with Zoom:** Zoom is available on
19 computers through a download on the Zoom website
20 (<https://zoom.us/meetings>) or on mobile devices through the
21 installation of a free app.⁶ Joining a Zoom conference does not require
22 creating a Zoom account, but it does require downloading the .exe file
23 (if using a computer) or the app (if using a mobile device). Participants
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26 ⁵ This deadline remains unchanged. *See* ECF No. 24 at 4.

27 ⁶ If possible, participants are encouraged to use laptops or desktop computers for the video
28 conference, rather than mobile devices.

1 are encouraged to create an account, install Zoom and familiarize
2 themselves with Zoom in advance of the ENE.⁷ There is a cost-free
3 option for creating a Zoom account.

4 B. Prior to the start of the ENE, the Court will email each participant an
5 invitation to join a Zoom video conference. Again, if possible,
6 participants are encouraged to use laptops or desktop computers for the
7 video conference, as mobile devices often offer inferior performance.
8 Participants shall join the video conference by following the ZoomGov
9 Meeting hyperlink in the invitation. **Participants who do not have**
10 **Zoom already installed on their device when they click on the**
11 **ZoomGov Meeting hyperlink will be prompted to download and**
12 **install Zoom before proceeding.** Zoom may then prompt participants
13 to enter the password included in the invitation. All participants will be
14 placed in a waiting room until the ENE begins.

15 C. Each participant should plan to join the Zoom video conference **at least**
16 **five minutes before** the start of the ENE to ensure that the conference
17 begins promptly at 9:30 a.m.

18 D. Zoom's functionalities will allow the Court to conduct the ENE as it
19 ordinarily would conduct an in-person one. The Court will divide
20 participants into separate, confidential sessions, which Zoom calls
21 Breakout Rooms.⁸ In a Breakout Room, the Court will be able to
22 communicate with participants from a single party in confidence.
23 Breakout Rooms will also allow parties and counsel to communicate
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25 ⁷ For help getting started with Zoom, visit: [https://support.zoom.us/hc/en-](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started)
26 [us/categories/200101697-Getting-Started](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started)

27 ⁸ For more information on what to expect when participating in a Zoom Breakout Room,
28 visit: <https://support.zoom.us/hc/en-us/articles/115005769646>

1 confidentially without the Court.

2 E. No later than **January 26, 2022**, counsel for each party shall send an
3 e-mail to the Court at efile_goddard@casd.uscourts.gov containing the
4 following:

- 5 i. The **name and title of each participant**, including all parties
6 and party representatives with full settlement authority, claims
7 adjusters for insured defendants, and the primary attorney(s)
8 responsible for the litigation;
- 9 ii. An **e-mail address for each participant** to receive the Zoom
10 video conference invitation; and
- 11 iii. A **telephone number where each participant** may be reached
12 so that if technical difficulties arise, the Court will be in a
13 position to proceed telephonically instead of by video
14 conference. (If counsel prefers to have all participants of their
15 party on a single conference call, counsel may provide a
16 conference number and appropriate call-in information,
17 including an access code, where all counsel and parties or party
18 representatives for that side may be reached as an alternative to
19 providing individual telephone numbers for each participant.)
- 20 iv. A **cell phone number for that party's preferred point of**
21 **contact** (and the name of the individual whose cell phone it is)
22 for the Court to use during the ENE to alert counsel via text
23 message that the Court will soon return to that party's Breakout
24 Room, to avoid any unexpected interruptions of confidential
25 discussions.

26 F. All participants shall display the same level of professionalism during
27 the ENE and be prepared to devote their full attention to the ENE as if
28 they were attending in person, i.e., cannot be driving while speaking to

1 the Court. Because Zoom may quickly deplete the battery of a
2 participant's device, each participant should ensure that their device is
3 plugged in or that a charging cable is readily available during the video
4 conference.

5 G. Counsel are advised that although the ENE will take place on Zoom, all
6 participants shall appear and conduct themselves as if it is proceeding
7 in a courtroom, i.e., counsel must dress in appropriate courtroom attire.

8 H. If the case does not settle during the ENE, the Court will hold the CMC
9 immediately following the ENE with counsel only in the main session.

10 7. **Requests for Continuances:** Local Rule 16.1(c) requires that an ENE take
11 place within forty-five (45) days of the filing of the first answer, thus, requests to continue
12 ENEs are rarely granted. An ENE may be rescheduled only upon a showing of good cause
13 and adequate notice to the Court. Absent extraordinary circumstances, requests for
14 continuances will not be considered unless submitted **in writing** no less than seven (7) days
15 before the ENE. All requests for continuances must be made by a joint motion. The request
16 must state:

17 A. The original date;

18 B. The number of previous requests for continuances;

19 C. A showing of good cause for the request;

20 D. Whether the request is opposed and why;

21 E. Whether the requested continuance will affect other case management
22 dates; and

23 F. A declaration from the counsel seeking the continuance that describes
24 the steps taken to comply with the existing deadlines, and the specific
25 reasons why the deadlines cannot be met.

26 8. **New Parties Must be Notified by Plaintiff or Plaintiff's Counsel:**
27 Plaintiff's counsel must give notice of the ENE to any Defendants who have been served
28 but who have not yet filed responsive pleadings as of the date of this Order. If any

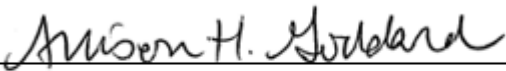
1 Defendants have not yet been served, Plaintiff's counsel must serve them with a copy of
2 this Order along with the summons and complaint.

3 9. **The failure of any party to follow these mandatory procedures shall result**
4 **in the imposition of sanctions.**

5 10. Questions regarding this case or these mandatory guidelines may be directed
6 to Judge Goddard's law clerks at (619) 557-6162. Lodged statements should be emailed to
7 efile_goddard@casd.uscourts.gov.

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9 **IT IS SO ORDERED.**

10 Dated: October 19, 2021

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13 Honorable Allison H. Goddard
14 United States Magistrate Judge
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