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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLIE LAVERDE,

Plaintiff,

v.

GENERAL MOTORS, LLC,

Defendants.

Case No.: 3:23-cv-00527-GPC-AHG
**ORDER GRANTING IN PART
JOINT MOTION TO CONTINUE
EARLY NEUTRAL EVALUATION
CONFERENCE AND CASE
MANAGEMENT CONFERENCE**

[ECF No. 5]

Before the Court is the parties’ joint motion to continue the Early Neutral Evaluation Conference (“ENE”) and Case Management Conference (“CMC”), presently scheduled for July 7, 2023. ECF No. 5. The parties request that the ENE and CMC be rescheduled because Defendant’s counsel will be travelling on a pre-planned vacation on that date. *Id.* at 2. Despite the joint motion’s shortcomings,¹ the Court appreciates that the parties have been working together and finds good cause to grant a small continuance. Thus, the Court **GRANTS IN PART** the motion as follows:

¹ Compare ECF No. 4 at 6 (Order setting ENE, requiring that requests for continuances include a declaration from counsel) with ECF No. 5 (instant motion, no declaration).

1 1. The ENE and CMC scheduled for July 7, 2023, are **RESET** for
2 **August 11, 2023** at **2:00 p.m.** *via videoconference* before Magistrate Judge
3 Allison H. Goddard. In accordance with the Local Rules, the Court requires attendance of
4 all parties, party representatives, including claims adjusters for insured defendants, and the
5 primary attorney(s) responsible for the litigation via videoconference. CivLR 16.1(c)(1).

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

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

21 4. **Confidential ENE Statements Required:** No later than **August 4, 2023**, the
22 parties shall submit confidential statements of five (5) pages or less directly to the chambers
23 of Magistrate Judge Goddard outlining the nature of the case, the claims, and the defenses.
24 **These statements shall not be filed or served on opposing counsel.** They shall be lodged
25 via email at efile_goddard@casd.uscourts.gov. The ENE statement is limited to **five (5)**
26 **pages or less, and up to five (5) pages of exhibits or declarations.** Each party’s ENE
27 statement must outline:

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- 1 A. the nature of the case and the claims,
- 2 B. position on liability or defense,
- 3 C. position regarding settlement of the case with a **specific**²
- 4 **demand/offer for settlement**,³ and
- 5 D. any previous settlement negotiations or mediation efforts.

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

- 10 A. The parties must meet and confer pursuant to Fed. R. Civ. P. 26(f) no
11 later than **June 14, 2023**. Although, due to the present continuance, the
12 ENE is not set within the standard 45-day timeframe after the filing of
13 the first Answer, the Court will consider discovery to be open after the
14 parties have met and conferred pursuant to Rule 26, and will take this
15 deadline into account when setting the case schedule during the CMC.
- 16 B. The parties must file a Joint Case Management Statement by
17 **August 1, 2023**. The Joint Case Management Statement must address
18 all points in the “Joint Case Management Statement Requirements for
19 Magistrate Judge Allison H. Goddard,” which can be found on the
20 court website at:
21 [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)
22 [t%20Case%20Management%20Statement%20Rules.pdf](https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf).

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

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

1 C. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by
2 **June 28, 2023.**

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

10 A. The Court will use its official Zoom video conferencing account to hold
11 the ENE. **If you are unfamiliar with Zoom:** Zoom is available on
12 computers through a download on the Zoom website
13 (<https://zoom.us/meetings>) or on mobile devices through the
14 installation of a free app.⁴ Joining a Zoom conference does not require
15 creating a Zoom account, but it does require downloading the .exe file
16 (if using a computer) or the app (if using a mobile device). Participants
17 are encouraged to create an account, install Zoom and familiarize
18 themselves with Zoom in advance of the ENE.⁵ There is a cost-free
19 option for creating a Zoom account.

20 B. Prior to the start of the ENE, the Court will email each participant an
21 invitation to join a Zoom video conference. Again, if possible,
22 participants are encouraged to use laptops or desktop computers for the
23 video conference, as mobile devices often offer inferior performance.

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26 ⁴ If possible, participants are encouraged to use laptops or desktop computers for the video
27 conference, rather than mobile devices.

28 ⁵ For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>

1 Participants shall join the video conference by following the ZoomGov
2 Meeting hyperlink in the invitation. **Participants who do not have**
3 **Zoom already installed on their device when they click on the**
4 **ZoomGov Meeting hyperlink will be prompted to download and**
5 **install Zoom before proceeding.** Zoom may then prompt participants
6 to enter the password included in the invitation.

7 C. Each participant should plan to join the Zoom video conference **at least**
8 **five minutes before** the start of the ENE to ensure that the conference
9 begins promptly at 2:00 p.m.

10 D. Zoom's functionalities will allow the Court to conduct the ENE as it
11 ordinarily would conduct an in-person one. The Court will divide
12 participants into separate, confidential sessions, which Zoom calls
13 Breakout Rooms.⁶ In a Breakout Room, the Court will be able to
14 communicate with participants from a single party in confidence.
15 Breakout Rooms will also allow parties and counsel to communicate
16 confidentially without the Court.

17 E. No later than **August 4, 2023**, each party shall send an e-mail to the
18 Court at efile_goddard@casd.uscourts.gov containing the following:

- 19 i. The **name and title of each participant**, including all parties
20 and party representatives with full settlement authority, claims
21 adjusters for insured defendants, and the primary attorney(s)
22 responsible for the litigation;
- 23 ii. An **e-mail address for each participant** to receive the Zoom
24 video conference invitation;
- 25 iii. A **telephone number where each participant** may be reached;
- 26

27 ⁶ 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 and

2 iv. A **cell phone number for that party's preferred point of**
3 **contact** (and the name of the individual whose cell phone it is)
4 for the Court to use during the ENE to alert counsel via text
5 message that the Court will soon return to that party's Breakout
6 Room, to avoid any unexpected interruptions of confidential
7 discussions.

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

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


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

21 7. **The failure of any party to follow these mandatory procedures shall result**
22 **in the imposition of sanctions.**

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

26 **IT IS SO ORDERED.**

27 Dated: June 28, 2023

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Honorable Allison H. Goddard
United States Magistrate Judge