

1
2
3 **UNITED STATES DISTRICT COURT**

4 EASTERN DISTRICT OF CALIFORNIA
5

6
7
8 THEODORE W. MORT,
Plaintiff,

9 v.

10
11 POSTMASTER GENERAL OF THE
UNITED STATES,
12 Defendant.
13 _____/

Case No. 1:19-cv-00652 NONE SKO

AMENDED ORDER re SETTLEMENT
CONFERENCE

ORDER FOLLOWING PRE-
SETTLEMENT CONFERENCE

14
15 On February 17, 2021, the Court held a telephonic pre-settlement conference. Dow Patten,
16 Esq. appeared on behalf of Plaintiff, and Victoria Boesch, Esq. appeared on behalf of Defendant.

17 The Court discussed with the parties the status of settlement negotiations and whether a
18 settlement conference on February 25, 2021, would be productive. The parties indicated that a
19 settlement conference on that date would not be productive, partly in view of outstanding fact and
20 expert discovery and the lack of meaningful meet and confer efforts by the parties.

21 Based on its discussion with the parties, the Court agrees that a settlement conference on
22 February 25, 2021, would not be productive at this time. Accordingly, the Court **hereby**
23 **CONTINUES the settlement conference to August 19, 2021, at 10:30 AM in Courtroom 7**
24 **(SKO) before Magistrate Judge Sheila K. Oberto.**

25 Consideration of settlement is a serious matter that requires thorough preparation prior to
26 the settlement conference. Accordingly, IT IS HEREBY ORDERED that:

27 ///

28 ///

1 **1. Pre-settlement Conference Exchange of Demand and Offer**

2 As discussed with the parties during the telephonic pre-settlement conference, a settlement
3 conference is more likely to be productive if, before the conference, the parties exchange written
4 settlement proposals. Accordingly, at least **5 weeks** prior to the settlement conference, counsel for
5 plaintiff shall submit an updated written itemization of damages and settlement demand to defense
6 counsel with a brief summary of the legal and factual basis supporting the demand. No later than **4**
7 **weeks** prior to the settlement conference, defense counsel shall submit a written offer to counsel for
8 plaintiff with a brief summary of the legal and factual basis supporting the offer.

9 The parties **shall** continue to meet and confer thereafter to attempt to compromise regarding
10 their respective positions, so as to assist with ensuring that the settlement conference will be
11 productive.

12 **2. Submission and Content of Confidential Settlement Conference Statements**

13 The parties are to send Confidential Settlement Conference Statements (Settlement
14 Statement) to the following email address: SKOorders@caed.uscourts.gov, to arrive no later than
15 **14 days** before the conference. Each statement shall be clearly marked “CONFIDENTIAL” with
16 the date and time of the mandatory settlement conference indicated prominently. Each party shall
17 also file a Notice of Submission of Confidential Settlement Conference Statement (*See* L.R. 270
18 (d)).

19 If the Settlement Conference is continued for any reason, each party must submit a new
20 Settlement Statement that is complete in itself, without reference to any prior Settlement Statements.

21 Each Settlement Statement *shall include the following*:

- 22 a. A brief summary of the core facts, allegations, and defenses, a forthright
23 evaluation of the parties’ likelihood of prevailing on the claims and
24 defenses, and a description of the major issues in dispute.
- 25 b. A summary of the proceedings to date.
- 26 c. An estimate of the cost and time to be expended for further discovery,
27 pretrial, and trial.
- 28 d. The nature of the relief sought.

- 1 e. An outline of past settlement efforts including information regarding the
2 "Pre-settlement Conference Exchange of Demand and Offer" required
3 above—including the itemization of damages—and a history of past
4 settlement discussions, offers, and demands.
- 5 f. A statement of each party's expectations and goals for the Settlement
6 Conference.

7 **3. Attendance of Trial Counsel and Parties Required**

8 *The attorneys who will try the case and parties with full and complete settlement authority*
9 *are required to personally attend the conference.*¹ An insured party shall appear by a representative
10 of the insurer who is authorized to negotiate, and who has *full authority to negotiate and settle the*
11 *case*. An uninsured corporate party shall appear by a representative authorized to negotiate, and
12 who has *full authority to negotiate and settle the case*. It is difficult for a party who is not present
13 to appreciate the process and the reasons that may justify a change in one's perspective toward
14 settlement. Accordingly, having a client with authority available by telephone is *not* an acceptable
15 alternative, except under the most extenuating circumstances.²

16 In light of the coronavirus (COVID-19) outbreak and the resulting courthouse restrictions,
17 *see* General Orders Nos. 612–618, the Court will revisit the in-person requirement closer to the date
18 of the settlement conference and reserves the right to modify the requirement depending upon the
19 courthouse restrictions, if any, in place as of August 19, 2021. The parties are advised that while
20 the courthouse restrictions pursuant to General Order No. 618 are in place, Zoom videoconference
21 settlement conferences are available. At the August 12, 2021 Pre-Settlement Conference, (*see*
22 paragraph 6 below), the parties should be prepared to discuss the method of conducting the
23 settlement conference and whether the settlement conference should proceed on August 21, 2021.
24 If the parties opt to conduct the settlement conference by Zoom videoconference, the Court will
25 provide the call-in information closer to the time of the settlement conference.

26 _____
27 ¹ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are
28 subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a
person or persons who occupy high executive positions in the party organization and who will be directly involved in
the process of approval of any settlement offers or agreements.

² Out of town or out of state travel and the purchase of an airplane ticket are not extenuating circumstances.

1 The Court expects both the lawyers and the party representatives to be fully prepared to
2 participate. The Court encourages all parties to keep an open mind in order to reassess their previous
3 positions and to discover creative means for resolving the dispute.

4 **4. Issues to Be Discussed**

5 The parties *shall* be prepared to discuss the following at the settlement conference:

- 6 a. Goals in the litigation and problems they would like to address in the
7 settlement conference and understanding of the opposing side's goals.
8 b. The issues (in and outside the lawsuit) that need to be resolved.
9 c. The strengths and weaknesses of their case.
10 d. Their understanding of the opposing side's view of the case.
11 e. Their points of agreement and disagreement (factual and legal).
12 f. Any financial, emotional, and/or legal impediments to settlement.
13 g. Whether settlement or further litigation better enables the accomplishment
14 of their respective goals.
15 h. Any possibilities for a creative resolution of the dispute.

16 **5. Statements Inadmissible**

17 The parties are expected to address each other with courtesy and respect and are encouraged
18 to be frank and open in their discussions. Statements made by any party during the settlement
19 conference are not to be used in discovery and will not be admissible at trial.

20 **6. Pre-Settlement Telephonic Conference**

21 Prior to the Settlement Conference, Magistrate Judge Oberto will hold a brief, telephonic
22 discussion on **August 12, 2021, at 4:00 PM (dial-in number: 1-888-557-8511; passcode:**
23 **6208204#)**. Only attorneys and unrepresented parties are required to participate in the conference.

24 ///

25 ///

26 ///

27 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

IT IS SO ORDERED.

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE