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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AT&T MOBILITY LLC,

Plaintiff,

v.

GENERAL CHARLES E. "CHUCK"
YEAGER (RET.); ED BOWLIN; CONNIE
BOWLIN; AVIATION AUTOGRAPHS;
BOWLIN & ASSOCIATES, INC.; LAW
OFFICES OF JOANNA R. MENDOZA,
P.C.; DE LA PENA & HOLIDAY, LLP;
LESSER LAW GROUP,

Defendants.

No. 2:13-cv-00007-KJM-DB

ORDER

This is an interpleader action involving funds General Charles Yeager won in a jury verdict following a 2012 trial based on unauthorized use of his name. Several attorneys who had formerly represented General Yeager and his wife Victoria Yeager claimed entitlement to a portion of these funds. General Yeager initially hired attorney John Zarian and the law firm Parsons Behle & Latimer, PLC ("Parsons Behle") to represent him, but Parsons Behle later withdrew, intervened and claimed General Yeager had not paid his bills to them. Days before a new trial was set to begin on the Parsons Behle fee dispute, Parsons Behle and General Yeager's new attorney notified the court the parties had settled. The court then vacated the trial date.

1 Afterwards, General Yeager declined to sign the settlement agreement, contending he never
2 agreed to the terms. Parsons Behle then moved to enforce the settlement. Mot., ECF No. 128.
3 The court held an evidentiary hearing. H'rg Mins., ECF No. 167. As explained below, the court
4 DENIES the motion. The court also DENIES as premature Mrs. Yeager's *ex parte* request to
5 disburse a portion of the interpleaded funds. Request, ECF No. 364.

6 I. MOTION TO ENFORCE

7 A. Background

8 1. The Settlement Agreement

9 After denying Parsons Behle's motion for summary judgment on its complaint-in-
10 intervention, the court scheduled a half day trial. Pretrial Conf. Mins., ECF No. 117. On
11 September 4, 2014, four days before trial was to begin, Parsons Behle and General Yeager's new
12 counsel, Parker White, began negotiating a settlement agreement. Zarian Decl., ECF No. 128-2,
13 ¶ 6. The attorneys exchanged draft settlement agreements that day and the next before Mr. White
14 signed a final version, which he confirmed "reflect[ed] the agreement of the parties, as in those
15 expected to sign." *Id.* ¶¶ 6-9; Email, Ex. D, ECF No. 128-6 (original emphasis). The attorneys
16 then filed a joint notice of settlement, anticipating they would file a final settlement agreement
17 signed by the parties on or about October 3, 2014. Notice, ECF No. 126. Based on this
18 representation, the court vacated the trial. Min. Order, ECF No. 127.

19 Over the following weeks, Mr. White was unable to obtain General Yeager's
20 signature on the agreement. He eventually emailed Parsons Behle that he had "run into serious
21 problems" and did not have a signed settlement agreement. Zarian Decl. ¶ 14. Parsons Behle
22 then filed the instant motion, asking the court to enforce the settlement agreement, disburse
23 \$65,000.00 of the interpleaded funds to Parsons Behle, and impose sanctions. Mot. at 4-9.
24 General Yeager signed an opposition consisting of a single-page declaration stating he "did not
25 agree to the terms of the written settlement agreement," and "did not agree to give up [his] rights
26 to sue John Zarian and/or Parsons Behle & Latimer et al [*sic*] for legal malpractice." Opp'n, ECF
27 No. 130, at 4. Parsons Behle replied, contending the Yeagers were bound by Mr. White's
28 promise on their behalf to settle. Reply, ECF No. 132.

1 After first holding a non-evidentiary hearing, the court issued an order partially
2 resolving questions related to the agreement’s enforceability, with one question outstanding.
3 Prior Order, ECF No. 139. Specifically, the court affirmed its jurisdiction to enforce an
4 agreement, should one exist; it also concluded Parsons Behle had entered into a settlement
5 agreement based on communications with General Yeager’s counsel, Mr. White. The court
6 declined Parsons Behle’s request to sanction General Yeager, finding Parsons Behle had not
7 shown General Yeager acted in bad faith. *Id.* at 9. The court ordered an evidentiary hearing on
8 the sole remaining question: Whether General Yeager authorized Mr. White to bind the General
9 to this agreement. *Id.* at 5-9 (“If a client alleges an attorney acted without authorization, the
10 question becomes one of fact to be resolved by taking evidence”; scheduling evidentiary hearing
11 and concluding, “If indeed Mr. White had authority, [General] Yeager is bound.”).

12 The court held the evidentiary hearing on March 24, 2015. *See* Tr., ECF No. 178.
13 The court heard testimony from Mr. White, Mr. White’s paralegal, and Mrs. Yeager. General
14 Yeager elected not to testify or present evidence. Tr. 105:1-2. As the court turned to the issue of
15 the parties’ closing briefs, Mrs. Yeager asked for the first time to call General Yeager as a
16 witness. Tr. 106:9-19. Mrs. Yeager also said at the evidentiary hearing, for the first time in the
17 court’s presence, that General Yeager could not understand the proceedings. Tr. 106:1-11. The
18 court declined to reopen the hearing to allow General Yeager to testify. Tr. 108:1-5.

19 2. General Yeager’s Competency and Mrs. Yeager’s Role

20 The court explored its concerns regarding General Yeager’s competency in a
21 separate hearing six months later. Competency H’rg Mins., ECF No. 218 (Sept. 14, 2015).
22 Based on the evidence presented at that hearing, the court held that the “appointment of a
23 guardian ad litem [was] necessary to protect General Yeager’s interests in this case.” ECF No.
24 223 (Nov. 10, 2015). The following month, the court appointed James Houpt, a member of the
25 court’s pro bono panel, as General Yeager’s guardian ad litem. Order, ECF No. 227 (Dec. 28,
26 2015).

27 Since then, Mrs. Yeager has taken a more active role in this litigation. First, in
28 August 2016, the court granted Mrs. Yeager limited intervention rights to represent her own

1 financial interests in this case. Order, ECF 263. Four months later, upon Mr. Houpt's
2 recommendation, the court granted Mrs. Yeager's request to substitute in for General Yeager such
3 that she "step[ped] into General Yeager's shoes from [December 2, 2016] forward." Order, ECF
4 No. 306 (granting ECF No. 267).

5 Although Mrs. Yeager is now active in this litigation, in March 2015, at the time
6 of the evidentiary hearing on this motion, Mrs. Yeager had not yet intervened or been granted
7 substitution rights. She nonetheless appeared to guide General Yeager's actions and spoke on his
8 behalf throughout the hearing. *See, e.g.*, Tr. 6:18-20 (court noting "Mrs. Yeager is writing
9 answers, apparently, for Mr. -- for General Yeager to read."). Mrs. Yeager's actions at the time
10 took account of General Yeager's condition at the time; the General, who was in his early 90s,
11 struggled to hear or understand the court proceedings. *See, e.g.*, Tr. 12:9-13 (court pausing
12 testimony to determine whether General Yeager could understand and hear the testimony). In
13 litigating this motion, both parties have treated Mrs. Yeager's conduct as relevant to assessing
14 Mr. White's settlement authority. *See e.g.*, Tr. 19:15-22, 27:22-23, 28:9-15 (probing Mr. White
15 for details about settlement discussions with Mrs. Yeager); *see also id.* at 35:3-10 (Mr. White
16 affirming he "[g]enerally" believed, "during the course of [his] representation, that Mrs. Yeager
17 was authorized by General Yeager to communicate with [Mr. White] concerning the subject of
18 his representation."). Here, the court does consider Mrs. Yeager's conduct and testimony to the
19 extent relevant to prove General Yeager's intent, giving her communications some weight.

20 3. Supplemental Briefing

21 At the March 2015 evidentiary hearing, the court invited closing briefs: Parsons
22 Behle filed a brief on its own behalf; Mrs. Yeager filed briefing on her own behalf and General
23 Yeager filed a brief on his own behalf. *See* Parsons Behle Br., ECF No. 181; General Yeager Br.,
24 ECF No. 180 (electronically signed); Mrs. Yeager Br., ECF No. 184 (handwritten signature).
25 Fifteen months later, once appointed as General Yeager's guardian ad litem and upon the court's
26 direction, Mr. Houpt filed a letter explaining his perspective on whether the settlement agreement
27 is enforceable. *See* Houpt Letter, ECF No. 264 (Aug. 25, 2016). Parsons Behle requested an
28 opportunity to file supplemental briefing in response, ECF No. 265 (Aug. 26, 2018), but the court

1 DENIES the request. Considering the extensive record on this issue, and noting Parsons Behle’s
2 admissions that “Gen. Yeager’s interests in this matter . . . do not warrant an expansion of the
3 evidentiary record with regard to Mr. White’s authority . . . to enter into the settlement
4 agreement,” *id.* at 2, the record as it stands is sufficiently clear.

5 As explained below, after carefully considering the evidence presented at hearing,
6 the subsequent closing briefs and Mr. Houpt’s letter, the court finds the record does not support
7 the conclusion Mr. White had authority to bind General Yeager. The settlement agreement is
8 therefore unenforceable.

9 B. Legal Standard

10 In order for the court to exercise its “equitable power to enforce summarily an
11 agreement to settle a case pending before it,” *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987)
12 (citations omitted), as requested here, the court must first determine whether General Yeager
13 expressly authorized Mr. White to bind the General to the otherwise valid settlement agreement.
14 Because General Yeager had declared, when his competence was not in doubt, that Mr. White
15 settled claims without his express authority, the question proceeded to an evidentiary hearing.
16 Prior Order at 8. Given that General Yeager attacks the settlement, it is his burden to disprove
17 that Mr. White had the requisite authority. *Id.* (citing cases). The court applies this burden
18 faithfully, while bearing in mind General Yeager’s compromised state at the time of the
19 evidentiary hearing.

20 State law governs whether Mr. White had the requisite authority to bind General
21 Yeager to the settlement agreement with Parsons Behle. *See id.* at 7 (deciding state law governs
22 this question). Under California law it is “well settled that an attorney must be specifically
23 authorized to settle and compromise a claim” and that “merely on the basis of his employment [an
24 attorney] has no implied or ostensible authority to bind his client to a compromise settlement of
25 pending litigation” *Levy v. Superior Court*, 10 Cal. 4th 578, 583 (1995) (quoting *Blanton v.*
26 *Womancare, Inc.*, 38 Cal. 3d 396, 404 (1985)). As the California Supreme Court has explained,
27 “[u]nlike the steps an attorney may take on behalf of the client that are incidental to the
28 management of a lawsuit, . . . the settlement of a lawsuit is not incidental to the management of

1 the lawsuit; it ends the lawsuit” and because settlement is “such a serious step” state law
2 mandates the client’s knowledge and express consent. *Id.* at 583 (citations omitted)

3 C. Discussion

4 The court does not doubt Mr. White’s honest belief he was settling the parties’
5 dispute with General Yeager’s express authority. Based on the totality of the record before the
6 court and the applicable law, however, the court cannot conclude Mr. White was actually granted
7 that authority. As explained below, the court bases this finding on the emails presented at
8 hearing, the testimony from Mr. White, his paralegal and Mrs. Yeager, the parties’ briefing and
9 concerns noted by Mr. Houpt as General Yeager’s guardian ad litem.

10 1. Mr. White’s Testimony

11 Mr. White’s testimony itself indicates he lacked the requisite express authority to
12 settle. Initially, the court notes Mr. White testified subject to the Yeagers’ waiver of their
13 attorney-client privilege “for the limited purposes” of allowing the court to decide whether he had
14 “authority to enter into settlement,” which the court explained “necessarily involves some
15 exploration of the context.” Tr. 38:8-25; *see also* Prior Order at 8-9 (same).

16 When asked about his settlement authority, Mr. White explained, “I believe I had
17 authority to enter into this agreement based upon my conversations with the Yeagers” Tr.
18 47:25-48:1. He did not say that at some point he obtained approval of settlement from General
19 Yeager alone. He stated generally, “I thought we were all on the same page,” noting that when he
20 agreed to represent the Yeagers for free, they had agreed to a “caveat” giving him general
21 authority to “eliminate” litigation. Tr. 48:13-20, 49:24-25. Mr. White interpreted the Yeagers’
22 acceptance of his legal assistance as implicit settlement authority. Tr. 47:24-49:25. He did not
23 say he received any express authority from either General or Mrs. Yeager.

24 Mr. White also could not say with any certainty when he, or anyone in his office,
25 first notified the Yeagers about Parsons Behle’s settlement offer. The email chain between
26 counsel detailing the agreement days before trial does not show the Yeagers were copied on any
27 of the messages, nor is there any document showing Mr. White forwarded the emails to the
28 Yeagers. Tr. 45:11-17, 46:19-47:25, 51:10-25 (referencing emails); *cf. Expedite It AOG, LLC v.*

1 *Clay Smith Eng'g, Inc.*, No. SA-CV-101055-AGM-LGX, 2011 WL 13225044, at *3 (C.D. Cal.
2 July 25, 2011) (noting evidence of client's being "copied on emails" discussing the settlement
3 paired with evidence that client never "rejected those statements by its counsel" is the "most
4 important[]" evidence in assessing an attorney's authority to settle). Mr. White said it was his
5 "general" and "preferred" practice to communicate with the Yeagers "by phone or a meeting," or
6 "by letter," Tr. 34:20-23, 39:17-21, but when asked how he notified the Yeagers that the trial date
7 was vacated, Mr. White's paralegal testified, "most likely by e-mail," Tr. 27:22-28:1. When she
8 examined Mr. White, Mrs. Yeager introduced two emails she exchanged with Mr. White, *see* Tr.
9 65:10-71:2 & Exs. A-B,¹ one of which Mr. White sent on September 5, 2014, the day he signed
10 the settlement agreement and agreed with Parsons Behle to vacate the trial. Mr. White admitted
11 he did not mention the settlement in this September 5 email. Tr. 66:20-67:20 & Ex. A.

12 Mr. White did not identify a single meeting, phone call or letter with the Yeagers
13 specifically discussing the settlement offer before he agreed to it. Instead, he expressly identified
14 only post-agreement discussions. When Mr. White was asked to "recall a discussion with the
15 Yeagers" as to whether they were bound by the settlement agreement he negotiated, he described
16 conversations in which he told them, "this is the agreement that we had pounded out, and I
17 expected them to agree to it." Tr. 60:15-20. Mr. White agreed no conversations with the Yeagers
18 defining the extent of any settlement authority were memorialized in writing. Tr. 34:1-3, 62:25-
19 63:1. In sum, no evidence before the court shows either General or Mrs. Yeager authorized Mr.
20 White to sign the settlement agreement with Parsons Behle.

21 When asked if the Yeagers were "told why the trial was off," Mr. White
22 responded, "I don't know. I did not make that communication." Tr. 55:2-4. When asked if he
23 had any "understanding, at any point in time, that the Yeagers had been told that the trial was off
24 by reason of a settlement," he again said, "I don't know that. . . . I did not communicate that
25

26 ¹ Opposing counsel objected to Mrs. Yeager's exhibits. Tr. 68-71. The court admitted
27 Exhibits A and B, which are lodged with the court, but declined to admit Exhibit C, finding it to
28 be incomplete. *See* Tr. 69:11-12, 70:1-2, 70:24-71:2. The court here need not resolve other
issues related to Mrs. Yeager's proposed exhibits, raised by Parsons Behle at hearing.

1 directly to them.” Tr. 55:5-10. When Mr. White’s paralegal was asked if the Yeagers were told
2 the trial was vacated because the case settled, she too responded, “I don’t recall.” Tr. 28:2-8; *see*
3 *also* Tr. 19:20-23 (admitting she had no recollection of “having discussed the subject of
4 settlement with either General Yeager or Mrs. Yeager at any point”). When asked why she told
5 opposing counsel the settlement was agreed to by the “parties,” Mr. White’s paralegal explained
6 she did not recall exactly, but that Mr. White had said something to the effect of, “go ahead and
7 respond with that,” even though she had not personally spoken to the Yeagers. Tr. 18:6-24.

8 2. Mrs. Yeager’s Testimony

9 Mrs. Yeager’s testimony, even given minimal weight given that she was neither a
10 party to this case nor authorized to speak on General Yeager’s behalf at the relevant time,
11 provides additional support for the conclusion that General Yeager never authorized the
12 settlement. Mrs. Yeager testified that Mr. White “never discussed a settlement with General
13 Yeager or me until [] September 25th,” weeks after he had signed the agreement and requested
14 that the trial date be vacated. Tr. 90:18-20. She also testified that as soon as Mr. White relayed
15 Parsons Behle’s offer, the Yeagers promptly said, “no, thank you.” Tr. 89:1-3.

16 Mrs. Yeager unequivocally disclaimed that she or General Yeager ever gave
17 Mr. White settlement authority. Tr. 103:23-104:3 (“I can’t remember exactly what I’ve said
18 before, but I just wanted to make it clear that neither General Yeager nor -- . . . I’ve never heard
19 General Yeager authorize Mr. White to settle . . . , and I have never authorized Mr. White to settle
20 the case.”). The court sustained an outside-the-scope objection when Mrs. Yeager offered this
21 testimony because she had already rested her case, and the court took under submission Parsons
22 Behle’s motion to strike. Tr. 104:4-7. The court notes Mrs. Yeager’s statement was consistent
23 with her earlier testimony, *see e.g.*, Tr. 90:18-20 (“Parker White never discussed a settlement with
24 General Yeager or me until that September 25th telephone call”). Given that Mrs. Yeager
25 remained under oath when she made this final statement, the court elects to consider it here and
26 therefore DENIES Parsons Behle’s motion to strike it.

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1 3. Parsons Behle’s Arguments

2 Parsons Behle argues that because the Yeagers were admittedly unprepared for
3 trial, and considering they knew the trial had been vacated yet did nothing afterwards to signal
4 their disapproval, they must have known the case had settled. *See* Parsons Behle Br. at 3-4.

5 The court is unpersuaded. Although Mrs. Yeager admitted that the week before
6 trial the Yeagers were out of town and unprepared, Mrs. Yeager implied a reason for the lack of
7 preparation when she indicated through a question to Mr. White that the Yeagers first learned
8 about the trial only ten days before it was scheduled to begin, Tr. 65:3-5, and later testified they
9 had requested a continuance. Tr. 96:6-99:12. Mr. White confirmed the Yeagers had in fact
10 requested a continuance. Tr. 39:24-25:11. On this record, the Yeagers’ awareness that the trial
11 had been vacated and their lack of trial preparation does not show they knew about and
12 authorized a settlement agreement.

13 4. Concerns Expressed by Guardian Ad Litem

14 Mr. Houpt’s detailed observations in his capacity as General Yeager’s guardian ad
15 litem bolster the conclusion that General Yeager did not authorize the settlement agreement. Mr.
16 Houpt informed the court that he “remain[s] unconvinced that the Yeagers gave their authority for
17 Mr. White to enter into the purported settlement agreement on General Yeager’s behalf” and that
18 “the record contradicts” any such authorization. Houpt Letter at 2. He notes with particular
19 concern the “absence of any writing or e-mail to show [the Yeagers] received any advance notice
20 of the proposed settlement or any confirmation they agreed to it” *Id.*

21 Mr. Houpt further explains that even if General Yeager had authorized a
22 settlement, this particular agreement is legally unenforceable because it contained a material term
23 of which the Yeagers were never apprised. *Id.* at 2-4; *see also* *Levy*, 10 Cal. 4th at 584
24 (explaining because settlement is “such a serious step” state law mandates the client’s knowledge
25 of and express consent to material terms). This material term was a “general release of all
26 claims,” which as relevant here, would have waived a malpractice action the Yeagers anticipated
27 bringing against Parsons Behle in state court. Houpt Letter at 2. Mr. Houpt suggests the record
28 shows that at best Mr. White never discussed this term with the Yeagers, but at worst, Mr. White

1 misled the Yeagers into believing their malpractice action would remain unaffected by the
2 settlement. *See id.* at 2-4. Mr. White minimized the significance of this general waiver on the
3 stand, testifying he felt the Yeagers “were giving up nothing” because the Yeager’s anticipated
4 malpractice claim, according to him, was time barred such that this additional term “didn’t
5 matter.” *See* Tr. 41:7-11, 49:8-25. But as Mr. Houpt points out, even if the malpractice claim
6 was time barred, which is unclear, *cf.* Cal. Civ. Proc. Code § 340.6(a)(2) (tolling applies while
7 attorney is still representing clients on same matter), Mr. White should have discussed with the
8 Yeagers the possibility that this “time-barred malpractice claim might still be an affirmative
9 defense or cross-claim and an offset to an attorney-fee claim.” Houpt Letter at 4 (citing cases).
10 As guardian ad litem, Mr. Houpt concludes, based on his conversations with Parsons Behle
11 attorneys before preparing this letter, he cannot state the purported settlement is in General
12 Yeager’s best interests. *Id.* at 5-6.

13 Given General Yeager’s inability to testify effectively on his own behalf at the
14 hearing, the court gives weight to Mr. Houpt’s observations, each of which support the court’s
15 conclusion that the settlement agreement is unenforceable.

16 5. Conclusion

17 In sum, the court cannot conclude General Yeager, or Mrs. Yeager on his behalf,
18 ever knew about and expressly consented to be bound by the settlement agreement. Mr. White’s
19 honest belief that a “caveat” of his representation with General Yeager was his implicit authority
20 to “eliminate litigation” is not enough to render the agreement enforceable under California law.
21 *See* Tr. 48:15-20, 49:24-25; *Levy*, 10 Cal. 4th at 583 (“The law is well settled that an attorney
22 must be specifically authorized to settle and compromise a claim, [and] that merely on the basis
23 of his employment he has no implied or ostensible authority to bind his client to a compromise
24 settlement of pending litigation.”) (alterations, citations and quotations omitted).

25 The court DENIES Parsons Behle’s motion to enforce the agreement.

26 II. REQUEST TO DISBURSE REMAINING FUNDS

27 Mrs. Yeager has filed an *ex parte* request for “an immediate partial distribution” of
28 the remaining interpleaded funds, or alternatively for leave to “conduct discovery and [file] a

1 motion for summary or partial summary judgment re distribution. Request at 1-2. Parsons Behle
2 opposes. ECF No. 367. Connie Bowlin, the Estate of Ed Bowlin, Aviation Autographs, and
3 Bowlin & Associates, Inc. (collectively, “the Bowlins”) also oppose. ECF No. 368.

4 Specifically, Mrs. Yeager claims entitlement to “\$226,404.93 (plus interest).”
5 Request at 6. Her request is both premature and procedurally improper. In December 2017,
6 when Mrs. Yeager filed her request, two motions were pending: Parsons Behle’s motion to
7 enforce, which this order resolves, and the Bowlins’ motion for fees and costs, which the court
8 resolved on March 30, 2018, *see* ECF No. 376. Because the court had yet to ascertain if Parsons
9 Behle or the Bowlins were entitled to a portion of the interpleaded funds, several factual disputes
10 remained. Furthermore, the deadline for dispositive motions lapsed years ago, rendering this
11 dispositive request procedurally improper as well. *See* Scheduling Order, ECF No. 71 (setting
12 April 25, 2014 dispositive motion deadline).

13 III. SCHEDULING NEW TRIAL DATE

14 The court will proceed to trial on the fee dispute that persists between Parsons
15 Behle and Mrs. Yeager. Although multiple parties initially claimed entitlement to a portion of the
16 interpleaded funds, *see* ECF No. 1, ¶¶ 14-18, all but Parsons Behle have since withdrawn their
17 claims. *See* ECF No. 368, 376 (Bowlins acknowledging no remaining “direct claim to the
18 interpleaded funds” and court’s order adjudicating Bowlins’ outstanding fee dispute); ECF
19 No. 362 (Lesser Law Group’s withdrawal of lien); ECF Nos. 192, 199 (voluntary dismissals of all
20 claims by Law Offices of Joanna R. Mendoza, P.C., and De la Pena & McDonald, LLP). A trial
21 date shall be determined at the pre-trial conference, which the court schedules below.

22 IV. CONCLUSION

23 The court DENIES Parsons Behle’s motion to enforce the settlement agreement,
24 ECF No. 128, and DENIES Mrs. Yeager’s ex parte request to disburse funds, ECF No. 364.
25 Parsons Behle’s complaint-in-intervention against the Yeagers embodies the sole outstanding
26 dispute in this interpleader action. The matter shall now proceed to trial. The court SETS a final
27 pre-trial conference for **10:00 a.m. on November 2, 2018**. A pre-trial statement from Mrs.
28 Yeager and a separate statement from Parsons Behle are both due seven days prior.

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IT IS SO ORDERED.

This resolves ECF Nos. 128, 364.

DATED: October 2, 2018.



UNITED STATES DISTRICT JUDGE