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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERIC REIN,	)	Case No. 06cv2281-H (BLM)
	)	
Plaintiff,	)	<b>NOTICE AND ORDER SETTING EARLY</b>
	)	<b>NEUTRAL EVALUATION CONFERENCE</b>
v.	)	
	)	
HILTI, INC.; and DOES 1-30,	)	
inclusive,	)	
	)	
Defendants.	)	
	)	
_____	)	

**IT IS HEREBY ORDERED** that an Early Neutral Evaluation (ENE) of your case will be held on **November 20, 2006** at **1:30 p.m.** in the chambers of the Honorable Barbara L. Major, United States Magistrate Judge, **located at 940 Front Street, Suite 5140, San Diego, California, 92101.**

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

1. **Purpose of Conference:** The purpose of the ENE is to permit an informal discussion between the attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be informal, off the record, privileged, and confidential. Counsel for any

1 non-English speaking party is responsible for arranging for the  
2 appearance of an interpreter at the conference.

3       2.    **Personal Appearance of Parties Required:**    All parties,  
4 adjusters for insured defendants, and other representatives of a party  
5 having full and complete authority to enter into a binding settlement,  
6 and the principal attorneys responsible for the litigation, must be  
7 present **in person** and legally and factually prepared to discuss  
8 settlement of the case.    Counsel appearing without their clients  
9 (whether or not counsel has been given settlement authority) will be  
10 cause for immediate imposition of sanctions and may also result in the  
11 immediate termination of the conference.

12       Unless there are extraordinary circumstances, persons required to  
13 attend the conference pursuant to this Order shall not be excused from  
14 personal attendance.    **Requests for excuse from attendance for**  
15 **extraordinary circumstances shall be made in writing at least seventy-**  
16 **two (72) hours prior to the conference.** Failure to appear at the ENE  
17 conference will be grounds for sanctions.

18       3.    **Full Settlement Authority Required:** In addition to counsel  
19 who will try the case, a party or party representative with full  
20 settlement authority<sup>1</sup> must be present for the conference. In the case

21 \_\_\_\_\_  
22       <sup>1</sup> "Full settlement authority" means that the individuals at the settlement  
23 conference must be authorized to explore settlement options fully and to agree at that  
24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph  
25 Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered  
26 discretion and authority" to change the settlement position of a party. Pitman v.  
27 Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring  
28 a person with unlimited settlement authority to attend the conference contemplates 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. See Nick v. Morgan's  
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 of a corporate entity, an authorized representative of the corporation  
2 who is not retained outside counsel must be present and must have  
3 discretionary authority to commit the company to pay an amount up to the  
4 amount of the Plaintiff's prayer (excluding punitive damages prayers).  
5 The purpose of this requirement is to have representatives present who  
6 can settle the case during the course of the conference without  
7 consulting a superior. Counsel for a government entity may be excused  
8 from this requirement so long as the government attorney who attends the  
9 ENE conference (1) has primary responsibility for handling the case, and  
10 (2) may negotiate settlement offers which the attorney is willing to  
11 recommend to the government official having ultimate settlement  
12 authority.

13 4. **Confidential ENE Statements Required:** No later than five (5)  
14 court days prior to the ENE, the parties shall submit confidential  
15 statements no more than five (5) pages in length directly to the  
16 chambers of the Honorable Barbara L. Major. **These confidential**  
17 **statements shall not be filed or served on opposing counsel.** Each  
18 party's confidential statement must include the following:

19 a. A brief description of the case, the claims and/or  
20 counterclaims asserted, and the applicable defenses or position  
21 regarding the asserted claims;

22 b. A specific and current demand or offer for settlement  
23 addressing all relief or remedies sought. If a specific demand or offer  
24 for settlement cannot be made at the time the brief is submitted, then  
25 the reasons therefore must be stated along with a statement as to when  
26 the party will be in a position to state a demand or make an offer; and

27 c. A brief description of any previous settlement  
28 negotiations, mediation sessions, or mediation efforts.

1 General statements that a party will "negotiate in good faith" is  
2 not a specific demand or offer contemplated by this Order. It is  
3 assumed that all parties will negotiate in good faith.

4 **5. New Parties Must be Notified by Plaintiff's Counsel:**

5 Plaintiff's counsel shall give notice of the ENE to parties responding  
6 to the complaint after the date of this notice.

7 **6. Requests to Continue an ENE Conference:** Local Rule 16.1(c)  
8 requires that an ENE take place within forty-five (45) days of the  
9 filing of the first answer. Requests to continue ENEs are rarely  
10 granted. However, the Court will consider formal, written, *ex parte*  
11 requests to continue an ENE conference when extraordinary circumstances  
12 exist that make a continuance appropriate. In and of itself, having to  
13 travel a long distance to appear in person is not "extraordinary."

14 **Absent extraordinary circumstances, requests for continuances will not**  
15 **be considered unless submitted in writing no less than seven (7) days**  
16 **prior to the scheduled conference.**

17 Questions regarding this case or the mandatory guidelines set forth  
18 herein may be directed to the Magistrate Judge's law clerk at (619) 557-  
19 7372.

20 Dated: October 13, 2006



21 BARBARA L. MAJOR  
22 United States Magistrate Judge

23 COPY TO:

24 HONORABLE MARILYN L. HUFF  
25 U.S. DISTRICT JUDGE

26 ALL COUNSEL  
27  
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**NOTICE OF RIGHT TO CONSENT TO TRIAL**  
**BEFORE A UNITED STATES MAGISTRATE JUDGE**

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3 In accordance with the provisions of 28 U.S.C. § 636(c), you are  
4 hereby notified that a U.S. Magistrate Judge of this district may, upon  
5 the consent of all parties, on Form 1A available in the Clerk's Office,  
6 conduct any or all proceedings, including a jury or non-jury trial, and  
7 order the entry of a final judgment. Counsel for the plaintiff shall  
8 be responsible for obtaining the consent of all parties, should they  
9 desire to consent.

10 You should be aware that your decision to consent or not to consent  
11 is entirely voluntary and should be communicated solely to the Clerk of  
12 Court. Only if all parties consent will the Judge or Magistrate Judge  
13 to whom the case has been assigned be informed of your decision.

14 Judgements of U.S. Magistrate Judges are appealable to the U.S.  
15 Court of Appeals in accordance with this statute and the Federal Rules  
16 of Appellate Procedure.