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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LARRY WILLIAMS,

Plaintiff,

v.

SCRIBD, INC., a corporation, et al.,

Defendants.

Civil No. 09-CV-1836-LAB (BGS)

**NOTICE AND ORDER FOR EARLY  
NEUTRAL EVALUATION  
CONFERENCE**

IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on **August 4, 2010**, at **9:00 a.m.** before United States Magistrate Judge Bernard G. Skomal, United States Courthouse, 940 Front Street, Courtroom 12, San Diego, California. In the event that the case does not settle at the ENE, the parties shall be prepared to discuss, as part of case management discussions at the conclusion of the ENE, the minimal discovery needed to inform a motion for summary judgment as outlined in Judge Burns's Order Granting in Part and Denying in Part Defendant's Motion to Dismiss (Doc. No. 21) and an expedited schedule for that discovery.

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

1. **Purpose of Conference:** The purpose of the Early Neutral Evaluation Conference ("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.

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

3 2. **Personal Appearance of Parties Is Required:** All parties, adjusters for  
4 insured defendants, and other representatives of a party having full and complete authority to enter  
5 into a binding settlement, and the principal attorneys responsible for the litigation, must be present  
6 **in person** and legally and factually prepared to discuss settlement of the case.

7 3. **Full Settlement Authority Required:** In addition to counsel who will try the  
8 case, a party or party representative with full settlement authority<sup>1</sup> must be present for the  
9 conference. In the case of a corporate entity, an authorized representative of the corporation who  
10 is not retained outside counsel must be present and must have discretionary authority to commit  
11 the company to pay an amount up to the amount of the plaintiff's prayer (excluding punitive  
12 damage prayers). The purpose of this requirement is to have representatives present who can  
13 settle the case during the course of the conference without consulting a superior. Counsel for a  
14 government entity may be excused from this requirement so long as the government attorney who  
15 attends the ENE conference (1) has primary responsibility for handling the case; and (2) may  
16 negotiate settlement offers which the attorney is willing to recommend to the government official  
17 having ultimate settlement authority.

18 Unless there are **extraordinary circumstances**, persons required to attend the  
19 conference pursuant to this Order shall not be excused from personal attendance. Requests for  
20 excuse from attendance for extraordinary circumstances shall be made in writing at least 48 hours  
21 prior to the conference. Failure to appear at the ENE conference may be grounds for sanctions.

22 4. **Confidential ENE Statements Required:** No later than five court days prior to  
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25 <sup>1</sup> "Full authority to settle" means that the individuals at the settlement conference must be authorized to  
26 fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties.  
27 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have  
28 "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl.,  
Inc., 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited  
settlement authority to attend the conference includes 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.  
Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 the ENE, the parties shall submit confidential statements of five pages or less directly to the  
2 chambers of Magistrate Judge Skomal outlining the nature of the case, the claims, and the  
3 defenses. These statements shall not be filed or served on opposing counsel. Please note ENE  
4 statements shall be submitted by courier directly to chambers or emailed to  
5 **efile\_Skomal@casd.uscourts.gov.**

6 5. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel  
7 shall give notice of the ENE to parties responding to the complaint after the date of this notice.

8 6. **Case Management Under the Amended Federal Rules:** In the event the case  
9 does not settle at the ENE, the parties can expect to leave the ENE with Rule 26 compliance dates  
10 or deadlines. Parties shall therefore be prepared to discuss the following matters at the conclusion  
11 of the ENE conference:

- 12 a. Any anticipated objections under Federal Rule of Civil Procedure  
13 26(a)(1)(E) to the initial disclosure provisions of Federal Rule of Civil  
14 Procedure 26(a)(1)(A-D);
- 15 b. The scheduling of the Federal Rule of Civil Procedure 26(f) conference:
- 16 c. The date of initial disclosure and the date for lodging the discovery plan  
17 following the Rule 26(f) conference; and,
- 18 d. The scheduling of a Case Management Conference pursuant to Federal  
19 Rule of Civil Procedure 16(b) following the Rule 26(f) conference.

20 The Court will issue an order following the ENE addressing these issues and setting dates as  
21 appropriate.

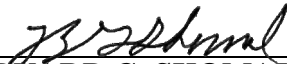
22 7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires that  
23 an ENE take place within 45 days of the filing of the first answer. Requests to continue ENEs are  
24 rarely granted. However, the Court will consider formal, written *ex parte* requests to continue an  
25 ENE conference when extraordinary circumstances exist that make a continuance appropriate. In  
26 and of itself, having to travel a long distance to appear in person is not "extraordinary." **Absent**  
27 **extraordinary circumstances, requests for continuances will not be considered *unless***  
28 **submitted in *writing* no less than seven (7) days prior to the scheduled conference.**

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Questions regarding this case or the mandatory guidelines set forth herein may be directed to Judge Skomal's research attorney at (619) 557-2993. Please consult Judge Skomal's rules, available on the Court's website, before contacting chambers with your questions.

A Notice of Right to Consent to Trial Before a United States Magistrate Judge is attached for your information.

DATED: July 9, 2010

  
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**BERNARD G. SKOMAL**  
United States Magistrate Judge

