

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THE ACTIVE NETWORK, INC.,	)	Civil No.10-CV-1158-BEN(WVG)
	)	
Plaintiffs,	)	
	)	NOTICE AND ORDER FOR EARLY
v.	)	NEUTRAL EVALUATION CONFERENCE
	)	
ELECTRONIC ARTS, INC.,	)	
	)	
Defendants.	)	

---

The Early Neutral Evaluation set for July 30, 2010, at 2:00 P.M. is VACATED and reset for August 11, 2010 at 2:00 P.M. before United States Magistrate Judge William V. Gallo, United States Courthouse, Courtroom F, First Floor, 940 Front Street, San Diego, California.

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

1 conference.

2 Pursuant to Rule 16.1(c) of the Local Rules of the United  
3 States District Court for the Southern District of California, both  
4 counsel and the parties who have full and unlimited authority<sup>1</sup> to  
5 negotiate and enter into a binding settlement shall appear in person  
6 at the conference and shall be prepared to discuss the claims,  
7 defenses, damages and settlement.

8 Unless there are **extraordinary circumstances**, persons  
9 required to attend the conference pursuant to this Order shall not  
10 be excused from personal attendance. Requests for excuse from  
11 attendance for extraordinary circumstances shall be made in *writing*  
12 at least 48 hours prior to the conference. Where the suit involves  
13 the United States or one of its agencies, only counsel for the  
14 United States with full settlement authority need appear.

15 **The Court requires that the parties file Confidential ENE**  
16 **Statements.** No later than **five court days prior to the ENE**, the  
17 parties shall submit directly to Judge Gallo's chambers confidential  
18 statements of five pages or less which outline the nature of the  
19 case, the claims, the defenses, and the parties' positions regarding  
20 settlement of the case.

21 In the event the case does not settle at the Early Neutral  
22

---

23 <sup>1</sup> "Full authority to settle" means that the individuals at the settlement  
24 conference must be authorized to fully explore settlement options and to  
25 agree at that time to any settlement terms acceptable to the parties.  
26 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir.  
27 1989). The person needs to have "unfettered discretion and authority" to  
28 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 Evaluation Conference, the parties shall also be prepared to discuss  
2 the following matters at the conclusion of the conference.

3 1. Any anticipated objections under Federal Rule of Civil  
4 Procedure 26(a)(1)(E) to the initial disclosure provisions of  
5 Federal Rule of Civil Procedure 26(a)(1)(A-D);

6 2. The scheduling of the Federal Rule of Civil Procedure  
7 26(f) conference;

8 3. The date of initial disclosure and the date for lodging  
9 the discovery plan following the Rule 26(f) conference; and,

10 4. The scheduling of a Case Management Conference pursuant  
11 to Federal Rule of Civil Procedure 16(b).

12 The Court will issue an appropriate order addressing these  
13 issues and setting dates as appropriate.

14 **Plaintiff's counsel shall give notice of the ENE to all**  
15 **parties responding to the Complaint after the date of this Notice.**

16 Local Rule 16.1(c) requires that an ENE take place within 45  
17 days of the filing of the first answer. Requests to continue ENE  
18 conferences are rarely granted. However, the Court will consider  
19 formal, written *ex parte* requests to continue an ENE conference when  
20 extraordinary circumstances exist that make a continuance appropri-  
21 ate. In and of itself, having to travel a long distance to appear  
22 at the ENE conference is not an extraordinary circumstance. **Absent**  
23 **extraordinary circumstances, requests for continuances of the ENE**  
24 **conference may not be considered unless submitted in writing no less**  
25 **than seven calendar days prior to the scheduled conference.**

26 ///

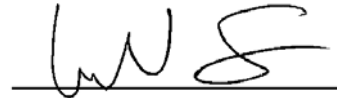
27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Questions regarding the ENE in this case may be directed to  
the Magistrate Judge's Research Attorney at (619) 557-6384.

DATED: July 21, 2010



Hon. William V. Gallo  
U.S. Magistrate Judge