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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EPITECH, INC.,)	Civil No. 11-1693-JM(WVG)
)	
Plaintiffs,)	AMENDED
)	NOTICE AND ORDER FOR SECOND
v.)	EARLY NEUTRAL EVALUATION
)	CONFERENCE
)	
COOPER WIRING DEVICES, INC.,)	
et al.,)	
)	
Defendants.)	
_____)	

IT IS HEREBY ORDERED that a second Early Neutral Evaluation ("ENE") of your case will be held on **June 1, 2012**, at **9:00 AM** before United States Magistrate Judge William V. Gallo, United States Courthouse, Courtroom F, First Floor, 940 Front Street, San Diego, California. The second Early Neutral Evaluation Conference set for May 14, 2012 at 2:00 PM is vacated.

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

1. Purpose of the Conference

The purpose of the ENE is to permit an informal discussion between the attorneys, parties and the settlement judge of every

1 aspect of the lawsuit in an effort to achieve an early resolution of
2 the case. All conference discussions will be informal, off the
3 record, privileged and confidential. Counsel for non-English
4 speaking parties is responsible for arranging for the appearance of
5 an interpreter at the conference.

6 **2. Personal Appearance of Parties Is Required:**

7 All parties, adjusters for insured defendants, and other
8 representatives of a party having full and complete authority¹ to
9 enter into a binding settlement, and the principal attorneys
10 responsible for the litigation, must be present **in person** and
11 legally and factually prepared to discuss settlement of the case.
12 See S.D. Cal. Civ. L. R. 16.1(c).

13 **3. Full Settlement Authority Required**

14 In addition to counsel who will try the case, a party or
15 party representative with full settlement authority must be present
16 for the conference. In the case of a corporate entity, an autho-
17 rized representative of the corporation who is not retained outside
18 counsel must be present and must have discretionary authority to
19 commit the company to pay an amount up to the amount of the
20 plaintiff's prayer (excluding punitive damage prayers). The purpose
21 of this requirement is to have representatives present who can

22
23 ¹ "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, 485-86 (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. The person with full settlement authority must be able to
negotiate a settlement without being restricted by any predetermined level
of authority. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 settle the case during the course of the conference without
2 consulting a superior.

3 Unless there are **extraordinary circumstances**, persons
4 required to attend the conference pursuant to this Order shall not
5 be excused from personal attendance. Requests for excuse from
6 attendance for extraordinary circumstances shall be made in writing
7 at least one week before the conference. Failure to appear at the
8 ENE conference will be grounds for sanctions.

9 **4. Settlement Proposal and Response Required**

10 No later than fifteen (15) days before the scheduled ENE
11 Conference, Plaintiff(s) shall submit to Defendant(s) a written
12 settlement proposal. No later than ten (10) days before the
13 scheduled ENE Conference, Defendant(s) shall submit a response to
14 Plaintiff(s)' settlement proposal. All parties shall be prepared to
15 address in their ENE Statements, and discuss at the ENE Conference,
16 the settlement proposal and the response.

17 **5. ENE Statements Required**

18 **The Court requires that the parties file ENE Statements,**
19 **which may be confidentially submitted within the party's discretion.**
20 No later than **five (5) court days prior to the ENE**, the parties
21 shall submit directly to the undersigned's chambers statements of
22 **five pages or less** which outline the nature of the case, the claims,
23 the defenses, and the parties' positions regarding settlement of,
24 and attempts to settle the case. **All briefs must comply with Judge**
25 **Gallo's Chambers Rules.**

26 **6. Case Management Under The Federal Rules of Civil Procedure**

27 In the event the case does not settle at the ENE Conference,
28 the parties shall also be prepared to discuss the following matters

1 at the conclusion of the conference.

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

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

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

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

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

13 **7. Time Allotted**

14 The Court generally allots two (2) hours for ENEs. Counsel
15 should be prepared to be succinct and to the point. Requests for
16 additional time must be made in writing in the party's ENE state-
17 ment, accompanied by a short explanation.

18 **8. New Parties Must Be Notified by Plaintiff's Counsel**

19 Plaintiff's counsel shall give notice of the ENE Conference
20 to all parties responding to the Complaint after the date of this
21 Notice.

22 **9. Requests to Continue an ENE Conference**

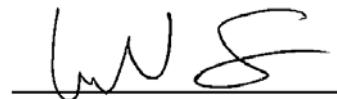
23 Civil Local Rule 16.1(c) requires that an ENE take place
24 within 45 days of the filing of the first answer. Requests to
25 continue ENE conferences are rarely granted. Counsel seeking to
26 reschedule an ENE must first confer with opposing counsel. The
27 Court will consider formal, written *ex parte* requests to continue an
28 ENE conference when extraordinary circumstances exist that make a

1 continuance appropriate. In and of itself, having to travel a long
2 distance to appear at the ENE conference is not an extraordinary
3 circumstance. **Absent extraordinary circumstances, requests for**
4 **continuances of the ENE conference may not be considered unless**
5 **submitted in writing no less than seven (7) calendar days prior to**
6 **the scheduled conference.** Please refer to the undersigned's
7 Chambers Rules for additional guidance regarding the areas which
8 must be addressed in the request.

9 Questions regarding this case may be directed to the
10 Magistrate Judge's Research Attorney at (619) 557-6384. Please
11 consult the undersigned's Chambers Rules, available on the Court's
12 website, before contacting chambers with any question(s).

13 IT IS SO ORDERED.

14 DATED: April 10, 2012

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

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