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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

H.I.S.C, INC. *et al.*,

Plaintiffs,

v.

FRANMAR INTERNATIONAL
IMPORTERS, LTD. *et al.*,

Defendants.

Case No.: 16-CV-480-BEN(WVG)

**ORDER GRANTING JOINT
MOTION TO COTINUE; and
AMENDED NOTICE AND ORDER
FOR EARLY NEUTRAL
EVALUATION CONFERENCE AND
CASE MANAGEMENT
CONFERENCE**

[Doc. No. 46.]

The Early Neutral Evaluation (“ENE”) currently set for August 30, 2017 is VACATED.¹ Instead, IT IS HEREBY ORDERED that an ENE of your case will be held on **September 6, 2017**, at **2:00 p.m.**, before United States Magistrate Judge William V. Gallo, United States Courthouse, Courtroom 2A, Second Floor, 221 West Broadway, San Diego, California. In the event the case does not settle at the ENE Conference, the parties shall also be prepared to participate in a Case Management Conference, pursuant to Federal Rule of Civil Procedure 16(b)

¹ All other dates in the Court’s June 30, 2017 Order remain as previously set and are restated herein.

1 Additionally, **on August 21, 2017, beginning at 8:15 a.m.**, the Court will hold an
2 attorneys-only telephonic status conference with each party separately.² The purpose of
3 this confidential, off-the-record teleconference is for the Court’s benefit in assessing each
4 party’s concerns, challenges, and whether the Court can assist in alleviating these. **On or**
5 **before August 16, 2017**, each attorney intending to participate shall lodge, via electronic
6 mail addressed to efile_Gallo@casd.uscourts.gov, (1) the name of each attorney who will
7 participate and (2) a telephone number at which each attorney may be reached directly
8 without fail at the time of the conference.

9 Pursuant to Rule 16.1(c) of the Local Rules of the United States District Court for
10 the Southern District of California, both counsel **and the parties** who have full and
11 unlimited authority³ to negotiate and enter into a binding settlement shall appear **in person**
12 at the conference and shall be prepared to discuss the claims, defenses and damages. Where
13 the suit involves the United States or one of its agencies, only counsel for the United States
14 with full settlement authority need appear. All conference discussions will be informal,
15 off the record, privileged and confidential.

16 Patent L.R. 2.1.a requires that an ENE take place within 60 days of the filing of the
17 first answer. Requests to continue ENEs are rarely granted. However, the Court will
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20 ² The Court will contact the first party and proceed to contact the remaining parties one at
21 a time. Each call may be short or lengthy. Counsel are required to be available for the
22 Court’s call beginning at the appointed time and remain available until they are called.

23 ³ “Full authority to settle” means that the individuals at the settlement conference must be
24 authorized to fully explore settlement options and to agree at that time to any settlement
25 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
26 648 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to
27 change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481,
28 485-86 (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. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

1 consider formal, written *ex parte* requests to continue an ENE conference when
2 extraordinary circumstances exist that make a continuance appropriate. In and of itself,
3 having to travel a long distance to appear in person is not “extraordinary.” **Absent**
4 **extraordinary circumstances, requests for continuances will not be considered unless**
5 **submitted in writing no less than seven days prior to the scheduled conference.**

6 **Settlement Proposal and Response Required**

7 The exchange of settlement proposals was to have already taken place.

8 **ENE Statements Required**

9 **In accordance with the Court’s Chambers Rules, each party shall exchange its**
10 **settlement Statement with all opposing parties. Additionally, in accordance with the**
11 **Court’s Chambers Rules, each party shall submit a confidential or non-confidential**
12 **Statement to the Court. Both the exchange of Statements between the parties and**
13 **submissions of Statements to the Court shall occur on or before August 11, 2017.** The
14 Statement each party submits directly to the chambers shall be five pages or less and shall
15 outline the nature of the case, the claims, the defenses, and the parties’ positions regarding
16 settlement of, and attempts to settle the case. **All Statements must comply with the**
17 **Court’s Chambers Rules.**

18 The parties shall meet and confer in good faith prior to the ENE Conference, and
19 verify that they have done so in their respective ENE Conference statements, outlining the
20 substance of their discussions and negotiations.

21 The parties shall also lodge with Magistrate Judge Gallo’s chambers a chronology,
22 setting forth a timeline of the factual events that are the basis for the claims and defenses
23 asserted in this litigation. The chronology should be in a chart or column format with the
24 column headings “DATE” and “EVENT” and may be annotated with documents
25 significant to the facts or issues.

26 Pursuant to Patent L.R. 2.1.a, the Rule 26(f) conference should have been completed
27 on or before July 31, 2017.

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1 Any objections made to initial disclosures pursuant to Federal Rule of Civil
2 Procedure, Rule 26(a)(1)(A-D) are overruled, and the parties are ordered to proceed with
3 the initial disclosure process. Any further objections to initial disclosure will be resolved
4 as required by Rule 26. Initial disclosures pursuant to Rule 26(a)(1)(A-D) should have
5 occurred on or before August 4, 2017;

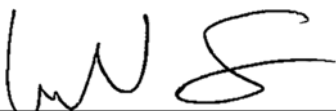
6 The parties' Federal Rule of Civil Procedure Rule 26(f) discovery plan including the
7 topics set forth in Patent L.R. 2.1.b.1-4 shall be lodged with Magistrate Judge Gallo **no**
8 **later than August 11, 2017;**

9 In the event the case does not settle at the ENE Conference, the parties shall also be
10 prepared to participate in a Case Management Conference, pursuant to Federal Rule of
11 Civil Procedure 16(b).⁴

12 Plaintiff's counsel shall notify all Defendants that have not yet made an appearance
13 in the case of the date and time of the ENE and Case Management Conference. Questions
14 regarding this case may be directed to the Magistrate Judge's research attorney at (619)
15 557-6384.

16 **IT IS SO ORDERED.**

17 DATED: August 7, 2017

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19 _____
20 Hon. William V. Gallo
21 United States Magistrate Judge
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27 ⁴ Counsel shall review the undersigned's Chambers Rules for guidance on completing the
28 proposed discovery plan. Counsel are further advised to consult the Chambers Rules of
the District Judge assigned to this case for case timeline preferences, if any.