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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 NUTRITION DISTRIBUTION LLC,

11 Plaintiff,

12 v.

13 PEP RESEARCH, LLC, BRIAN REYNDERS,
14 FRED REYNDERS, AND DOES 1-10,

15 Defendants.

Case No.: 16CV2328-WQH(BLM)

**ORDER DENYING DEFENDANTS' EX
PARTE MOTION TO PERMIT MSC
ATTENDANCE VIA TELEPHONE,
VACATING MSC, AND SETTING
TELEPHONIC ATTORNEYS-ONLY CASE
MANAGEMENT CONFERENCE**

[ECF No. 64]

16 On October 16, 2018, Defendants filed an *Ex Parte* Motion to Permit MSC Attendance Via
17 Telephone. ECF No. 64. Defendants' three representatives request permission to attend the
18 October 22, 2018 Mandatory Settlement Conference ("MSC") via telephone. Id. at 2. In support,
19 Defendants argue there is good cause for their request because Defendant (1) Brian Reynders
20 is a mis-named party who has no involvement with Defendant PEP and who should be dismissed
21 when the pending motion for summary judgment is decided, (2) Fred Reynders is a retired
22 septuagenarian who cannot afford the cost, stress, and time required to attend the MSC in
23 person, and (3) Brent Reynders, who has a one-man business, also cannot afford the cost and
24 time required to attend the MSC in person. Id.; see also ECF No. 64-1, Declaration of Stephen
25 M. Lobbin in Support of *Ex Parte* Motion to Permit MSC Attendance Via Telephone ("Lobbin
26 Decl.") at ¶¶ 4-6. In further support, Defendants argue that they do not have money to spend
27 traveling to the MSC from Texas where they reside, because they were recently sanctioned by
28 the Court. Id.; see also Lobbin Decl. at ¶ 7. Finally, Defendants argue that same considerations

1 that took place when the Court permitted Plaintiff to telephonically depose Defendants to limit
2 expenses, should apply here as well. Id. at 3.

3 On October 16, 2018, Plaintiff filed an Opposition to Defendants' *Ex Parte* Motion to Permit
4 MSC Attendance Via Telephone. ECF No. 65. Plaintiff contends Defendants' motion should be
5 denied because Defendants have been aware of the MSC since April 16, 2018 and their late
6 request to be excused demonstrates a lack of diligence. Id. at 2. Plaintiff further contends that
7 the basis of Defendants' request does not meet the standard required for being excused from
8 personal appearance. Id. Plaintiff notes that its representative has already arranged travel from
9 Idaho to California for the MSC and would "be subject to costs" if the Court were to hold the
10 conference telephonically. Id. at 3.

11 Defendants' motion is **DENIED**. The Court's chambers rules state that "[t]he Court will
12 not grant requests to excuse a required party from personally appearing [at an MSC] absent
13 extraordinary circumstances. Distance of travel alone does not constitute an 'extraordinary
14 circumstance.'" In addition, the November 3, 2017 scheduling order that was entered in this
15 case states that "[u]nless there is good cause, persons required to attend the conference
16 pursuant to this Order shall not be excused from personal attendance." ECF No. 22 at 4. The
17 Court believes that the presence of all parties and counsel is critical to the possibility of a
18 successful settlement. However, after reviewing the parties' settlement statements, the Court
19 finds that the parties are not ready to engage in meaningful settlement discussions at this time
20 and **VACATES** the MSC set for October 22, 2018 at 1:30 p.m. The Court will hold a telephonic,
21 attorneys-only Case Management Conference on **November 8, 2018** at **3:00 p.m.** All other
22 deadlines and requirements remain as previously set. See ECF Nos. 22 and 34.

23 **IT IS SO ORDERED.**

24 Dated: 10/18/2018

25 
26 Hon. Barbara L. Major
27 United States Magistrate Judge
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