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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLES HOLMES,

Plaintiff,

v.

DR. ESTOCK, et al.,

Defendants.

Case No.: 16cv2458-MMA(BLM)

ORDER SETTING MANDATORY SETTLEMENT CONFERENCE

On February 16, 2021, Judge Michael M. Anello issued an Order Denying Defendants’ Motion for Summary Judgment. ECF No. 145. In the order, Judge Anello directed the parties to “jointly contact the chambers of the assigned magistrate judge, within ten (10) business days of the date this Order is filed, for the purpose of scheduling a settlement conference at the convenience of the magistrate judge.” *Id.* at 53. On February 24, 2021, after consulting with Plaintiff’s counsel, defense counsel, Ms. Lisa Freund, contacted Magistrate Judge Barbara L. Major’s Chambers regarding counsels’ availability for a settlement conference. In light of Judge Anello’s order and Ms. Freund’s representations, the Court issues the following orders:

1. The Court will hold a videoconference Mandatory Settlement Conference (“MSC”) on **March 3, 2021** at **9:30 a.m.**
 2. The Court will use its official Zoom video conferencing account to hold the MSC.
- IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on computers through a download on the Zoom website (<https://zoom.us/meetings>) or on mobile devices through the

1 installation of a free app.¹ Joining a Zoom conference does not require creating a Zoom account,
2 but it does require downloading the .exe file (if using a computer) or the app (if using a mobile
3 device). Participants are encouraged to create an account, install Zoom and familiarize
4 themselves with Zoom in advance of the MSC.² There is a cost-free option for creating a Zoom
5 account.

6 3. Prior to the start of the MSC, the Court will e-mail each MSC participant an
7 invitation to join a Zoom video conference. Again, if possible, participants are encouraged to
8 use laptops or desktop computers for the video conference, as mobile devices often offer inferior
9 performance. Participants shall join the video conference by following the ZoomGov Meeting
10 hyperlink in the invitation. **Participants who do not have Zoom already installed on their**
11 **device will be prompted to download and install Zoom before proceeding when they**
12 **click on the ZoomGov Meeting hyperlink.** Zoom may then prompt participants to enter the
13 password included in the invitation. All participants will be placed in a waiting room until the
14 MSC begins.

15 4. Plaintiff's counsel is responsible for coordinating the appearance of Plaintiff at the
16 MSC. Plaintiff may participate in the MSC telephonically by calling the number provided in the
17 Zoom invitation. Plaintiff's counsel is responsible for providing Plaintiff and/or his facility with
18 the necessary Zoom information.

19 5. Each participant should plan to join the Zoom video conference at least five
20 minutes before the start of the MSC to ensure that the MSC begins promptly at **9:30 A.M.** **The**
21 **Zoom e-mail invitation may indicate an earlier start time, but the MSC will begin at**
22 _____

23 ¹ Participants should use a device with a camera to fully participate in the video conference. If
24 possible, participants are encouraged to use laptops or desktop computers for the video
25 conference, as mobile devices may offer inferior performance.

26 ² For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>

1 **the Court-scheduled time.**

2 6. Zoom’s functionalities will allow the Court to conduct the MSC as it ordinarily would
3 conduct an in-person MSC. That is, the Court will begin the MSC with all participants joined
4 together in a main session. After an initial discussion in the main session, the Court will divide
5 participants into separate, confidential sessions, which Zoom calls Breakout Rooms.³ In a
6 Breakout Room, the Court will be able to communicate with participants from a single party in
7 confidence. Breakout Rooms will also allow parties and counsel to communicate confidentially
8 without the Court.

9 7. No later than **February 26, 2021**, counsel for each party shall send an e-mail to
10 the Court at **efile_Major@casd.uscourts.gov** containing the following:

11 a. The **name and title of each participant**, including all parties and party
12 representatives with full settlement authority, claims adjusters for insured defendants, and the
13 primary attorney(s) responsible for the litigation;

14 b. An **e-mail address for each participant** to receive the Zoom video conference
15 invitation; and

16 c. A **telephone number where each participant may be reached** so that if
17 technical difficulties arise, the Court will be in a position to proceed telephonically instead of by
18 video conference. (If counsel prefers to have all participants of their party on a single conference
19 call, counsel may provide a conference number and appropriate call-in information, including an
20 access code, where all counsel and parties or party representatives for that side may be reached
21 as an alternative to providing individual telephone numbers for each participant.)

22 8. **Confidential Settlement Statements Required**: No later than **March 1,**
23 **2021**, the parties shall submit directly to Magistrate Judge Major's chambers

25 ³ For more information on what to expect when participating in a Zoom Breakout Room, visit:
26 <https://support.zoom.us/hc/en-us/articles/115005769646>

1 (efile_major@casd.uscourts.gov) confidential settlement statements no more than ten (10)
2 pages in length. **These confidential statements shall not be filed or served on opposing**
3 **counsel.** Each party's confidential statement must set forth the party's statement of the case,
4 identify controlling legal issues, concisely set out issues of liability and damages, and shall set
5 forth the party's settlement position, including any previous settlement negotiations, mediation
6 sessions, or mediation efforts, the last offer or demand made by that party, and a separate
7 statement of the offer or demand the party is prepared to make at the settlement conference.
8 If a specific demand or offer for settlement cannot be made at the time the brief is submitted,
9 then the reasons therefore must be stated along with a statement as to when the party will be
10 in a position to state a demand or make an offer.

11 General statements that a party will "negotiate in good faith" is not a specific demand
12 or offer contemplated by this Order. It is assumed that all parties will negotiate in good faith.

13 9. **Full Settlement Authority Required:** In addition to counsel who will try the
14 case, a party or party representative with full settlement authority⁴ must be present for the
15 conference. In the case of a corporate entity, an authorized representative of the corporation
16 who is not retained outside counsel must be present and must have discretionary authority
17 to commit the company to pay an amount up to the amount of Plaintiff's prayer (excluding
18 punitive damages prayers). The purpose of this requirement is to have representatives
19 present who can settle the case during the course of the conference without consulting
20

21
22 ⁴ "Full settlement authority" means that the individuals at the settlement conference must be
23 authorized to explore settlement options fully and to agree at that time to any settlement terms
24 acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th
25 Cir. 1989). The person needs to have "unfettered discretion and authority" to change the
26 settlement position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz.
27 2003). The purpose of requiring a person with unlimited settlement authority to attend the
28 conference contemplates 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. See Nick
v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 a superior. Counsel for a government entity may be excused from this requirement so long as
2 the government attorney who attends the Mandatory Settlement Conference (1) has primary
3 responsibility for handling the case, and (2) may negotiate settlement offers which the attorney
4 is willing to recommend to the government official having ultimate settlement authority.

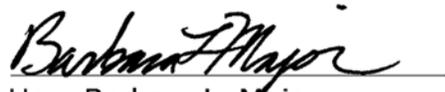
5 10. Any request to continue the Mandatory Settlement Conference or request for relief
6 from any of the provisions or requirements of this Order must be sought by a **written**
7 ***ex parte* application**. The application must (1) be supported by a declaration of counsel
8 setting forth the reasons and justifications for the relief requested, (2) confirm compliance with
9 Civil Local Rule 83.3(h), and (3) report the position of opposing counsel or any
10 unrepresented parties subject to the Order. **Absent good cause, requests for continuances**
11 **will not be considered unless submitted in writing no fewer than (7) days prior to**
12 **the scheduled conference.**

13 **If the case is settled in its entirety before the scheduled date of the conference,**
14 **counsel and any unrepresented parties must still appear in person, unless a written**
15 **joint notice confirming the complete settlement of the case is filed no fewer than**
16 **twenty-four (24) hours before the scheduled conference.**

17 11. All participants shall display the same level of professionalism during the MSC and
18 be prepared to devote their full attention to the MSC as if they were attending in person.
19 Because Zoom may quickly deplete the battery of a participant's device, each participant should
20 ensure that their device is plugged in or that a charging cable is readily available during the
21 video conference.

22 **IT IS SO ORDERED.**

23 Dated: 2/24/2021

24 
25 Hon. Barbara L. Major
26 United States Magistrate Judge