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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ERIC GOTTESMAN,  
12  
13 Plaintiff,  
14 v.  
15 CARLOS SANTANA et al.,  
16 Defendants.  
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Case No.: 16-cv-2902 JLS (JLB)

**ORDER: (1) GRANTING IN PART  
AND DENYING IN PART JOINT  
MOTION; AND (2) ISSUING  
AMENDED SCHEDULING ORDER  
REGULATING DISCOVERY  
AND OTHER PRE-TRIAL  
PROCEEDINGS**

[ECF Nos. 162 & 189]

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19 Before the Court is the parties' Joint Motion for Modification of the Scheduling  
20 Order and Continuance of the Pre-Trial and Trial Dates. (ECF No. 189.) Good cause  
21 appearing in support of a limited modification of the schedule, **IT IS HEREBY**  
22 **ORDERED** that the motion is **GRANTED IN PART AND DENIED IN PART**<sup>1</sup> as  
23 follows:

24 1. Any motion to join other parties, to amend the pleadings, or to file additional  
25 pleadings was due by **July 31, 2017**.  
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28 <sup>1</sup> The Joint Motion is denied to the extent that the Joint Motion requests extensions of deadlines that are not hereby ordered by the Court.

1           2.     All discovery, including expert discovery, shall be completed by all parties by  
2 **February 2, 2018**. “Completed” means that all discovery under Rules 30–36 of the  
3 Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated  
4 a sufficient period of time in advance of the cut-off date, **so that it may be completed** by  
5 the cut-off date, taking into account the times for service, notice and response as set forth  
6 in the Federal Rules of Civil Procedure. **Counsel shall promptly and in good faith meet**  
7 **and confer with regard to all discovery disputes in compliance with Local Rule**  
8 **26.1(a)**. The Court expects counsel to make every effort to resolve all disputes without  
9 court intervention through the meet and confer process. If the parties reach an impasse on  
10 any discovery issue, counsel shall file an appropriate motion within the time limit and  
11 procedures outlined in the undersigned magistrate judge’s chambers rules. **A failure to**  
12 **comply in this regard will result in a waiver of a party’s discovery issue. Absent an**  
13 **order of the court, no stipulation continuing or altering this requirement will be**  
14 **recognized by the court.**

15           Discovery motions must be filed in the time and manner directed by Magistrate  
16 Judge Burkhardt (*see* Judge Burkhardt’s Civil Chambers Rules on Discovery Disputes  
17 available on the Court’s website). All discovery motions must be filed within 30 days of  
18 the service of an objection, answer, or response which becomes the subject of dispute, or  
19 the passage of a discovery due date without response or production, and only after counsel  
20 (and any unrepresented parties) have met and conferred to resolve the dispute **and**  
21 complied with Section IV.B. of Judge Burkhardt’s Civil Chambers Rules.

22           3.     The parties shall designate their respective experts in writing by **November**  
23 **22, 2017**. The parties must identify any person who may be used at trial to present evidence  
24 pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not limited to  
25 retained experts. The date for exchange of rebuttal experts shall be by **December 15, 2017**.  
26 The written designations shall include the name, address and telephone number of the  
27 expert and a reasonable summary of the testimony the expert is expected to provide. The  
28 list shall also include the normal rates the expert charges for deposition and trial testimony.

1           4. By **November 22, 2017**, each party shall comply with the disclosure  
2 provisions in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This  
3 disclosure requirement applies to all persons retained or specially employed to provide  
4 expert testimony, or whose duties as an employee of the party regularly involve the giving  
5 of expert testimony. **Except as provided in the paragraph below, any party that fails  
6 to make these disclosures shall not, absent substantial justification, be permitted to  
7 use evidence or testimony not disclosed at any hearing or at the time of trial. In  
8 addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

9           5. Any party shall supplement its disclosure regarding contradictory or rebuttal  
10 evidence under Fed. R. Civ. P. 26(a)(2)(D) by **December 15, 2017**.

11           6. Failure to comply with this section or any other discovery order of the court  
12 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on  
13 the introduction of experts or other designated matters in evidence.

14           7. All other pretrial motions must be filed by **February 23, 2018**. Counsel for  
15 the moving party must obtain a motion hearing date from the law clerk of the judge who  
16 will hear the motion. The period of time between the date you request a motion date and  
17 the hearing date may vary from one district judge to another. Please plan accordingly.  
18 Failure to make a timely request for a motion date may result in the motion not being heard.  
19 Motions in limine are to be filed as directed in the Local Rules, or as otherwise set by the  
20 district judge.

21           8. A Mandatory Settlement Conference shall be conducted on **November 13,**  
22 **2017**, at **9:00 AM** in the chambers of **Magistrate Judge Jill L. Burkhardt**. Counsel or  
23 any party representing himself or herself shall submit confidential settlement briefs directly  
24 to chambers by **November 3, 2017**. All parties are ordered to read and to fully comply  
25 with the Chamber Rules of the assigned magistrate judge.

26           The **confidential** settlement statements should be lodged by e-mail to  
27 efile\_Burkhardt@casd.uscourts.gov. Each party's settlement statement shall concisely set  
28 forth the following: (1) the party's statement of the case; (2) the controlling legal issues;

1 (3) issues of liability and damages; (4) the party's settlement position, including the last  
2 offer or demand made by that party; (5) a separate statement of the offer or demand the  
3 party is prepared to make at the settlement conference; and (6) a **list of all attorney and**  
4 **non-attorney conference attendees** for that side, including the name(s) and  
5 title(s)/position(s) of the party/party representative(s) who will attend and have settlement  
6 authority at the conference. If exhibits are attached and the total submission amounts to  
7 more than 20 pages, a hard copy must also be delivered directly to Magistrate Judge  
8 Burkhardt's chambers. **Settlement conference statements shall not be filed with the**  
9 **Clerk of the Court. Settlement conference statements may be exchanged**  
10 **confidentially with opposing counsel within the parties' discretion.**

11 Pursuant to Civil Local Rule 16.3, all party representatives and claims adjusters for  
12 insured defendants with full and unlimited authority<sup>1</sup> to negotiate and enter into a binding  
13 settlement, as well as the principal attorney(s) responsible for the litigation, must be present  
14 and legally and factually prepared to discuss and resolve the case at the mandatory  
15 settlement conference. In the case of an entity, an authorized representative of the entity  
16 who is not retained outside counsel must be present and must have discretionary authority  
17 to commit the entity to pay an amount up to the amount of the 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 a  
20 superior.

21 Failure to attend the conference or obtain proper excuse will be considered grounds  
22 for sanctions.

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24 <sup>1</sup> "Full authority to settle" means that the individuals at the settlement conference must be  
25 authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable  
26 to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person  
27 needs to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman*  
28 *v. Brinker Int'l, 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. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-97 (8th Cir. 2001).

1           9. Counsel shall file their Memoranda of Contentions of Fact and Law and take  
2 any other action required by Local Rule 16.1(f)(2) by **May 31, 2018**.

3           10. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.  
4 Civ. P. 26(a)(3) by **May 31, 2018**. Failure to comply with these disclosure requirements  
5 could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

6           11. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by  
7 **June 7, 2018**. At this meeting, counsel shall discuss and attempt to enter into stipulations  
8 and agreements resulting in simplification of the triable issues. Counsel shall exchange  
9 copies and/or display all exhibits other than those to be used for impeachment. The exhibits  
10 shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall note any  
11 objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ. P.  
12 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference  
13 order.

14           12. Counsel for plaintiff will be responsible for preparing the pretrial order and  
15 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **June 14, 2018**,  
16 plaintiff's counsel must provide opposing counsel with the proposed pretrial order for  
17 review and approval. Opposing counsel must communicate promptly with plaintiff's  
18 attorney concerning any objections to form or content of the pretrial order, and both parties  
19 shall attempt promptly to resolve their differences, if any, concerning the order.

20           13. The Proposed Final Pretrial Conference Order, including objections to any  
21 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and  
22 lodged with the assigned district judge by **June 21, 2018**, and shall be in the form  
23 prescribed in and comply with Local Rule 16.1(f)(6).

24           14. The final Pretrial Conference is scheduled on the calendar of the **Honorable**  
25 **Janis L. Sammartino** on **June 28, 2018**, at **1:30 PM**.

26           15. The parties must review the chambers' rules for the assigned district judge  
27 and magistrate judge.

28           16. A post trial settlement conference before a magistrate judge may be held

1 within 30 days of verdict in the case.


2 17. The dates and times set forth herein will not be modified except for good cause  
3 shown.

4 18. Briefs or memoranda in support of or in opposition to any pending motion  
5 shall not exceed twenty-five (25) pages in length without leave of a district court judge.  
6 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.  
7 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents  
8 and a table of authorities cited.

9 19. Plaintiff's counsel shall serve a copy of this order on all parties that enter this  
10 case hereafter.

11 **IT IS SO ORDERED.**

12 Dated: September 13, 2017

13   
14 Hon. Jill L. Burkhardt  
15 United States Magistrate Judge  
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