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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Layla Suscavage,

12 Plaintiff,

13 v.

14 The Regents of the University of
15 California,

16 Defendants.

Case No.: 17cv170 BEN (NLS)

**ORDER GRANTING JOINT
MOTION TO CONTINUE EARLY
NEUTRAL EVALUATION AND
SETTING AND CASE
MANAGEMENT CONFERENCE**

[Dkt. No. 5]

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18 For good cause shown, the court **GRANTS** the joint motion, **VACATES** the April
19 19, 2017 Early Neutral Evaluation (ENE) and **RESETS** it for **May 15, 2017** at **9:30 a.m.**
20 in the Chambers of Magistrate Judge Nita L. Stormes, Carter-Keep United States
21 Courthouse, 333 West Broadway, Suite 1210, San Diego, California 92101. If the case
22 does not settle at the ENE, the Court will hold a Case Management Conference (CMC)
23 immediately following the ENE on **May 15, 2017** at **9:30 a.m.**

24 The following are **mandatory** guidelines for preparing for the conference.

25 1. **Purpose of Conference:** The purpose of the ENE is to permit an informal
26 discussion between the attorneys, parties, and the settlement judge of every aspect of the
27 lawsuit in an effort to achieve an early resolution of the case. All conference discussions
28 will be informal, off the record, privileged and confidential. Counsel for any non-English

1 speaking parties is responsible for arranging for the appearance of an interpreter at the
2 conference.

3 2. **Personal Appearance of Parties Is Required:** All parties, adjusters for
4 insured defendants, and other representatives of a party having full and complete
5 authority to enter into a binding settlement, and the principal attorneys responsible for the
6 litigation, must be present **in person** and legally and factually prepared to discuss
7 settlement of the case. Full authority to settle means that the individuals at the ENE be
8 authorized to fully explore settlement options and to agree at that time to any settlement
9 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871
10 F.2d 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion and
11 authority” to change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216
12 F.R.D. 481, 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with
13 unlimited settlement authority to attend the conference is that the person’s view of the
14 case may be altered during the face-to-face conference. *Pitman*, 216 F.R.D. at 486.
15 Limited or sum certain authority is not adequate. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d
16 590, 595-597 (8th Cir. 2001). **Counsel appearing without their clients (whether or
17 not counsel has been given settlement authority) will be cause for immediate
18 imposition of sanctions and will also result in the immediate termination of the
19 conference.**

20 3. **Full Settlement Authority Required:** In addition to counsel who will try
21 the case, a party or party representative with **full settlement authority** must be present
22 for the conference. In the case of a corporate entity, an authorized representative of the
23 corporation who is **not** retained outside counsel must be present and must have
24 discretionary authority to commit the company to pay an amount up to the amount of the
25 plaintiff’s prayer (excluding punitive damage prayers). The purpose of this requirement
26 is to have representatives present who can settle the case during the course of the
27 conference without consulting a superior. Counsel for a government entity may be
28 excused from this requirement so long as the government attorney who attends the ENE

1 conference (1) has primary responsibility for handling the case; and (2) may negotiate
2 settlement offers which the attorney is willing to recommend to the government official
3 having ultimate settlement authority.

4 4. **Confidential ENE Statements Required:** No later than **three court days**
5 before the ENE, the parties shall submit confidential statements of five pages or less
6 directly to the chambers of Magistrate Judge Stormes outlining the nature of the case, the
7 claims, and the defenses. **These statements shall not be filed or served on opposing**
8 **counsel.** They can be lodged via email at efile_stormes@casd.uscourts.gov. If exhibits
9 are attached and the total submission amounts to more than 20 pages, a hard copy must
10 be delivered directly to chambers.

11 5. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel
12 shall serve a copy of this order on all parties responding to the complaint after the date of
13 this notice.

14 6. **Case Management Under the Amended Federal Rules:** If the case does
15 not settle at the ENE, the Court will immediately thereafter hold a CMC pursuant to Rule
16 16(b). The Court therefore **ORDERS** the following to occur before the ENE:

- 17 a. The Rule 26(f) conference must be completed by **May 1, 2017.**
- 18 b. The parties must lodge a Joint Discovery Plan with Judge Stormes by
19 **May 8, 2017.** The Joint Discovery Plan must address all points in the
20 attached "Model Rule 26(f) Report and Joint Case Management
21 Statement."
- 22 c. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by **May**
23 **8, 2017.**

24 7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires
25 that an ENE take place within 45 days of the filing of the first answer. Requests to
26 continue ENEs are rarely granted. However, the Court will consider formal, written ex
27 parte requests to continue an ENE conference when extraordinary circumstances exist
28 that make a continuance appropriate. In and of itself, having to travel a long distance to

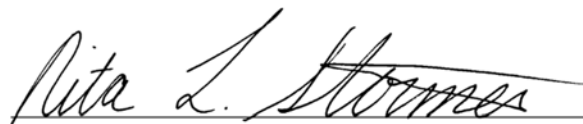
1 appear in person is not “extraordinary.” Absent extraordinary circumstances, requests for
2 continuances will **not be considered unless submitted in writing** no less than seven (7)
3 days prior to the scheduled conference.

4 Questions regarding this case or the mandatory guidelines set forth herein may be
5 directed to the Magistrate Judge’s law clerks at (619) 557-5391.

6 A Notice of Right to Consent to Trial Before a United States Magistrate Judge is
7 also attached for your information.

8 **IT IS SO ORDERED.**

9 Dated: April 11, 2017

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11 Hon. Nita L. Stormes
12 United States Magistrate Judge
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1 **NOTICE OF RIGHT TO CONSENT TO TRIAL**
2 **BEFORE A UNITED STATES MAGISTRATE JUDGE**
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4 In accordance with the provisions of 28 U.S.C. § 636(c), you are notified that a
5 U.S. Magistrate Judge of this district may, upon the consent of all parties, on form 1A
6 available in the Clerk’s office, conduct any or all proceedings, including a jury or non-
7 jury trial, and order the entry of a final judgment. Counsel for the plaintiff is responsible
8 to obtain the consent of all parties, if they want to consent.

9 Be aware that your decision to consent or not to consent is entirely voluntary.
10 Only if all parties consent will the Judge or Magistrate Judge to whom the case has been
11 assigned be informed of your decision.

12 Judgments of the U.S. Magistrate Judges are appealable to the U.S. Court of
13 Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.
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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 **IN RE: CASE MANAGEMENT**

**MODEL RULE 26(f) REPORT AND
JOINT CASE MANAGEMENT
STATEMENT**

[insert CMC Date and Time]

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14 **The parties must include the following information in their Rule 26(f) report
15 and joint case management statement.¹ Except in unusually complex cases the
16 statement should not exceed 10 pages.**

17 1. **Jurisdiction and Service:** The basis for the court's subject matter
18 jurisdiction over the plaintiff's claims and counterclaims, whether any issues exist
19 regarding personal jurisdiction or venue, whether any parties remain to be served, and, if
20 any parties remain to be served, a proposed deadline for service.

21 2. **Facts:** A brief chronology of the facts and a statement of the principal
22 factual issues in dispute.

23 3. **Legal Issues:** A brief statement, without extended legal argument, of the
24 disputed points of law, including reference to specific statutes and decisions.

25 4. **Motions:** All prior and pending motions, their current status, and any
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28 ¹ This Model Report is taken largely from the Standing Order for All Judges of the
Northern District of California effective January 1, 2017.

1 anticipated motions.

2 5. **Amendment of Pleadings:** The extent to which parties, claims, or defenses
3 are expected to be added or dismissed and a proposed deadline for amending the
4 pleadings.

5 6. **Evidence Preservation:** A brief report certifying that the parties have met
6 and conferred pursuant to Fed.R.Civ.P. 26(f) regarding reasonable and proportionate
7 steps taken to preserve evidence relevant to the issues reasonably evident in this action.

8 7. **Disclosures:** Whether there has been full and timely compliance with the
9 initial disclosure requirements of Fed.R.Civ.P. 26, and a description of the disclosures
10 made.

11 8. **Discovery:** Discovery taken to date, if any, the scope of anticipated
12 discovery, any proposed limitations or modifications of the discovery rules, a brief report
13 on whether the parties have agreed to a proposed Electronic Discovery Order, a proposed
14 Protective Order to govern the exchange of confidential information, a proposed
15 discovery plan pursuant to Rule 26(f), and any identified discovery disputes.

16 9. **Class Actions:** If a class action, a proposal for how and when the class will
17 be certified.

18 10. **Related Cases:** Any related cases or proceedings pending before another
19 judge of this court, or before another court or administrative body.

20 11. **Relief:** All relief sought through complaint or counterclaim, including the
21 amount of any damages sought and a description of the bases on which damages are
22 calculated. In addition, any party from whom damages are sought must describe the
23 bases on which it contends damages should be calculated if liability is established.

24 12. **Settlement and Mediation:** Prospects for settlement, settlement efforts to
25 date, and whether the parties have been to or are planning to go to private mediation.

26 13. **Consent to Magistrate Judge for All Purposes:** Whether all parties will
27 consent to have a magistrate judge conduct all further proceedings including trial and
28 entry of judgment. ___yes ___ no

1 If yes, please fill out the attached consent form and lodge it with the district judge.

2 14. **Other References:** Whether the case is suitable for reference to binding
3 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

4 15. **Narrowing of Issues:** Issues that can be narrowed by agreement or by
5 motion, suggestions to expedite the presentation of evidence at trial (e.g. through
6 summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.

7 16. **Scheduling:** Proposed dates for fact discovery cutoff, expert designations
8 and exchange of expert reports, expert discovery cutoff, dispositive motions cutoff,
9 Markman hearing (in patent cases), pretrial conference and trial.

10 17. **Trial:** Whether the case will be tried to a jury or to the court and the
11 expected length of trial.

12 18. **Disclosure of Non-party Interested Entities or Persons:** Whether each
13 party has filed the "Notice of Party with Financial Interest" required by Civil Local Rule
14 40.2. In addition, each party must restate in the case management statement the contents
15 of its certification by identifying any persons, firms, partnerships, corporations (including
16 parent corporations) or other entities known by the party to have either: (i) a financial
17 interest in the subject matter in controversy or in a party to the proceeding; or (ii) any
18 other kind of interest that could be substantially affected by the outcome of the
19 proceeding.

20 19. **Professional Conduct:** Whether all attorneys of record for the parties have
21 reviewed Civil Local Rule 83.4 on Professionalism.

22 20. **Miscellaneous:** Such other matters as may facilitate the just, speedy and
23 inexpensive disposition of this matter.

24 Dated: _____

Attorney for Plaintiff(s)

26 Dated: _____

Attorney for Defendant(s)

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1 **UNITED STATES DISTRICT COURT**
2 **SOUTHERN DISTRICT OF CALIFORNIA**

3 Layla Suscavage,

4 Plaintiff(s)

Case No.: 17cv170 BEN (NLS)

5 v.

**NOTICE, CONSENT, AND
REFERENCE OF A CIVIL ACTION TO
A MAGISTRATE JUDGE**

6 The Regents of the University of California,

7 Defendant(s)

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9 *Notice of a magistrate judge's availability.* A United States magistrate judge of this court is
10 available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to
11 order the entry of a final judgment. The judgment may then be appealed directly to the United
12 States court of appeals like any other judgment of this court. A magistrate judge may exercise this
13 authority only if all parties voluntarily consent.

14 You may consent to have your case referred to a magistrate judge, or you may withhold your
15 consent without adverse substantive consequences. The name of any party withholding consent will
16 not be revealed to any judge who may otherwise be involved with your case.

17 *Consent to a magistrate judge's authority.* The following parties Consent / Do Not Consent
18 to have a United States magistrate judge conduct all proceedings in this case including trial, the
19 entry of final judgment, and all post-trial proceedings.

20 *Printed Names*

Signatures of parties and attorneys

Dates

21 _____

22 _____

23 _____

24 **REFERENCE ORDER**

25 **IT IS ORDERED:** This case is referred to United States Magistrate Judge Nita L.
26 Stormes, to conduct all proceedings and order entry of a final judgment in accordance with 28
27 U.S.C. § 636(c), Fed. R. Civ. P. 73, and CivLR 73.1.

28 _____
Date

United States District Judge