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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Saint Onge Orchids, LLC,

Plaintiff,

v.

County of San Diego, et al.,

Defendants.

Case No.: 17-cv-00638-GPC-JLB

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

[ECF No. 6]

Before the Court is the parties’ Joint Motion to Continue Early Neutral Evaluation and Case Management Conference and Related Dates. (ECF No. 6.) The parties seek to continue the April 26, 2017 Early Neutral Evaluation (“ENE”) and Case Management Conferences and all related dates by 60 days. (Id. at 2.) For good cause shown, the Joint Motion is **GRANTED in part**. Accordingly, **IT IS HEREBY ORDERED**:

1. The ENE Conference set for **April 26, 2017**, at **1:45 PM** in the Chambers of Magistrate Judge Jill L. Burkhardt, Edward J. Schwartz U.S. Courthouse, 221 West Broadway, Suite 5140, San Diego, California 92101, is **CONTINUED** to **June 14, 2017**, at **9:00 AM**. In the event the case does not settle at the ENE Conference, a Case Management Conference pursuant to Fed. R. Civ. P. 16(b) will be held at the conclusion of the ENE Conference.

2. **Personal Appearance of Parties Required**: All parties, adjusters for insured defendants, and other representatives of a party having full settlement authority as explained below, and the principal attorneys responsible for the litigation, must be present **in person** and legally and factually prepared to discuss settlement of the case. Counsel

1 appearing without their clients (whether or not counsel has been given settlement authority)
2 will be cause for immediate imposition of sanctions and may also result in the immediate
3 termination of the ENE Conference. If each of the principal attorneys responsible for the
4 litigation is not listed on the docket as an “ATTORNEY TO BE NOTICED,” then they each
5 shall enter their appearance on the docket as soon as practicable, but in no event later than
6 **ten calendar days** prior to the ENE Conference.

7 Unless there are extraordinary circumstances, persons required to attend the ENE
8 Conference pursuant to this Order shall not be excused from personal attendance.
9 **Requests for excuse from attendance for extraordinary circumstances shall be filed**
10 **as a motion at least ten calendar days prior to the conference.** Failure to appear at the
11 ENE Conference will be grounds for sanctions.

12 3. **Full Settlement Authority Required:** In addition to counsel who will try the
13 case, a party or party representative with full settlement authority¹ must be present for the
14 ENE Conference. In the case of an entity, an authorized representative of the entity who
15 is not retained outside counsel must be present and must have discretionary authority to
16 commit the company to pay an amount up to the amount of the Plaintiff’s prayer (excluding
17 punitive damages prayers). The purpose of this requirement is to have representatives
18 present who can settle the case during the course of the ENE Conference without consulting
19 a superior.

20 4. **ENE Statements Required:** On or before **June 5, 2017**, the parties shall
21 lodge statements of **five pages** or less directly to the chambers of Magistrate Judge
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24 ¹ “Full settlement authority” means that the individuals at the settlement conference must be
25 authorized to explore settlement options fully and to agree at that time to any settlement terms acceptable
26 to the parties. *Heileman Brewing Co. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989). The person
27 needs to have “unfettered discretion and authority” to change the settlement position of a party.
28 *Pitman 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 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 Burkhardt outlining the nature of the case, the claims, the defenses, and the parties’
2 positions regarding settlement of the case. The settlement position must include a specific
3 and current demand or offer addressing all relief or remedies sought. If a specific demand
4 or offer cannot be made at the time the brief is submitted, then the reasons therefor must
5 be stated along with a statement as to when the party will be in a position to state a demand
6 or offer. A general statement that a party will “negotiate in good faith,” “offer a nominal
7 cash sum,” or “be prepared to make an offer at the conference” is not a specific demand or
8 offer. The statement shall also list all attorney and non-attorney conference attendees for
9 that side, including the name(s) and title(s)/position(s) of the party/party representative(s)
10 who will attend and have settlement authority at the conference.

11 ENE statements shall be lodged via email at efile_burkhardt@casd.uscourts.gov. If
12 exhibits are attached and the total submission amounts to more than 20 pages, a hard copy
13 must also be delivered directly to chambers. **Whether these statements are submitted**
14 **confidentially or whether they are served on opposing counsel is within the parties’**
15 **discretion.** Statements of more than five pages will not be considered.

16 5. **Case Management Under the Amended Federal Rules:** The parties are
17 ordered to comply with Fed. R. Civ. P. 26 and proceed with the initial disclosure process
18 as follows:

- 19 a. The Rule 26(f) conference shall be completed on or before **May 31, 2017**;
- 20 b. The date of initial disclosure pursuant to Rule 26(a)(1)(A)-D) shall occur on
21 or before **June 5, 2017**;
- 22 c. A **Joint Discovery Plan** shall be filed on the CM/ECF system as well as
23 lodged with Magistrate Judge Burkhardt by emailing the Plan to
24 efile_burkhardt@casd.uscourts.gov, on or before **June 5, 2017**. The Plan
25 must be one document and must explicitly cover the parties’ views and
26 proposals for each item identified in Fed. R. Civ. P. 26(f)(3). The parties
27 should consult both Judge Burkhardt’s and the assigned District Judge’s Civil
28 Chambers Rules in drafting their Plan. A courtesy paper copy of the Plan

1 shall be delivered to Judge Burkhardt's Chambers if the Plan with its
2 attachments exceeds 20 pages. In addition to complying with Chambers
3 Rules, the Plan must identify whether and what good cause (specific to this
4 case) exists to modify the Court's tentative schedule for this case. The Court's
5 **tentative** schedule is as follows:

- 6 i. Filing of motions to amend pleadings and/or add parties: **July 14, 2017**;
- 7 ii. Completion of fact and expert witness discovery: **December 8, 2017**;
- 8 iii. The designation and service of expert witness reports: **October 13,**
9 **2017**;
- 10 iv. The supplemental designation and service of rebuttal expert witness
11 reports: **November 10, 2017**;
- 12 v. The date by which dispositive motions, inclusive of any motions
13 addressing any Daubert issues, shall be filed: **January 12, 2018**.
14 Motions in limine are to be filed as directed in the Local Rules, or as
15 otherwise set by the District Judge;
- 16 vi. The date for the Mandatory Settlement Conference: **December 14,**
17 **2017**; and
- 18 vii. The date for a Pretrial Conference before the District Judge assigned to
19 the case: **May 11, 2018**.

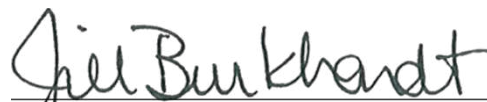
20 6. **Requests to Continue or Reschedule an ENE Conference**: Local Rule
21 16.1.c requires that an ENE Conference take place within 45 days of the filing of the first
22 answer. Requests to continue ENE Conferences are rarely granted. However, the Court
23 will consider formal, filed ex parte or joint motions to continue an ENE Conference when
24 extraordinary circumstances exist that make a continuance appropriate. In and of itself,
25 having to travel a long distance to appear in person is not "extraordinary." Absent
26 extraordinary circumstances, requests for continuances **will not be considered unless filed**
27 no less than **ten calendar days** prior to the scheduled conference.

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1 7. **Settlement Prior to ENE Conference:** The Court encourages the parties to
2 work on settling the matter in advance of the ENE Conference. In the event that the parties
3 resolve the matter prior to the day of the ENE Conference, the following procedures must
4 be followed before the Court will vacate the ENE Conference and excuse the parties from
5 appearing:

- 6 a. The parties may file a Joint Motion to Dismiss and separately lodge by email
7 a proposed order to the assigned District Judge.² If a Joint Motion to Dismiss
8 is filed, the Court will vacate the ENE Conference. The parties are
9 encouraged to contact Judge Burkhardt's Chambers by telephone to notify the
10 Court of their pending Joint Motion;
- 11 b. If the parties settle more than 24 hours before the ENE Conference but are not
12 able to file a Joint Motion to Dismiss, they must file a Notice of Settlement
13 containing the electronic signatures of counsel for all settling parties and
14 identifying a date by which the Joint Motion to Dismiss will be filed. The
15 parties are encouraged to contact Judge Burkhardt's Chambers by telephone
16 to notify the Court of their filed Notice of Settlement;
- 17 c. If the parties settle less than 24 hours before the conference, counsel for the
18 settling parties must JOINTLY call chambers and inform the Court of the
19 settlement and receive Court permission to not appear at the ENE Conference.

20 Dated: April 7, 2017

21 
22 Hon. Jill L. Burkhardt
23 United States Magistrate Judge
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27 ² See Electronic Case Filing Administrative Policies and Procedures Manual, United States District
28 Court for the Southern District of California § 2(h), for the chambers' official email address and
procedures on emailing proposed orders.