

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ALLEN HAMMLER,

12 Plaintiffs,

13 v.

14 F. AVILES,

15 Defendant.
16
17

Case No.: 17-CV-1185-AJB(WVG)

**ORDER (1) GRANTING MOTION
TO CONTINUE MSC; and (2)
AMENDED SCHEDULING ORDER
REGULATING DISCOVERY
AND OTHER PRE-TRIAL
PROCEEDINGS**

[Doc. No. 46.]

18 Defendant's motion to continue the July 8, 2020 Mandatory Settlement Conference
19 is GRANTED. Additionally, the Court amends the remaining unexpired dates in the prior
20 Scheduling Order as set forth below. **IT IS HEREBY ORDERED:**

21 1. On or before **October 9, 2020**, all parties shall exchange with all other parties
22 a list of all expert witnesses expected to be called at trial to present evidence under Federal
23 Rules of Evidence 702, 703, or 705. The list shall include the name, address, and phone
24 number of the expert and a brief statement identifying the subject areas as to which the
25 expert is expected to testify. The list shall also include the normal rates the expert charges
26 for deposition and trial testimony. On or before **October 23, 2020**, any party may
27 supplement its designation in response to any other party's designation so long as the party
28

1 supplementing its expert designation has not previously retained an expert to testify on that
2 subject. **The parties must identify any person who may be used at trial to present**
3 **evidence pursuant to Federal Rules of Evidence 702, 703 and 705, respectively. This**
4 **requirement is not limited to retained experts.**

5 2. Each expert witness designated by a party shall prepare a written report to be
6 provided to all other parties **no later than November 6, 2020**, containing the information
7 required by Rule 26(a)(2)(B). **This disclosure requirement applies to all persons**
8 **retained or specifically employed to provide expert testimony or whose duties as an**
9 **employee of the party regularly involve the giving of expert testimony.**

10 3. On or before **November 20, 2020**, any party, through any expert designated,
11 shall in accordance with Rule 26(a)(2)(D)(ii), supplement any of its expert reports
12 regarding evidence intended solely to contradict or rebut evidence on the same subject
13 matter identified in an expert report submitted by another party.

14 **Except as provided in paragraph 5, below, any party that fails to make these**
15 **disclosures shall not, absent substantial justification, be permitted to use evidence or**
16 **testimony not disclosed at any hearing or at the time of trial. In addition, the Court**
17 **may impose sanctions as permitted by Rule 37(c).**

18 5. If a party has made a disclosure under Rule 26(a), and “learns that in some
19 material respect the disclosure or response is incomplete or incorrect, and if the additional
20 or corrective information has not otherwise been made known to the other parties during
21 the discovery process or in writing,” the party must supplement or correct its disclosure or
22 response in a “timely manner,” pursuant to Rule 26(e)(1).

23 6. All discovery pertaining to expert witnesses shall be completed on or before
24 **December 11, 2020**.

25 “Completed” means that all discovery under Rules 30-36 of the Federal Rules of
26 Civil Procedure must be initiated a sufficient period of time in advance of the cut-off date,
27 so that it may be completed by the cut-off date, taking into account the times for services,
28 notice, and response as set forth in the Federal Rules of Civil Procedure, **and any motions**

1 **and the resolution of any discovery disputes.** All disputes concerning discovery shall be
2 brought to the attention of the Magistrate Judge no later than thirty (30) days following the
3 date upon which the event giving rise to the discovery dispute occurred. Counsel shall
4 meet and confer pursuant to the requirements of Rule 26 and Local Rule 26.1(a). **A failure**
5 **to comply in this regard will result in a waiver of a party's discovery issue. Absent an**
6 **order of the Court, no stipulation continuing or altering this requirement will be**
7 **recognized by the Court.**

8 7. A second Mandatory Settlement Conference shall be conducted on
9 **September 30, 2020**, at **9:00 a.m.** in the chambers of Magistrate Judge William V. Gallo.
10 Each party shall submit settlement statements **directly to chambers** no later than
11 **September 18, 2020**.

12 **Because Plaintiff is incarcerated, he may appear by telephone. Defendant's**
13 **counsel is responsible for making any and all necessary arrangements with the**
14 **litigation coordinator at the institution where Plaintiff is housed to ensure Plaintiff's**
15 **telephonic presence.**

16 Each party's settlement statement shall set forth the party's statement of the case,
17 identify controlling legal issues, concisely set out issues of liability and damages, and shall
18 set forth the party's settlement position, including the last offer or demand made by that
19 party, and a separate statement of the offer or demand the party is prepared to make at the
20 settlement conference. **Settlement conference briefs shall not be filed with the Clerk of**
21 **the Court, but may be served on opposing counsel at the party's discretion.**
22 **Settlement conference briefs shall comply with the undersigned's Chambers Rules.**

23 The parties shall meet and confer in good faith prior to the Mandatory Settlement
24 Conference, and verify that they have done so in their respective Mandatory Settlement
25 Conference statements, outlining the substance of their discussions and negotiations.

26 Pursuant to Rule 16 and Local Civil Rule 16.3, all named Plaintiffs, named
27 Defendants, claims adjusters for insured defendants, and if a named Plaintiff or Defendant
28 is a corporation, partnership, or other entity, a representative of that entity, with full and

1 unlimited authority¹ to negotiate and enter into a binding settlement, as well as the principal
2 attorney(s) responsible for the litigation, must be present and must be prepared to discuss
3 in good faith, the facts of the case, the law that governs the legal issues in the case, and to
4 resolve the case at the Settlement Conference. Sanctions may issue against a party and/or
5 attorney who does not proceed as noted above. Retained outside corporate counsel shall
6 not appear on behalf of a corporation as the party who has the authority to negotiate and
7 enter into a settlement. For good cause, and on *ex parte* application at least one week
8 before the scheduled settlement conference, Magistrate Judge Gallo may excuse a party or
9 representative from personal attendance provided such party or parties will be available by
10 telephone during the conference. Failure to attend the conference or participate in good
11 faith or obtain proper excuse will be considered grounds for sanctions. Counsel seeking to
12 reschedule a Settlement Conference must first confer with opposing counsel. The Court
13 will consider formal, written *ex parte* requests to continue a Settlement Conference when
14 extraordinary circumstances exist that make a continuance appropriate. In and of itself,
15 having to travel a long distance to appear at the Settlement Conference is not an
16 extraordinary circumstance.

17 Counsel for a government entity may be excused from this requirement so long as
18 the government attorney who attends the Settlement Conference (1) has primary
19 responsibility for handling the case; and (2) may negotiate settlement offers which the
20
21

22 ¹ “Full authority to settle” means that the individuals at the settlement conference must be
23 authorized to fully explore settlement options and to agree at that time to any settlement
24 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
25 648 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to
26 change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481,
27 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement
28 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 (8th Cir. 2001).

1 attorney is willing to recommend to the government official who has ultimate settlement
2 authority.

3 4. All other dispositive motions, *including those addressing Daubert issues*,
4 must be filed on or before **January 8, 2021**. Please be advised that counsel for the moving
5 party must obtain a motion hearing date from the law clerk of the judge who will hear the
6 motion. Motions in Limine are to be filed as directed in the Local Rules, or as otherwise
7 set by Judge Battaglia.

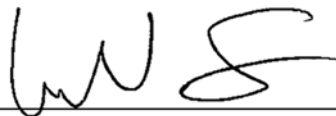
8 5. The dates and times set forth herein will not be modified except for good cause
9 shown.

10 6. Dates and times for hearings on motions must be approved by the Court's clerk
11 before notice of hearing is served.

12 7. Briefs or memoranda in support of or in opposition to any pending motion
13 must not exceed twenty-five (25) pages in length without leave of a district judge. No reply
14 memorandum will exceed ten (10) pages without leave of a district judge. Briefs and
15 memoranda exceeding ten (10) pages in length must have a table of contents and a table of
16 authorities cited.

17 **IT IS SO ORDERED.**

18 DATED: July 1, 2020



19
20 Hon. William V. Gallo
21 United States Magistrate Judge