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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JONATHAN SHAWN BUSH, et al.,  
12 Plaintiff,  
13 v.  
14 INBOUNDPROSPECT, INC., d/b/a  
15 Senior Mobility Care,  
16 Defendants.

Case No.: 17-CV-2074-JAH-WVG

**NOTICE AND ORDER FOR EARLY  
NEUTRAL EVALUATION  
CONFERENCE AND CASE  
MANAGEMENT CONFERENCE**

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18 **IT IS HEREBY ORDERED** that an Early Neutral Evaluation (“ENE”) of your case  
19 and Case Management Conference (“CMC”) will be held **on January 24, 2018, at 2:00**  
20 **P.M.**, before United States Magistrate Judge William V. Gallo, United States Courthouse,  
21 Courtroom 2A, Second Floor, 221 West Broadway, San Diego, California.

22 Additionally, **on January 17, 2018, beginning at 8:15 A.M.**, the Court will hold an  
23 attorneys-only telephonic status conference with each party separately.<sup>1</sup> The purpose of  
24 this confidential, off-the-record teleconference is for the Court’s benefit in assessing each  
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27 <sup>1</sup> The Court will contact the first party and proceed to contact the remaining parties one at  
28 a time. Each call may be short or lengthy. Counsel are required to be available for the  
Court’s call beginning at the appointed time and remain available until they are called.

1 party's concerns, challenges, and whether the Court can assist in alleviating these. **On or**  
2 **before January 12, 2018**, each attorney intending to participate shall lodge, via electronic  
3 mail addressed to efile\_Gallo@casd.uscourts.gov, (1) the name of each attorney who will  
4 participate and (2) a telephone number at which each attorney may be reached directly  
5 without fail at the time of the conference.

6 **I. EARLY NEUTRAL EVALUATION CONFERENCE**

7 **The following are mandatory guidelines for the parties preparing for the ENE**  
8 **Conference.**

9 **1. Purpose of Conference**

10 The purpose of the ENE is to permit an informal discussion between the attorneys,  
11 parties and the settlement judge of every aspect of the lawsuit in an effort to achieve an  
12 early resolution of the case. All conference discussions will be informal, off the record,  
13 privileged and confidential. Counsel for non-English speaking parties is responsible for  
14 arranging for the appearance of an interpreter at the conference.

15 **2. Personal Appearance of Parties Required**

16 All parties, adjusters for insured defendants, and other representatives of a party  
17 having full and complete authority to enter into a binding settlement, and the principal  
18 attorneys responsible for the litigation, must be present **in person** and legally and factually  
19 prepared to discuss settlement of the case. See S.D. Cal. Civ. L. R. 16.1(c).

20 **3. Full Settlement Authority Required**

21 In addition to counsel who will try the case, a party or party representative with full  
22 settlement authority<sup>2</sup> must be present for the conference. In the case of a corporate entity,  
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25 <sup>2</sup> "Full authority to settle" means that the individuals at the settlement conference must be  
26 authorized to fully explore settlement options and to agree at that time to any settlement  
27 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d  
28 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to  
change the settlement position of a party. *Pitman v. Brinker Intl., Inc.*, 216 F.R.D. 481,  
485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement

1 an authorized representative of the corporation who is not retained outside counsel must be  
2 present and must have discretionary authority to commit the company to pay an amount up  
3 to the amount of the plaintiff's prayer (excluding punitive damage prayers). The purpose  
4 of this requirement is to have representatives present who can settle the case during the  
5 course of the conference without consulting a superior.

6 Counsel for a government entity may be excused from this requirement so long as  
7 the government attorney who attends the ENE conference (1) has primary responsibility  
8 for handling the case; and (2) may negotiate settlement offers which the attorney is willing  
9 to recommend to the government official who has ultimate settlement authority.

10 Unless there are extraordinary circumstances, persons required to attend the  
11 conference pursuant to this Order shall not be excused from personal attendance. Requests  
12 for excuse from attendance for extraordinary circumstances shall be made in writing at  
13 least one week before the conference. Failure to appear at the ENE conference will be  
14 grounds for sanctions.

15 **4. Settlement Proposal and Response Required**

16 No later than 15 days before the scheduled ENE Conference, Plaintiff(s) shall submit  
17 to Defendant(s) a written settlement proposal. No later than 10 days before the scheduled  
18 ENE Conference, Defendant(s) shall submit a response to Plaintiff(s)' settlement proposal.  
19 All parties shall be prepared to address in their ENE Statements, and discuss at the ENE  
20 conference, the settlement proposal and response.

21 **5. ENE Statements Required**

22 **In accordance with the Court's Chambers Rules, each party shall exchange its**  
23 **settlement Statement with all opposing parties. Additionally, in accordance with the**  
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26 authority to attend the conference includes that the person's view of the case may be altered  
27 during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is  
28 not adequate. The person with full settlement authority must be able to negotiate a  
*Nick v. Morgan's Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

1 **Court's Chambers Rules, each party shall submit a confidential or non-confidential**  
2 **Statement to the Court. Both the exchange of Statements between the parties and**  
3 **submissions of Statements to the Court shall occur on or before January 12, 2018.** The  
4 Statement each party submits directly to the chambers shall be five pages or less and shall  
5 outline the nature of the case, the claims, the defenses, and the parties' positions regarding  
6 settlement of, and attempts to settle the case. **All Statements must comply with the**  
7 **Court's Chambers Rules.**

8 The parties shall meet and confer in good faith prior to the ENE Conference, and  
9 verify that they have done so in their respective ENE Conference statements, outlining the  
10 substance of their discussions and negotiations.

11 **6. Time Allotted**

12 The Court generally allots two hours for ENEs. Counsel should be prepared to be  
13 succinct and to the point. Requests for additional time must be made in writing in the  
14 party's ENE statement, accompanied by a short explanation.

15 **7. New Parties Must Be Notified by Plaintiff's Counsel**

16 Plaintiff's counsel shall give notice of the ENE Conference to all parties responding  
17 to the Complaint after the date of this Notice.

18 **8. Requests to Continue an ENE Conference**

19 Civil Local Rule 16.1(c) requires that an ENE take place within 45 days of the filing  
20 of the first answer. Requests to continue ENE conferences are rarely granted. Counsel  
21 seeking to reschedule an ENE must first confer with opposing counsel. The Court will  
22 consider formal, written ex parte requests to continue an ENE conference when  
23 extraordinary circumstances exist that make a continuance appropriate. In and of itself,  
24 having to travel a long distance to appear at the ENE conference is not an extraordinary  
25 circumstance. **Absent extraordinary circumstances, requests for continuances of the**  
26 **ENE conference may not be considered unless submitted in writing no less than seven**  
27 **calendar days prior to the scheduled conference.**

1 Please refer to the undersigned's Chambers Rules for additional guidance regarding  
2 the areas which must be addressed in the request.

3 The parties shall be prepared to engage in good faith settlement discussions with the  
4 Court and opposing parties during the ENE Conference. Failure to engage in good faith  
5 settlement discussions may result in the imposition of sanctions.

6 **II. CASE MANAGEMENT CONFERENCE**

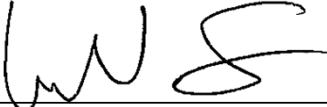
7 Given the delay in convening the ENE Conference, the parties shall also be prepared  
8 for a Case Management Conference on **January 24, 2018** at **9:00 a.m.** Accordingly, the  
9 Court issues the following orders:

- 10 1. The Rule 26(f) conference shall be completed before **December 29, 2017**;
- 11 2. The date of initial disclosure pursuant to Rule 26(a)(1)(A)-(D) shall occur before  
12 **January 10, 2018**; and
- 13 3. A joint discovery plan shall be lodged with Magistrate Judge Gallo on or before  
14 **January 12, 2018**.<sup>3</sup>

15 Questions regarding this case may be directed to the undersigned's Research  
16 Attorney at (619) 557-6384. Please consult the undersigned's Chambers Rules, which are  
17 available on the Court's website, before contacting chambers with any questions.

18 **IT IS SO ORDERED.**

19 Dated: December 13, 2017

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21 \_\_\_\_\_  
22 Hon. William V. Gallo  
23 United States Magistrate Judge  
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26 <sup>3</sup> Counsel are invited to review the undersigned's Chambers Rules for guidance on  
27 completing the proposed discovery plan. Counsel are further advised to consult the  
28 Chambers Rules of the District Judge assigned to this case for case timeline preferences, if  
any.