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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Evolve Technologies, LLC, a Delaware
limited liability company,

Plaintiff,

v.

Coil Winding Specialist, Inc., a California
corporation,

Defendant.

Case No.: 18-cv-00671-BEN-BGS

**NOTICE AND ORDER FOR EARLY
NEUTRAL EVALUATION
CONFERENCE
IN PATENT CASES**

Coil Winding Specialist, Inc., a California
corporation,

Counter Claimant,

v.

Evolve Technologies, LLC, a Delaware
limited liability company,

Counter Defendant.

IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on **August 20, 2018**, at **1:30 PM** before United States Magistrate Judge Bernard G.

1 Skomal, United States District Court, 333 W. Broadway, Suite 1280, San Diego,
2 California.

3 **The following are mandatory guidelines for the parties preparing for the**
4 **Early Neutral Evaluation Conference.**

5 1. **Purpose of Conference:** The purpose of the Early Neutral Evaluation
6 Conference (“ENE”) is to hold a serious discussion of every aspect of the lawsuit in an
7 effort to achieve early resolution of the case. All conference discussions will be off the
8 record, privileged and confidential. Counsel for any non-English speaking parties is
9 responsible for arranging for the appearance of an interpreter at the conference.

10 2. **Personal Appearance of Parties Is Required:** All parties, adjusters for
11 insured defendants, and client representatives must be present and have full and complete
12 authority to enter into a binding settlement at the ENE.¹ The purpose of this requirement
13 is to have representatives present who can settle the case during the course of the
14 conference without consulting a superior. Counsel for a government entity may be
15 excused from this requirement so long as the government attorney who attends the ENE
16 conference (1) has primary responsibility for handling the case; and (2) may negotiate
17 settlement offers which the attorney is willing to recommend to the government official
18 having ultimate settlement authority. Other parties seeking permission to be excused
19 from attending the ENE in person must follow the procedures outlined in Judge Skomal’s
20 Chambers’ Rules. (See Judge Skomal’s Chambers’ Rules Rules II.C.) Failure of any of
21 the above parties to appear at the ENE conference without the Court’s permission will be
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23
24 ¹ “Full authority to settle” means that the individuals at the settlement conference must be authorized to
25 fully explore settlement options and to agree at that time to any settlement terms acceptable to the
26 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 Intl., Inc.*, 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The person must be able to bind the
party without the need to call others not present at the conference for authority or approval. 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 (8th Cir. 2001).

1 grounds for sanctions. The principal attorneys responsible for the litigation must also be
2 present in person and prepared to discuss all of the **legal and factual** issues in the case.

3 3. **Confidential ENE Statements Required:** No later than **August 6, 2018**,
4 the parties must submit confidential statements of seven pages or less directly to Judge
5 Skomal. Please also attach relevant exhibits. The statement must address the legal and
6 factual issues in the case and should focus on issues most pertinent to settling the matter.
7 The statement should not repeat facts or law contained in the Complaint or Answer.
8 Statements do not need to be filed or served on opposing counsel. The statement must
9 also include any prior settlement offer or demand, as well as the offer or demand the
10 party will make at the ENE. The Court will keep this information confidential unless the
11 party authorizes the Court to share the information with opposing counsel. **ENE**
12 **statements must be emailed to efile_Skomal@casd.uscourts.gov.**

13 4. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel
14 shall give notice of the ENE to parties responding to the complaint after the date of this
15 notice.

16 5. **Case Management Under the Amended Federal Rules and Local Patent**
17 **Rules:** The parties can expect to leave the ENE with Rule 26 compliance dates and
18 deadlines and a Case Management Order including a Claim Construction briefing
19 schedule and hearing date. **Parties shall therefore meet and confer pursuant to Fed.**
20 **R. Civ. P. 26(f) no later than 21 days before the ENE regarding the following:**

21 a. Any anticipated objections under Federal Rule of Civil Procedure
22 26(a)(1)(E) to the initial disclosure provisions of Federal Rule of Civil Procedure
23 26(a)(1)(A-D) and the date of initial disclosures;

24 b. Whether the parties will request the preservation and production of
25 Electronically Stored Information ("ESI") and, if so:

- 26 i. the nature, location, and scope of discoverable ESI;
- 27 ii. the agreed form of production;
- 28 iii. the agreed search methodology;

1 iv. whether any proportionality issues exist and whether the parties have
2 identified issues with respect to inaccessible ESI;

3 c. Any proposed modification of the deadlines provided for in the Patent Local
4 Rules, and the effect of any such modification on the date and time of the Claim
5 Construction Hearing, if any;

6 d. The need for and specific limitations on discovery relating to claim
7 construction, including depositions of percipient and expert witnesses; and any proposed
8 modifications to the limitations on discovery imposed under the Federal Rules of Civil
9 Procedure or by local rule;

10 e. The need, if any, to phase damage discovery.

11 6. **Joint Discovery Plan**: The parties must include their positions with respect
12 to the meet-and-confer issues listed above, **AND propose actual dates for ALL of the**
13 **following deadlines in a Joint Discovery Plan**:

- 14 - deadline for disclosure of asserted claims and preliminary infringement
- 15 contentions;
- 16 - deadline for preliminary invalidity contentions;
- 17 - deadline for exchange of proposed claim constructions and extrinsic
- 18 evidence;
- 19 - deadline for joint claim construction chart, worksheet and hearing
- 20 statement;
- 21 - deadline for completion of claim construction discovery;
- 22 - proposed briefing schedule for filing of claim construction briefs
- 23 - proposed date and time of the Claim Construction Hearing, if any;
- 24 - whether the court will hear live testimony at the Claim Construction
- 25 Hearing;
- 26 - the need for and specific limitations on discovery relating to claim
- 27 construction, including depositions of percipient and expert witnesses;
- 28 - deadlines for expert witness designation and supplementation;
- deadlines for expert witness report submissions and supplementation
- deadlines for completions of fact and expert discovery;
- deadline for filing pretrial motions; and
- proposed final Pretrial Conference date.

1 The **Joint Discovery Plan shall be submitted via email to Judge Skomal's**
2 **chambers as well as filed on the CM/ECF system, no later than August 6, 2018** The
3 Court will issue an order following the ENE addressing these issues and setting dates as
4 appropriate.

5 **7. Requests to Continue an ENE Conference:** Local Patent Rule 2.1.a
6 requires that an ENE take place within 60 days of the filing of the first answer. Requests
7 to continue ENEs are rarely granted. The Court will, however, consider formal motions
8 to continue an ENE when extraordinary circumstances exist and the other party has no
9 objection. If another party objects to the continuance, counsel for both parties must call
10 chambers and discuss the matter with the research attorney/law clerk assigned to the case
11 before any motion may be filed. **Any request for a continuance must be made as soon**
12 **as counsel is aware of the circumstances that warrant rescheduling the conference.**
13 **Requests to continue the ENE based on preexisting scheduling conflicts must be**
14 **raised within 10 days of the Court's issuance of this Order.**

15 **8. Settlement Prior to ENE Conference:** The Court encourages the parties
16 to work on settling the matter in advance of the ENE Conference. In the event that the
17 parties resolve the matter prior to the day of the conference, the following procedures
18 must be followed before the Court will vacate the ENE and excuse the parties from
19 appearing:

20 A. The parties may file a Joint Motion to Dismiss and submit a proposed
21 order to the assigned district judge. If a Joint Motion to Dismiss is filed, the Court will
22 immediately vacate the ENE;

23 B. If the parties settle more than 24 hours before the conference but are
24 not able to file a Joint Motion to Dismiss, they must file a Notice of Settlement
25 containing the electronic signatures of counsel for all settling parties and must also
26 identify a date by which the Joint Motion to Dismiss will be filed;

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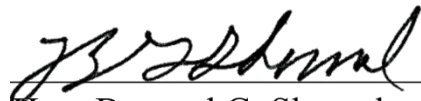
1 C. If the parties settle less than 24 hours before the conference, counsel
2 for the settling parties must JOINTLY call chambers and inform the Court of the
3 settlement and receive Court permission to not appear at the ENE.

4 Questions regarding this case or the mandatory guidelines set forth herein may be
5 directed to Skomal's research attorney at (619) 557-2993.

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

8 **IT IS SO ORDERED.**

9 Dated: June 18, 2018

10 
11 Hon. Bernard G. Skomal
United States Magistrate Judge

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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