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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and
STATE OF CALIFORNIA ex rel.
RANDY LAZAR,

Plaintiffs/Relator,

v.

S.M.R.T., LLC, a California limited
liability company; and CORNELIUS
MCKAY, an individual,

Defendants.

Case No.: 18-cv-0822-BEN-BGS

**SCHEDULING ORDER
REGULATING DISCOVERY
AND OTHER PRE-TRIAL
PROCEEDINGS**

Pursuant to Rule 16.1(d) of the Local Rules, a Case Management Conference was held on **October 21, 2021**. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed by **November 29, 2021**.
2. All fact discovery shall be completed by all parties by **April 14, 2022**.
“Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil

1 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period
2 of time in advance of the cut-off date, **so that it may be completed** by the cut-off date,
3 taking into account the times for service, notice and response as set forth in the Federal
4 Rules of Civil Procedure. **Counsel shall promptly and in good faith meet and confer**
5 **with regard to all discovery disputes in compliance with Civil Local Rule 26.1(a).**

6 The Court expects counsel to make every effort to resolve all disputes without court
7 intervention through the meet and confer process. If the parties reach an impasse on any
8 discovery issue, counsel shall follow the procedures outlined in the assigned magistrate
9 judge's Chambers Rules to timely raise the dispute. **A failure to comply in this regard**
10 **will result in a waiver of a party's discovery issue. Absent an order of the court, no**
11 **stipulation continuing or altering this requirement will be recognized by the court.**

12 3. Discovery limits in the Federal Rules of Civil Procedure and Civil Local
13 Rules, including Federal Rule of Civil Procedure 33(a)(1), Civil Local Rules 33.1.a, and
14 36.1.a shall apply. Absent prior leave of Court to exceed these limits, the Court will not
15 consider any discovery dispute arising from discovery requests in excess of these limits.

16 4. The parties shall designate their respective experts in writing by **May 9,**
17 **2022.** Pursuant to Federal Rule of Civil Procedure 26(a)(2)(A), the parties must identify
18 any person who may be used at trial to present evidence pursuant to Rules 702, 703 or
19 705 of the Federal Rules of Evidence. This requirement is not limited to retained experts.
20 The date for exchange of rebuttal experts shall be by **May 23, 2022.** The written
21 designations shall include the name, address and telephone number of the expert and a
22 reasonable summary of the testimony the expert is expected to provide. The list shall
23 also include the normal rates the expert charges for deposition and trial testimony.

24 5. By **June 20, 2022,** each party shall comply with the disclosure provisions in
25 Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure
26 requirement applies to all persons retained or specially employed to provide expert
27 testimony, or whose duties as an employee of the party regularly involve the giving of
28 expert testimony. **Except as provided in the paragraph below, any party that fails to**

1 make these disclosures shall not, absent substantial justification, be permitted to use
2 evidence or testimony not disclosed at any hearing or at the time of trial. In
3 addition, the Court may impose sanctions as permitted by Federal Rule of Civil
4 Procedure 37.

5 6. Any party shall supplement its disclosure regarding contradictory or rebuttal
6 evidence under Federal Rules of Civil Procedure 26(a)(2)(D) and 26(e) by **July 1, 2022**.

7 7. All expert discovery shall be completed by all parties by **August 1, 2022**.
8 The parties shall comply with the same procedures set forth in the paragraph governing
9 fact discovery. Failure to comply with this section or any other discovery order of the
10 court may result in the sanctions provided for in Federal Rule of Civil Procedure 37,
11 including a prohibition on the introduction of experts or other designated matters in
12 evidence.

13 8. All other pretrial motions must be filed by **August 29, 2022**. Counsel for
14 the moving party must obtain a motion hearing date from the law clerk of the judge who
15 will hear the motion. The period of time between the date you request a motion date and
16 the hearing date may vary from one district judge to another. Please plan accordingly.
17 Failure to make a timely request for a motion date may result in the motion not being
18 heard. Deadlines for filing motions in limine will be set by the district judge at the final
19 Pretrial Conference.

20 9. When filing a Motion for Summary Judgment and/or Adjudication, the
21 parties need not file a separate statement of material facts absent prior leave of court.

22 10. A Mandatory Settlement Conference shall be conducted on **November 14,**
23 **2022** at **2:00 PM** in the chambers of **Magistrate Judge Bernard G. Skomal**. All
24 parties, adjusters for insured defendants, and client representatives must be present and
25 have full and complete authority to enter into a binding settlement at the MSC.¹ The
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27 ¹ “Full authority to settle” means that the individuals at the settlement conference must be authorized to
28 fully explore settlement options and to agree at that time to any settlement terms acceptable to the
parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person

1 purpose of this requirement is to have representatives present who can settle the case
2 during the course of the conference without consulting a superior. Parties seeking
3 permission to be excused from attending the MSC in person must follow the procedures
4 outlined in Judge Skomal’s Chambers’ Rules. Failure of any of the above parties to
5 appear at the MSC without the Court’s permission will be grounds for sanctions. The
6 principal attorneys responsible for the litigation must also be present in person and
7 prepared to discuss all of the **legal and factual** issues in the case.

8 11. Counsel or any party representing himself or herself shall lodge confidential
9 settlement briefs with chambers by **October 31, 2022**. The briefs must address the legal
10 and factual issues in the case and should focus on issues most pertinent to settling the
11 matter. Briefs do not need to be filed or served on opposing counsel. The briefs must
12 also include any prior settlement offer or demand, as well as the offer or demand the
13 party will make at the MSC. The Court will keep this information confidential unless the
14 party authorizes the Court to share the information with opposing counsel. **MSC briefs**
15 **must be emailed to efile_Skomal@casd.uscourts.gov**.

16 12. For bench trials before the Honorable Roger T. Benitez, counsel shall file
17 their Memoranda of Contentions of Fact and Law and take any other action required by
18 Civil Local Rule 16.1(f)(2) by **November 21, 2022**. In jury trial cases before the
19 Honorable Roger T. Benitez, neither party, unless otherwise ordered by the Court, is
20 required to file Memoranda of Contentions of Fact and Law pursuant to Civil Local Rule
21 16.1(f)(2).

22 13. Counsel shall comply with the pre-trial disclosure requirements of Federal
23 Rule of Civil Procedure 26(a)(3) by **November 21, 2022**. Failure to comply with these
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25 needs to have “unfettered discretion and authority” to change the settlement position of a party. *Pitman*
26 *v. Brinker Intl., Inc.*, 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The person must be able to bind the
27 party without the need to call others not present at the conference for authority or approval. The purpose
28 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 disclosure requirements could result in evidence preclusion or other sanctions under
2 Federal Rule of Civil Procedure 37.

3 14. Counsel shall meet and take the action required by Civil Local Rule
4 16.1(f)(4) by **November 28, 2022**. At this meeting, counsel shall discuss and attempt to
5 enter into stipulations and agreements resulting in simplification of the triable issues.
6 Counsel shall exchange copies and/or display all exhibits other than those to be used for
7 impeachment. The exhibits shall be prepared in accordance with Civil Local Rule
8 16.1(f)(4)(c). Counsel shall note any objections they have to any other parties' Pretrial
9 Disclosures under Federal Rule of Civil Procedure 26(a)(3). Counsel shall cooperate in
10 the preparation of the proposed pretrial conference order.

11 15. Counsel for plaintiff will be responsible for preparing the pretrial order and
12 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **December 5,**
13 **2022**, plaintiff's counsel must provide opposing counsel with the proposed pretrial order
14 for review and approval. Opposing counsel must communicate promptly with plaintiff's
15 attorney concerning any objections to form or content of the pretrial order, and both
16 parties shall attempt promptly to resolve their differences, if any, concerning the order.

17 16. The Proposed Final Pretrial Conference Order, including objections to any
18 other parties' Federal Rule of Civil Procedure 26(a)(3) Pretrial Disclosures shall be
19 prepared, served and lodged with the assigned district judge by **December 12, 2022**, and
20 shall be in the form prescribed in and comply with Civil Local Rule 16.1(f)(6).

21 17. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
22 **Roger T. Benitez** on **December 19, 2022** at **10:30 AM**.

23 18. A post-trial settlement conference before a magistrate judge may be held
24 within 30 days of verdict in the case.

25 19. The dates and times set forth herein will not be modified except for good
26 cause shown or on a showing of excusable neglect. Fed. R. Civ. P. 6(b)(1).

27 20. Briefs or memoranda in support of or in opposition to any pending motion
28 shall not exceed twenty-five (25) pages in length without leave of a district court judge.

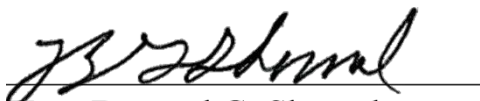
1 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
2 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
3 and a table of authorities cited.

4 21. Plaintiff's counsel shall serve a copy of this order on all parties that enter
5 this case hereafter.

6 22. All parties are ordered to read and to fully comply with the Chamber Rules
7 of the assigned magistrate judge.

8 **IT IS SO ORDERED.**

9 Dated: November 2, 2021

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