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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 William Perez, Jr. Individually and On
12 Behalf of All Others Similarly Situated,
13 Plaintiff,
14 v.
15 Transunion Rental Screening Solutions,
16 Inc.,
17 Defendant.

Case No.: 18-cv-02509-LAB-BGS

**ORDER GRANTING PARTIES'
REQUEST TO CONTINUE ENE
AND TAKING UNDER
SUBMISSION REQUEST TO
CONVERT ENE TO TELEPHONIC
ATTORNEYS ONLY CONFERENCE**

[ECF NO. 20]

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19 On January 14, 2019, the parties filed a Joint Motion to Continue the Early Neutral
20 Evaluation Conference currently set for January 30, 2019. (ECF No. 20.) In the Joint
21 Motion, they request that the Early Neutral Evaluation be continued to February 27, 2019
22 in light of defense counsel's previously scheduled hearing in Chicago set for January 30,
23 2019. (Id. at 2.) Further, they request that the Early Neutral Evaluation be converted into
24 a telephonic, attorneys only conference in light of the fact that: (1) this is a putative class
25 action, (2) Plaintiff is unwilling to entertain an individual settlement prior to the discovery,
26 and (3) class-wide settlement is not possible before discovery has occurred. (Id. at 3.)

27 Good cause appearing, the Joint Motion (ECF No. 20) is **GRANTED IN PART**.
28 The request to continue the Early Neutral Evaluation to February 27, 2019 in light of

1 defense counsel’s preexisting scheduling conflict is **GRANTED**. However, the Court
2 TAKES UNDER SUBMISSION the parties’ request to convert the Early Neutral
3 Evaluation into a telephonic, attorneys only conference pending review of the parties’ Early
4 Neutral Evaluation briefs. Accordingly:

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6 **IT IS HEREBY ORDERED** that an Early Neutral Evaluation of your case will be
7 held on **February 27, 2019**, at **1:30 PM** before United States Magistrate Judge Bernard
8 G. Skomal, United States District Court, 333 W. Broadway, Suite 1280, San Diego,
9 California.

10 **The following are mandatory guidelines for the parties preparing for the**
11 **Early Neutral Evaluation Conference.**

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

17 2. **Personal Appearance of Parties Is Required:** All parties, adjusters for
18 insured defendants, and client representatives must be present and have full and complete
19 authority to enter into a binding settlement at the ENE.¹ The purpose of this requirement
20 is to have representatives present who can settle the case during the course of the
21 conference without consulting a superior. Counsel for a government entity may be
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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 parties.
26 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have
27 “unfettered discretion and authority” to change the settlement position of a party. Pitman v. Brinker Intl.,
28 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 excused from this requirement so long as the government attorney who attends the ENE
2 conference (1) has primary responsibility for handling the case; and (2) may negotiate
3 settlement offers which the attorney is willing to recommend to the government official
4 having ultimate settlement authority. Other parties seeking permission to be excused
5 from attending the ENE in person must follow the procedures outlined in Judge Skomal's
6 Chambers' Rules. (See Judge Skomal's Chambers' Rules II.C.) Failure of any of the
7 above parties to appear at the ENE conference without the Court's permission will be
8 grounds for sanctions. The principal attorneys responsible for the litigation must also be
9 present in person and prepared to discuss all of the **legal and factual** issues in the case.

10 3. **Confidential ENE Statements Required:** No later than **February 13,**
11 **2019,** the parties must submit confidential statements of seven pages or less directly to
12 Judge Skomal. Please also attach relevant exhibits. The statement must address the legal
13 and factual issues in the case and should focus on issues most pertinent to settling the
14 matter. The statement should not repeat facts or law contained in the Complaint or
15 Answer. Statements do not need to be filed or served on opposing counsel. The
16 statement must also include any prior settlement offer or demand, as well as the offer or
17 demand the party will make at the ENE. The Court will keep this information
18 confidential unless the party authorizes the Court to share the information with opposing
19 counsel. **ENE statements must be emailed to efile_Skomal@casd.uscourts.gov.**

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

23 5. **Case Management Conference:** Any objections made to initial disclosure
24 pursuant to Federal Rule of Civil Procedure, Rule 26(a)(1)(A)-(D) are overruled, and the
25 parties are ordered to proceed with the initial disclosure process. Any further objections
26 to initial disclosure will be resolved as required by Rule 26 and Judge Skomal's
27 Chambers' Rules regarding discovery disputes. Accordingly:
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1 a. The Rule 26(f) conference shall be completed on or before **January**
2 **30, 2019;**

3 b. The date of initial disclosure pursuant to Rule 26(a)(1)(A-D) shall
4 occur before **February 6, 2019;**

5 c. A Joint Discovery Plan shall be filed on the CM/ECF system as well
6 as lodged with Magistrate Judge Skomal by delivering the plan directly to chambers or by
7 emailing it to efile_skomal@casd.uscourts.gov, on or before **February 13, 2019.** The
8 plan must be one document and must explicitly cover the parties' views and proposals for
9 each item identified in Fed. R. Civ. P. 26(f)(3). In addition, Judge Skomal requires the
10 discovery plan to identify whether the parties will consent to jurisdiction of a Magistrate
11 Judge. Agreements made in the Discovery Plan will be treated as binding stipulations
12 that are effectively incorporated into the Court's Case Management Order.

13 In cases involving significant document production or any electronic discovery, the
14 parties must also include the process and procedure for "claw back" or "quick peek"
15 agreements as contemplated by Fed. R. Evid. 502(d). The parties should also address
16 whether an order providing for protection under Rule 502(e) is needed.

17 Finally, the parties must thoughtfully meet and confer about electronic discovery
18 and include answers to the following questions in the Discovery Plan:

- 19 i. Are there any preservation issues? If so, what are they and how are
20 the parties addressing the issues;
- 21 ii. What form of production have the parties agreed to? Are there any
22 disputes with respect to the parties' preferred form of production?
23 What is the parties' positions respecting Metadata;
- 24 iii. Are there any proportionality issues? Specifically address Rule
25 26(b)(2)(B) relating to inaccessible electronically stored information
26 ("ESI");
- 27 iv. What have the parties decided regarding the methodologies for
28 identifying ESI for production? For instance, will the parties conduct

1 key word searching, use predictive coding, or other advanced culling
2 techniques.

3 In the event the case does not settle at the ENE, a Case Management Conference,
4 pursuant to Federal Rule of Civil Procedure 16(b) will be held at the conclusion of the
5 settlement conference.

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

15 7. **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;

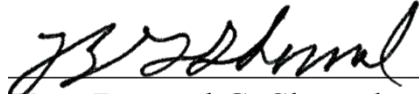
1 C. If the parties settle less than 24 hours before the conference, counsel
2 for the settling parties must JOINTLY call chambers and inform the Court of the
3 settlement and receive Court permission to not appear at the ENE.

4 Questions regarding this case or the mandatory guidelines set forth herein may be
5 directed to Judge Skomal's research attorney at (619) 557-2993. Please consult Judge
6 Skomal's rules, available on the Court's website, before contacting chambers with your
7 questions.

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

10 **IT IS SO ORDERED.**

11 Dated: January 15, 2019

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13 Hon. Bernard G. Skomal
14 United States Magistrate Judge
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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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