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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BARRY ERNEST OCHOA,
Plaintiff,
v.
CARLA FRIEDERIKE VON LINTIG,
Defendant.

Case No.: 19-cv-00346-MMA-JLB

ORDER:

(1) GRANTING *EX PARTE* MOTION TO MODIFY SCHEDULING ORDER; AND

(2) ISSUING AMENDED SCHEDULING ORDER

[ECF Nos. 43; 45]

Before the Court is Defendant Carla Friederike Von Lintig’s second *Ex Parte* Motion to Modify Scheduling Order. (ECF No. 45.) Defendant requests a sixty-day extension of the March 1, 2021 discovery cutoff and the March 29, 2021 pretrial motions deadline and a continuance of the March 11, 2021 Mandatory Settlement Conference. (*Id.* at 1.) Defendant provides that good cause exists for the requested extensions and continuance because Plaintiff failed to appear for his deposition, which was noticed for January 12, 2021. (*Id.* at 2.) Defendant further provides that Plaintiff has secured counsel, but his counsel has not yet appeared in the case. (*Id.*)

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1 For good cause shown, Defendant’s *ex parte* motion (ECF No. 45) is **GRANTED**,
2 and the operative Scheduling Order (ECF No. 43) is amended as follows:

3 1. A telephonic, counsel-only **Status Conference** shall be held before
4 Magistrate Judge Jill L. Burkhardt on **March 3, 2021**, at **2:00 PM**. For purposes of the
5 Status Conference, counsel for Plaintiff and defense counsel shall call the Court’s
6 teleconference line at (877) 873-8018 and use access code 9930765.

7 2. All discovery shall be completed on or before **April 30, 2021**. “Completed”
8 means that all discovery under Rules 30–36 of the Federal Rules of Civil Procedure and
9 discovery subpoenas under Rule 45 must be initiated a sufficient period of time in advance
10 of the cut-off date so that it may be completed by the cut-off date, taking into account the
11 times for services, notice, and response as set forth in the Federal Rules of Civil Procedure

12 The parties or their counsel, if represented, shall promptly and in good faith meet
13 and confer with regard to all discovery disputes in compliance with Local Rule 26.1(a).
14 The Court expects counsel and the parties to make every effort to resolve all disputes
15 without court intervention through the meet and confer process. Discovery motions must
16 be filed in the time and manner directed by Judge Burkhardt (*see* Judge Burkhardt’s Civil
17 Chambers Rules on Discovery Disputes). All discovery motions must be filed within 30
18 days of the service of an objection, answer, or response that becomes the subject of dispute
19 or the passage of a discovery due date without response or production, and only after
20 counsel have met and conferred to resolve the dispute **and** requested an informal
21 teleconference with the Court.

22 3. A **Mandatory Settlement Conference** shall be conducted on **May 6, 2021**,
23 at **9:00 AM** in the chambers of Magistrate Judge Jill L. Burkhardt, Edward J. Schwartz
24 U.S. Courthouse, 221 West Broadway, Suite 5140, San Diego, California 92101. If
25 Plaintiff is incarcerated, Plaintiff shall appear at the settlement conference by video
26 conference, and defense counsel shall assist in coordinating the arrangements for Plaintiff’s
27 video conference appearance. If Plaintiff is not incarcerated, Plaintiff shall attend the
28 settlement conference in person.

1 The parties or their counsel, if represented, shall LODGE confidential settlement
2 statements in accordance with Judge Burkhardt’s Civil Chambers Rules no later than
3 **April 26, 2021**. The confidential settlement statements should be lodged by e-mail to
4 `efile_Burkhardt@casd.uscourts.gov`. However, if e-mail is unavailable, settlement
5 conference statements may be lodged by mail to the U.S. District Court, Southern District
6 of California, Office of the Clerk, Attn: Magistrate Judge Burkhardt’s Chambers, 333 West
7 Broadway, Suite 420, San Diego, California 92101. **Settlement conference statements**
8 **shall not be filed via the CM/ECF system. Settlement conference statements may be**
9 **exchanged confidentially with opposing counsel within the parties’ discretion.**

10 Each party’s settlement statement shall concisely set forth the following: (1) the
11 party’s statement of the case; (2) the controlling legal issues; (3) issues of liability and
12 damages; (4) the party’s settlement position, including the last offer or demand made by
13 that party; (5) a separate statement of the offer or demand the party is prepared to make at
14 the settlement conference; and (6) a list of all attorney and non-attorney attendees for the
15 Conference, including person(s) and their title(s) or position(s) with the party who will
16 attend and have settlement authority at the conference.

17 Pursuant to Local Civil Rule 16.3, all party representatives and claims adjusters for
18 insured defendants with full and unlimited authority¹ to negotiate and enter into a binding
19 settlement, as well as the principal attorney(s) responsible for the litigation, must be present
20 and legally and factually prepared to discuss and resolve the case at the mandatory
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23 ¹ “Full authority to settle” means that the individuals at the settlement conference must
24 be authorized to fully explore settlement options and to agree at that time to any settlement
25 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
26 648 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to
27 change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481,
28 485–86 (D. Ariz. 2003). 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 settlement conference. In the case of a corporate entity, an authorized representative of the
2 corporation who is not retained outside counsel must be present and must have
3 discretionary authority to commit the company to pay an amount up to the amount of the
4 Plaintiff's prayer, excluding punitive damages prayers. The purpose of this requirement is
5 to have representatives present who can settle the case during the course of the conference
6 without consulting a superior.

7 **Failure to attend the conference or obtain proper excuse will be considered**
8 **grounds for sanctions.**

9 4. All dispositive pretrial motions, including motions for summary judgment and
10 motions addressing *Daubert* issues, must be filed by **May 28, 2021**.² Counsel for the
11 moving party must obtain a motion hearing date from Judge Anello's law clerk. The period
12 of time between the date you request a motion date and the hearing date may vary from
13 one district judge to another. Please plan accordingly. Failure to make a timely request
14 for a motion date may result in the motion not being heard.

15 5. If appropriate, following the filing of an order ruling on a motion for summary
16 judgment or other dispositive pretrial motion, or in the event no such motion is filed, after
17 the expiration of the deadline set forth in paragraph 4, *supra*, Judge Anello will issue a
18 pretrial scheduling order setting a pretrial conference, trial date, and all related pretrial
19 deadlines. The parties must review and be familiar with Judge Anello's Civil Chambers
20 Rules, which provide additional information regarding pretrial scheduling.

21 6. A post trial settlement conference before a magistrate judge may be held
22 within 30 days of verdict in the case.

23 7. The dates and times set forth herein will not be modified except for good cause
24 shown.

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27 ² This deadline is not applicable to pretrial motions *in limine*. For further information
28 regarding motions *in limine*, please refer to Judge Anello's Civil Chambers Rules.

1 8. Briefs or memoranda in support of or in opposition to any pending motion
2 shall not exceed twenty-five (25) pages in length without leave of a district judge. No reply
3 memorandum shall exceed ten (10) pages without leave of a district judge. Briefs and
4 memoranda exceeding ten (10) pages in length shall have a table of contents and a table of
5 authorities cited.

6 9. This Order does not otherwise amend the Court's previous Scheduling Orders
7 (ECF Nos. 37; 43).

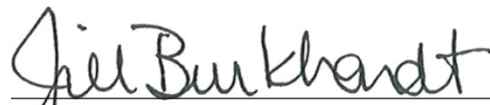
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9 The Clerk of Court is **DIRECTED** to mail a copy of this Order to the following
10 addresses:

11 Barry Ernest Ochoa
12 39161 Trail Creek Ln
13 Temecula, CA 92591

14 Philip Deitch
15 19360 Rinaldi St, Ste 330
16 Porter Ranch, CA 91326

17 **IT IS SO ORDERED.**

18 Dated: February 17, 2021

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20 Hon. Jill L. Burkhardt
21 United States Magistrate Judge
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