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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 Natural Shrimp, Inc.,

10 Plaintiff,

11 v.

12 Vista Capital Investments, LLC; David
13 Clark,

14 Defendants.
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Case No.: 19-cv-01239-WQH-BGS

NOTICE AND ORDER:

**(1) GRANTING JOINT MOTION TO
CONTINUE EARLY NEUTRAL
EVALUATION CONFERENCE**

[ECF No. 12]

AND

**(2) RE-SETTING EARLY NEUTRAL
EVALUATION CONFERENCE AND
SETTING RULE 26 COMPLIANCE
AND CASE MANAGEMENT
CONFERENCE.**

22 Presently before the Court is the parties' Joint Motion to Continue Early Neutral
23 Evaluation Conference (ECF No 12) based on the unavailability of counsel for Plaintiff.
24 Good cause appearing, the Joint Motion is **GRANTED**.

25 Accordingly, IT IS HEREBY ORDERED that an Early Neutral Evaluation of your
26 case will be held on **December 2, 2019**, at **1:30 PM** before United States Magistrate
27 Judge Bernard G. Skomal, United States District Court, 333 W. Broadway, Suite 1280,
28 San Diego, California.

1 **The following are mandatory guidelines for the parties preparing for the**
2 **Early Neutral Evaluation Conference.**

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

8 2. **Personal Appearance of Parties Is Required:** All parties, adjusters for
9 insured defendants, and client representatives must be present and have full and complete
10 authority to enter into a binding settlement at the ENE.¹ The purpose of this requirement
11 is to have representatives present who can settle the case during the course of the
12 conference without consulting a superior. Counsel for a government entity may be
13 excused from this requirement so long as the government attorney who attends the ENE
14 conference (1) has primary responsibility for handling the case; and (2) may negotiate
15 settlement offers which the attorney is willing to recommend to the government official
16 having ultimate settlement authority. Other parties seeking permission to be excused
17 from attending the ENE in person must follow the procedures outlined in Judge Skomal’s
18 Chambers’ Rules. (See Judge Skomal’s Chambers’ Rules II.C.) Failure of any of the
19 above parties to appear at the ENE conference without the Court’s permission will be
20 grounds for sanctions. The principal attorneys responsible for the litigation must also be
21 present in person and prepared to discuss all of the **legal and factual** issues in the case.

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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
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 3. **Confidential ENE Statements Required:** No later than **November 13,**
2 **2019,** the parties must submit confidential statements of seven pages or less directly to
3 Judge Skomal. Please also attach relevant exhibits. The statement must address the legal
4 and factual issues in the case and should focus on issues most pertinent to settling the
5 matter. Statements do not need to be filed or served on opposing counsel. The statement
6 must also include any prior settlement offer or demand, as well as the offer or demand the
7 party will make at the ENE. The Court will keep this information confidential unless the
8 party authorizes the Court to share the information with opposing counsel. **ENE**
9 **statements must be emailed to efile_Skomal@casd.uscourts.gov.**

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

13 5. **Case Management Conference:** Any objections made to initial disclosure
14 pursuant to Federal Rule of Civil Procedure, Rule 26(a)(1)(A)-(D) are overruled, and the
15 parties are ordered to proceed with the initial disclosure process. Any further objections
16 to initial disclosure will be resolved as required by Rule 26 and Judge Skomal's
17 Chambers' Rules regarding discovery disputes. Accordingly:

18 a. The Rule 26(f) conference shall be completed on or before **October**
19 **30, 2019;**

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

22 c. A Joint Discovery Plan shall be filed on the CM/ECF system as well
23 as lodged with Magistrate Judge Skomal by delivering the plan directly to chambers or by
24 emailing it to **efile_skomal@casd.uscourts.gov**, on or before **November 13, 2019.** The
25 plan must be one document and must explicitly cover the parties' views and proposals for
26 each item identified in Fed. R. Civ. P. 26(f)(3). Agreements made in the Discovery Plan
27 will be treated as binding stipulations that are effectively incorporated into the Court's
28 Case Management Order.

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

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

- 7 i. Are there any preservation issues? If so, what are they and how are
8 the parties addressing the issues;
- 9 ii. What form of production have the parties agreed to? Are there any
10 disputes with respect to the parties' preferred form of production?
11 What is the parties' positions respecting Metadata;
- 12 iii. Are there any proportionality issues? Specifically address Rule
13 26(b)(2)(B) relating to inaccessible electronically stored information
14 ("ESI");
- 15 iv. What have the parties decided regarding the methodologies for
16 identifying ESI for production? For instance, will the parties conduct
17 key word searching, use predictive coding, or other advanced culling
18 techniques.

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

22 6. **Requests to Continue an ENE Conference:** Requests to continue ENEs
23 are rarely granted. The Court will, however, consider formal motions to continue an
24 ENE when extraordinary circumstances exist and the other party has no objection. If
25 another party objects to the continuance, counsel for both parties must call chambers and
26 discuss the matter with the research attorney/law clerk assigned to the case before any
27 motion may be filed. **Any request for a continuance must be made as soon as counsel**
28 **is aware of the circumstances that warrant rescheduling the conference. Requests**

1 **to continue the ENE based on preexisting scheduling conflicts must be raised within**
2 **10 days of the Court's issuance of this Order.**

3 7. **Settlement Prior to ENE Conference:** The Court encourages the parties
4 to work on settling the matter in advance of the ENE Conference. In the event that the
5 parties resolve the matter prior to the day of the conference, the following procedures
6 must be followed before the Court will vacate the ENE and excuse the parties from
7 appearing:

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

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

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

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

22 **IT IS SO ORDERED.**

23 Dated: October 8, 2019

24 
25 Hon. Bernard G. Skomal
26 United States Magistrate Judge
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