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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JILL DONALD WATKINS,

12 Plaintiff,

13 v.

14 DOLLAR TREE INC., et al.,

15 Defendants.
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Case No.: 20cv717-L(MSB)

**ORDER GRANTING JOINT MOTION TO
CONTINUE EARLY NEUTRAL
EVALUATION CONFERENCE AND
RELATED DEADLINES [ECF NO. 27]**

18 On June 1, 2021, the parties filed a “Joint Motion to Continue Early Neutral
19 Evaluation Conference.” (ECF No. 27.) They ask the Court to continue the Early Neutral
20 Evaluation Conference (“ENE”) currently scheduled for June 23, 2021, at 1:30 p.m. by
21 two months. (Id. at 2.) In support, the parties state that “beyond th[e] information
22 plead” in Plaintiff’s First Amended Complaint, “Defendant is unaware of the full nature
23 and extent of Plaintiff’s injuries and the facts and circumstances relative to the
24 occurrence of the incident, and requires discovery on these issues to obtain a clearer
25 picture of same in order to evaluate the claim for settlement purposes.” (Id.) They
26 further contend that “Defendant is unable to evaluate both liability issues and
27 [P]laintiff’s claimed injuries, as same remain unknown[,]” and the parties are therefore
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1 “not yet able to meaningfully participate and discuss settlement at the June 23, 2021
2 ENE.” (Id. at 3.)

3 Having considered the parties’ joint motion and finding good cause, the Court
4 **GRANTS** the motion. Accordingly, the Court **CONTINUES** the ENE, as well as the Case
5 Management Conference (“CMC”), currently scheduled for June 23, 2021, at 1:30 p.m.,
6 until **August 25, 2021**, at **9:30 a.m.** The Court further issues the following **ORDERS**:

7 The ENE will be hosted through the Court’s ZoomGov account. All discussions at
8 the ENE Conference will be informal, off the record, privileged, and confidential.
9 Counsel for any non-English speaking party is responsible for arranging for the
10 appearance of an interpreter at the conference. The following rules and deadlines
11 apply:

12 **1. Personal Appearance of Parties Required:** All named parties, party
13 representatives, including claims adjusters for insured defendants, as well as the
14 principal attorney(s) responsible for the litigation, must participate in the video
15 conference, and be legally and factually prepared to discuss and resolve the case.
16 Counsel appearing without their clients (whether or not counsel has been given
17 settlement authority) will be cause for immediate imposition of sanctions and may also
18 result in the immediate termination of the conference.

19 **2. Full Settlement Authority Required:** A party or party representative with
20 full settlement authority¹ must be present at the conference. Retained outside
21 corporate counsel shall not appear on behalf of a corporation as the party

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24 ¹ “Full settlement authority” means that the individuals at the settlement conference must be
25 authorized to fully explore settlement options and to agree at that time to any settlement terms
26 acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989).
27 The person needs to have “unfettered discretion and authority” to change the settlement position of a
28 party. Pitman v. Brinker Int’l, Inc., 216 F.R.D. 481, 485–86 (D. Ariz. 2003). The purpose of requiring a
person with unlimited settlement authority to attend the conference contemplates 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. See Nick v. Morgan’s Foods, Inc., 270 F.3d 590, 595–97 (8th Cir.
2001).

1 representative who has the authority to negotiate and enter into a settlement.

2 **3. Confidential ENE Statements Required:** No later than **August 18, 2021**, the
3 parties shall submit directly to Magistrate Judge Berg’s chambers (via hand delivery or
4 by e-mail to the Court at efile_berg@casd.uscourts.gov), confidential settlement
5 statements. The ENE statement is limited to **five (5) pages or less, and up to five (5)**
6 **pages of exhibits or declarations.** Each party’s ENE statement must outline (1) the
7 nature of the case and the claims, (2) position on liability or defense, (3) position
8 regarding settlement of the case with a **specific demand/offer for settlement**, and
9 (4) any previous settlement negotiations or mediation efforts.

10 If a specific demand or offer cannot be made at the time the ENE statement is
11 submitted, then the reasons as to why a demand or offer cannot be made must be
12 stated. Further, the party must explain when they will be in a position to state a
13 demand or offer. General statements such as a party will “negotiate in good faith” is
14 not a specific demand or offer. The ENE statement should be submitted confidentially
15 and need not be shared with other parties.

16 **4.** The Court will use its official Zoom video conferencing account to hold the
17 ENE. **IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on computers through a
18 download on the Zoom website (<https://zoom.us/meetings>) or on mobile devices
19 through the installation of a free app.² Joining a Zoom conference does not require
20 creating a Zoom account, but it does require downloading the .exe file (if using a
21 computer) or the app (if using a mobile device). Participants are encouraged to create
22 an account, install Zoom, and familiarize themselves with Zoom in advance of the ENE.³
23 There is a cost-free option for creating a Zoom account.

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26 ² If possible, participants are encouraged to use laptops or desktop computers for the video conference,
as mobile devices often offer inferior performance.

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28 ³ For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>.

1 **5.** Prior to the start of the ENE, the Court will e-mail each ENE participant an
2 invitation to join a Zoom video conference. Again, if possible, participants are
3 encouraged to use laptops or desktop computers for the video conference, as mobile
4 devices often offer inferior performance. Participants shall join the video conference by
5 following the ZoomGov Meeting hyperlink in the invitation. **Participants who do not**
6 **have Zoom already installed on their device when they click on the ZoomGov Meeting**
7 **hyperlink will be prompted to download and install Zoom before proceeding.** Zoom
8 may then prompt participants to enter the password included in the invitation. All
9 participants will be placed in a waiting room until the ENE begins.

10 **6.** Each participant should plan to join the Zoom video conference **at least five**
11 **minutes before** the start of the ENE to ensure that the ENE begins promptly at **9:30 a.m.**
12 **The Zoom e-mail invitation may indicate an earlier start time, but the ENE will begin at**
13 **the Court-scheduled time.**

14 **7.** Zoom’s functionalities will allow the Court to conduct the ENE as it
15 ordinarily would conduct an in-person ENE. That is, the Court will begin the ENE with all
16 participants joined together in a main session. After an initial discussion in the main
17 session, the Court will divide participants into separate, confidential sessions, which
18 Zoom calls Breakout Rooms.⁴ In a Breakout Room, the Court will be able to
19 communicate with participants from a single party in confidence. Breakout Rooms will
20 also allow parties and counsel to communicate confidentially without the Court.

21 **8.** No later than **August 18, 2021**, counsel for each party shall send an e-mail
22 to the Court at efile_berg@casd.uscourts.gov containing the following:

23 a. The **name and title of each participant**, including all parties and
24 party representatives with full settlement authority, claims adjusters for insured
25 defendants, and the primary attorney(s) responsible for the litigation;

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28 ⁴ For more information on what to expect when participating in a Zoom Breakout Room, visit:
<https://support.zoom.us/hc/en-us/articles/115005769646>.

1 b. An **e-mail address for each participant** to receive the Zoom video
2 conference invitation; and

3 c. A **telephone number where each participant** may be reached so that
4 if technical difficulties arise, the Court will be able to proceed telephonically instead of
5 by video conference. (If counsel prefers all participants of their party on a single
6 conference call, counsel may provide a conference number and appropriate call-in
7 information, including an access code, where all counsel and parties or party
8 representatives for that side may be reached as an alternative to providing individual
9 telephone numbers for each participant.)

10 **9.** All participants shall display the same level of professionalism during the
11 ENE and be prepared to devote their full attention to the ENE as if they were attending
12 in person. Because Zoom may quickly deplete the battery of a participant’s device, each
13 participant should ensure that their device is plugged in or that a charging cable is
14 readily available during the video conference.

15 **10. New Parties Must be Notified by Plaintiff or Plaintiff’s Counsel:** Plaintiff’s
16 counsel shall give notice of the ENE to parties responding to the complaint after the
17 date of this notice.

18 **11. Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires that
19 an ENE take place within forty-five (45) days of the filing of the first answer. Requests to
20 continue ENEs are rarely granted. An ENE may be rescheduled only upon a showing of
21 good cause and adequate notice to the Court. **Absent good cause, requests for**
22 **continuances will not be considered unless submitted in writing no fewer than seven**
23 **(7) calendar days prior to the scheduled conference.**

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1 **12. Case Management Conference:** If the case does not settle during the ENE,
2 the Court will conduct a CMC at the conclusion of the ENE.

3 **IT IS SO ORDERED.**

4 Dated: June 1, 2021

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7 Honorable Michael S. Berg
8 United States Magistrate Judge
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