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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CASSANDRA LACKMAN,

Plaintiff,

v.

BLAZIN WINGS, INC.; BUFFALO
WILD WINGS, INC.; and INSPIRE
BRANDS, INC.,

Defendants.

Case No.: 3:20-cv-1256-BEN-AHG

**ORDER GRANTING MOTION TO
CONTINUE EARLY NEUTRAL
EVALUATION AND CASE
MANAGEMENT CONFERENCE**

[ECF No. 8]

This matter comes before the Court on the parties’ Joint Motion to Continue the Early Neutral Evaluation (“ENE”) and Case Management Conference (“CMC”), filed on August 6, 2020. ECF No. 8.

On July 9, 2020, the Court scheduled the ENE and CMC in this matter for September 8, 2020 before Magistrate Judge Allison H. Goddard. ECF No. 6. However, defense counsel is unavailable to attend the ENE on that date due to a previously scheduled family vacation. *See* ECF No. 8-1, James Decl. Upon due consideration, the Court finds good cause to **GRANT** the Joint Motion (ECF No. 8).

Accordingly, the ENE and CMC are hereby **RESET** for **October 9, 2020** at **2:00 p.m.** As before, the ENE will take place via videoconference for all attendees.

The Court issues the following **Mandatory Procedures** to be followed in

1 preparation for the ENE:

2 1. **Purpose of the Conference:** The purpose of the ENE is to permit an informal
3 discussion between the attorneys and the settlement judge of every aspect of the lawsuit in
4 an effort to achieve an early resolution of the case. All conference discussions will be
5 informal, off the record, and confidential.

6 2. **Full Settlement Authority Required:** A party or party representative with
7 **full and complete authority to enter into a binding settlement** must be present via
8 videoconference or immediately available to join. Full authority to settle means that a
9 person must be authorized to fully explore settlement options and to agree at that time to
10 any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat*
11 *Corp.*, 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion
12 and authority” to change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*,
13 216 F.R.D. 481, 485–86 (D. Ariz. 2003). Limited or sum certain authority is not adequate.
14 *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 595–97 (8th Cir. 2001). **A person who needs**
15 **to call another person who is not present on the videoconference before agreeing to**
16 **any settlement does not have full authority.**

17 3. **Confidential ENE Statements Required:** No later than **October 5, 2020**,
18 the parties shall submit confidential statements of five (5) pages or less directly to the
19 chambers of Magistrate Judge Goddard outlining the nature of the case, the claims, and the
20 defenses. **These statements shall not be filed or served on opposing counsel.** They shall
21 be lodged via email at efile_goddard@casd.uscourts.gov. The ENE statement is limited to
22 **five (5) pages or less, and up to five (5) pages of exhibits or declarations.** Each party’s
23 ENE statement must outline:

- 24 A. the nature of the case and the claims,
 - 25 B. position on liability or defense,
- 26
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1 C. position regarding settlement of the case with a **specific**¹
2 **demand/offer for settlement**,² and

3 D. any previous settlement negotiations or mediation efforts.

4 4. **Case Management Conference:** In the event the case does not settle at the
5 ENE, the Court will immediately thereafter hold a Case Management Conference (“CMC”)
6 pursuant to Fed. R. Civ. P 16(b). Appearance of the parties at the CMC is not required. The
7 Court orders the following to occur before the CMC:

8 A. The parties must meet and confer pursuant to Fed. R. Civ. P. 26(f) no
9 later than **September 18, 2020**.

10 B. The parties must file a Joint Case Management Statement by
11 **September 29, 2020**. The Joint Case Management Statement must
12 address all points in the “Joint Case Management Statement
13 Requirements for Magistrate Judge Allison H. Goddard,” which can
14 be found at:
15 [https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Join](https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf)
16 [t%20Case%20Management%20Statement%20Rules.pdf](https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf).

17 C. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by
18 **October 2, 2020**.

19 5. **Appearances via Videoconference Required:** All named parties, party
20 representatives, including claims adjusters for insured defendants, as well as principal
21 attorney(s) responsible for the litigation must attend the ENE via videoconference. All who
22 attend the ENE must be legally and factually prepared to discuss and resolve the case.

25 ¹ A general statement, such as that a party “will negotiate in good faith,” is a not a specific
26 demand or offer.

27 ² If a specific demand or offer cannot be made at the time the ENE statement is submitted,
28 then the reasons as to why a demand or offer cannot be made must be stated. Further, the
party must explain when they will be in a position to state a demand or offer.

1 Counsel appearing without their clients (whether or not counsel has been given settlement
2 authority) will be subject to immediate imposition of sanctions. To facilitate the
3 videoconference ENE, the Court hereby orders as follows:

4 A. The Court will use its official Zoom video conferencing account to hold
5 the ENE. **If you are unfamiliar with Zoom:** Zoom is available on
6 computers through a download on the Zoom website
7 (<https://zoom.us/meetings>) or on mobile devices through the
8 installation of a free app.³ Joining a Zoom conference does not require
9 creating a Zoom account, but it does require downloading the .exe file
10 (if using a computer) or the app (if using a mobile device). Participants
11 are encouraged to create an account, install Zoom and familiarize
12 themselves with Zoom in advance of the ENE.⁴ There is a cost-free
13 option for creating a Zoom account.

14 B. Prior to the start of the ENE, the Court will email each participant an
15 invitation to join a Zoom video conference. Again, if possible,
16 participants are encouraged to use laptops or desktop computers for the
17 video conference, as mobile devices often offer inferior performance.
18 Participants shall join the video conference by following the ZoomGov
19 Meeting hyperlink in the invitation. **Participants who do not have**
20 **Zoom already installed on their device when they click on the**
21 **ZoomGov Meeting hyperlink will be prompted to download and**
22 **install Zoom before proceeding.** Zoom may then prompt participants
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24
25 ³ If possible, participants are encouraged to use laptops or desktop computers for the
26 video conference, rather than mobile devices.

27 ⁴ For help getting started with Zoom, visit: [https://support.zoom.us/hc/en-](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started)
28 [us/categories/200101697-Getting-Started](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started)

1 to enter the password included in the invitation.

2 C. Each participant should plan to join the Zoom video conference **at least**
3 **five minutes before** the start of the ENE to ensure that the conference
4 begins promptly at 2:00 p.m.

5 D. Zoom's functionalities will allow the Court to conduct the ENE as it
6 ordinarily would conduct an in-person one. The Court will divide
7 participants into separate, confidential sessions, which Zoom calls
8 Breakout Rooms.⁵ In a Breakout Room, the Court will be able to
9 communicate with participants from a single party in confidence.
10 Breakout Rooms will also allow parties and counsel to communicate
11 confidentially without the Court.

12 E. No later than **October 5, 2020**, counsel for each party shall send an
13 e-mail to the Court at efile_goddard@casd.uscourts.gov containing the
14 following:

- 15 i. The **name and title of each participant**, including all parties
16 and party representatives with full settlement authority, claims
17 adjusters for insured defendants, and the primary attorney(s)
18 responsible for the litigation;
- 19 ii. An **e-mail address for each participant** to receive the Zoom
20 video conference invitation; and
- 21 iii. A **telephone number where each participant** may be reached
22 so that if technical difficulties arise, the Court will be in a
23 position to proceed telephonically instead of by video
24 conference. (If counsel prefers to have all participants of their
25 party on a single conference call, counsel may provide a
26

27 ⁵ For more information on what to expect when participating in a Zoom Breakout
28 Room, visit: <https://support.zoom.us/hc/en-us/articles/115005769646>

1 conference number and appropriate call-in information,
2 including an access code, where all counsel and parties or party
3 representatives for that side may be reached as an alternative to
4 providing individual telephone numbers for each participant.)

5 iv. **A cell phone number for that party's preferred point of**
6 **contact** (and the name of the individual whose cell phone it is)
7 for the Court to use during the ENE to alert counsel via text
8 message that the Court will soon return to that party's Breakout
9 Room, to avoid any unexpected interruptions of confidential
10 discussions.

11 F. All participants shall display the same level of professionalism during
12 the ENE and be prepared to devote their full attention to the ENE as if
13 they were attending in person, i.e., cannot be driving while speaking to
14 the Court. Because Zoom may quickly deplete the battery of a
15 participant's device, each participant should ensure that their device is
16 plugged in or that a charging cable is readily available during the video
17 conference.

18 G. If the case does not settle during the ENE, the Court will hold the CMC
19 immediately following the ENE with counsel only in the main session.

20 6. **Requests for Continuances:** Local Rule 16.1(c) requires that an ENE take
21 place within forty-five (45) days of the filing of the first answer. Requests to continue ENEs
22 are rarely granted. An ENE may be rescheduled only upon a showing of good cause and
23 adequate notice to the Court. Absent extraordinary circumstances, requests for
24 continuances will not be considered unless submitted **in writing** no less than seven (7) days
25 before the ENE. All requests for continuances must be made by a joint motion. The request
26 must state:

27 A. The original date;

28 B. The number of previous requests for continuances;

- 1 C. A showing of good cause for the request;
2 D. Whether the request is opposed and why;
3 E. Whether the requested continuance will affect other case management
4 dates; and
5 F. A declaration from the counsel seeking the continuance that describes
6 the steps taken to comply with the existing deadlines, and the specific
7 reasons why the deadlines cannot be met.

8 7. **New Parties Must be Notified by Plaintiff or Plaintiff's Counsel:**

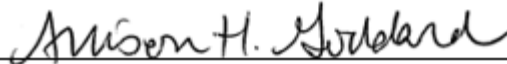
9 Plaintiff's counsel must give notice of the ENE to any Defendants who have been served
10 but who have not yet filed responsive pleadings as of the date of this Order. If any
11 Defendants have not yet been served, Plaintiff's counsel must serve them with a copy of
12 this Order along with the summons and complaint.

13 8. **The failure of any party to follow these mandatory procedures shall result**
14 **in the imposition of sanctions.**

15 9. Questions regarding this case or these mandatory guidelines may be directed
16 to Judge Goddard's law clerks at (619) 557-6162. Lodged statements should be emailed to
17 [efile_goddard@casd.uscourts.gov](mailto:goddard@casd.uscourts.gov).

18 **IT IS SO ORDERED.**

19 Dated: August 6, 2020

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21 _____
22 Honorable Allison H. Goddard
23 United States Magistrate Judge
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