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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ANALIA OLIVAS, a minor child, by and  
12 through her Guardian ad Litem,  
13 ALBERTO OLIVAS,

Plaintiff,

14 v.

15 LOWE'S COMPANIES, INC., et al.,  
16

17 Defendants.  
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Case No.: 21-cv-1769-GPC-RBM

**ORDER GRANTING JOINT  
MOTION TO CONTINUE EARLY  
NEUTRAL EVALUATION  
CONFERENCE AND RULE 26  
COMPLIANCE AND CASE  
MANAGEMENT CONFERENCE**

**[Doc. 9]**

20  
21 On October 28, 2021, Plaintiff Analia Olivas, a minor child by and through her  
22 Guardian ad Litem, Alberto Olivas ("Plaintiff") and Defendant Lowe's Companies, Inc.  
23 ("Defendant") filed a joint motion to continue early neutral evaluation conference and  
24 scheduling conference ("Joint Motion"). (Doc. 9.) The parties seek to continue the  
25 November 22, 2021 early neutral evaluation conference ("ENE") and case management  
26 conference ("CMC") to a date after December 1, 2021 as defense counsel and Defendant's  
27 primary representative will be unavailable on November 22, 2021 due to vacation plans  
28 and the Thanksgiving holiday. (*Id.* at 2.)

1 The undersigned's October 21, 2021 order set the ENE on **November 22, 2021** and  
2 the deadline to lodge confidential ENE statements on **November 10, 2021**. (Doc. 7 at 3.)

3 A scheduling order may be modified only upon a showing of good cause and with  
4 the judge's consent. FED. R. CIV. P. 16(b)(4); *see, e.g., Johnson v. Mammoth Recreations,*  
5 *Inc.*, 975 F.2d 604; 609 (9th Cir. 1992) (stating, "the focus of [the good cause] inquiry is  
6 upon the moving party's reasons for seeking modification.")

7 Here, the undersigned finds good cause to vacate the current ENE date and to grant  
8 a continuance, and thus the Joint Motion is **GRANTED**. Considering the 45-day timeline  
9 to convene the ENE as set forth in Civil Local Rule 16.1(c), **FURTHER REQUESTS TO**  
10 **CONTINUE THE ENE AND CMC WILL NOT BE GRANTED ABSENT**  
11 **EXTRAORDINARY GOOD CAUSE**. The undersigned's October 21, 2021 order is  
12 amended as follows:

13 IT IS HEREBY ORDERED that an **Early Neutral Evaluation Conference** of your  
14 case will be held on **December 13, 2021**, at **1:30 p.m.** before United States Magistrate  
15 Judge Ruth Bermudez Montenegro of the Southern District of California, United States  
16 Courthouse, 2003 W. Adams Ave., El Centro, CA 92243. In the event the case does not  
17 settle at the ENE, a **Case Management Conference** pursuant to FED. R. CIV. P. 16(b) is  
18 set for **December 13, 2021**, and will be held at the conclusion of the ENE. Although the  
19 Court typically requires personal attendance of all parties, party representatives, including  
20 claims adjusters for insured parties, and primary attorney(s) responsible for the litigation,  
21 due to the COVID-19 public emergency **the ENE and CMC shall convene through the**  
22 **Zoom video conferencing platform, as explained below**. If circumstances relating to the  
23 COVID-19 public emergency improve prior to the scheduled date, the Court will notify the  
24 parties that it will conduct the conference in person.

25 The following are **mandatory** directions for the parties preparing for the ENE.  
26 **Absent express permission from this Court, and notwithstanding the pendency of any**  
27 **motion, counsel shall timely comply with the dates and deadlines ordered herein.**

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1           **1. Purpose of Conference:** The purpose of the ENE is to permit an informal  
2 discussion between the attorneys, parties, and the settlement judge of every aspect of the  
3 lawsuit in an effort to achieve an early resolution of the case. All ENE discussions will be  
4 informal, off the record, privileged, and confidential. Counsel for non-English speaking  
5 parties is responsible for arranging for the appearance of an interpreter at the ENE.

6           **2. Personal Appearance of Parties Required:** All parties, adjusters for insured  
7 defendants, and other representatives of a party having full settlement authority as  
8 explained below, and the principal attorneys responsible for the litigation, must be present  
9 and legally and factually prepared to discuss settlement of the case. Counsel appearing  
10 without their clients (whether or not counsel has been given settlement authority) will be  
11 cause for immediate imposition of sanctions and may result in immediate termination of  
12 the ENE. If each of the principal attorneys responsible for the litigation is not listed on the  
13 docket as an “*ATTORNEY TO BE NOTICED*,” then they each shall enter their appearance  
14 on the docket as soon as practicable, but no later than **ten calendar days** prior to the ENE.

15           Unless extraordinary circumstances exist, persons required to attend the ENE under  
16 this Order will not be excused from attendance. **Requests for excuse from attendance**  
17 **for extraordinary circumstances shall be filed as a motion at least ten calendar days**  
18 **before the ENE.** Failure to appear at the ENE will be grounds for sanctions.

19           **3. Full Settlement Authority Required:** In addition to counsel who will try the  
20 case, a party or party representative with full settlement authority<sup>1</sup> must be present for the  
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24 <sup>1</sup> Full settlement authority means that the individuals at the settlement conference must be  
25 authorized to explore settlement options fully and to agree at that time to any settlement  
26 terms acceptable to the parties. *Heileman Brewing Co. v. Joseph Oat Corp.*, 871 F.2d 648,  
27 653 (7th Cir. 1989). The person needs to have unfettered discretion and authority to change  
28 the settlement position of a 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. *Pitman*, 216 F.R.D. at 486. A limited or a sum certain of

1 ENE. In the case of an entity, an authorized representative of the entity other than retained  
2 outside counsel must be present and must have discretionary authority to commit the entity  
3 to pay an amount up to the amount of Plaintiff's prayer (excluding punitive damages  
4 prayers). The purpose of this requirement is to have representatives present who can settle  
5 the case during the ENE without consulting a superior.

6 **4. ENE Statements Required:** On or before **December 1, 2021**, Plaintiff and  
7 Defendant shall lodge statements of **five pages** or less directly to Magistrate Judge  
8 Montenegro's chambers outlining the nature of the case, the claims, the defenses, and the  
9 parties' positions regarding settlement of the case. The settlement position must include a  
10 specific and current demand or offer addressing all relief or remedies sought. If a specific  
11 demand or offer cannot be made at the time the brief is submitted, then the reasons therefore  
12 must be stated along with a statement as to when the party will be in a position to state a  
13 demand or offer. A general statement that a party will "negotiate in good faith," "offer a  
14 nominal cash sum," or "be prepared to make an offer at the conference" is not a specific  
15 demand or offer. The statement shall also list all attorney and non-attorney conference  
16 attendees for that side, including the name(s) and title(s)/position(s) of the party/party  
17 representative(s) who will attend and have settlement authority at the conference.

18 ENE statements shall be lodged via email at [efile\\_montenegro@casd.uscourts.gov](mailto:efile_montenegro@casd.uscourts.gov).  
19 If exhibits are attached and the total submission amounts to more than twenty pages, a hard  
20 copy must also be delivered directly to chambers. **Whether these statements are**  
21 **submitted confidentially or whether they are served on opposing counsel is within the**  
22 **parties' discretion.** Statements of more than five pages will not be considered.

23 **5. Submission of Magistrate Judge Consent Form:** No later than **November**  
24 **10, 2021**, if Defendants consent to the reference to a magistrate judge, Defendants shall  
25 provide Plaintiff and/or Plaintiff's counsel with an executed copy of the attached consent  
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27 authority is not adequate. *See Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-97 (8th  
28 Cir. 2001).

1 form, titled Notice, Consent, and Reference of a Civil Action to a Magistrate Judge. Under  
2 Civil Local Rule 73.1, if (and only if) **all** parties have consented to the reference to a  
3 magistrate judge, then Plaintiff shall file the consent form(s) **in paper format** at the Clerk's  
4 Office by **November 17, 2021**. If the paper format filing reflects consent by **all** parties,  
5 then the form(s) will be forwarded to the assigned district judge for approval. The consent  
6 form(s) **should not be filed with the Court electronically** through its Case  
7 Management/Electronic Case Filing (CM/ECF) system. No consent form will be made  
8 available, nor will its contents be made known to any judicial officer, unless all parties  
9 have consented to the reference to a magistrate judge. The parties are free to withhold  
10 consent without adverse substantive consequences. Questions related to the consent  
11 form(s) should only be directed to the Clerk's Office at 619-557-5600. Please do not call  
12 chambers' staff with questions related to the consent form(s).

13 **6. New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel  
14 shall give notice of the ENE and this Order to parties responding to the Complaint after the  
15 date of this notice.

16 **7. Appearing via Zoom Video Conference Platform for ENE Conference**

- 17 **a.** The Court will use its official Zoom videoconferencing account to hold the  
18 ENE. IF YOU ARE UNFAMILIAR WITH ZOOM: Zoom is available on  
19 computers through a download on the Zoom website  
20 (<https://zoom.us/meetings>) or on mobile devices through the installation of a  
21 free app.<sup>2</sup> Joining a Zoom conference does not require creating a Zoom  
22 account, but it does require downloading the .exe file (if using a computer) or  
23 the app (if using a mobile device). Participants are encouraged to create an  
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28 <sup>2</sup> If possible, participants are encouraged to use laptops or desktop computers for the video  
conference, as mobile devices often offer inferior performance.

1 account, install Zoom and familiarize themselves with Zoom in advance of  
2 the ENE.<sup>3</sup> There is a cost-free option for creating a Zoom account.

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

13 **c.** Each participant should plan to join the Zoom video conference at **least five**  
14 **minutes before** the start of the ENE to ensure that the ENE begins promptly  
15 at 1:30 p.m. **The Zoom e-mail invitation may indicate an earlier start**  
16 **time, but the ENE will begin at the Court scheduled time.**

17 **d.** Zoom's functionalities will allow the Court to conduct the ENE as it ordinarily  
18 would conduct an in-person ENE. That is, the Court will begin the ENE with  
19 all participants joined together in a main session. After an initial discussion  
20 in the main session, the Court will divide participants into separate,  
21 confidential sessions, which Zoom calls Breakout Rooms.<sup>4</sup> In a Breakout  
22 Room, the Court will be able to communicate with participants from a single  
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26 <sup>3</sup> For help getting started with Zoom, visit: [https://support.zoom.us/hc/en-](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started)  
27 [us/categories/200101697-Getting-Started](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started).

28 <sup>4</sup> 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 party in confidence. Breakout Rooms will also allow parties and counsel to  
2 communicate confidentially outside of the Court's presence.

3 e. No later than **December 6, 2021**, counsel for each party shall send an e-mail  
4 to the Court at `efile_montenegro@casd.uscourts.gov` containing the  
5 following:

6 i. The **name and title of each participant**, including all parties and party  
7 representatives with full settlement authority, claims adjusters for  
8 insured defendants, and primary attorney(s) responsible for litigation;

9 ii. An **e-mail address for each participant** to receive the Zoom video  
10 conference invitation; and

11 iii. A **telephone number where each participant** may be reached so that  
12 if technical difficulties arise with Zoom, the Court will be able to  
13 proceed telephonically. (If counsel prefers to have all participants of  
14 their party on a single conference call, counsel may provide a  
15 conference number and appropriate call-in information, including an  
16 access code, where all counsel and parties or party representatives for  
17 that side may be reached as an alternative to providing individual  
18 telephone numbers for each participant.)

19 All participants shall display the same level of professionalism during the ENE and  
20 be prepared to devote their full attention to the ENE as if they were attending in person.  
21 Because Zoom may quickly deplete the battery of a participant's device, each participant  
22 should ensure that their device is plugged in or that a charging cable is readily available  
23 during the video conference.

24 **8. Case Management under the Amended Federal Rules:** The parties are  
25 ordered to comply with FED. R. CIV. P. 26 and proceed with the initial disclosure process  
26 as follows:

27 a. The Rule 26(f) conference shall be completed on or before **November 10,**  
28 **2021;**

1           b. The date of initial disclosure pursuant to Rule 26(a)(1)(A)-(D) shall occur on  
2           or before **December 1, 2021**;

3           c. A **Joint Discovery Plan** (“Plan”) shall be filed on the CM/ECF system as well  
4           as lodged with Magistrate Judge Montenegro by emailing the Plan to  
5           efile\_montenegro@casd.uscourts.gov, on or before **December 1, 2021**. The  
6           Plan must be one document and must explicitly cover the parties’ views and  
7           proposals for each item identified in FED. R. CIV. P. 26(f)(3). The parties  
8           should consult both Judge Montenegro’s and the assigned District Judge’s  
9           Civil Chambers Rules in drafting their Plan. A courtesy paper copy of the  
10          Plan shall be delivered to Judge Montenegro’s Chambers if the Plan, with its  
11          attachments, exceeds twenty pages.

12          **9. Requests to Continue or Reschedule an ENE:** Civil Local Rule 16.1(c)  
13          requires an ENE take place within 45 days of the filing of the first Answer. Requests to  
14          continue ENE are rarely granted. But the Court will consider formal, filed *ex parte* or joint  
15          motions to continue an ENE when extraordinary circumstances exist making a continuance  
16          appropriate. Absent extraordinary circumstances, requests for continuances **will not be**  
17          **considered unless filed** no less than **ten calendar days** before the scheduled conference.

18          **10. Settlement Prior to ENE:** It is expected that before the ENE, the parties will  
19          have exchanged good-faith settlement offers, including the basis for their positions, no later  
20          than **December 1, 2021**. If settlement is not achieved, Counsel shall be prepared to identify  
21          and discuss the impasses and barriers to settlement at the ENE. In the event the parties  
22          resolve the matter before the day of the ENE, the following procedures must be followed  
23          before the Court will vacate the ENE and excuse the parties from appearing:

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

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ANALIA OLIVAS, a minor child, by and  
through her Guardian ad Litem, ALBERTO  
OLIVAS,  
  
v.  
  
LOWE'S COMPANIES, INC., et al.,  
  
Plaintiff,  
  
Defendants.

Case No.: 21-cv-1769-GPC-RBM

**NOTICE, CONSENT, AND  
REFERENCE OF A CIVIL ACTION TO  
A MAGISTRATE JUDGE**

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*Notice of a magistrate judge's availability.* A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

*Consent to a magistrate judge's authority.* The following parties  Consent /  Do Not Consent\*  
to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Printed Names</i>	<i>Signatures of all parties <u>and</u> counsel for all parties</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**REFERENCE ORDER**

**IT IS ORDERED:** This case is referred to United States Magistrate Judge Ruth B. Montenegro to conduct all proceedings and order entry of a final judgment in accordance with 28 U.S.C. § 636(c), FED. R. CIV. P. 73, and CivLR 73.1.

\_\_\_\_\_  
Date

\_\_\_\_\_  
United States District Judge

\* Pursuant to Civil Local Rule 73.1, if (and only if) all parties have consented to the reference to a magistrate judge, then Plaintiff shall file the consent form(s) in paper format at the Clerk's Office.