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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Gerrity,

Plaintiff,

v.

AscentX Medical, Inc. et al,

Defendants.

Case No.: 22-cv-796-JO(WVG)

**ORDER GRANTING JOINT
MOTION TO CONTINUE (1) EARLY
NEUTRAL EVALUATION
CONFERENCE, (2) CASE
MANAGEMENT CONFERENCE,
AND (3) TELEPHONIC STATUS
CONFERENCE**

[ECF No. 7]

On October 14, 2022, the Parties filed a Joint Motion to Modify Scheduling Order, requesting the Court continue the November 17, 2022 Early Neutral Evaluation and Case Management Conference, and November 9, 2022 Telephonic Status Conference. (ECF No. 7.) The Court **GRANTS** the Joint Motion. Accordingly:

IT IS HEREBY ORDERED that an Early Neutral Evaluation (“ENE”) of your case and Case Management Conference (“CMC”) will be held **on December 20, 2022, at 2:00 p.m.**, before United States Magistrate Judge William V. Gallo. These conferences will be held via Zoom videoconference as set forth in Appendix A.

Additionally, **on December 13, 2022, beginning at 1:00 p.m.**, the Court will hold

1 an attorneys-only telephonic status conference with each party separately.¹ The purpose
2 of this confidential, off-the-record teleconference is for the Court's benefit in assessing
3 each party's concerns, challenges, and whether the Court can assist in alleviating these.
4 **On or before December 6, 2022**, each attorney intending to participate shall lodge, via
5 electronic mail addressed to efile_Gallo@casd.uscourts.gov, (1) the name of each attorney
6 who will participate and (2) a telephone number at which each attorney may be reached
7 directly without fail at the time of the conference.

8 **I. EARLY NEUTRAL EVALUATION CONFERENCE**

9 **The following are mandatory guidelines for the parties preparing for the ENE**
10 **Conference.**

11 **1. Purpose of Conference**

12 The purpose of the ENE is to permit an informal discussion between the attorneys,
13 parties and the settlement judge of every aspect of the lawsuit in an effort to achieve an
14 early resolution of the case. All conference discussions will be informal, off the record,
15 privileged and confidential. Counsel for non-English speaking parties is responsible for
16 arranging for the appearance of an interpreter at the conference.

17 **2. Personal Participation of Parties Required**

18 All parties, adjusters for insured defendants, and other representatives of a party
19 having full and complete authority to enter into a binding settlement, and the principal
20 attorneys responsible for the litigation, must participate in the ENE and be legally and
21 factually prepared to discuss settlement of the case. See S.D. Cal. Civ. L. R. 16.1(c). Given
22 the current ongoing COVID-19 pandemic and related travel and health concerns, the ENE
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25 ¹ The Court will contact the first party and proceed to contact the remaining parties one at
26 a time. Each call may be short or lengthy. Counsel are required to be available for the
27 Court's call beginning at the appointed time and remain available until they are called. If
28 counsel has not received a call from chambers after 20 minutes, counsel is directed to call
chambers at (619) 557-6384. If multiple counsel will appear for a party, all counsel shall
call jointly.

1 and CMC will be held via Zoom videoconference, the procedures for which are set forth
2 in Appendix A to this Order.

3 **3. Full Settlement Authority Required**

4 In addition to counsel who will try the case, a party or party representative with full
5 settlement authority² must participate in the conference. In the case of a corporate entity,
6 an authorized representative of the corporation who is not retained outside counsel must
7 participate and must have discretionary authority to commit the company to pay an amount
8 up to the amount of the plaintiff’s prayer (excluding punitive damage prayers). The
9 purpose of this requirement is to have representatives present who can settle the case during
10 the course of the conference without consulting a superior.

11 **4. Settlement Proposal and Response Required**

12 **No later than October 25, 2022**, Plaintiff shall submit to Defendant(s) a written
13 settlement proposal. **No later than November 11, 2022**, Defendant(s) shall submit a
14 response to Plaintiff’s settlement proposal. All parties shall be prepared to address in their
15 ENE Statements, and discuss at the ENE conference, the settlement proposal and response.

16 **5. ENE Statements Required**

17 In accordance with the Court’s Chambers Rules, each party shall exchange its
18 settlement Statement with all opposing parties. Additionally, in accordance with the
19 Court’s Chambers Rules, each party shall submit a confidential or non-confidential
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21 ² “Full authority to settle” means that the individuals at the settlement conference must be
22 authorized to fully explore settlement options and to agree at that time to any settlement
23 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
24 648 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to
25 change the settlement position of a party. *Pitman v. Brinker Intl., Inc.*, 216 F.R.D. 481,
26 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement
27 authority to attend the conference includes that the person’s view of the case may be altered
28 during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is
not adequate. The person with full settlement authority must be able to negotiate a
settlement without being restricted by any predetermined level of authority. *Nick v.*
Morgan’s Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

1 Statement to the Court. **Both the exchange of Statements between the parties and**
2 **submissions of Statements to the Court shall occur on or before December 6, 2022.**

3 The Statement each party submits directly to the chambers shall be five pages or less and
4 shall outline the nature of the case, the claims, the defenses, and the parties' positions
5 regarding settlement of, and attempts to settle the case. **All Statements must comply with**
6 **the Court's Chambers Rules.**

7 The parties shall meet and confer in good faith prior to the ENE Conference, and
8 verify that they have done so in their respective ENE Conference statements, outlining the
9 substance of their discussions and negotiations.

10 **6. Time Allotted**

11 The Court generally allots two hours for ENEs. Counsel should be prepared to be
12 succinct and to the point. Requests for additional time must be made in writing in the
13 party's ENE statement, accompanied by a short explanation.

14 **7. New Parties Must Be Notified by Plaintiff's Counsel**

15 Plaintiff's counsel shall give notice of the ENE Conference to all parties responding
16 to the Complaint after the date of this Notice.

17 **8. Requests to Continue an ENE Conference**

18 Civil Local Rule 16.1(c) requires that an ENE take place within 45 days of the filing
19 of the first answer. Requests to continue ENE conferences are rarely granted. Counsel
20 seeking to reschedule an ENE must first confer with opposing counsel. The Court will
21 consider formal, written *ex parte* requests to continue an ENE conference when
22 extraordinary circumstances exist that make a continuance appropriate. **Absent**
23 **extraordinary circumstances, requests for continuances of the ENE conference will**
24 **not be considered unless submitted in writing no less than seven calendar days prior**
25 **to the scheduled conference, and only after conferring with opposing counsel.**

26 Please refer to the undersigned's Chambers Rules for additional guidance regarding
27 the areas which must be addressed in the request.

28 The parties shall be prepared to engage in good faith settlement discussions with the

1 Court and opposing parties during the ENE Conference. Failure to engage in good faith
2 settlement discussions may result in the imposition of sanctions.

3 **II. CASE MANAGEMENT CONFERENCE**

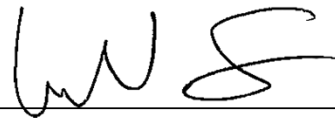
4 If the case does not settle at the ENE, the parties shall be prepared for a Case
5 Management Conference immediately upon completion of the ENE. Accordingly, the
6 Court issues the following orders:

- 7 1. The Rule 26(f) conference shall be completed before **October 13, 2022**;
- 8 2. The date of initial disclosure pursuant to Rule 26(a)(1)(A)-(D) shall occur before
9 **November 18, 2022**; and
- 10 3. A joint discovery plan shall be lodged with Magistrate Judge Gallo on or before
11 **December 6, 2022**.³

12 Questions regarding this case may be directed to the undersigned's Research
13 Attorney at (619) 557-6384. Please consult the undersigned's Chambers Rules, which are
14 available on the Court's website, before contacting chambers with any questions.

15 **IT IS SO ORDERED.**

16 DATED: October 14, 2022



17
18 Hon. William V. Gallo
19 United States Magistrate Judge

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27 ³ Counsel shall review the undersigned's Chambers Rules for guidance on completing the
28 proposed discovery plan. Counsel are further advised to consult the Chambers Rules of
the District Judge assigned to this case for case timeline preferences, if any.

Appendix A – Zoom Videoconference Procedures

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

9 2. Prior to the start of the ENE, the Court will e-mail counsel the meeting login
10 information required to join the Zoom video conference. Participants can join the video
11 conference by following the ZoomGov Meeting hyperlink provided to counsel *or* by
12 entering the meeting ID and password. Again, if possible, participants are encouraged to
13 use laptops or desktop computers with a camera for the video conference, as mobile devices
14 often offer inferior performance. **Participants who do not have Zoom already installed**
15 **on their device when they click on the ZoomGov Meeting hyperlink will be prompted**
16 **to download and install Zoom before proceeding.** Zoom may then prompt participants
17 to enter the password included in the invitation. All participants will be placed in a waiting
18 room until the ENE begins.

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

21 4. Zoom’s functionalities will allow the Court to conduct the ENE as it ordinarily
22 would conduct an in-person ENE. That is, the Court will begin the ENE with all
23 participants joined together in a main session. After an initial discussion in the main
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26 ⁴ If possible, participants are encouraged to use laptops or desktop computers for the
27 video conference, as mobile devices often offer inferior performance.

28 ⁵ For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>

1 session, the Court will divide participants into separate, confidential sessions, which Zoom
2 calls “Breakout Rooms.”⁶ In a Breakout Room, the Court will be able to communicate with
3 participants from a single party in confidence. Breakout Rooms will also allow parties and
4 counsel to communicate confidentially without the Court.

5 5. **No later than 12:00 p.m. on December 6, 2022**, counsel for each party shall
6 send an e-mail to the Court at efile_Gallo@casd.uscourts.gov containing the following:

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

10 b. An **e-mail address for each participant**. This email address should be
11 the same address the participant has used to create his or her Zoom account; and

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

19 6. 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.

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23 ⁶ For more information on what to expect when participating in a Zoom Breakout
24 Room, visit: <https://support.zoom.us/hc/en-us/articles/115005769646>. In short, the Court
25 will manually place each participant in their respective Breakout Room. When the Court
26 does this, on the participants device, the participant will see a notification regarding joining
27 the Breakout Room. The participant should select the option to join the room. If the Court
28 then wishes to close the Breakout Rooms and converse with all parties and counsel, the
participant should choose the option that will appear on his or her device to leave the
Breakout Room—this will send the participant to the group room; it will not expel the
participant from the conference.

1 Because Zoom may quickly deplete the battery of a participant's device, each participant
2 should ensure that their device is plugged in or that a charging cable is readily available
3 during the video conference. Participants should also participate in the conference in a
4 location that allows for privacy and which does not contain background noise such as dogs
5 barking, children, or other noise that will disrupt the conference.

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