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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
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12 HECTOR SEGURA,

13 Plaintiff,

14 v.

15 CITY OF SAN DIEGO, et al.,

16 Defendants.  
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Case No.: 3:22-cv-01029-RBM-AHG

**ORDER GRANTING DEFENDANTS’  
EX PARTE MOTION TO  
CONTINUE EARLY NEUTRAL  
EVALUATION CONFERENCE AND  
CASE MANAGEMENT  
CONFERENCE**

**[ECF No. 23]**

20 Before the Court is Defendants’ *ex parte* motion to continue the Early Neutral  
21 Evaluation Conference (“ENE”) and Case Management Conference (“CMC”), presently  
22 scheduled for July 12, 2023. ECF No. 23. Defendants request that the ENE and CMC be  
23 rescheduled because Defendants’ claims representative with settlement authority will be  
24 unavailable on that date. *Id.* at 2. Further, Defendants seek an extension of pre-conference  
25 deadlines because they have been unable to meet and confer with Plaintiff pursuant to  
26 Rule 26(f), as required by the Court’s order setting the ENE and CMC, despite numerous  
27 attempts via email, phone, letter, and personal service. ECF No. 23-1. Court staff also  
28 attempted to reach Plaintiff, to no avail. Email from Chambers (June 20, 2023, at 6:01 PM).

1 The Court appreciates Defendants’ thorough motion, and finds good cause to **GRANT** the  
2 motion as follows:

3 1. The Court reminds Plaintiff of his duty to comply with Court-ordered  
4 conferences and deadlines. One such deadline is the deadline to meet and confer with  
5 Defendants’ counsel pursuant to Rule 26(f). Further lack of participation by Plaintiff, such  
6 as by failing to participate in a Rule 26(f) conference or by failing to attend the ENE, will  
7 be considered grounds for the undersigned to issue an Order to Show Cause regarding a  
8 report and recommendation of dismissal for failure to prosecute. *See* FED. R. CIV. P. 41(b).

9 2. The ENE and CMC scheduled for July 12, 2023, are **RESET** for  
10 **August 16, 2023** at **2:00 p.m.** ***via videoconference*** before Magistrate Judge  
11 Allison H. Goddard. In accordance with the Local Rules, the Court requires attendance of  
12 all parties, party representatives, including claims adjusters for insured defendants, and the  
13 primary attorney(s) responsible for the litigation via videoconference. CivLR 16.1(c)(1).

14 3. **Purpose of the Conference:** The purpose of the ENE is to permit an informal  
15 discussion between the attorneys, *pro se* parties, and the settlement judge of every aspect  
16 of the lawsuit in an effort to achieve an early resolution of the case. All conference  
17 discussions will be informal, off the record, and confidential.

18 4. **Full Settlement Authority Required:** A party or party representative with  
19 **full and complete authority to enter into a binding settlement** must be present via  
20 videoconference. Full authority to settle means that a person must be authorized to fully  
21 explore settlement options and to agree at that time to any settlement terms acceptable to  
22 the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir.  
23 1989). The person needs to have “unfettered discretion and authority” to change the  
24 settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481, 485–86 (D.  
25 Ariz. 2003). Limited or sum certain authority is not adequate. *Nick v. Morgan’s Foods,*  
26 *Inc.*, 270 F.3d 590, 595–97 (8th Cir. 2001). **A person who needs to call another person**  
27 **who is not present on the videoconference before agreeing to any settlement does not**  
28 **have full authority.**

1           5.     **Confidential ENE Statements Required:** No later than **August 9, 2023**, the  
2 parties shall submit confidential statements of five (5) pages or less directly to the chambers  
3 of Magistrate Judge Goddard outlining the nature of the case, the claims, and the defenses.  
4 **These statements shall not be filed or served on opposing counsel.** They shall be lodged  
5 via email at [efile\\_goddard@casd.uscourts.gov](mailto:efile_goddard@casd.uscourts.gov). The ENE statement is limited to **five (5)**  
6 **pages or less, and up to five (5) pages of exhibits or declarations.** Each party’s ENE  
7 statement must outline:

- 8           A.     the nature of the case and the claims,
- 9           B.     position on liability or defense,
- 10          C.     position regarding settlement of the case with a **specific**<sup>1</sup>  
11                 **demand/offer for settlement,**<sup>2</sup> and
- 12          D.     any previous settlement negotiations or mediation efforts.

13           6.     **Case Management Conference:** In the event the case does not settle at the  
14 ENE, the Court will immediately thereafter hold a Case Management Conference (“CMC”)  
15 pursuant to Fed. R. Civ. P. 16(b). The Court orders the following to occur before the CMC:

- 16          A.     The parties must meet and confer pursuant to Fed. R. Civ. P. 26(f) no  
17                 later than **July 24, 2023**.
- 18          B.     The parties must file a Joint Case Management Statement by  
19                 **August 4, 2023**. The Joint Case Management Statement must address  
20                 all points in the “Joint Case Management Statement Requirements for  
21                 Magistrate Judge Allison H. Goddard,” which can be found on the  
22                 court website at:

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

27 <sup>2</sup> 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 <https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf>.

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3 C. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by  
4 **August 7, 2023**.

5 7. **Appearances via Videoconference Required:** All named parties, party  
6 representatives, including claims adjusters for insured defendants, as well as principal  
7 attorney(s) responsible for the litigation must attend the ENE via videoconference. All who  
8 attend the ENE must be legally and factually prepared to discuss and resolve the case.  
9 Counsel appearing without their clients (whether or not counsel has been given settlement  
10 authority) will be subject to immediate imposition of sanctions. To facilitate the  
11 videoconference ENE, the Court hereby orders as follows:

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

22 B. Prior to the start of the ENE, the Court will email each participant an  
23 invitation to join a Zoom video conference. Again, if possible,  
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26 <sup>3</sup> If possible, participants are encouraged to use laptops or desktop computers for the video  
27 conference, rather than mobile devices.

28 <sup>4</sup> For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>

1 participants are encouraged to use laptops or desktop computers for the  
2 video conference, as mobile devices often offer inferior performance.  
3 Participants shall join the video conference by following the ZoomGov  
4 Meeting hyperlink in the invitation. **Participants who do not have**  
5 **Zoom already installed on their device when they click on the**  
6 **ZoomGov Meeting hyperlink will be prompted to download and**  
7 **install Zoom before proceeding.** Zoom may then prompt participants  
8 to enter the password included in the invitation.

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

12 D. Zoom’s functionalities will allow the Court to conduct the ENE as it  
13 ordinarily would conduct an in-person one. The Court will divide  
14 participants into separate, confidential sessions, which Zoom calls  
15 Breakout Rooms.<sup>5</sup> In a Breakout Room, the Court will be able to  
16 communicate with participants from a single party in confidence.  
17 Breakout Rooms will also allow parties and counsel to communicate  
18 confidentially without the Court.

19 E. No later than **August 9, 2023**, each party shall send an e-mail to the  
20 Court at [efile\\_goddard@casd.uscourts.gov](mailto:efile_goddard@casd.uscourts.gov) containing the following:

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

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28 <sup>5</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           ii.    An **e-mail address for each participant** to receive the Zoom
- 2                    video conference invitation;
- 3           iii.   A **telephone number where each participant** may be reached;
- 4                    and
- 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 or in a car while

14                   speaking to the Court. Because Zoom may quickly deplete the battery

15                   of a participant's device, each participant should ensure that their

16                   device is plugged in or that a charging cable is readily available during

17                   the video conference.

18           G.    Counsel are advised that although the ENE will take place on Zoom, all

19                   participants shall appear and conduct themselves as if it is proceeding

20                   in a courtroom, i.e., all participants must dress in appropriate courtroom

21                   attire.

22           H.    If the case does not settle during the ENE, the Court will hold the CMC

23                   immediately following the ENE with counsel only in the main session.

24           8.    **The failure of any party to follow these mandatory procedures shall result**

25 **in the imposition of sanctions.**

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