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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PATRICIA ALVAREZ,  
  
Plaintiff,  
  
v.  
  
WALMART STORE INC., et al.,  
  
Defendants.

Case No.: 23cv1519-W(LR)

**AMENDED ORDER FOR EARLY  
NEUTRAL EVALUATION  
CONFERENCE AND CASE  
MANAGEMENT CONFERENCE**

On August 22, 2023, Judge William V. Gallo issued an order setting a video Early Neutral Evaluation Conference and Case Management Conference in this case for October 23, 2022, at 2:00 p.m. (ECF No. 3.) On October 17, 2023, the case was transferred from the calendar of Judge William V. Gallo to the calendar of Judge Jill L. Burkhardt. (ECF No. 7.) On October 18, 2023, the case was transferred from the calendar of Judge Jill L. Burkhardt to the calendar of Judge Lupe Rodriguez, Jr. (ECF No. 8.)

In light of the case’s reassignment, the Court issues the following Amended Order for Early Neutral Evaluation Conference and Case Management Conference:

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1 The video Early Neutral Evaluation (“ENE”) Conference and Case Management  
2 Conference currently scheduled for October 23, 2023, at 2:00 p.m. are **RESET** for  
3 **November 2, 2023**, at **9:30 a.m.** All discussions at the ENE Conference will be  
4 informal, off the record, privileged, and confidential. Counsel for any non-English  
5 speaking party is responsible for arranging for the appearance of an interpreter at the  
6 conference. The following rules and deadlines apply:

7 **1. Appearance via Videoconference Required:** All named parties (including  
8 those who are indemnified by others), party representatives, including claims adjusters  
9 for insured defendants, as well as the principal attorney(s) responsible for the litigation,  
10 must participate in the video conference, and be legally and factually prepared to discuss  
11 and resolve the case. Counsel appearing without their clients will be cause for immediate  
12 imposition of sanctions and may also result in the immediate termination of the  
13 conference.

14 **2. Full Settlement Authority Required:** A party or party representative with full  
15 settlement authority<sup>1</sup> must be present at the conference. A person who needs to call  
16 another person who is not present on the videoconference before agreeing to any  
17 settlement does not have full settlement authority. Retained outside corporate counsel  
18 shall not appear on behalf of a corporation as the party representative who has the  
19 authority to negotiate and enter into a settlement. Counsel for a government entity is  
20 excused from this requirement if the government counsel who participates in the ENE  
21 (1) has primary responsibility for handling the case, and (2) may negotiate settlement  
22 offers that the attorney is willing to recommend to the government official having  
23 ultimate settlement authority.

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26 <sup>1</sup> “Full settlement authority” means that a person is authorized to fully explore settlement options and to  
27 agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph  
28 Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion and  
authority” to change the settlement position of a party. Pitman v. Brinker Int’l, Inc., 216 F.R.D. 481,  
485–86 (D. Ariz. 2003). Limited or a sum certain authority is not adequate. See Nick v. Morgan’s  
Foods, Inc., 270 F.3d 590, 595–97 (8th Cir. 2001).

1           **3. Confidential ENE Statements Required:** No later than **October 26, 2023**,  
2 the parties shall submit directly to Magistrate Judge Rodriguez’s chambers (via hand  
3 delivery or by e-mail to the Court at [efile\\_rodriguez@casd.uscourts.gov](mailto:efile_rodriguez@casd.uscourts.gov)), confidential  
4 settlement statements. The ENE statement is limited to **five (5) pages or less, and up to**  
5 **five (5) pages of exhibits or declarations.** Each party’s ENE statement must outline:  
6 (1) the nature of the case and the claims, (2) position on liability or defense, (3) position  
7 regarding settlement of the case with a **specific demand/offer for settlement**, and  
8 (4) any previous settlement negotiations or mediation efforts.

9           If a specific demand or offer cannot be made at the time the ENE statement is  
10 submitted, then the reasons as to why a demand or offer cannot be made must be stated.  
11 Further, the party must explain when they will be able to state a demand or offer.

12 **General statements such as a party will “negotiate in good faith” is not a specific**  
13 **demand or offer.** The ENE statement should be submitted confidentially and need not  
14 be shared with other parties.

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

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27 <sup>2</sup> For help getting started with Zoom, visit: [https://support.zoom.us/hc/en-us/categories/200101697-](https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started)  
28 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**  
7 **Meeting hyperlink will be prompted to download and install Zoom before**  
8 **proceeding.** Zoom may then prompt participants to enter the password included in the  
9 invitation. All 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 ten**  
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**  
13 **begin at the Court-scheduled time.**

14           **7.** Zoom’s functionalities will allow the Court to conduct the ENE as it ordinarily  
15 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.<sup>3</sup> 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.** All participants shall display the same level of professionalism during the ENE  
22 and be prepared to devote their full attention to the ENE as if they were attending in  
23 person. Because Zoom may quickly deplete the battery of a participant’s device, each  
24 participant should ensure that their device is plugged in or that a charging cable is readily  
25 available during the video conference.

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28 <sup>3</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           **8. New Parties Must be Notified by Plaintiff or Plaintiff’s Counsel:** Plaintiff’s  
2 counsel shall give notice of the ENE to parties responding to the complaint after the date  
3 of this notice.

4           **9. Case Management Conference:** If the case does not settle at the ENE, the  
5 Court will conduct a Case Management Conference **immediately after the ENE.**

6           **IT IS SO ORDERED.**

7 Dated: October 20, 2023

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12 Honorable Lupe Rodriguez, Jr.  
13 United States Magistrate Judge  
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