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 7 Smart Industries Corporation

8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**

EJY

10 WESCO INSURANCE COMPANY as subrogee
 of its insured NICKELS AND DIMES
 11 INCORPORATED,

Case No.: 2:16-cv-01206-JCM-CWH

12 Plaintiff,

13 vs.

14 SMART INDUSTRIES CORPORATION dba
 SMART INDUSTRIES CORP., MFG., an Iowa
 15 corporation,

CONSOLIDATED FOR PURPOSES OF
DISCOVERY AND TRIAL

16 Defendants.

17 JENNIFER WYMAN, individually; BEAR
 18 WYMAN, a minor, by and through his natural
 parent JENNIFER WYMAN; JENNIFER
 19 WYMAN and VIVIAN SOOF, as Joint Special
 Administrators of the ESTATE OF CHARLES
 20 WYMAN,

Case No.: 2:16-cv-02378-RFB-GWF

21 Plaintiffs,

22 vs.

23 SMART INDUSTRIES CORPORATION dba
 SMART INDUSTRIES CORP., MFG.; HI-TECH
 24 SECURITY INC; WILLIAM ROSEBERRY;
 BOULEVARD VENTURES, LLC; SANSONE
 25 COMPANIES, LLC; DOES I through V; and
 BUSINESS ENTITIES I through V, inclusive,

**DEFENDANT SMART INDUSTRIES
CORPORATION dba SMART
INDUSTRIES CORP., MFG.'S MOTION
FOR LEAVE TO APPEAR VIRTUALLY
AT SETTLEMENT CONFERENCE**

26 Defendants.
27

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1 A Settlement Conference has been scheduled in the above referenced matter for Wednesday,
2 April 27, 2022 with Magistrate Judge Elayna J. Youchah. Pursuant to the Order Setting Settlement
3 Conference filed on February 28, 2022, any party desiring an exception from personally attending
4 the settlement conference must submit a request, after consultation with opposing counsel, a least 7
5 days before the settlement conference.

6 Counsel for each of the plaintiffs (namely Peter Dubowsky for Plaintiff Wesco Ins. Co.,
7 Brittney Glover for Wyman Plaintiffs, and Cliff Marcek for Rodriguez Plaintiffs) have given defense
8 counsel their consent that *both* representatives for Defendant Smart Industries Corp. and its carrier
9 be permitted to appear remotely instead of in person. As Ms. Glover stated, “As long as the
10 individuals appearing have settlement authority, we do not have an issue with your client and carrier
11 appearing virtually for the upcoming settlement conference.”¹ And, this Court has already granted
12 leave for the representative for Defendant Smart Industries Corp.’s carrier to appear virtually. ECF
13 No. 367 (minute order dated 04/06/2022).

14
15 The president of Defendant Smart Industries, Jeff Smart, will be out of the country in Taiwan
16 at the time of the settlement conference. Accordingly, the company’s vice president, Jeff DuPree
17 intends to appear on behalf of Defendant Smart Industries. However, it would pose an unusual
18 burden for Smart Industries to have both its president and vice president out of state simultaneously
19 for multiple days. Smart Industries is based in the State of Iowa. If Mr. DuPree were to travel to
20 Las Vegas, Nevada it would require that he be out of the office for multiple days.

21
22 Furthermore, upon information and belief, Mr. DuPree currently suffers from a fractured
23 shoulder. Requiring him to travel to Las Vegas, Nevada would further require that he be estranged
24 from his medical providers for that period, risk injury to his shoulder during the 5+ hrs. flights to
25 and from Las Vegas, Nevada, and also expose him to the risks of COVID-19. Accordingly,
26 appearing personally for the settlement conference would create an unusual burden.

27
28 ¹ See April 5, 2022 Email Correspondence attached as **Exhibit A**.

1 Defendant respectfully requests that Mr. DuPree be allowed to attend the settlement
2 conference remotely via videoconference. That way, Mr. DuPree would be able to participate in
3 good faith, without concerns about risks associated with travel. Defendant also notes that the Court,
4 counsel of record, and Mr. DuPree have all developed greater capability at videoconferencing in
5 recent years owing to the pandemic.

6 BARRON & PRUITT, LLP

7 /s/ Joseph Meservy

8

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14 *Attorneys for Defendant*
15 *Smart Industries Corporation*

16 IT IS SO ORDERED.

17 IT IS FURTHER ORDERED that counsel for
18 Defendant Smart Industries must bring to the
19 settlement conference a computer with the
20 necessary programming or application to allow
21 counsel to connect with Smart Industries
22 representative and its insurer by video
23 conference for the entirety of the settlement
24 conference.

25 
26

U.S. MAGISTRATE JUDGE

27 Dated: April 8, 2022

28
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