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PLEASE READ THIS ORDER CAREFULLY

This case has been referred to Magistrate Judge Sheri Pym for settlement proceedings.

The Settlement Conference is placed on calendar for __, at 9:30 a.m., in **Courtroom 3 of the United States District Court, Riverside Courthouse, located at 3470 Twelfth Street in Riverside, California.**

The magistrate judge will not be involved in the actual trial of the case, but rather will assist the parties in an objective appraisal and evaluation of the case. The following are guidelines for the parties in preparing for the Settlement Conference.

Purpose

1. The purpose of the Settlement Conference is to permit an informal discussion between the attorneys, parties, non-party indemnitors or insurers, and the settlement judge, of every aspect of the case bearing on its settlement value.

Confidentiality

1 2. Pursuant to Local Rule 16-15.8, all settlement proceedings shall be
2 confidential and no statement made therein shall be admissible in any proceeding in
3 the case, unless the parties otherwise agree. No part of a settlement proceeding shall
4 be reported or otherwise recorded, without the consent of the parties, except for any
5 memorialization of a settlement.

6 **Persons Who Must Be Present at Settlement Conference**

7 3. In addition to counsel who will try the case being present, a person with
8 full settlement authority should likewise be present for the conference. This
9 requirement contemplates the physical presence of the actual parties – that is, the
10 clients – or, if a corporate or governmental entity, of an authorized and
11 knowledgeable representative of the client.¹ The plaintiff’s representative must have
12 full and final authority, **in the representative’s sole discretion**, to authorize
13 dismissal of the case with prejudice, or to accept a settlement amount recommended
14 by the settlement judge down to the defendant’s last offer made prior to the
15 settlement conference. The defendant’s representative must have final settlement
16 authority to commit the defendant to pay, **in the representative’s sole discretion**, a
17 settlement amount recommended by the settlement judge up to the plaintiff’s prayer
18 (excluding punitive damage prayers), or up to the plaintiff’s last demand made prior
19 to the settlement conference, whichever is **lower**.

20 The purpose of this requirement is to have representatives present who can
21 settle the case during the course of the conference without consulting a superior.

22 4. If Board approval is required to authorize settlement, the attendance of
23 at least one sitting and knowledgeable member of the Board (preferably the

24 _____
25 ¹ Unless otherwise ordered by the court, however, if this matter is a lawsuit in
26 which the United States or any of its agencies is a party, the Assistant United States
27 Attorney who will try the case may appear without a representative, provided that he
28 or she comes armed with the full measure of authority conveyed by his or her
superiors within the United States Attorney’s Office after appropriate consultation.

1 Chairman) is **absolutely required**.

2 5. Subject to paragraph 7 below, counsel appearing without their clients
3 (whether or not counsel purportedly have been given settlement authority) will
4 cause the settlement conference to be cancelled and rescheduled. The noncomplying
5 party, attorney, or both, may be assessed the costs and expenses incurred by other
6 parties as a result of such cancellation and rescheduling.

7 6. Any insurance company that is a party to the case, or is contractually
8 required to defend or to pay damages assessed within policy limits, should have a
9 settlement representative present at the conference. Such representative must have
10 final settlement authority to commit the company to pay, **in the representative's**
11 **sole discretion**, an amount recommended by the settlement judge within the policy
12 limits. The purpose of this requirement is to have an insurance representative
13 present who can settle the outstanding claim or claims during the course of the
14 conference without consulting a superior. An insurance representative authorized to
15 pay, **in his or her sole discretion**, up to the plaintiff's last demand made prior to the
16 settlement conference will also satisfy this requirement. Counsel of record will be
17 responsible for timely advising any involved non-party insurance company of the
18 requirements of this Order.

19 7. When a person whose personal attendance would otherwise be required
20 pursuant to the foregoing paragraphs resides outside this district, the court will
21 consider excusing the personal attendance of such person, so long as such person
22 can and will be available by telephone during the entire settlement conference. If a
23 party desires to avail itself of this excuse from personal attendance, counsel should
24 so request in such party's Settlement Conference Statement (and specify where such
25 person will be located during the settlement conference). After the party's
26 Settlement Conference Statement is submitted, counsel should contact Magistrate
27 Judge Pym's courtroom deputy clerk to ascertain whether the request has been
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1 granted. **Frequently, such requests are not granted.**

2 **Pre-Conference Discussions and Exchange of Offers**

3 8. Prior to the Settlement Conference, the attorneys are directed to discuss
4 settlement with their respective clients and insurance representatives, so that the
5 parameters of possible settlement will have been explored well in advance of the
6 Settlement Conference. At the Settlement Conference, each party shall be fully
7 prepared to discuss all economic and non-economic factors relevant to a full and
8 final settlement of the case.

9 9. In order to avoid the unnecessary expenditure of resources if the case is
10 not ripe for settlement, and in order to provide the parties with a starting point for
11 their settlement discussions with the magistrate judge if the case is ripe for
12 settlement, plaintiff shall advise defendant(s) of the terms upon which plaintiff then
13 is prepared to settle the case, in a letter delivered or faxed no later than ten (10)
14 **court days** prior to the Settlement Conference. Within forty-eight (48) hours of
15 receipt of plaintiff's settlement offer, each defendant shall respond to the same by
16 letter advising plaintiff of the terms upon which such defendant is prepared to settle
17 the case.² **If, following this exchange of settlement offers, counsel for any of the**
18 **parties believes that the case is not ripe for settlement and/or that proceeding**
19 **with the settlement conference as scheduled will not be a productive use of the**
20 **magistrate judge's and the parties' time, then counsel for the parties shall**
21 **immediately contact the courtroom deputy at 951-328-4467 and arrange for a**

22
23 ² The Court expects the parties to exchange good faith settlement offers. For
24 the plaintiff, this means offering to settle on terms less favorable than those which
25 the plaintiff reasonably could expect to achieve if plaintiff prevailed at trial, taking
26 into account plaintiff's non-recoupable costs of litigation. For each defendant, this
27 means offering to settle on terms less favorable to such defendant than those such
28 defendant reasonably could expect to achieve if such defendant prevailed at trial,
taking into account such defendant's non-recoupable costs of litigation.

1 **telephonic conference with the magistrate judge to discuss the advisability of**
2 **proceeding with the settlement conference as scheduled.**

3 **Settlement Conference Statements**

4 10. Assuming the settlement conference remains on calendar, no later than
5 4:00 p.m. five (5) court days prior thereto, each party shall **submit a Settlement**
6 **Conference Statement directly to the chambers of Magistrate Judge Pym**, by
7 hand-delivering the Statement to Magistrate Judge Pym's chambers copy box on the
8 third floor of the United States District Court's Riverside Courthouse, 3470 Twelfth
9 Street, Riverside, California, by emailing the Statement to chambers at
10 SP_chambers@cacd.uscourts.gov or by faxing the Statement to 951-328-2249.³ The
11 parties shall exchange the Statements on the same date. The Statements should not
12 be filed with the Clerk of the Court, and they will not be made part of the case file.
13 The Statements shall be double-spaced and shall not exceed ten (10) pages in length.

14 11. The parties' respective Settlement Conference Statements shall include
15 the following:

16 a. A brief statement of the facts of the case, and of the claims and
17 defenses remaining to be tried, including the statutory or other grounds upon
18 which the claims are founded. This statement should identify the major
19 factual and legal issues in dispute, and cite any controlling authorities.

20 b. An itemized statement of the damages claimed, and of any other
21 relief sought.

22 c. A summary of the proceedings to date, including any case
23 management dates/deadlines already set by the District Judge.

24 d. A history of past settlement discussions, offers and demands,
25 including the most recent settlement offers exchanged pursuant to ¶ 9 above.

26
27 ³ If the Settlement Conference Statement, including the Confidential Adden-
28 dum, exceeds 15 pages in length, it should be hand-delivered, not faxed.

1 A copy of such party's letter sent pursuant to ¶ 9 above should be attached to
2 such party's Settlement Conference Statement.

3 12. **Each party shall also prepare a Confidential Addendum to**
4 **Settlement Conference Statement, which shall be delivered (or emailed or**
5 **faxed) directly to Magistrate Judge Pym only, along with the Settlement**
6 **Conference Statement.** The Confidential Addendum shall not be filed with the
7 court or served upon the other parties. The Confidential Addendum shall contain:

8 a. A forthright evaluation of the party's likelihood of prevailing on
9 each of its claims and/or defenses.

10 b. The approximate amount of attorney's fees, time and costs
11 expended to date, and an estimate of the fees, time and costs to be expended
12 for (i) further discovery, (ii) pretrial and (iii) trial.

13 c. The party's evaluation of the terms on which the other side is
14 prepared to settle the case.

15 d. The party's evaluation of the terms on which the case could be
16 settled **fairly, taking into account the litigation position and settlement**
17 **position of the other side.**

18 13. If it does not appear to the court from its review of the parties'
19 Settlement Conference Statements and Confidential Addenda that a Settlement
20 Conference at this juncture in the proceedings is likely to result in a settlement of
21 the matter, the court may order the Settlement Conference off calendar or defer it to
22 a later juncture in the proceedings (e.g., after a pending or anticipated dispositive
23 summary judgment motion is decided).

24 **Procedures at Settlement Conference**

25 14. At the commencement of the conference, counsel for each party should
26 be prepared to make the equivalent of a mini-opening statement and/or to respond to
27 the court's questions regarding the relevant facts and law, in the presence of all
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1 parties and counsel. Counsel should have available for the court's perusal copies of
2 all key documents in the case, as well as copies of all important witnesses'
3 deposition transcripts.

4 15. The magistrate judge may, in her discretion, converse with the lawyers,
5 the parties, the insurance representatives, or any one of them outside of the hearing
6 of the others. The comments of the judge during such separate sessions are not to be
7 used by counsel in settlement negotiations with opposing counsel. This is a
8 necessary requirement in order to avoid intentional or unintentional misquotation of
9 the judge's comments. If all counsel and parties are not present to hear the judge's
10 opinions, it is all too easy for counsel to misrepresent the judge's comments in an
11 effort to obtain a tactical advantage with opposing counsel. Violation of this policy
12 may be misleading and therefore a hindrance to settlement.

13 16. All papers submitted for the Settlement Conference will either be
14 returned to the parties or destroyed by the magistrate judge, after the settlement
15 proceedings are concluded, unless the parties agree otherwise.

16 **Penalties for Non-Compliance With This Order**

17 17. Any failure of the trial attorneys, parties or persons with authority to
18 attend the conference may result in sanctions to include the fees and costs expended
19 by the other parties in preparing for and attending the conference. The failure of any
20 party to timely submit a Settlement Conference Statement and Confidential
21 Addendum in compliance with this Order, or otherwise comply strictly with this
22 Order, may result in the Settlement Conference being ordered off calendar and
23 sanctions being imposed.

24 **Notification of Settlement**

25 18. If settlement between any or all parties is reached as a result of the
26 Settlement Conference, it is the responsibility of counsel to immediately report the
27 settlement to the District Judge's courtroom deputy clerk, as well as to timely
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1 memorialize the settlement. *See* Local Rule 16-15.7.

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3 DATED: DATE

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6 SHERI PYM
7 UNITED STATES MAGISTRATE JUDGE
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