

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MATTHEW JONES, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as  
Attorney General of the State of California,  
MARTIN HORAN, in his official capacity as  
Director of the Department of Justice Bureau  
of Firearms AND DOES 1-20

Defendants.

Case No.: 19-cv-01226-L-BLM

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

**IT IS HEREBY ORDERED** that an Early Neutral Evaluation (“ENE”) of your case will be held on **September 30, 2019** at **9:30 a.m.** in the chambers of the Honorable Barbara L. Major, United States Magistrate Judge, **located at 333 West Broadway, Suite 1110, San Diego, California, 92101.**

**The following are mandatory guidelines for the parties preparing for the Early Neutral Evaluation Conference.**

1. **Purpose of Conference:** The purpose of the ENE is to permit an informal discussion between the attorneys and the settlement judge of every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be informal, off

1 the record, privileged, and confidential. Counsel for any non-English speaking party is  
2 responsible for arranging for the appearance of an interpreter at the conference.

3       2.       **Personal Appearance of Parties Required:** All parties, adjusters for insured  
4 parties, and other representatives of a party having full and complete authority to enter into a  
5 binding settlement, and the principal attorneys responsible for the litigation, must be present **in**  
6 **person** and legally and factually prepared to discuss settlement of the case. Counsel appearing  
7 without their clients (whether or not counsel has been given settlement authority) will be cause  
8 for immediate imposition of sanctions and may also result in the immediate termination of the  
9 conference. Counsel for a government entity is excused from this requirement so long as the  
10 government attorney who attends the ENE conference (1) has primary responsibility for handling  
11 the case, and (2) may negotiate settlement offers which the attorney is willing to recommend  
12 to the government official having ultimate settlement authority.

13           Unless there is good cause, persons required to attend the conference pursuant to this  
14 Order shall not be excused from personal attendance. **Motions seeking a waiver of the**  
15 **personal appearance requirement must establish good cause and be filed at least**  
16 **five (5) court dates prior to the conference.** Failure to appear at the ENE conference will  
17 be grounds for sanctions.

18       3.       **Full Settlement Authority Required:** In addition to counsel who will try the  
19 case, a party or party representative with full settlement authority<sup>1</sup> must be present for the  
20 conference. In the case of a corporate entity, an authorized representative of the corporation  
21

---

22  
23 <sup>1</sup> "Full settlement authority" means that the individuals at the settlement conference must be  
24 authorized to explore settlement options fully and to agree at that time to any settlement terms  
25 acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th  
26 Cir. 1989). The person needs to have "unfettered discretion and authority" to change the  
27 settlement position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz.  
28 2003). The purpose of requiring a person with unlimited settlement authority to attend the  
conference contemplates that the person's view of the case may be altered during the face to  
face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick  
v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 who is not retained outside counsel must be present and must have discretionary authority to  
2 commit the company to pay an amount up to the amount of the Plaintiff's prayer (excluding  
3 punitive damages prayers). The purpose of this requirement is to have representatives present  
4 who can settle the case during the course of the conference without consulting a superior.

5 4. **Confidential ENE Statements Required:** On or before **September 20, 2019,**  
6 the parties shall submit via fax, email (efile\_major@casd.uscourts.gov) or hand delivery,  
7 confidential statements no more than ten (10) pages<sup>2</sup> in length directly to the chambers of the  
8 Honorable Barbara L. Major. **These confidential statements shall not be filed or served**  
9 **on opposing counsel.** Each party's confidential statement must include the following:

10 a. A brief description of the case, including a chronology of the relevant facts  
11 and a statement of the principal factual disputes;

12 b. A brief description of the legal claims, counterclaims, and defenses  
13 asserted, and a statement of the principal contested legal disputes, including references to  
14 relevant statutes and legal authority;

15 c. A specific and current demand or offer for settlement addressing all relief  
16 or remedies sought. If a specific demand or offer for settlement cannot be made at the time  
17 the brief is submitted, then the reasons therefore must be stated along with a statement as to  
18 when the party will be in a position to state a demand or make an offer. A general statement  
19 that a party will "negotiate in good faith" is not a specific demand or offer contemplated by this  
20 Order. It is assumed that all parties will negotiate in good faith; and

21 d. A brief description of any previous settlement negotiations, mediation  
22 sessions, or mediation efforts.

23 5. **New Parties Must be Notified by Plaintiff or Plaintiff's Counsel:** Plaintiff  
24 or his counsel shall give notice of the ENE to parties responding to the complaint after the date  
25 of this notice.

26 6. **Case Management Conference:** In the event the case does not settle during  
27

28 <sup>2</sup> The parties shall not append attachments or exhibits to the ENE statement.

1 the ENE, the Court will conduct an Initial Case Management Conference. In preparation for this  
2 conference, the parties must

3 a. Meet and confer pursuant to Fed. R. Civ. P. 26(f) no later than **September**  
4 **9, 2019.**

5 b. File a Joint Discovery Plan on the CM/ECF system no later than **September**  
6 **20, 2019.** Agreements made in the Joint Discovery Plan will be treated as binding stipulations  
7 that are effectively incorporated into the Court's Case Management Order. The Joint Discovery  
8 Plan must be one document and must address each item identified in Fed. R. Civ. P. 26(f)(3).

9 In addition, the discovery plan must include:

10 i. **Service:** A statement as to whether any parties remain to be served  
11 and, if so, a proposed deadline for service;

12 ii. **Amendment of Pleadings:** The extent to which parties, claims, or  
13 defenses are expected to be added or dismissed and a proposed deadline for amending the  
14 pleadings;

15 iii. **Protective Order:** Whether a protective order is contemplated to  
16 cover the exchange of confidential information and, if so, the date by which the proposed order  
17 will be submitted to the Court;

18 iv. **Privilege:** The procedure the parties plan to use regarding claims  
19 of privilege and whether an order pursuant to Fed. R. Evid. 502 will be sought;

20 v. **Evidence Preservation:** Whether the parties have discussed issues  
21 related to the preservation of relevant evidence and if there are areas of disagreement, how the  
22 parties are resolving them;

23 vi. **Electronic Discovery:** In addition to the requirements set forth in  
24 Fed. R. Civ. P. 26(f)(3)(C), the parties must describe their agreements regarding methodologies  
25 for locating and producing electronically stored information and the production of metadata, and  
26 must identify any issues or agreements regarding electronically stored information that may not  
27 be reasonably accessible (see Fed. R. Civ. P. 26(b)(2)(B));

28 vii. **Discovery:** In addition to the requirements of Fed. R. Civ. P.

1 26(f)(3)(B), the parties must describe the discovery taken to date (if any), any proposed  
2 limitations or modifications of the discovery rules, and any identified discovery disputes;

3           viii.       **Related Cases**: Any related cases or proceedings pending before  
4 another judge of this court, or before another court or administrative body;

5           ix.       **Scheduling**: Proposed dates for fact discovery cutoff, expert  
6 designations and disclosures, expert discovery cutoff, filing of dispositive motions, filing class  
7 certification motion (if class is alleged), pretrial conference and trial;

8           x.       **Professional Conduct**: Whether all attorneys of record for the  
9 parties have reviewed Civil Local Rule 83.4 on Professionalism; and

10           xi.       **Miscellaneous**: Such other matters as may facilitate the just,  
11 speedy and inexpensive disposition of this matter.

12           c.       Exchange initial disclosures pursuant to Rule 26(a)(1)(A-D) no later than  
13 **September 23, 2019**.

14       7.       **Requests to Continue an ENE Conference**: Local Rule 16.1(c) requires that  
15 an ENE take place within forty-five (45) days of the filing of the first answer. Requests to  
16 continue ENEs are rarely granted. However, the Court will consider formal, written, *ex parte*  
17 requests to continue an ENE conference when good cause exists that make a continuance  
18 appropriate. In and of itself, having to travel a long distance to appear in person is not "good  
19 cause." Any request must be filed with the Court and served on opposing counsel. **Absent**  
20 **good cause, requests for continuances will not be considered unless submitted in**  
21 **writing no fewer than seven (7) days prior to the scheduled conference.**

22           **IT IS SO ORDERED.**

23  
24 Dated: 8/22/2019

  
25 Hon. Barbara L. Major  
26 United States Magistrate Judge  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF RIGHT TO CONSENT TO TRIAL**  
**BEFORE A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a U.S. Magistrate Judge of this district may, upon the consent of all parties, on Form 1A available in the Clerk's Office, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Plaintiff or his counsel shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of Court. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgments of U.S. Magistrate Judges are appealable to the U.S. Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.