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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELIZABETH MIRABELLI, an individual, and LORI ANN WEST, an individual,

Plaintiffs,

v.

MARK OLSON, in his official capacity as President of the EUSD Board of Education, et al.,

Defendants.

Case No.: 3:23-cv-00768-BEN-VET

**SCHEDULING ORDER
REGULATING DISCOVERY AND
OTHER PRE-TRIAL
PROCEEDINGS**

Pursuant to Rule 16.1(d) of the Local Rules, the Court held a Case Management Conference on **April 12, 2024**. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

- 1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed by **June 7, 2024**.
- 2. Counsel shall appear for a remote Status Conference before Magistrate Judge Valerie E. Torres on **July 12, 2024** at **2:00 p.m.**. Instructions for remote appearances will be provided two (2) business days prior to the conference.

1 3. All fact discovery shall be completed by all parties by **October 15, 2024**.
2 “Completed” means that all discovery under Fed. R. Civ. P. 30-36, and discovery
3 subpoenas under Fed. R. Civ. P. 45, must be initiated a sufficient period of time in advance
4 of the cut-off date, so that it may be completed by the cut-off date, taking into account the
5 times for service, notice, and response as set forth in the Federal Rules of Civil Procedure.
6 Counsel shall promptly and in good faith meet and confer regarding all discovery disputes
7 in compliance with Local Rule 26.1(a). The Court expects counsel to make every effort to
8 resolve all disputes without court intervention through the meet and confer process. If the
9 parties reach an impasse on any discovery issue, counsel shall follow the procedures
10 governing discovery disputes set forth in Judge Torres’ Civil Chambers Rules. **A failure**
11 **to comply in this regard will result in a waiver of a party’s discovery issue. Absent an**
12 **order of the Court, no stipulation continuing or altering this requirement will be**
13 **recognized by the Court.**

14 4. A Mandatory Settlement Conference (“MSC”) shall be conducted by Zoom
15 video conferencing on **October 30, 2024** at **9:30 a.m.** before Magistrate Judge Valerie E.
16 Torres.¹

17 a. The following are **mandatory** procedures to be followed in preparation for
18 the MSC. Absent express permission from this Court, counsel must timely comply with
19 the dates and deadlines herein. Questions regarding the MSC or the mandatory guidelines
20 set forth herein may be directed to Judge Torres’ Chambers at (619) 557-6384.

21 b. **Full Settlement Authority Required.** Pursuant to Local Rule 16.1.c.1, all
22 parties, party representatives, including claims adjusters for insured parties, and the
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27 ¹ Counsel may request the MSC be converted to an in-person appearance through a joint
28 call or email to Judge Torres’ Chambers (efile_torres@casd.uscourts.gov). Counsel must meet and confer prior to making such a request.

1 principal attorney(s) responsible for the litigation must participate in the MSC.² This
2 appearance must be made with full and complete authority to negotiate and enter into a
3 binding settlement.³ Counsel for a government entity is excused from this requirement if
4 the government attorney who participates in the MSC (i) has primary responsibility for
5 handling the case, and (ii) may negotiate settlement offers that the attorney is willing to
6 recommend to the government official having ultimate settlement authority.

7 c. **Confidential Settlement Brief.** No later than **seven (7) calendar days**
8 before the MSC, each party must lodge a Confidential Settlement Brief by email to
9 efile_torres@casd.uscourts.gov. The Confidential Settlement Brief should not exceed ten
10 (10) pages, excluding exhibits, and must be formatted according to the requirements of
11 Local Rule 5.1(a). Parties attaching exhibits must attach only the relevant pages of multi-
12 page exhibits and must highlight the relevant portions.

13 d. **Contents of Settlement Brief.** All Confidential Settlement Briefs shall
14 include the content specified in the Court's Chambers Rules, available at
15 <https://www.casd.uscourts.gov/Judges/torres/docs/Civil%20Chambers%20Rules.pdf>.

16 e. **Procedure for Zoom Videoconference.** Two (2) business days prior to
17 the MSC, the Court will email counsel of record an invitation with the Zoom meeting
18 information. Participants can join the Zoom video conference by following the ZoomGov
19

20 ² The attendance requirement includes parties that are indemnified by others. Any
21 deviation from this Order requires prior Court approval.

22 ³ Full authority to settle means that the individuals at the MSC are authorized to fully
23 explore settlement options and to agree at that time to any settlement terms acceptable
24 to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th
25 Cir. 1989). Party participants need to have “unfettered discretion and authority” to
26 change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481,
27 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with complete
28 settlement authority to attend the conference is that the person's view of the case may
be altered during the face-to-face conference. *Id.* at 486. Limited or sum certain
authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-597 (8th
Cir. 2001).

1 Meeting hyperlink or using the meeting ID and password provided. Each participant should
2 plan to join the Zoom video conference *at least five (5) minutes before* the start of the
3 MSC. Counsel is responsible for ensuring their clients can participate in the MSC. All
4 participants must display the same level of professionalism and attention during the MSC
5 as if they were attending in person (e.g., not be driving while speaking to the Court, or
6 otherwise distracted).

7 5. The parties shall designate their respective experts in writing by
8 **November 15, 2024**. The parties must identify any person who may be used at trial to
9 present evidence pursuant to Fed. R. Evid. 702, 703 or 705. This requirement is not limited
10 to retained experts. The parties shall designate rebuttal experts in writing by
11 **November 29, 2024**. The written expert designations shall include the name, address and
12 telephone number of the expert and a reasonable summary of the testimony the expert is
13 expected to provide, including any summary of facts and opinions required by Fed. R. Civ.
14 P. 26(a)(2)(C). The designations shall also include the normal rates the expert charges for
15 deposition and trial testimony.

16 6. By **December 27, 2024**, each party shall comply with the disclosure
17 provisions in Fed. R. Civ. P. 26(a)(2)(A) and (B). This disclosure requirement applies to
18 all persons retained or specially employed to provide expert testimony, or whose duties as
19 an employee of the party regularly involve giving expert testimony. Except as provided in
20 the paragraph below, any party that fails to make these disclosures shall not, absent
21 substantial justification, be permitted to use evidence or testimony not disclosed at any
22 hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by
23 Fed. R. Civ. P. 37(c).

24 7. Any party shall supplement its disclosure regarding contradictory or rebuttal
25 evidence under Fed. R. Civ. P. 26(a)(2)(D) and 26(e) by **January 10, 2025**.

26 8. All expert discovery shall be completed by all parties by **February 7, 2025**.
27 The parties shall comply with the same procedures set forth in the paragraph governing
28 fact discovery. Failure to comply with this section or any other discovery order of the court

1 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
2 the introduction of experts or other designated matters in evidence.

3 9. All pre-trial motions must be filed by **March 7, 2025**. Counsel for the moving
4 party must obtain a motion hearing date from the law clerk of the judge who will hear the
5 motion. The period of time between the date you request a motion date and the hearing
6 date may vary from one district judge to another. Please plan accordingly. Failure to make
7 a timely request for a motion date may result in the motion not being heard. Deadlines for
8 filing motions in limine will be set by the district judge at the Pretrial Conference.

9 10. When filing a Motion for Summary Judgment and/or Adjudication, the parties
10 need not file a separate statement of material facts absent prior leave of the court.

11 11. For bench trials before the Honorable Roger T. Benitez, counsel shall file their
12 Memoranda of Contentions of Fact and Law and take any other action required by Local
13 Rule 16.1(f)(2) by **June 9, 2025**.

14 12. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
15 Civ. P. 26(a)(3) by **June 9, 2025**. Failure to comply with these disclosure requirements
16 could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

17 13. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
18 **June 16, 2025**. At this meeting, counsel shall discuss and attempt to enter into stipulations
19 and agreements resulting in simplification of the triable issues. Counsel shall exchange
20 copies and/or display all exhibits other than those to be used for impeachment. The exhibits
21 shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall note any
22 objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ. P.
23 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference
24 order.

25 14. Counsel for plaintiff will be responsible for preparing the pretrial order and
26 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **June 23, 2025**,
27 plaintiff's counsel must provide opposing counsel with the proposed pretrial order for
28 review and approval. Opposing counsel must communicate promptly with plaintiff's

1 counsel concerning any objections to form or content of the pretrial order, and both parties
2 shall attempt promptly to resolve their differences, if any, concerning the order.

3 15. The Proposed Final Pretrial Conference Order, including objections to any
4 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served, and
5 lodged with the assigned district judge by **June 30, 2025**, and shall be in the form
6 prescribed in and comply with Local Rule 16.1(f)(6).

7 16. The final Pretrial Conference is scheduled on the calendar of the Honorable
8 **Roger T. Benitez** on **July 7, 2025** at **10:30 a.m.**

9 17. The parties must review the chambers' rules for the assigned district judge
10 and magistrate judge.

11 18. A post-trial settlement conference before a magistrate judge may be held
12 within 30 days of verdict in the case.

13 19. The dates and times set forth herein will not be modified except for good cause
14 shown.

15 20. Briefs or memoranda in support of or in opposition to any pending motion
16 shall not exceed twenty-five (25) pages in length without leave of a district court judge. No
17 reply memorandum shall exceed ten (10) pages without leave of a district court judge.
18 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
19 and a table of authorities cited.

20 21. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
21 case hereafter.

22 **IT IS SO ORDERED.**

23 Dated: April 12, 2024

24 

25
26 Honorable Valerie E. Torres
United States Magistrate Judge