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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LANNA RAE RENNA, et al.,
Plaintiffs,
v.
ROB BONTA, in his official capacity as
Attorney General of California and LUIS
LOPEZ, in his official capacity as
Director of the Department of Justice
Bureau of Firearms,
Defendants.

Case No.: 20-cv-290-DMS (DEB)

**NOTICE AND ORDER SETTING
EARLY NEUTRAL EVALUATION
CONFERENCE; RULE 26
COMPLIANCE; AND CASE
MANAGEMENT CONFERENCE**

Counsel and party representatives will appear for an Early Neutral Evaluation Conference (“ENE”) in this case on **September 7, 2021** at **1:30 p.m.** before Magistrate Judge Daniel E. Butcher. In the event the case does not settle during the ENE, the Court will hold a Case Management Conference (“CMC”) pursuant to Fed. R. Civ. P. 16(b) immediately following the conclusion of the ENE.

Although the Court typically requires personal attendance of all participants, due to the COVID-19 public emergency the Court will hold the ENE and CMC by video conference. If circumstances relating to the COVID-19 public emergency improve prior to

1 the scheduled date, the Court will notify the parties that it will conduct the conference in
2 person.

3 The following are **mandatory** guidelines for the parties preparing for the ENE and
4 CMC. Absent express permission obtained from this Court, counsel must timely comply
5 with the dates and deadlines herein.

6 1. **Review of Chambers Rules:** Counsel¹ must refer to the Civil Local Rules,
7 the undersigned’s Chambers Rules for Civil Cases, as well as the Chambers Rules of the
8 assigned District Judge, which are accessible via the Court’s website at
9 www.casd.uscourts.gov.

10 2. **Purpose of the ENE:** The purpose of the ENE is to permit an informal
11 discussion between the attorneys, parties, and the Magistrate Judge of every aspect of the
12 lawsuit in an effort to achieve an early resolution of the case. Counsel attending the ENE
13 are expected to have a command of the facts and applicable law. Counsel and the parties
14 must come prepared to engage in a detailed discussion of the merits of their respective
15 cases and engage in good faith settlement discussions. *All discussions during the ENE*
16 *are informal, off the record, privileged and confidential.* Counsel for any non-English
17 speaking party is responsible for arranging for the appearance of an interpreter at the
18 conference.

19 3. **Full Settlement Authority Is Required:** Pursuant to Fed. R. Civ. P. 16(c)(1)
20 and Local Rule 16.1.c.1, all parties, party representatives, including claims adjusters for
21 insured parties, and the principal attorney(s) responsible for the litigation must participate
22 in the ENE.² This appearance must be made with full and unlimited authority to negotiate
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25 ¹ As used herein, references to “counsel” or “attorney(s)” include any party
26 representing himself or herself.

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

1 and enter into a binding settlement.³ In the case of a corporate entity, an authorized
2 representative of the corporation who is not retained outside counsel must be present and
3 must have discretionary authority to commit the company to pay an amount up to the
4 amount of the plaintiff’s prayer (excluding punitive damage prayers). The purpose of this
5 requirement is to have representatives present who can settle the case during the course of
6 the conference without consulting a superior.

7 Counsel for a government entity may be excused from this requirement if the
8 government attorney who participates in the ENE (1) has primary responsibility for
9 handling the case; and (2) may negotiate settlement offers that the attorney is willing to
10 recommend to the government official having ultimate settlement authority.

11 4. **Procedure for Zoom Videoconference Appearance:** The Court will use its
12 Zoom video conferencing account to hold the ENE and CMC. *If you are unfamiliar with*
13 *Zoom:* Zoom is available on computers through a download on the Zoom website
14 (<https://zoom.us/meetings>) or on mobile devices through the installation of a free app.⁴
15 Joining a Zoom conference does not require creating a Zoom account, but it does require
16 downloading the .exe file (if using a computer) or the app (if using a mobile device).
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20 ³ Full authority to settle means that the individuals at the ENE Conference are
21 authorized to fully explore settlement options and to agree at that time to any settlement
22 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
23 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion and authority”
24 to change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481,
25 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with unlimited
26 settlement authority to attend the conference is that the person’s view of the case may be
altered during the face-to-face conference. *Pitman*, 216 F.R.D. 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).

27 ⁴ Participants are encouraged to use laptops or desktop computers for the video
28 conference, if possible, as mobile devices often offer inferior performance.

1 Participants are encouraged to create an account, install Zoom and familiarize themselves
2 with Zoom in advance of the ENE.⁵ There is a cost-free option for creating a Zoom account.

3 Prior to the start of the ENE, the Court will email each participant an invitation to
4 join a Zoom video conference. Participants must join the video conference by following
5 the ZoomGov Meeting hyperlink in the invitation. ***Participants who do not have Zoom***
6 ***already installed on their device when they click on the ZoomGov Meeting hyperlink will***
7 ***be prompted to download and install Zoom before proceeding.*** Zoom may then prompt
8 participants to enter the password included in the invitation. All participants will be placed
9 in a waiting room until the ENE begins.

10 Each participant should plan to join the Zoom video conference ***at least five minutes***
11 ***before*** the start of the ENE to ensure that the conference begins on time. ***The Zoom e-mail***
12 ***invitation may indicate an earlier start time, but the ENE will begin at the time scheduled***
13 ***by the Court.***

14 Zoom’s functionalities will allow the Court to conduct the ENE as it ordinarily
15 would conduct an in-person one. The Court will divide participants into separate,
16 confidential sessions, which Zoom calls Breakout Rooms.⁶ In a Breakout Room, the Court
17 will be able to confidentially and individually communicate with participants. Breakout
18 Rooms will also allow parties and counsel to communicate confidentially outside the
19 presence of the Court.

20 No later than **August 31, 2021** counsel for each party must send an e-mail to the
21 Court at efile_butcher@casd.uscourts.gov containing the following:

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26 ⁵ For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>

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28 ⁶ 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 a. The *name and title of each participant*, including all parties and party
2 representatives with full settlement authority, claims adjusters for insured
3 defendants, and the primary attorney(s) responsible for the litigation;
- 4 b. An *e-mail address for each participant* to receive the Zoom video conference
5 invitation; and
- 6 c. A *telephone number where each participant* may be reached so that, if
7 technical difficulties arise, the Court will be in a position to proceed
8 telephonically instead of by video conference. (If counsel prefers to have all
9 participants of their party on a single conference call, counsel may provide a
10 conference number and appropriate call-in information, including an access
11 code, where all counsel and parties or party representatives for that side may
12 be reached as an alternative to providing individual telephone numbers for
13 each participant.)

14 Counsel are responsible for ensuring their clients are able to participate in the ENE.
15 All participants must display the same level of professionalism and attention during the
16 ENE as if they were attending in person (e.g., not be driving while speaking to the Court,
17 or otherwise distracted). Because Zoom may quickly deplete the battery of a participant's
18 device, each participant should ensure that their device is plugged in or that a charging
19 cable is readily available during the video conference.

20 If the case does not settle during the ENE, the Court will hold the CMC with counsel
21 immediately following the ENE.

22 5. **Confidential ENE Statements Required:** No later than one week before the
23 ENE, each party must lodge a Confidential ENE Statement by email to
24 efile_butcher@casd.uscourts.gov. The ENE statement must not exceed seven (7) pages,
25 excluding exhibits. If exhibits are attached, the parties are encouraged to highlight the
26 relevant portions.

1 The Court does not require ENE Statements to be served on other parties; however,
2 the parties may elect to share their ENE Statements at their discretion. *These statements*
3 *are not to be filed on the CM/ECF system.*

4 All confidential ENE Statements must include:

5 a. A brief description of the case and the claims and defenses asserted;
6 b. The party's position on liability and damages supported by relevant facts and
7 controlling legal authority;

8 c. *For plaintiff(s)*, a specific and current settlement demand addressing all relief
9 sought, and the specific basis for that relief (if a specific demand for settlement cannot be
10 made at the ENE, state the reasons why and explain what additional information is required
11 to make a settlement demand); and, *for defendant(s)*, a specific and current offer and the
12 bases for that offer (if a specific offer cannot be made at the ENE, state the reasons why
13 and explain what additional information is required to make a settlement offer) (*Note: a*
14 *general statement that a party will “negotiate in good faith,” “offer a nominal cash*
15 *sum,” or “be prepared to make a demand or offer at the conference” is not a specific*
16 *demand or offer.*);

17 d. A brief description of any previous settlement negotiations or mediation
18 efforts;

19 e. The names of attorney and non-attorney conference attendees who will attend
20 the ENE, including the name(s) and title(s)/position(s) of the party/party representative(s)
21 who will attend and have settlement authority at the conference; and

22 f. The parties are also encouraged to include as an attachment to the ENE
23 Statement a chronology, setting forth a timeline of the factual events that are the basis for
24 the claims and defenses asserted in this litigation. If submitted, the chronology should be
25 in a chart or column format with the column headings “DATE” and “EVENT.” The
26 chronology is not included in the page limits applicable to ENE Statements and exhibits.

27 6. **Requests to Continue an ENE:** Requests to continue the ENE are strongly
28 disfavored. A request for continuance may be initiated by counsel placing a joint call to the

1 Court's Chambers. Any request for a continuance must be made as soon as counsel is aware
2 of the circumstances that warrant rescheduling the conference. Requests to continue the
3 ENE based on a pre-existing scheduling conflict must be made within 10 days of the
4 issuance of this Order. When requesting a continuance of the ENE, counsel should keep
5 in mind that Civil Local Rule 16.1.c.1. requires the ENE take place within 45 days of the
6 filing of the first Answer.

7 7. **Settlement Prior to the ENE:** The Court encourages the parties to work on
8 settling the matter in advance of the ENE. In the event that the parties resolve the matter
9 prior to the ENE, counsel must promptly file a Joint Motion for Dismissal or a Notice of
10 Settlement.

11 8. **Case Management Conference:** If the case does not settle during the ENE
12 the Court will immediately proceed with the Case Management Conference ("CMC"). The
13 parties are, therefore, ordered to comply with Fed. R. Civ. P. 26 and proceed with the initial
14 disclosure process in advance of the CMC as follows:

15 a. Initial disclosures, pursuant to Rule 26(a)(1)(A-D), must occur on or before
16 **August 31, 2021;**

17 b. Counsel must meet and confer pursuant to Fed. R. Civ. P. 26(f) no later than
18 **August 24, 2021.**

19 c. A Joint Discovery Plan must be filed on the CM/ECF system no later than
20 **August 31, 2021.** The Joint Discovery Plan must be one document and must
21 explicitly address all topics identified in Fed. R. Civ. P. 26(f)(3). In addition,
22 the discovery plan must include:

23 i. **Service:** Whether any parties remain to be served and a proposed
24 deadline for service if any parties remain to be served;

25 ii. **Amendment of Pleadings:** The extent to which parties, claims, or
26 defenses are expected to be added or dismissed and a proposed
27 deadline for amending the pleadings;
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- 1 iii. Protective Order: Whether a protective order is contemplated to
2 cover the exchange of confidential information and, if so, the date
3 by which the proposed order will be submitted to the Court;
- 4 iv. Electronic Discovery: In addition to the requirements set forth in
5 Fed. R. Civ. P. 26(f)(3)(C), the parties must represent they have
6 reviewed the Checklist for Rule 26(f) Meet and Confer Regarding
7 Electronically Stored Information (“ESI”)⁷ and describe their
8 agreements regarding methodologies for locating and producing
9 electronically stored information and the production of metadata,
10 and must identify any issues or agreements regarding electronically
11 stored information that may not be reasonably accessible (*see* Fed.
12 R. Civ. P. 26(b)(2)(B));
- 13 v. Discovery: In addition to the Fed. R. Civ. P. 26(f)(3)(B)
14 requirements, the parties must describe the discovery taken to date
15 (if any) and any identified discovery disputes;
- 16 vi. Related Cases: Any related cases or proceedings pending before
17 another judge of this court, or before another court or administrative
18 body;
- 19 vii. Scheduling: Proposed dates for fact discovery cutoff, expert
20 designations and disclosures, expert discovery cutoff, filing of
21 dispositive motions, filing class certification motion (if class is
22 alleged), the Mandatory Settlement Conference (*see* CivLR 16.3),
23 pretrial conference, and trial;
- 24 viii. Trial: Whether the case will be tried to a jury or to the Court, and
25 the expected length of the trial;
- 26 ix. Professional Conduct: Confirmation that all attorneys who will be
27 listed in the pleadings or motions for any party have reviewed Local
28 Rule 2.1 and agree to abide by the Court’s Code of Conduct; and

⁷ The Checklist for Rule 26(f) Meet and Confer Regarding ESI can be found at <https://www.casd.uscourts.gov/judges/butcher/docs/Electronically%20Stored%20Information%20Checklist.pdf>

1 x. Miscellaneous: Such other matters as may facilitate the just, speedy
2 and inexpensive disposition of the matter.

3 9. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel
4 must give notice of the ENE and CMC and provide a copy of this Order to parties
5 responding to the complaint after the date of this notice.

6 Questions regarding this case or the mandatory guidelines set forth herein may be
7 directed to the Magistrate Judge's law clerks at (619) 446-3704.

8 A Notice of Right to Consent to Trial Before a United States Magistrate Judge is
9 attached for your information.

10 **IT IS SO ORDERED.**

11 Dated: July 21, 2021



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13 Honorable Daniel E. Butcher
14 United States Magistrate Judge
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1 **NOTICE OF RIGHT TO CONSENT TO TRIAL**
2 **BEFORE A UNITED STATES MAGISTRATE JUDGE**

3
4 IN ACCORDANCE WITH THE PROVISIONS OF 28 U.S.C. § 636(c), YOU ARE
5 HEREBY NOTIFIED THAT A U.S. MAGISTRATE JUDGE OF THIS DISTRICT MAY,
6 UPON THE CONSENT OF ALL PARTIES, ON FORM 1A AVAILABLE IN THE
7 CLERK’S OFFICE, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY
8 OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT.
9 COUNSEL FOR THE PLAINTIFF IS RESPONSIBLE FOR OBTAINING THE
10 CONSENT OF ALL PARTIES, SHOULD THEY DESIRE TO CONSENT.

11 YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT
12 TO CONSENT IS ENTIRELY VOLUNTARY. ONLY IF ALL PARTIES CONSENT
13 WILL THE JUDGE OR MAGISTRATE JUDGE TO WHOM THE CASE HAS BEEN
14 ASSIGNED BE INFORMED OF YOUR DECISION.

15 JUDGMENTS OF THE U.S. MAGISTRATE JUDGES ARE APPEALABLE TO
16 THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND
17 THE FEDERAL RULES OF APPELLATE PROCEDURE.

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