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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Vincent Manikan,

Plaintiff,

v.

Pacific Ridge Neighborhood Homeowners
Association, et al.,

Defendants.

Case No.: 17-cv-00467-BEN-JLB

**ORDER RESETTING MANDATORY
SETTLEMENT CONFERENCE**

[ECF No. 39]

On October 27, 2017, a minute order of recusal issued and hearings previously set before Magistrate Judge Barbara Lynn Major were transferred to Magistrate Judge Jill L. Burkhardt. (ECF No. 46.) Having reviewed the docket for this case and the operative scheduling order (ECF No. 39), it is hereby ORDERED:

1. **Submission of Magistrate Judge Consent Form**: No later than **November 10, 2017**, each party shall provide Plaintiff’s counsel with an executed copy of the attached consent form, titled Notice, Consent, and Reference of a Civil Action to a Magistrate Judge. Pursuant to Civil Local Rule 73.1, if (and only if) **all** parties have consented to the reference to a magistrate judge, then Plaintiff shall file the consent form(s) **in paper format** at the Clerk’s Office by **November 15, 2017**. If the paper format filing reflects consent by **all** parties, then the form(s) will be forwarded to the assigned district judge for approval. The consent form(s) **should not be filed with the court electronically** through its Case Management/Electronic Case Filing (CM/ECF) system. No consent form will be made available, nor will its contents be made known to any judicial officer, unless all parties

1 have consented to the reference to a magistrate judge. The parties are free to withhold
2 consent without adverse substantive consequences. Questions related to the consent
3 form(s) should be directed only to the clerk's office at 619-557-5600. Please do not call
4 chambers' staff with questions related to the consent form(s).

5 2. Due to a conflict in the Court's calendar, the Court hereby RESETS the
6 Mandatory Settlement Conference ("MSC") to **May 2, 2018**, at **9:00 AM** in the Chambers
7 of Magistrate Judge Jill L. Burkhardt, Edward J. Schwartz U.S. Courthouse, 221 West
8 Broadway, Suite 5140, San Diego, California 92101.

9 The following are **mandatory** directions for the parties preparing for the MSC.
10 **Absent express permission obtained from this Court, and notwithstanding the**
11 **pendency of any motion, counsel shall timely comply with the dates and deadlines**
12 **ordered herein.**

13 a. **Purpose of Conference**: The purpose of the MSC is to permit an informal
14 discussion between the attorneys, parties, and the settlement judge of every aspect of the
15 lawsuit in an effort to achieve a resolution of the case. All conference discussions will be
16 informal, off the record, privileged and confidential. Counsel for any non-English speaking
17 parties is responsible for arranging for the appearance of an interpreter at the conference.

18 b. **Personal Appearance of Parties Required**: All parties, adjusters for insured
19 defendants, and other representatives of a party having full settlement authority as
20 explained below, and the principal attorneys responsible for the litigation, must be present
21 **in person** and legally and factually prepared to discuss settlement of the case. Counsel
22 appearing without their clients (whether or not counsel has been given settlement authority)
23 will be cause for immediate imposition of sanctions and may also result in the immediate
24 termination of the conference. If each of the principal attorneys responsible for the
25 litigation is not listed on the docket as an "*ATTORNEY TO BE NOTICED*," then they each
26 shall enter their appearance on the docket as soon as practicable, but in no event later than
27 **ten calendar days** prior to the MSC.
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1 Unless there are extraordinary circumstances, persons required to attend the
2 conference pursuant to this Order shall not be excused from personal attendance. **Requests**
3 **for excuse from attendance for extraordinary circumstances shall be filed as a motion**
4 **at least ten calendar days prior to the conference.** Failure to appear at the MSC will be
5 grounds for sanctions.

6 c. **Full Settlement Authority Required:** In addition to counsel who will try the
7 case, a party or party representative with full settlement authority¹ must be present for the
8 conference. In the case of a corporate entity, an authorized representative of the
9 corporation who is not retained outside counsel must be present and must have
10 discretionary authority to commit the company to pay an amount up to the amount of the
11 Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement
12 is to have representatives present who can settle the case during the course of the
13 conference without consulting a superior.

14 d. **MSC Statements Required:** On or before **April 20, 2018**, the parties shall
15 lodge statements of **five pages** or less directly to the chambers of Magistrate Judge
16 Burkhardt outlining the nature of the case, the claims, the defenses, and the parties'
17 positions regarding settlement of the case. The settlement position must include a specific
18 and current demand or offer addressing all relief or remedies sought. If a specific demand
19 or offer cannot be made at the time the brief is submitted, then the reasons therefor must
20 be stated along with a statement as to when the party will be in a position to state a demand
21 or offer. A general statement that a party will "negotiate in good faith," "offer a nominal
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25 ¹ "Full settlement authority" means that the individuals at the settlement conference must be
26 authorized to explore settlement options fully and to agree at that time to any settlement terms acceptable
27 to the parties. *Heileman Brewing Co. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989). The person
28 needs to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman*
v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 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 cash sum,” or “be prepared to make an offer at the conference” is not a specific demand or
2 offer. The statement shall also list all attorney and non-attorney conference attendees for
3 that side, including the name(s) and title(s)/position(s) of the party/party representative(s)
4 who will attend and have settlement authority at the conference.

5 MSC statements shall be lodged via email at
6 efile_burkhardt@casd.uscourts.gov. If exhibits are attached and the total submission
7 amounts to more than 20 pages, a hard copy must also be delivered directly to chambers.

8 **Whether these statements are submitted confidentially or whether they are served on**
9 **opposing counsel is within the parties’ discretion.** Statements of more than five pages
10 will not be considered.

11 e. **Requests to Continue or Reschedule an MSC:** Local Rule 16.3 governs
12 MSCs. Requests to continue MSCs are rarely granted. However, the Court will consider
13 formal, filed *ex parte* or joint motions to continue an MSC when extraordinary
14 circumstances exist that make a continuance appropriate. In and of itself, having to travel
15 a long distance to appear in person is not “extraordinary.” Absent extraordinary
16 circumstances, requests for continuances **will not be considered unless filed** no less than
17 **ten calendar days** prior to the scheduled conference.

18 f. **Settlement Prior to MSC:** The Court encourages the parties to work on
19 settling the matter in advance of the MSC. In the event that the parties resolve the matter
20 prior to the day of the MSC, the following procedures must be followed before the Court
21 will vacate the MSC and excuse the parties from appearing:

- 22 i. The parties may file a Joint Motion to Dismiss and separately lodge by
23 email a proposed order to the assigned District Judge.² If a Joint Motion
24 to Dismiss is filed, the Court will vacate the MSC. The parties are
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27 ² See Electronic Case Filing Administrative Policies and Procedures Manual, United States District
28 Court for the Southern District of California § 2(h), for the chambers’ official email address and
procedures on emailing proposed orders.

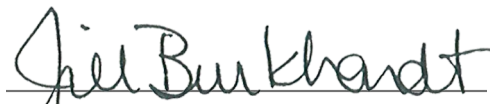
1 encouraged to contact Judge Burkhardt's Chambers by telephone to
2 notify the Court of their pending Joint Motion;

3 ii. If the parties settle more than 24 hours before the conference but are
4 not able to file a Joint Motion to Dismiss, they must file a Notice of
5 Settlement containing the electronic signatures of counsel for all
6 settling parties and identifying a date by which the Joint Motion to
7 Dismiss will be filed. The parties are encouraged to contact Judge
8 Burkhardt's Chambers by telephone to notify the Court of their filed
9 Notice of Settlement;

10 iii. If the parties settle less than 24 hours before the conference, counsel for
11 the settling parties must JOINTLY call chambers and inform the Court
12 of the settlement **and** receive Court permission to not appear at the
13 MSC.

14 After having reviewed Judge Burkhardt's Civil Chambers Rules, appropriate
15 questions regarding this case or the mandatory directions set forth herein may be addressed
16 through a joint call by the parties to Judge Burkhardt's law clerks at (619) 557-6624. For
17 additional information, please see Judge Burkhardt's Civil Chambers Rules.

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19 Dated: October 27, 2017

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21 Hon. Jill L. Burkhardt
22 United States Magistrate Judge
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Vincent Manikan,

v.

Pacific Ridge Neighborhood Homeowners
Association, et al.,

Plaintiff(s),

Defendant(s).

Case No.: 17-cv-00467-BEN-JLB

**NOTICE, CONSENT, AND
REFERENCE OF A CIVIL ACTION TO
A MAGISTRATE JUDGE**

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties Consent / Do Not Consent* to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Printed Names</i>	<i>Signatures of all parties <u>and</u> counsel for all parties</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REFERENCE ORDER

IT IS ORDERED: This case is referred to United States Magistrate Judge Jill L. Burkhardt to conduct all proceedings and order entry of a final judgment in accordance with 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and CivLR 73.1.

_____ Date _____ United States District Judge

* Pursuant to Civil Local Rule 73.1, if (and only if) all parties have consented to the reference to a magistrate judge, then Plaintiff shall file the consent form(s) in paper format at the Clerk's Office.