

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JANE DOE,

Plaintiff,

v.

CISSY STEELE, et al.,

Defendants.

Case No.: 20cv1818-MMA (MSB)

**ORDER GRANTING JOINT MOTION  
REQUESTING SETTLEMENT CONFERENCE  
AND EXTENSION OF FACT DISCOVERY  
CUTOFF [ECF NO. 102]**

On April 28, 2022, Plaintiff Jane Doe and Defendants Diabolic Video Productions, Inc., Black Ice LTD, Zero Tolerance Entertainment, Inc., and Third Degree Films filed a “Joint Motion Requesting Settlement Conference and Extension of Fact Discovery Cut-Off Date” (“Joint Motion”). (ECF No. 102.) In the Joint Motion, the parties ask the Court to set a settlement conference on either June 9 or June 10, 2022, at 9:30 a.m. (Id. at 2.) They further ask the Court to continue the fact discovery cut-off to August 5, 2022. (Id.) Based on the discussions at the telephonic Case Management Conference on April 21, 2022, (see ECF No. 100), and the parties’ pleadings, the Court **GRANTS** the Joint Motion as follows:

The fact discovery cut-off is **CONTINUED** to **August 5, 2022**. A Settlement Conference (“SC”) will be held via **video conference** on **June 10, 2022**, at **9:30 a.m.**,

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through the Court's ZoomGov account. All discussions at the SC will be informal, off the record, privileged, and confidential. The following rules and deadlines apply:

**1. Personal Appearance of Parties Required:** All named parties, party representatives, including claims adjusters for insured defendants, as well as the principal attorney(s) responsible for the litigation, must participate in the video conference, and be legally and factually prepared to discuss and resolve the case. Counsel appearing without their clients (whether or not counsel has been given settlement authority) will be cause for immediate imposition of sanctions and may also result in the immediate termination of the conference.

**2. Full Settlement Authority Required:** A party or party representative with full settlement authority<sup>1</sup> must be present at the conference. Retained outside corporate counsel shall not appear on behalf of a corporation as the party representative who has the authority to negotiate and enter a settlement.

**3. Confidential Settlement Statements Required:** No later than **June 3, 2022**, the parties shall submit directly to Magistrate Judge Berg's chambers (via hand delivery or by e-mail to the Court at [efile\\_berg@casd.uscourts.gov](mailto:efile_berg@casd.uscourts.gov)), confidential settlement statements. The statements are limited to ten (10) pages, plus an additional ten (10) pages of exhibits. Each party's settlement statement must outline (1) the nature of the case and the claims, (2) position on liability or defenses; (3) position regarding settlement of the case with a specific demand/offer for settlement, and (4) any previous settlement negotiations or mediation efforts. The settlement statement must not

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<sup>1</sup> "Full settlement authority" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person 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).

merely repeat what was contained in the Early Neutral Evaluation conference brief or any earlier settlement brief. The settlement statement must specifically identify what the discovery process revealed and the effect that the evidence has on the issues in the case. To the extent specific discovery responses, portions of deposition testimony, or expert reports are pertinent to the Court's evaluation of the matter, these documents must be attached as exhibits. Evidence supporting or refuting either party's claim for damages must also be identified and included as an exhibit.

If a specific demand or offer cannot be made at the time the settlement statement is submitted, then the reasons as to why a demand or offer cannot be made must be stated. Further, the party must explain when they will be prepared to state a demand or offer. General statements such as a party will "negotiate in good faith" is not a specific demand or offer. The settlement statement should be submitted confidentially and need not be shared with other parties.

**4.** The Court will use its official Zoom video conferencing account to hold the SC. **IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on computers through a download on the Zoom website (<https://zoom.us/meetings>) or on mobile devices through the installation of a free app.<sup>2</sup> Joining a Zoom conference does not require creating a Zoom account, but it does require downloading the .exe file (if using a computer) or the app (if using a mobile device). Participants are encouraged to create an account, install Zoom, and familiarize themselves with Zoom in advance of the SC.<sup>3</sup> There is a cost-free option for creating a Zoom account.

**5.** Prior to the start of the SC, the Court will e-mail each SC participant an invitation to join a Zoom video conference. Again, if possible, participants are

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<sup>2</sup> If possible, participants are encouraged to use laptops or desktop computers for the video conference, as mobile devices often offer inferior performance.

<sup>3</sup> For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>.

1 encouraged to use laptops or desktop computers for the video conference, as mobile  
 2 devices often offer inferior performance. Participants shall join the video conference by  
 3 following the ZoomGov Meeting hyperlink in the invitation. **Participants who do not**  
 4 **have Zoom already installed on their device when they click on the ZoomGov Meeting**  
 5 **hyperlink will be prompted to download and install Zoom before proceeding.** Zoom  
 6 may then prompt participants to enter the password included in the invitation. All  
 7 participants will be placed in a waiting room until the SC begins.

8       **6.** Each participant should plan to join the Zoom video conference **at least five**  
 9 **minutes before** the start of the SC to ensure that the SC begins promptly at **9:30 a.m.**  
 10 **The Zoom e-mail invitation may indicate an earlier start time, but the ENE will begin at**  
 11 **the Court-scheduled time.**

12       **7.** Zoom's functionalities will allow the Court to conduct the SC as it ordinarily  
 13 would conduct an in-person SC. That is, the Court will begin the SC with all participants  
 14 joined together in a main session. After an initial discussion in the main session, the  
 15 Court will divide participants into separate, confidential sessions, which Zoom calls  
 16 Breakout Rooms.<sup>4</sup> In a Breakout Room, the Court will be able to communicate with  
 17 participants from a single party in confidence. Breakout Rooms will also allow parties  
 18 and counsel to communicate confidentially without the Court.

19       **8.** No later than **June 3, 2022**, counsel for each party shall send an e-mail to  
 20 the Court at [efile\\_berg@casd.uscourts.gov](mailto:efile_berg@casd.uscourts.gov) containing the following:

21           a. The **name and title of each participant**, including all parties and  
 22 party representatives with full settlement authority, claims adjusters for insured  
 23 defendants, and the primary attorney(s) responsible for the litigation;

24           b. An **e-mail address for each participant** to receive the Zoom video  
 25 conference invitation; and

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 28 <sup>4</sup> For more information on what to expect when participating in a Zoom Breakout Room, visit:  
<https://support.zoom.us/hc/en-us/articles/115005769646>.

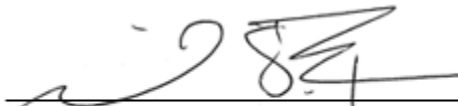
1 c. A **telephone number where each participant** may be reached so that  
2 if technical difficulties arise, the Court will be able to proceed telephonically instead of  
3 by video conference. (If counsel prefers all participants of their party on a single  
4 conference call, counsel may provide a conference number and appropriate call-in  
5 information, including an access code, where all counsel and parties or party  
6 representatives for that side may be reached as an alternative to providing individual  
7 telephone numbers for each participant.)

8 **9.** All participants shall display the same level of professionalism during the SC  
9 and be prepared to devote their full attention to the SC as if they were attending in  
10 person. Because Zoom may quickly deplete the battery of a participant's device, each  
11 participant should ensure that their device is plugged in or that a charging cable is  
12 readily available during the video conference.

13 **10.** If the parties would prefer to conduct the Settlement Conference in-person,  
14 rather than via Zoom, they may file a joint motion requesting the same.

15 **IT IS SO ORDERED.**

16 Dated: May 12, 2022

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18 Honorable Michael S. Berg  
19 United States Magistrate Judge  
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