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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARTIN MACK BASHINSKI JR.,
Plaintiff,
v.
THE UNITED STATES OF AMERICA,
Defendant.

Case No.: 23-cv-01026-JO-JLB

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

Pursuant to Rule 16.1(d) of the Local Rules, a Case Management Conference was held on **September 7, 2023**. 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. The Court understands that parties to litigation often enter into stipulations that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in specified way. Any motion for a protective order entering such stipulation(s) in this case shall be filed as a joint motion no later than **October 5, 2023**, and comply with § VI of Magistrate Judge Jill L. Burkhardt’s Civil Chambers Rules. The parties may use Judge Burkhardt’s model protective order, which is

1 available on the Court’s website under her Chambers Rules.¹

2 If the need for a protective order is not initially apparent to the parties and only
3 becomes apparent due to a later development in the case, the parties must seek leave to file
4 a late motion for protective order. Any such motion shall be supported by good cause,
5 which includes an explanation as to why the parties could not have anticipated the need for
6 a protective order.

7 2. Any motion to join other parties, to amend the pleadings, or to file additional
8 pleadings shall be filed by **November 2, 2023**.

9 3. All fact discovery shall be completed by all parties by **May 7, 2024**.
10 “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil
11 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
12 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking
13 into account the times for service, notice and response as set forth in the Federal Rules of
14 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with**
15 **regard to all discovery disputes in compliance with Local Rule 26.1(a)**. The Court
16 expects counsel to make every effort to resolve all disputes without court intervention
17 through the meet and confer process. Discovery disputes must be brought to the Court’s
18 attention in the time and manner required by § V of Judge Burkhardt’s Civil Chambers
19 Rules. **All discovery disputes must be raised within 30 calendar days of the service of**
20 **an objection, answer, or response** that becomes the subject of dispute, or the passage of
21 a discovery due date without response or production, and only after counsel (and any
22 unrepresented parties) have met and conferred to resolve the dispute. *See* J. Burkhardt Civ.
23 Chambers R. § V. **A failure to comply in this regard will result in a waiver of a party’s**
24 **discovery issue. Absent an order of the court, no stipulation continuing or altering**
25 **this requirement will be recognized by the court.**

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28 ¹ <https://www.casd.uscourts.gov/Judges/burkhardt/docs/Burkhardt%20Model%20Protective%20Order.docx>

1 4. The parties shall designate their respective experts in writing by
2 **March 12, 2024**. The parties must identify any person who may be used at trial to present
3 evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not
4 limited to retained experts. The date for exchange of rebuttal experts shall be by
5 **April 9, 2024**. The written designations shall include the name, address and telephone
6 number of the expert and a reasonable summary of the testimony the expert is expected to
7 provide. The list shall also include the normal rates the expert charges for deposition and
8 trial testimony.

9 5. By **March 12, 2024**, each party shall comply with the disclosure provisions
10 in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure
11 requirement applies to all persons retained or specially employed to provide expert
12 testimony, or whose duties as an employee of the party regularly involve the giving of
13 expert testimony. **Except as provided in the paragraph below, any party that fails to**
14 **make these disclosures shall not, absent substantial justification, be permitted to use**
15 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**
16 **the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

17 6. Any party shall supplement its disclosure regarding contradictory or rebuttal
18 evidence under Fed. R. Civ. P. 26(a)(2)(D) by **April 9, 2024**.

19 7. All expert discovery shall be completed by all parties by **May 7, 2024**. The
20 parties shall comply with the same procedures set forth in the paragraph governing fact
21 discovery.

22 8. Failure to comply with this section or any other discovery order of the court
23 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
24 the introduction of experts or other designated matters in evidence.

25 9. All other pretrial motions must be filed by **June 4, 2024**. Counsel for the
26 moving party must obtain a motion hearing date from the law clerk of the judge who will
27 hear the motion. The period of time between the date you request a motion date and the
28 hearing date may vary from one district judge to another. Please plan accordingly. Failure

1 to make a timely request for a motion date may result in the motion not being heard.
2 Motions in limine are to be filed as directed in the Local Rules, or as otherwise set by the
3 district judge.

4 10. A Mandatory Settlement Conference (“MSC”) will be held by video
5 conference² on **May 22, 2024** at **9:00 AM** before **Magistrate Judge Jill L. Burkhardt**.
6 **Mandatory directions for participating in the MSC by video conference are attached**
7 **hereto**. The purpose of the MSC is to permit an informal, candid discussion between the
8 attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to
9 achieve a mediated resolution of the case. All MSC discussions will be off the record,
10 privileged, and confidential. *See* CivLR 16.3(h).

11 Pursuant to Civil Local Rule 16.3, all party representatives and claims adjusters for
12 insured defendants with full and unlimited authority³ to negotiate and enter into a binding
13 settlement, as well as the principal attorney(s) responsible for the litigation, must be present
14 and legally and factually prepared to discuss and resolve the case at the MSC. In the case
15 of an entity, an authorized representative of the entity who is not retained outside counsel
16 must be present and must have discretionary authority to commit the entity to pay an
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18 ² If any party believes the MSC is more likely to be successful if conducted in-person,
19 that party shall meet and confer on the issue with the other parties. After meeting and
20 conferring, and no later than **60 days before the MSC**, the parties shall leave a joint
21 voicemail with chambers at (619) 557-6624 indicating which of the parties requests an in-
22 person MSC. In the voicemail, the parties shall leave three mutually available dates for a
23 telephonic status conference to discuss whether the MSC should be held in-person. The
24 final decision will be made by the Court.

25 ³ “Full authority to settle” means that the individuals at the settlement conference must
26 be authorized to fully explore settlement options and to agree at that time to any settlement
27 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
28 648 (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 includes 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. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 595–97 (8th Cir. 2001).

1 amount up to the amount of the Plaintiff's prayer (excluding punitive damages prayers).
2 The purpose of this requirement is to have representatives present who can settle the case
3 during the course of the conference without consulting a superior.

4 **Counsel for a United States government entity** may be excused from this
5 requirement so long as the government attorney who attends the MSC conference (1) has
6 primary responsibility for handling the case, and (2) may negotiate settlement offers which
7 the attorney is willing to recommend to the government official having ultimate settlement
8 authority.

9 **Failure to attend the MSC or obtain proper excuse will be considered grounds**
10 **for sanctions.**

11 11. No later than **21 days before the MSC**, the parties shall exchange formal
12 settlement proposals, as required by § III.A. of Judge Burkhardt's Civil Chambers Rules.
13 No later than **14 days before the MSC**, the parties shall meet and confer in person or
14 telephonically, as required by § III.B. of Judge Burkhardt's Civil Chambers Rules.

15 12. No later than **May 13, 2024**, counsel (and any unrepresented parties) shall
16 **lodge** confidential MSC statements with Judge Burkhardt's chambers via e-mail at
17 efile_Burkhardt@casd.uscourts.gov. The parties' MSC statements shall comply with §
18 III.C. of Judge Burkhardt's Civil Chambers Rules.

19 13. If the trial will be a bench trial, Counsel shall file their Memoranda of
20 Contentions of Fact and Law and take any other action required by Local Rule 16.1(f)(2)
21 by **September 11, 2024**. Counsel do not need to file Memoranda of Contentions of Fact
22 and Law if the trial will be a jury trial.

23 14. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
24 Civ. P. 26(a)(3) by **September 11, 2024**. Failure to comply with these disclosure
25 requirements could result in evidence preclusion or other sanctions under Fed. R. Civ.
26 P. 37.

27 15. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
28 **September 18, 2024**. At this meeting, counsel shall discuss and attempt to enter into

1 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
2 exchange copies and/or display all exhibits other than those to be used for impeachment.
3 The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall
4 note any objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ.
5 P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference
6 order.

7 16. Counsel for Plaintiff will be responsible for preparing the pretrial order and
8 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By
9 **September 25, 2024**, Plaintiff's counsel must provide opposing counsel with the proposed
10 pretrial order for review and approval. Opposing counsel must communicate promptly
11 with Plaintiff's attorney concerning any objections to form or content of the pretrial order,
12 and both parties shall attempt promptly to resolve their differences, if any, concerning the
13 order.

14 17. The Proposed Final Pretrial Conference Order, including objections to any
15 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
16 lodged with the assigned district judge by **October 2, 2024**, and shall be in the form
17 prescribed in and comply with Local Rule 16.1(f)(6).

18 18. The final Pretrial Conference is scheduled on the calendar of the
19 **Honorable Jinsook Ohta on October 9, 2024 at 8:30 AM.**

20 19. The parties must review the chambers' rules for the assigned magistrate judge.

21 20. A post trial settlement conference before a magistrate judge may be held
22 within 30 days of verdict in the case.

23 21. The dates and times set forth herein will not be modified except for good cause
24 shown.

25 22. Briefs or memoranda in support of or in opposition to any pending motion
26 shall not exceed twenty-five (25) pages in length without leave of a district court judge.
27 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
28 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents

1 and a table of authorities cited.

2 23. Plaintiff’s counsel shall serve a copy of this order on all parties that enter this
3 case hereafter.

4 **IT IS SO ORDERED.**

5 Dated: September 8, 2023



Hon. Jill L. Burkhardt
United States Magistrate Judge

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1 **Mandatory Directions for Zoom Video Conference Participation**

2 1. The Court will use its official ZoomGov video conferencing account to hold
3 the MSC. **IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on
4 computers through a download on the Zoom website (<https://zoom.us/meetings>) or on
5 mobile devices through the installation of a free app.⁴ Joining a Zoom conference does not
6 require creating a Zoom account, but it does require downloading the .exe file (if using a
7 computer) or the app (if using a mobile device). Participants are encouraged to create an
8 account, install Zoom and familiarize themselves with Zoom in advance of the MSC.⁵
9 There is a cost-free option for creating a Zoom account.

10 2. Prior to the start of the MSC, the Court will e-mail each MSC participant an
11 invitation to join a Zoom video conference. Again, if possible, participants are encouraged
12 to use laptops or desktop computers for the video conference, as mobile devices often offer
13 inferior performance. Because Zoom may quickly deplete the battery of a participant’s
14 device, each participant should ensure that her or his device is plugged in or that a charging
15 cable is readily available during the video conference. Participants shall join the video
16 conference by following the ZoomGov Meeting hyperlink in the invitation. **Participants**
17 **who do not have Zoom already installed on their device when they click on the**
18 **ZoomGov Meeting hyperlink will be prompted to download and install Zoom before**
19 **proceeding.** Zoom may then prompt participants to enter the password included in the
20 invitation. All participants will be placed in a waiting room until the MSC begins.

21 3. Each participant should plan to join the Zoom video conference **at least**
22 **5 minutes** before the start of the MSC to ensure that the MSC begins on time.

23 4. Zoom’s functionalities will allow the Court to conduct the MSC as it
24 ordinarily would conduct an in-person MSC. That is, the Court will begin the MSC with
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26 ⁴ If possible, participants are encouraged to use laptops or desktop computers for the
27 video conference, as mobile devices often offer inferior performance.

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

1 all participants joined together in a main session. After an initial discussion in the main
2 session, the Court will divide participants into separate, confidential sessions, which Zoom
3 calls Breakout Rooms.⁶ In a Breakout Room, the Court will be able to communicate with
4 participants from a single party in confidence. Breakout Rooms will also allow parties and
5 counsel to communicate confidentially without the Court.

6 5. As previously stated, MSCs are confidential court proceedings. All attendees
7 must participate from a private and stable location where no individual who is not a party,
8 a party representative, or an attorney for a party can overhear the proceedings. All
9 attendees must be prepared to devote their full attention to the MSC as if they were
10 attending in person. This means that attendees must clear their schedules of all conflicts
11 for the entire period of the MSC.⁷ Attendees may not participate from a moving car or a
12 public space.

13 6. All participants are expected to display the same level of professionalism and
14 civility as they would at an in-person court proceeding. *See* CivLR 2.1; J. Burkhardt’s Civ.
15 Chambers R. § I.

27 ⁶ For more information on what to expect when participating in a Zoom Breakout
28 Room, visit: <https://support.zoom.us/hc/en-us/articles/115005769646>

⁷ MSCs are ordinarily scheduled for three hours but may last considerably longer.