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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL PUBLIC RADIO, INC. and
GRAHAM SMITH,

Plaintiffs,

v.

U.S. CENTRAL COMMAND and
U.S. DEPARTMENT OF DEFENSE,

Defendants.

Case No.: 3:21-cv-01079-MMA-AHG

ORDER:

- 1) VACATING MOTION HEARING SET FOR NOVEMBER 16, 2021 [ECF No. 11],**
- 2) GRANTING PLAINTIFFS’ MOTION FOR EARLY NEUTRAL EVALUATION CONFERENCE [ECF No. 10], and**
- 3) SETTING EARLY NEUTRAL EVALUATION CONFERENCE AND CASE MANAGEMENT CONFERENCE VIA VIDEOCONFERENCE**

Before the Court is Plaintiffs’ Motion for Pre-Answer Early Neutral Evaluation Conference. ECF No. 10.

On June 9, 2021, Plaintiffs filed suit in this district, alleging violations of the Freedom of Information Act, and seeking records from Defendants relating to a “a suspected friendly fire incident that took place in Fallujah, Iraq on 12 April, 2004.” ECF No. 1. On August 2, 2021, Defendants filed a motion to dismiss Plaintiffs’ complaint. ECF

1 No. 6. As such, no Defendant answered Plaintiffs' complaint. On November 4, 2021,
2 Plaintiffs filed the instant motion, requesting that an Early Neutral Evaluation Conference
3 ("ENE") be scheduled before any answer had been filed. ECF No. 10; *see* CivLR
4 16.1(c)(1). On November 10, 2021, the Court denied Defendants' motion to dismiss, and
5 ordered Defendants "to file a response within the time specified by Federal Rule of Civil
6 Procedure 12(a)(4)(A)." ECF No. 12 at 9. On November 12, 2021, Defendants filed a
7 Notice of Non-Opposition to the instant motion, stating that "they do not oppose Plaintiffs'
8 request that the Court schedule an Early Neutral Evaluation." ECF No. 13. The Court finds
9 that this motion is suitable for determination on the papers and without oral argument in
10 accordance with Civil Local Rule 7.1(d)(1). As such, the motion hearing scheduled for
11 November 16, 2021 is **VACATED**.

12 In this district, the Court generally conducts ENEs within forty-five days of the filing
13 of an answer. *See* CivLR 16.1(c)(1) ("Within forty-five (45) days of the filing of an answer,
14 counsel and the parties must appear before the assigned judicial officer supervising
15 discovery for an early neutral evaluation conference"); *Seoane v. Lexisnexis Risk Data*
16 *Mgmt.*, No. 11cv0908 L-WMc, 2011 WL 2132844, at *1 (S.D. Cal. May 26, 2011); *Yang*
17 *v. DTS Financial Group*, 570 F. Supp. 2d 1257, 1261 (S.D. Cal. 2008). However, "[a]t any
18 time after the filing of a complaint and before an answer has been filed, counsel for any
19 party may make a request in writing to the judicial officer assigned to supervise discovery
20 in the case to hold an early neutral evaluation conference[.]" CivLR 16.1(c)(1). Upon such
21 a request, the Court "will examine the circumstances of the case and the reasons asserted
22 for the request[.]" and determine whether an expedited ENE would reduce the "expense
23 and delay" of litigation. *Id.*; *Seoane*, 2011 WL 2132844, at *1.

24 Upon due consideration of this case's procedure history (*see* ECF Nos. 12, 13), and
25 good cause appearing, the Court **GRANTS** Plaintiffs' unopposed motion. ECF No. 10.
26 Accordingly, the Court **ORDERS** as follows:

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1 IT IS ORDERED that an Early Neutral Evaluation (“ENE”) of your case will be held
2 on **December 15, 2021** at **9:30 a.m.** before Magistrate Judge Allison H. Goddard. In
3 accordance with the Local Rules, the Court requires personal attendance of all parties, party
4 representatives, including claims adjusters for insured defendants, and the primary
5 attorney(s) responsible for the litigation. CivLR 16.1(a). However, due to the current
6 COVID-19 public emergency,¹ and upon due consideration, the Court hereby **MODIFIES**
7 the ENE to be via **videoconference** for all attendees.

8 The Court issues the following **Mandatory Procedures** to be followed in
9 preparation for the ENE:

10 1. **Purpose of the Conference:** The purpose of the ENE is to permit an informal
11 discussion between the attorneys and the settlement judge of every aspect of the lawsuit in
12 an effort to achieve an early resolution of the case. All conference discussions will be
13 informal, off the record, and confidential.

14 2. **Full Settlement Authority Required:** A party or party representative with
15 **full and complete authority to enter into a binding settlement** must be present via
16 videoconference or immediately available to join. Full authority to settle means that a
17 person must be authorized to fully explore settlement options and to agree at that time to
18 any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat*
19 *Corp.*, 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion
20 and authority” to change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*,

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22 ¹ On March 2, 2021, Chief Judge Dana M. Sabraw issued an Order in response to the
23 COVID-19 public emergency (“CJO #62”) which, among other things, suspends the
24 requirement under Civil Local Rule 16.1(a) that ENEs be conducted in person. *See* CJO
25 #62 at 1. CJO #62 is available on the Court website at
26 <https://www.casd.uscourts.gov/assets/pdf/rules/Chief%20Judge%20Order%2062%20-%20Civil%20Case%20Proceedings%20During%20the%20Covid-19%20Public%20Emergency.pdf>. The suspension of the requirement under Civil Local
27 Rule 16.1(a) that ENEs be conducted in person is also reiterated by CJO #62-B, filed on
28 June 11, 2021. CJO #62-B is available on the Court website at
<https://www.casd.uscourts.gov/assets/pdf/rules/Chief%20Judge%20Order%2062-B.pdf>.

1 216 F.R.D. 481, 485–86 (D. Ariz. 2003). Limited or sum certain authority is not adequate.
2 *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 595–97 (8th Cir. 2001). **A person who needs**
3 **to call another person who is not present on the videoconference before agreeing to**
4 **any settlement does not have full authority.**

5 3. **Confidential ENE Statements Required:** No later than **December 8, 2021**,
6 the parties shall submit confidential statements of five (5) pages or less directly to the
7 chambers of Magistrate Judge Goddard outlining the nature of the case, the claims, and the
8 defenses. **These statements shall not be filed or served on opposing counsel.** They shall
9 be lodged via email at efile_goddard@casd.uscourts.gov. The ENE statement is limited to
10 **five (5) pages or less, and up to five (5) pages of exhibits or declarations.** Each party’s
11 ENE statement must outline:

- 12 A. the nature of the case and the claims,
- 13 B. position on liability or defense,
- 14 C. position regarding settlement of the case with a **specific**²
15 **demand/offer for settlement**,³ and
- 16 D. any previous settlement negotiations or mediation efforts.

17 4. **Case Management Conference:** In the event the case does not settle at the
18 ENE, the Court will immediately thereafter hold a Case Management Conference (“CMC”)
19 pursuant to Fed. R. Civ. P. 16(b). Appearance of the parties at the CMC is not required.
20 The Court orders the following to occur before the CMC:

- 21 A. The parties must meet and confer pursuant to Fed. R. Civ. P. 26(f) no
22 later than **November 30, 2021**.

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25 ² A general statement, such as that a party “will negotiate in good faith,” is a not a specific
26 demand or offer.

27 ³ If a specific demand or offer cannot be made at the time the ENE statement is submitted,
28 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 in a position to state a demand or offer.

1 B. The parties must file a Joint Case Management Statement by
2 **December 7, 2021**. The Joint Case Management Statement must
3 address all points in the “Joint Case Management Statement
4 Requirements for Magistrate Judge Allison H. Goddard,” which can
5 be found on the court website at:

6 [https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Join
7 t%20Case%20Management%20Statement%20Rules.pdf](https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf).

8 C. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by
9 **December 14, 2021**.

10 5. **Appearances via Videoconference Required:** All named parties, party
11 representatives, including claims adjusters for insured defendants, as well as principal
12 attorney(s) responsible for the litigation must attend the ENE via videoconference. All who
13 attend the ENE must be legally and factually prepared to discuss and resolve the case.
14 Counsel appearing without their clients (whether or not counsel has been given settlement
15 authority) will be subject to immediate imposition of sanctions. To facilitate the
16 videoconference ENE, the Court hereby orders as follows:

17 A. The Court will use its official Zoom video conferencing account to hold
18 the ENE. **If you are unfamiliar with Zoom:** Zoom is available on
19 computers through a download on the Zoom website
20 (<https://zoom.us/meetings>) or on mobile devices through the
21 installation of a free app.⁴ Joining a Zoom conference does not require
22 creating a Zoom account, but it does require downloading the .exe file
23 (if using a computer) or the app (if using a mobile device). Participants
24 are encouraged to create an account, install Zoom and familiarize
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27 ⁴ If possible, participants are encouraged to use laptops or desktop computers for the
28 video conference, rather than mobile devices.

1 themselves with Zoom in advance of the ENE.⁵ There is a cost-free
2 option for creating a Zoom account.

3 B. Prior to the start of the ENE, the Court will email each participant an
4 invitation to join a Zoom video conference. Again, if possible,
5 participants are encouraged to use laptops or desktop computers for the
6 video conference, as mobile devices often offer inferior performance.
7 Participants shall join the video conference by following the ZoomGov
8 Meeting hyperlink in the invitation. **Participants who do not have**
9 **Zoom already installed on their device when they click on the**
10 **ZoomGov Meeting hyperlink will be prompted to download and**
11 **install Zoom before proceeding.** Zoom may then prompt participants
12 to enter the password included in the invitation. All participants will be
13 placed in a waiting room until the ENE begins.

14 C. Each participant should plan to join the Zoom video conference **at least**
15 **five minutes before** the start of the ENE to ensure that the conference
16 begins promptly at 9:30 a.m.

17 D. Zoom's functionalities will allow the Court to conduct the ENE as it
18 ordinarily would conduct an in-person one. The Court will divide
19 participants into separate, confidential sessions, which Zoom calls
20 Breakout Rooms.⁶ In a Breakout Room, the Court will be able to
21 communicate with participants from a single party in confidence.
22 Breakout Rooms will also allow parties and counsel to communicate
23 confidentially without the Court.

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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 E. No later than **December 8, 2021**, counsel for each party shall send an
2 e-mail to the Court at efile_goddard@casd.uscourts.gov containing the
3 following:

- 4 i. The **name and title of each participant**, including all parties
5 and party representatives with full settlement authority, claims
6 adjusters for insured defendants, and the primary attorney(s)
7 responsible for the litigation;
- 8 ii. An **e-mail address for each participant** to receive the Zoom
9 video conference invitation; and
- 10 iii. A **telephone number where each participant** may be reached
11 so that if technical difficulties arise, the Court will be in a
12 position to proceed telephonically instead of by video
13 conference. (If counsel prefers to have all participants of their
14 party on a single conference call, counsel may provide a
15 conference number and appropriate call-in information,
16 including an access code, where all counsel and parties or party
17 representatives for that side may be reached as an alternative to
18 providing individual telephone numbers for each participant.)
- 19 iv. A **cell phone number for that party's preferred point of**
20 **contact** (and the name of the individual whose cell phone it is)
21 for the Court to use during the ENE to alert counsel via text
22 message that the Court will soon return to that party's Breakout
23 Room, to avoid any unexpected interruptions of confidential
24 discussions.

25 F. All participants shall display the same level of professionalism during
26 the ENE and be prepared to devote their full attention to the ENE as if
27 they were attending in person, i.e., cannot be driving while speaking to
28 the Court. Because Zoom may quickly deplete the battery of a

1 participant's device, each participant should ensure that their device is
2 plugged in or that a charging cable is readily available during the video
3 conference.

4 G. Counsel are advised that although the ENE will take place on Zoom, all
5 participants shall appear and conduct themselves as if it is proceeding
6 in a courtroom, i.e., counsel must dress in appropriate courtroom attire.

7 H. If the case does not settle during the ENE, the Court will hold the CMC
8 immediately following the ENE with counsel only in the main session.

9 6. **Requests for Continuances:** Local Rule 16.1(c) requires that an ENE take
10 place within forty-five (45) days of the filing of the first answer, and the answers in this
11 case are due on November 24, 2021. *See* ECF Nos. 12, 13. Requests to continue ENEs are
12 rarely granted. An ENE may be rescheduled only upon a showing of good cause and
13 adequate notice to the Court. Absent extraordinary circumstances, requests for
14 continuances will not be considered unless submitted **in writing** no less than seven (7) days
15 before the ENE. All requests for continuances must be made by a joint motion. The request
16 must state:

17 A. The original date;

18 B. The number of previous requests for continuances;

19 C. A showing of good cause for the request;

20 D. Whether the request is opposed and why;

21 E. Whether the requested continuance will affect other case management
22 dates; and

23 F. A declaration from the counsel seeking the continuance that describes
24 the steps taken to comply with the existing deadlines, and the specific
25 reasons why the deadlines cannot be met.

26 7. **New Parties Must be Notified by Plaintiff or Plaintiff's Counsel:**
27 Plaintiff's counsel must give notice of the ENE to any Defendants who have been served
28 but who have not yet filed responsive pleadings as of the date of this Order. If any

1 Defendants have not yet been served, Plaintiff’s counsel must serve them with a copy of
2 this Order along with the summons and complaint.

3 8. **The failure of any party to follow these mandatory procedures shall result**
4 **in the imposition of sanctions.**

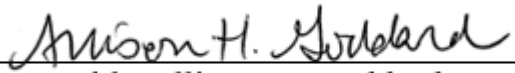
5 9. Questions regarding this case or these mandatory guidelines may be directed
6 to Judge Goddard’s law clerks at (619) 557-6162. Lodged statements should be emailed to
7 efile_goddard@casd.uscourts.gov.

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

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IT IS SO ORDERED.

Dated: November 12, 2021



Honorable Allison H. Goddard
United States Magistrate Judge

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 notified that a
5 U.S. Magistrate Judge of this district may, upon the consent of all parties, conduct any or
6 all proceedings, including a jury or non-jury trial, and order the entry of a final judgment.
7 Consent forms are available in the Clerk’s Office, and one is attached to this notice.
8 Plaintiff or counsel for the plaintiff is responsible to obtain the consent of all parties,
9 should they want to consent.

10 **Be aware that your decision to consent or not to consent is entirely voluntary,**
11 **and should be communicated solely to the Clerk of Court.** Only if all parties consent
12 will the Judge or Magistrate Judge to whom the case has been assigned be informed of
13 your decision.

14 Judgments of U.S. Magistrate Judges are appealable to the U.S. Court of Appeals
15 in accordance with this statute and the Federal Rules of Appellate Procedure.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL PUBLIC RADIO, INC. and
GRAHAM SMITH,

Plaintiffs,

v.

U.S. CENTRAL COMMAND and U.S.
DEPARTMENT OF DEFENSE,

Defendants.

Case No.: 3:21-cv-01079-MMA-AHG

**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 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 parties and attorneys</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REFERENCE ORDER

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

Date

United States District Judge