

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Kersting v. UnitedHealth Group

Kersting · No. 3:23-cv-00159-TWR-AHG · Decided March 3, 2023

SUMMARY

The United States District Court for the Southern District of California partially granted the parties’ joint motion to continue the Early Neutral Evaluation and Case Management Conference. The court found good cause based on the unavailability of the defendant’s representative, while criticizing the parties for failing to comply with procedural requirements for continuance motions. The court reset the ENE for May 3, 2023, and specified attendance, settlement-authority, confidentiality, submission, and videoconference requirements.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Allison H. Goddard
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 3, 2023
DOCKET	3:23-cv-00159-TWR-AHG
DISPOSITION	other
PROCEDURAL POSTURE	The parties jointly moved to continue a scheduled Early Neutral Evaluation Conference, Case Management Conference, and related deadlines because Defendant's client representative was unavailable.
STANDARD OF REVIEW	The court applied the good-cause standard governing continuances and scheduling modifications, focusing on the diligence of the party seeking modification and the reasons for the requested change.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential

TOPICS

- civil procedure
- mediation
- sanctions

PRACTICE AREAS

- civil procedure
- commercial litigation

QUESTIONS PRESENTED

1. Whether the parties established good cause to continue the scheduled Early Neutral Evaluation Conference, Case Management Conference, and related deadlines.
2. What attendance, settlement-authority, statement-submission, and videoconference requirements should govern the continued ENE.

HOLDINGS

1. A party seeking to continue an Early Neutral Evaluation Conference must demonstrate good cause, and the court found good cause after considering supplemental information explaining Defendant's representative's unavailability.
2. The continued ENE required attendance by all parties, party representatives with full and complete settlement authority, applicable claims adjusters, and primary litigation counsel, with participation by videoconference and compliance with the court's confidential statement and procedural requirements.

KEY QUOTATIONS

“Good cause” is a non-rigorous standard that has been construed broadly across procedural and statutory contexts.” (at 1)

“Full authority to settle means that a person must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties.” (at 3)

“A person who needs to call another person who is not present on the videoconference before agreeing to any settlement does not have full authority.” (at 3)

FACTUAL BACKGROUND

The parties sought to continue an Early Neutral Evaluation Conference and Case Management Conference because Defendant's representative was unavailable to attend the scheduled ENE. The motion was filed on the same date that confidential ENE statements and participant lists were due, did not include the declaration required by the court's Chambers Rules and prior order, and initially provided insufficient factual detail to establish good cause.

PROCEDURAL HISTORY

The parties' joint motion was filed in the Southern District of California on March 2, 2023, one day before the scheduled March 9 ENE and on the deadline for ENE statements and participant lists. The court found the motion deficient in several respects but, after receiving supplemental information from Defendant regarding its representative's personal commitments, found good cause to continue the ENE and CMC and imposed revised dates and mandatory participation procedures.

DISPOSITION

other

CASES CITED

- Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1259 (9th Cir. 2010)
- Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)
- Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989)
- Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003)
- Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001)

OPINION

1 2 3 4 5 6 7 8 9 UNITED STATES DISTRICT COURT 10 SOUTHERN DISTRICT OF
CALIFORNIA 11 12 TERESA KERSTING, Case No.: 3:23-cv-00159-TWR-AHG 13 Plaintiff,
ORDER GRANTING IN PART JOINT MOTION TO CONTINUE 14 v. EARLY NEUTRAL
EVALUATION 15 UNITEDHEALTH GROUP, CONFERENCE AND CASE MANAGEMENT
CONFERENCE 16 Defendant. 17 [ECF No. 6] 18 19 Before the Court is the parties' joint motion
to continue the Early Neutral Evaluation 20 Conference ("ENE") and Case Management
Conference ("CMC"), currently scheduled for 21 March 9, 2023.

ECF No. 6. 22 Parties seeking to continue an ENE must demonstrate good cause. ECF No. 4 at 6
23 ("An ENE may be rescheduled only upon a showing of good cause"); Chmb.R. at 2 (stating 24
that any request for continuance requires "[a] showing of good cause for the request"); see, 25 e.g.,
FED. R. CIV. P. 6(b) ("When an act may or must be done within a specified time, the 26 court
may, for good cause, extend the time").

27 "Good cause" is a non-rigorous standard that has been construed broadly across 28 procedural
and statutory contexts. Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1259 1 (9th Cir. 2010).
The good cause standard focuses on the diligence of the party seeking to 2 amend the scheduling
order and the reasons for seeking modification. Johnson v. Mammoth 3 Recreations, Inc., 975 F.2d
604, 609 (9th Cir.

1992) ("[T]he focus of the inquiry is upon 4 the moving party's reasons for seeking
modification.... If that party was not diligent, the 5 inquiry should end.") (internal citation
omitted). 6 Here, the parties have represented to the Court that Defendant's client representative 7
is unavailable to attend the ENE. ECF No. 6 at 2.

Therefore, the parties seek a continuance 8 of the ENE, CMC, and related deadlines. Id. The
parties identified March 20, 21, or 23 as 9 mutually agreeable conference dates. Id. at 3. 10 As an
initial matter, the parties' motion is deficient.

First, the parties failed to provide 11 a declaration from counsel, as required by the Court's
Chambers Rules and the Court's 12 January 30, 2023, Order. Chmb.R. at 2 (requiring that the joint
motion for continuance 13 include a "declaration from counsel seeking the continuance that

describes the steps taken 14 to comply with the existing deadlines, and the specific reasons why the deadlines cannot 15 be met”); ECF No. 4 at 6 (same).

The Court will take the parties at their words without the 16 required declaration, but will not do so again. 17 Second, the parties’ Confidential ENE Statements and Participant Lists were due on 18 March 2, 2023, (see ECF No. 4 at 2, 5), and the instant motion to continue the ENE and 19 the deadline for submission of ENE Statements was filed on March 2, 2023.

ECF No. 6. 20 By filing the motion on same date as the affected deadline, the parties failed to follow the 21 Court’s Chambers Rules and the Court’s January 30, 2023, Order. See Chmb.R. at 2 22 (requiring that “[a]ll requests for continuances must be made by a joint motion no less than 23 seven calendar days before the affected date”) (emphasis added); ECF No. 4 at 6 (same).

24 The Court expresses its deep concern in the parties’ blatant disregard for the Court’s 25 Chambers Rules. 26 Third, the parties’ motion failed to include specific facts or any framework for a 27 finding of good cause.

The motion merely recounts that “a person with authority for 28 Defendant [] is unavailable for the ENE video-conference on March 9, 2023.” ECF No. 6 1 at 2. Without more, this is simply insufficient. However, court staff reached out to the 2 parties for more detailed reasoning regarding the requested continuance and Defendant 3 responded, explaining the representative’s personal commitments.

The details provided to 4 court staff should have been included in the required declaration. 5 Despite the joint motion’s shortcomings, upon receipt of the supplemental 6 information, the Court finds good cause to continue the ENE and CMC.

As such, the 7 parties’ joint motion is GRANTED IN PART as follows: 8 1. The ENE, originally scheduled for March 9, 2023, is hereby RESET for 9 May 3, 2023¹ at 2:00 p.m. before Magistrate Judge Allison H. Goddard via 10 videoconference.

In accordance with the Local Rules, the Court requires attendance of all 11 parties, party representatives, including claims adjusters for insured defendants, and the 12 primary attorney(s) responsible for the litigation via videoconference. CivLR 16.1(c)(1). 13 2. Purpose of the Conference: The purpose of the ENE is to permit an informal 14 discussion between the attorneys and the settlement judge of every aspect of the lawsuit in 15 an effort to achieve an early resolution of the case.

All conference discussions will be 16 informal, off the record, and confidential. 17 3. Full Settlement Authority Required: A party or party representative with 18 full and complete authority to enter into a binding settlement must be present via 19 videoconference. Full authority to settle

means that a person must be authorized to fully 20 explore settlement options and to agree at that time to any settlement terms acceptable to 21 the parties.

Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 22 1989). The person needs to have “unfettered discretion and authority” to change the 23 settlement position of a party. Pitman v. Brinker Int’l, Inc., 216 F.R.D. 481, 485–86 (D. 24 Ariz. 2003). Limited or sum certain authority is not adequate. Nick v. Morgan’s Foods, 25 26 1 The Court appreciates that the parties identified dates in March that were mutually 27 agreeable.

See ECF No. 6 at 2. However, the Court does not have availability on those dates and has set the continued ENE for the first available date on its calendar. 28 1 Inc., 270 F.3d 590, 595–97 (8th Cir. 2001). A person who needs to call another person 2 who is not present on the videoconference before agreeing to any settlement does not 3 have full authority. 4 4.

Confidential ENE Statements Required: No later than April 26, 2023,2 the 5 parties shall submit confidential statements of five (5) pages or less directly to the chambers 6 of Magistrate Judge Goddard outlining the nature of the case, the claims, and the defenses. 7 These statements shall not be filed or served on opposing counsel. They shall be lodged 8 via email at efile_goddard@casd.uscourts.gov.

The ENE statement is limited to five (5) 9 pages or less, and up to five (5) pages of exhibits or declarations. Each party’s ENE 10 statement must outline: 11 A. the nature of the case and the claims, 12 B. position on liability or defense, 13 C. position regarding settlement of the case with a specific3 14 demand/offer for settlement,4 and 15 D. any previous settlement negotiations or mediation efforts.

16 5. Case Management Conference: In the event the case does not settle at the 17 ENE, the Court will immediately thereafter hold a CMC pursuant to Fed. R. Civ. P. 16(b). 18 Appearance of the parties at the CMC is not required.

The deadlines previously set (see 19 ECF No. 4) remain in place, but are repeated for the parties’ convenience: 20 / / 21 22 2 Plaintiff timely submitted her ENE Statement by the initial deadline of March 2, 2023. 23 Thus, Plaintiff is not required to submit an ENE Statement by the continued April deadline. 24 Should Plaintiff prefer to send an updated ENE statement, though, she may do so.

25 3 A general statement, such as that a party “will negotiate in good faith,” is a not a specific demand or offer. 26 27 4 If a specific demand or offer cannot be made at the time the ENE statement is submitted, then the reasons as to why a demand or offer cannot be made must be stated. Further, the 28 1 A. The parties must meet and confer pursuant to Fed.

R. Civ. P. 26(f) no 2 later than February 17, 2023. 3 B. The parties must file a Joint Case Management Statement by 4 February 28, 2023. The Joint Case Management Statement must 5 address all points in the “Joint Case Management Statement 6 Requirements for Magistrate Judge Allison H. Goddard,” which can 7 be found on the court website at: 8 <https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf>. 9

10 C. Initial disclosures pursuant to Rule 26(a)(1)(A-D) must occur by 11 March 3, 2023. 12 6. Appearances via Videoconference Required: All named parties, party 13 representatives, including claims adjusters for insured defendants, as well as principal 14 attorney(s) responsible for the litigation must attend the ENE via videoconference. All who 15 attend the ENE must be legally and factually prepared to discuss and resolve the case.

16 Counsel appearing without their clients (whether or not counsel has been given settlement 17 authority) will be subject to immediate imposition of sanctions. To facilitate the 18 videoconference ENE, the Court hereby orders as follows: 19 A. The Court will use its official Zoom video conferencing account to hold 20 the ENE. If you are unfamiliar with Zoom: Zoom is available on 21 computers through a download on the Zoom website 22 (<https://zoom.us/meetings>) or on mobile devices through the 23 installation of a free app.⁵ Joining a Zoom conference does not require 24 creating a Zoom account, but it does require downloading the.exe file 25 (if using a computer) or the app (if using a mobile device).

Participants 26 27 5 If possible, participants are encouraged to use laptops or desktop computers for the video 28 1 are encouraged to create an account, install Zoom and familiarize 2 themselves with Zoom in advance of the ENE.⁶ There is a cost-free 3 option for creating a Zoom account. 4 B. Prior to the start of the ENE, the Court will email each participant an 5 invitation to join a Zoom video conference.

Again, if possible, 6 participants are encouraged to use laptops or desktop computers for the 7 video conference, as mobile devices often offer inferior performance. 8 Participants shall join the video conference by following the ZoomGov 9 Meeting hyperlink in the invitation. Participants who do not have 10 Zoom already installed on their device when they click on the 11 ZoomGov Meeting hyperlink will be prompted to download and 12 install Zoom before proceeding.

Zoom may then prompt participants 13 to enter the password included in the invitation. 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 2:00 p.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.⁷ 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. 24 25 6 For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started> 27 7 For more information on what to expect when participating in a Zoom Breakout Room, 28 1 E. No later than April 26, 2023, 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 videoconference invitation; 10 iii. A telephone number where each participant may be reached; 11 and 12 iv. A cell phone number for that party's preferred point of 13 contact (and the name of the individual whose cell phone it is) 14 for the Court to use during the ENE to alert counsel via text 15 message that the Court will soon return to that party's Breakout 16 Room, to avoid any unexpected interruptions of confidential 17 discussions.

18 F. All participants shall display the same level of professionalism during 19 the ENE and be prepared to devote their full attention to the ENE as if 20 they were attending in person, i.e., cannot be driving or in a car while 21 speaking to the Court.

Because Zoom may quickly deplete the battery 22 of a participant's device, each participant should ensure that their 23 device is plugged in or that a charging cable is readily available during 24 the videoconference. 25 26 27 8 Plaintiff timely submitted her Participant List by the initial deadline of March 2, 2023.

Thus, Plaintiff is not required to submit a Participant List by the continued April deadline. 28 1 G. Counsel are advised that although the ENE will take place on Zoom, all 2 participants shall appear and conduct themselves as if it is proceeding 3 in a courtroom, i.e., all participants must dress in appropriate courtroom 4 attire. 5 H. If the case does not settle during the ENE, the Court will hold the CMC 6 immediately following the ENE with counsel only in the main session.

7 7. The failure of any party to follow these mandatory procedures shall result 8 the imposition of sanctions. 9 8. Questions regarding this case or these mandatory guidelines may be directed 10 Judge Goddard's law clerks at (619) 557-6162. Lodged statements should be emailed to 11 efile_goddard@casd.uscourts.gov. 12 IT IS SO ORDERED. 13 || Dated: March 3, 2023 14 Joba Xlyvolary Honorable Allison H. Goddard 15 United States Magistrate Judge 16 17 18 19 20 21 22 23 24 25 26 27 28

