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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Tamara Eichelberger,
Plaintiff(s),
v.
Mary Hudson-McKinney et al,
Defendant(s).

CASE NO. CV 22-00663-MCS (SKx)

**ORDER RE SETTLEMENT
CONFERENCE WITH U.S.
MAGISTRATE JUDGE KIM**

PLEASE READ THIS ORDER CAREFULLY

This case has been referred to Magistrate Judge Steve Kim for settlement proceedings. Judge Kim will not be involved in the actual trial of the case and will assist the parties in an objective appraisal and evaluation of the case. By agreeing to have Judge Kim conduct settlement proceedings and participating in those proceedings, the parties understand that if Judge Kim is the assigned Magistrate Judge for pre-trial proceedings in this matter, the parties are waiving any argument of a potential conflict in having Judge Kim serve as both a neutral for settlement purposes and the assigned Magistrate Judge for other pre-trial matters, including discovery, referred by the District Judge.

The purpose of the Settlement Conference is to permit an informal discussion between the attorneys, parties, non-party indemnitors or insurers, and the settlement

1 judge, of every aspect of the case bearing on its settlement value. **IT IS THEREFORE**
2 **ORDERED AS FOLLOWS:**

3 **1. Date, Time and Duration**

4 The Settlement Conference is placed on calendar for **Wednesday, December 7,**
5 **2022 at 10:00 AM in Courtroom 540, 5th Floor, 255 E. Temple Street, Los**
6 **Angeles, California 90012.** Absent leave of Court, the Settlement Conference shall
7 last no longer than 4 hours.

8 **2. Mandatory Participants and Attendees**

9 Everyone whose decision is necessary for settlement must attend and participate in
10 the Settlement Conference **in person**, even if a party, representative, or counsel is
11 located outside the Central District of California.¹ This includes: lead trial counsel for
12 each side (except for a pro se plaintiff) and their respective clients; an authorized and
13 knowledgeable representative of any party that is a corporate or government entity; and
14 the person for each side with full and final settlement authority. The purpose of this
15 requirement is to have all persons present who can settle the case during the Settlement
16 Conference without consulting anyone else not physically present at the Settlement
17 Conference. If a proposed settlement involving a corporate or government entity must be
18 presented for final or pro forma approval to a Board, committee, or other decision-
19 making body, the person whose recommendation is normally followed must attend the
20 Settlement Conference in person.

21 The plaintiff's representative must have full and final authority, in the
22 representative's discretion, to authorize dismissal of the case with prejudice or to accept a
23 settlement amount recommended by Judge Kim down to the defendant's last offer made
24 prior to the Settlement Conference. The defendant's representative must have full and
25 final authority to commit the defendant to pay, in the representative's discretion, a
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27 ¹ The provisions of Local Rule 16-15.5(b) permitting telephonic appearances by parties
28 residing outside the District (other than the United States or any of its agencies) are
inapplicable to this Order.

1 settlement amount recommended by Judge Kim up to the plaintiff's prayer (excluding
2 punitive damage prayers) or up to the plaintiff's last demand made prior to the
3 Settlement Conference, whichever is lower. **Authority to settle is not the same as**
4 **authorization to settle for a particular amount on the day of the conference.**
5 **Sanctions will be imposed if the decision-making representative at the**
6 **conference comes with only limited authorization but not complete**
7 **authority.**

8 Any insurance company that is a party or is contractually required to defend or to
9 pay damages, if any, assessed within policy limits in this case must have a fully authorized
10 settlement representative present at the conference. Such representative must have final
11 settlement authority to commit the company to pay, in the representative's sole
12 discretion, an amount recommended by Judge Kim within the policy limits. An insurance
13 representative authorized to pay, in the representative's sole discretion, up to the
14 plaintiff's last demand made prior to the Settlement Conference will also satisfy this
15 requirement. Counsel of record will be responsible for timely advising any involved non-
16 party insurance company of the requirement of this Order.

17 **3. Confidential Communications**

18 Pursuant to Local Rule 16-15.8, all settlement proceedings shall be confidential
19 and no statement made therein shall be admissible in any proceeding in the case, unless
20 the parties otherwise agree in writing. No part of a settlement proceeding shall be
21 reported or otherwise recorded, without the consent of the parties, except for the initial
22 case call and notices of appearance, and any memorialization of a settlement that the
23 parties seek to place on the record. All papers submitted for the Settlement Conference
24 will either be returned to the parties or destroyed after all the settlement proceedings are
25 concluded, unless the parties agree otherwise.

26 Judge Kim may, in his discretion, converse with the lawyers, the parties, the
27 insurance representatives, or any one of them outside of the hearing of the others. Judge
28 Kim also may, in his discretion, converse with the lawyers ex parte by telephone in

1 advance of the Settlement Conference. The comments of Judge Kim during any such
2 separate sessions or ex parte conversations are not to be recorded or used by counsel in
3 any way during the Settlement Conference, in any court proceedings, or in settlement
4 negotiations with opposing counsel either before or after the Settlement Conference.
5 Judge Kim will not report the substance of any settlement discussions to the assigned
6 District Judge, other than the fact of whether a settlement was reached or not, without
7 the affirmative consent of the parties.

8 **4. Pre-Settlement Conference Requirements**

9 Prior to the Settlement Conference, the attorneys are directed to discuss
10 settlement with their respective clients and insurance representatives, so that the
11 parameters of possible settlement will have been explored well in advance of the
12 Settlement Conference. At the Settlement Conference, each party shall be fully prepared
13 to discuss all economic and non-economic factors relevant to a full and final settlement of
14 the case.

15 **The parties must attempt in good faith to resolve the case before the**
16 **Settlement Conference.** By no later than **two calendar weeks** in advance of the
17 Settlement Conference, counsel shall confer in writing and reasonably discuss the
18 settlement of this matter. Except in exceedingly rare situations, a mutual walk-away
19 proposal or offer to waive the right to pursue fees and costs as the prevailing party will
20 not be considered a good faith settlement offer and may result in the imposition of
21 sanctions. Likewise, a demand for essentially the full amount of the damages sought in a
22 complaint will not be considered a good faith settlement offer and may result in the
23 imposition of sanctions. The parties must summarize all settlement efforts and detail the
24 material terms of the exchanged proposals in their respective Confidential Settlement
25 Conference Statements (discussed below) to the Court. If the parties successfully resolve
26 the case before the conference or determine that the conference should be postponed,
27 counsel must immediately inform the courtroom deputy clerk.

1 By no later than **seven calendar days** prior to the conference, each party shall
2 submit, ex parte, a Confidential Settlement Conference Statement directly to the
3 Chambers of Magistrate Judge Kim via email to SK_Chambers@cacd.uscourts.gov. The
4 Statements should not be filed with the Clerk of the Court, and they will not be made part
5 of the case file. The Statements should be in the form of a letter and shall not exceed 10
6 pages in length, excluding material and necessary exhibits, absent prior permission of the
7 Court. The Statements shall include:

- 8 a. A brief statement of the facts of the case, including the party's claims and
9 defenses. The statement should include citations to the applicable statutory
10 or other grounds upon which claims or defenses are based. This statement
11 should identify the major factual and legal issues in dispute, and cite any
12 controlling authorities.
- 13 b. An itemized statement of the monetary damages claimed and of any other
14 relief sought, including the evidentiary bases for the monetary damages
15 and/or other relief sought.
- 16 c. A summary of the proceedings to date, including any case management
17 dates/deadlines already set by the District Judge.
- 18 d. A history of past settlement discussions, offers and demands, including
19 specifically a detailed summary of the proposals that must be exchanged by
20 the parties no later than two weeks before the conference, as ordered
21 herein.
- 22 e. A forthright evaluation of the party's likelihood of prevailing on each of its
23 claims and/or defenses.
- 24 f. The approximate amount of attorney's fees, time and costs expended to
25 date, and an estimate of the fees, time and costs to be expended for further
26 discovery, pretrial proceedings, and trial.
- 27 g. The party's evaluation of the terms on which the case could be settled fairly
28 and reasonably, considering the litigation and settlement positions of the

1 other side.

2 h. The party's preference on the format of the conference, including whether to
3 hold a joint session, whether to start immediately with private caucuses,
4 and any other unique presentation approaches a party would like to use.

5 i. Any other relevant circumstance, information or variable that counsel
6 believe will assist the Court in conducting a productive conference.

7 **5. Overview of Settlement Conference**

8 Considering the preferences and recommended approaches of the parties, the
9 Court may begin with a joint session attended by all participants. At that joint session,
10 parties and counsel should be prepared to summarize their respective positions and
11 interests, keeping in mind that the goal is not to prove one side's case, but to explain the
12 parties' positions and interests to the settlement decision-makers while also educating the
13 settlement judge.

14 After or in lieu of a joint session, Judge Kim shall hold private caucuses between
15 the judge and each party and counsel. In private caucus, the parties can and should
16 discuss confidential information that they prefer not to disclose in direct negotiations but
17 which may assist Judge Kim in working toward a resolution and the parties in assessing
18 realistic options for settlement. You should anticipate that the judge will play "devil's
19 advocate" to help all parties gain the most balanced evaluation of the matter.

20 If the parties reach a resolution of the case during the conference, the Court will
21 summarize the key terms of the agreement on the record or will direct the parties to draft
22 an appropriate memorandum. The Court encourages counsel to bring a proposed
23 settlement agreement to the conference. If settlement between any or all the parties is
24 reached at the Settlement Conference, it is the responsibility of all counsel to immediately
25 report the settlement to the District Judge's courtroom deputy clerk, as well as to timely
26 memorialize the settlement, pursuant to Local Rule 16-15.7.

27 If no resolution is reached, the Court will consult with the parties to determine
28 whether an additional settlement conference is likely to be productive.

1 **6. Sanctions for Violating this Order**

2 Judge Kim expects strict compliance with this Order. The failure of any party or
3 attorney to comply strictly with the requirements of this Order may result in sanctions
4 being imposed. The sanctions may include, but are not limited to, the fees and costs
5 expended by the other parties in preparing for and attending the Settlement Conference.
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7 DATED: September 30, 2022

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10 HON. STEVE KIM
11 UNITED STATES MAGISTRATE JUDGE
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