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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**SETTLEMENT CONFERENCE STANDING ORDER
BEFORE MAGISTRATE JUDGE PETER H. KANG**
(Effective and Last Revised May 24, 2023)

INTRODUCTION

This Standing Order governs cases referred to Magistrate Judge Peter H. Kang for settlement. The Parties shall follow the General Orders of the Court for the Northern District of California, the Civil Local Rules, and the ADR Local Rules, except as expressly modified herein. Within five (5) business days of any Notice, Order, Stipulation, or other determination referring a case to Judge Kang for settlement, the plaintiff in such case shall serve a copy of this Settlement Conference Standing Order on all other Parties in that case.

A. PRE-SETTLEMENT PLANNING CONFERENCE

In order to effectively prepare for the Settlement Conference, the Court will conduct an initial Pre-Settlement Planning Conference (“Planning Conference”) with counsel of record for the Parties. A Clerk’s Notice will set the Planning Conference, which will be held typically via the Court’s Zoom Meetings link, unless otherwise directed by the Court. *See* <https://www.cand.uscourts.gov/judges/peter-h-kang-phk/>. Within five (5) business days of receiving the Clerk’s Notice (or any other deadline as otherwise set by the Court), counsel for each Party shall provide to the undersigned’s Courtroom Deputy (“CRD”) the names and email addresses of the attorney(s) who will attend the Planning Conference for that Party; without these email addresses, a Zoom Invitation to join the Planning Conference cannot be sent. For scheduling questions, contact Judge Kang’s CRD at PHKCRD@cand.uscourts.gov. Counsel for a Party requesting to reschedule a Planning Conference shall (1) meet and confer with counsel for the other Parties to identify at least two mutually agreeable proposed alternate dates for the Planning Conference and then (2) immediately contact Judge Kang’s CRD at PHKCRD@cand.uscourts.gov to submit the request for rescheduling and the proposed alternative dates, all to be accomplished as far in advance of the noticed date as possible. Planning Conferences are typically held on Monday, Tuesday, Wednesday, or Thursday at 11 a.m. (Pacific Time).

1 At the Planning Conference, counsel for the Parties shall be prepared to discuss: (1) a general
2 discussion of the background and nature of the case; (2) proposed dates for the Settlement
3 Conference; (3) the persons who will be present at the Settlement Conference for each Party,
4 including identifying all persons who need to be present to have a productive Settlement
5 Conference; (4) any ideas to improve the effectiveness of the Settlement Conference or matters that
6 could pose impediments; and (5) any questions related to the Court’s Settlement Conference
7 procedures, including procedures to be followed for the Settlement Conference Statements and at
8 the Settlement Conference. The schedule for the Settlement Conference will be set during the
9 Planning Conference, unless otherwise ordered by the Court.

10 **B. MEET AND CONFER REQUIREMENT FOR PLANNING CONFERENCE**

11 No later than five (5) business days prior to a scheduled Planning Conference, and prior to
12 the preparation of their exchanged Settlement Conference Statements and Confidential Settlement
13 Statements, counsel for all the Parties shall meet and confer (in person, by video conference, or by
14 telephone) to discuss issues pertinent to improving the prospects that the settlement discussions will
15 be productive. At the meet and confer, Counsel may address any subjects they feel are appropriate,
16 but shall discuss the following:

- 17 1. Identifying at least three (3) mutually agreeable, proposed dates for the Settlement
18 Conference to propose to the Court at the Planning Conference, where all such proposed
19 dates shall be between 30 to 90 days after the date of the Planning Conference. Settlement
20 Conferences are typically held on Monday, Tuesday, Wednesday, and Thursday. Typically,
21 Settlement Conferences start at 1 p.m. (Pacific Time), and the Court will discuss the start
22 time for the Settlement Conference at the Planning Conference. In the process of discussing
23 proposed dates for the Settlement Conference, counsel are reminded to check the Court’s
24 general availability and criminal duty schedule. *See*
25 <https://www.cand.uscourts.gov/calendars/>.
- 26 2. Who will attend the conference on behalf of each Party, including counsel and identification
27 of the person(s) with full authority to decide whether any settlement offer or demand is made,
28 accepted, or rejected (*e.g.*, either the Party or another person(s) if full authority does not rest

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with that Party).

3. Which person(s) or entity(ies) must approve a proposed settlement agreement before it can be executed, the source of their authority to approve a settlement, whether such person(s) or entity(ies), or their representatives, are attending the Settlement Conference (and if not, whether they should and/or the reasons why such person(s) or entity(ies) are not attending the Settlement Conference), as well as the nature and duration of any such approval process.
4. Whether insurance is available to cover all or part of the claimed losses or to fund all or part of any Party's defense; whether tenders have been made to any insurance companies; and if insurance is available, the name and position held by each claims representative who will be attending the Settlement Conference.
5. Whether it would be useful for settlement demands and/or offers to be exchanged before the Settlement Conference is convened.
6. Whether there are particular documents or other tangible things that should be submitted jointly to the Court prior to or during the Settlement Conference (*e.g.*, to educate the Court or to support or explain significant contentions).
7. Any unusual issues or factors that could come into play in settlement negotiations or any especially sensitive matters that other counsel should be alerted to before the conference.

C. SETTLEMENT CONFERENCE STATEMENTS

No later than ten (10) business days prior to the Settlement Conference, counsel for each Party (or each individual Party representing themselves *pro se*) shall lodge with Chambers their Party's Settlement Conference Statement by emailing a .pdf of their Party's Settlement Conference Statement to PHKsettlement@cand.uscourts.gov. This email address shall not be used for other purposes unless otherwise ordered by the Court. Settlement Conference Statements shall not be filed (manually or electronically using ECF) with the Court. Hard copies of Settlement Conference Statements or their exhibits shall not be lodged with Chambers, unless otherwise ordered by the Court. Counsel shall serve a copy of the Settlement Conference Statement on all other Parties. Counsel are encouraged to share with their respective client(s) the contents of the opposing Party's Settlement Conference Statement(s) prior to the Settlement Conference. Each Settlement

1 Conference Statement shall comply with Civil L.R. 3-4(c) and shall not exceed ten (10) pages of
2 text. Parties may include as exhibits any key documents and deposition excerpts. The exhibits to a
3 Settlement Conference Statement shall not exceed twenty (20) pages. A Party's Settlement
4 Conference Statement must include the following:

- 5 1. A brief summary statement of the facts of the case.
- 6 2. A brief overview statement of the claims and defenses including, but not limited to, the
7 statutory or other grounds upon which the claims or defenses are founded.
- 8 3. A brief description of the key factual and legal issues that are in dispute and a plain and
9 concise statement of the specific evidence relevant to their determination. Portions of any
10 exhibits relied upon by the Parties shall be referenced and highlighted.
- 11 4. A summary of the proceedings to date and any pending motions.
- 12 5. The relief sought, the basis for any damage calculations, and a description of any non-
13 monetary relief sought or non-monetary components of any previously exchanged settlement
14 offers or demands.
- 15 6. A list of the names, titles, and email addresses of all persons who will be attending the
16 Settlement Conference on behalf of each Party.
- 17 7. Where a Party is a governmental or corporate entity, a description of which persons or
18 entities must approve a proposed settlement agreement before it can be executed, whether
19 such persons or entities (or their representative) will attend the Settlement Conference (and
20 if not, whether they can or should), and a brief description of the nature and duration of that
21 approval process.

22 **D. CONFIDENTIAL SETTLEMENT STATEMENTS**

23 No later than ten (10) business days prior to the Settlement Conference, counsel for each
24 Party (or each individual Party representing themselves *pro se*) shall lodge with Chambers their
25 Party's Confidential Settlement Statement by emailing a .pdf of their Party's Confidential
26 Settlement Statement to PHKsettlement@cand.uscourts.gov. This email address shall not be used
27 for other purposes unless otherwise ordered by the Court. Confidential Settlement Statements shall
28 not be filed (manually or electronically using ECF) with the Court clerk. Hard copies of

1 Confidential Settlement Statements or their exhibits shall not be lodged with Chambers, unless
2 otherwise ordered by the Court. The Confidential Settlement Statements shall **not** be served upon
3 the other Parties. Each Confidential Settlement Statement shall comply with Civil L.R. 3-4(c) and
4 shall not exceed five (5) pages of text. Each Party's Confidential Settlement Statement shall include
5 the following:

- 6 1. Separately for each principal claim and defense, a brief, forthright evaluation of the strengths
7 and weaknesses and likelihood that the Party submitting the Confidential Settlement
8 Statement will prevail. Citations to any key legal authorities relied upon by the Parties as
9 part of this evaluation shall be provided.
- 10 2. An estimate of out-of-pocket expenses, attorneys' fees, and time: (a) spent to date and (b) to
11 be expended for further discovery, pretrial preparation, and trial. If plaintiff seeks attorneys'
12 fees and costs, counsel shall be prepared at the Settlement Conference to provide sufficient
13 information to enable the fee claim to be evaluated for settlement purposes.
- 14 3. A history of any ongoing or past settlement discussions (without revealing communications,
15 if any, whose disclosure to a settlement judge is prohibited by applicable law), a description
16 of the principal impediments (factual, legal, or other) to reaching agreement to date, and the
17 reasons the Parties' assessments of the settlement value of the case differ.
- 18 4. A realistic settlement figure or terms (including any non-monetary terms) that, given all the
19 circumstances, the Party submitting its Confidential Settlement Statement would consider
20 seriously.
- 21 5. Where the Party is insured or is a governmental entity, any foreseeable barriers to insurance
22 coverage or approval of a proposed settlement, or special concerns that the insurer or
23 governmental entity has raised or could foreseeably anticipate to be a topic of discussion.
- 24 6. A brief discussion of any of the subjects identified in Section B of this Order which that
25 Party believes would be significant in the settlement dynamic.

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1 **E. ATTENDANCE REQUIREMENTS**

2 Any counsel of record for each Party shall attend the Planning Conference. Lead trial
3 counsel for each Party shall attend the Settlement Conference with the persons having full authority
4 to negotiate and settle the case for each Party.

5 **1. Corporation or Other Non-Government Entity**

6 A Party other than a natural person (*e.g.*, a corporation or association) satisfies the attendance
7 requirement if represented by a person (other than outside counsel) who is knowledgeable about the
8 case and has final authority to settle the case. If ultimate authority to settle on behalf of a Party is
9 vested in a governing board, claims committee, or equivalent outside body and cannot be delegated,
10 that Party must designate a person with authority (a) to attend and participate in the Settlement
11 Conference and (b) if a tentative settlement agreement is reached, to recommend the agreement to
12 the appropriate body for approval. *See* ADR L.R. 7-3(a).

13 **2. Government Entity**

14 A Party that is a government entity satisfies the attendance requirement if represented by a
15 person (in addition to counsel of record) who (1) has, to the greatest extent feasible, authority to
16 settle the case, (2) is knowledgeable about the facts of the case, the Parties' contentions, that
17 government entity's position, and the positions and policies under which that government entity
18 decides whether to propose terms for settlement and accept proposed settlements, and (3) has the
19 authority, if a tentative settlement agreement is reached, to recommend the agreement to the
20 government entity for approval. *See* ADR L.R. 7-3(b). If the action is brought by a government
21 entity on behalf of one or more individuals, at least one such individual must also attend the
22 Settlement Conference. *See id.*

23 **3. Insured Party**

24 An insured Party must appear with a representative of the carrier who has full authority to
25 negotiate and settle up to the limits of coverage. *See* ADR L.R. 7-3(c). A person who needs to call
26 another person, not present at the Settlement Conference, before agreeing to any settlement does not
27 have full authority.

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1 **F. SETTLEMENT CONFERENCE**

2 **1. Settlement Conference discussions**

3 The Parties shall report to Courtroom F (15th Floor) for the Settlement Conference at the
4 scheduled date and time. During the Settlement Conference, all Parties should be prepared to
5 discuss issues in their Settlement Conference Statements, including: (1) their settlement objectives;
6 (2) any impediments to settlement they perceive; (3) whether they have enough information to
7 discuss settlement and, if not, what additional information is needed; and (4) the possibility of a
8 creative resolution of the dispute. Statements made during the conference are confidential and will
9 treated subject to ADR L.R. 7-4.

10 **2. Continuances**

11 Any request to continue a scheduled Settlement Conference must be filed on ECF as soon
12 as possible and as far in advance of the scheduled date as possible. A Party requesting a continuance
13 shall (1) meet and confer with counsel for the other Parties to discuss the request and, if agreed,
14 identify at least two mutually agreeable proposed alternate dates for the Settlement Conference and
15 then (2) immediately contact Judge Kang’s CRD at PHKCRD@cand.uscourts.gov to submit the
16 request for rescheduling and the proposed alternative dates, all to be accomplished as far in advance
17 of the scheduled date as possible. The request must demonstrate a compelling reason for a
18 continuance and state whether it is joined or opposed by the other Party(ies). The original Settlement
19 Conference date will remain on calendar and the Parties must appear on that date unless otherwise
20 ordered by the Court.

21 **3. Advising the Court of Settlement**

22 The Parties are encouraged to engage in or continue any ongoing settlement negotiations
23 throughout this ADR process. The Parties shall notify chambers immediately at
24 PHKsettlement@cand.uscourts.gov if the case settles, particularly if any settlement is prior to the
25 date of either the Planning Conference or the Settlement Conference.

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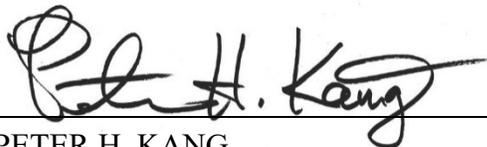
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G. PRACTICE DEVELOPMENT FOR MEMBERS OF THE BAR

The Court strongly encourages Parties to permit less experienced lawyers, including lawyers from historically under-represented groups and/or First Generation lawyers, to actively participate in the proceedings by presenting a Party’s positions at the Planning Conference and the Settlement Conference. The Court is amenable to permitting a number of lawyers to present a Party’s positions if this creates an opportunity for such lawyers to participate.

IT IS SO ORDERED.

Dated: May 24, 2023


PETER H. KANG
United States Magistrate Judge