

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

**SETTLEMENT CONFERENCE STANDING ORDER FOR
MAGISTRATE JUDGE KANDIS A. WESTMORE**

(Revised March 9, 2015)

1. **Discovery:** Counsel shall ensure that whatever discovery is needed for all sides to evaluate the case for settlement purposes is completed by the date of the settlement conference. Counsel shall cooperate in providing discovery informally and expeditiously.

2. **Meet and Confer requirement:** No later than 14 days before the settlement conference and prior to the preparation of their exchanged Settlement Conference Statements and their Confidential Settlement Letters, counsel for the parties must meet and confer (in person or by phone) to discuss at least the following matters:
 - a. Who will attend the conference on behalf of each party, including counsel and the person(s) with full authority to make the final decision as to whether any settlement offer is made, accepted, or rejected.
 - b. Which persons or entities must approve a proposed settlement agreement before it can be executed, as well as the nature and duration of any such approval process.
 - c. 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 of and position held by each claims representative who will be attending the settlement conference.
 - d. Whether it would be useful for settlement demands and/or offers to be made before the settlement conference is convened.
 - e. Whether there are particular documents or other tangible things that should be brought to the conference (e.g., to educate the settlement judge or to support or explain significant contentions).
 - f. Any unusual issues or factors that could come into play in the settlement negotiations, or any especially sensitive matters that other counsel should be alerted to before the conference.

3. **Who must attend:** Lead trial counsel shall appear at the settlement conference with the parties. Any party who is not a natural person shall be represented by the person(s) with full authority to negotiate a settlement. An insured party shall appear with a representative of the carrier with full authority to negotiate up to the limits of coverage. A person who needs to call another person not present before agreeing to any settlement does not have full authority. If a party is a governmental entity, its governing body shall designate one of its members or a

senior executive to appear at the settlement conference with authority to participate in the settlement conference and, if a tentative settlement agreement is reached, to recommend the agreement to the governmental entity for its approval. Personal attendance of a party is mandatory and will rarely be excused by the Court, and then only upon a written request that is timely under the circumstances and that demonstrates extraordinary hardship. Personal attendance may be excused only upon written authorization from the Court.

4. **Settlement Conference Statements and Confidential Letters:** Each party shall prepare a Settlement Conference Statement and may prepare an optional, Confidential Settlement Letter, which must be LODGED with the undersigned's chambers (NOT electronically filed) no later than **10** calendar days prior to the conference. Please 2-hole punch the documents at the top. Each party shall also email their Settlement Conference Statement and Confidential Settlement Letter, if applicable, in .pdf format to kawcrd@cand.uscourts.gov.
5. **The Settlement Conference Statement** shall be served on opposing counsel. It may not exceed 10 pages of text and 20 pages of exhibits, which must be tabbed. All references to exhibits should cite to specific page numbers. Failure to timely lodge a settlement conference statement may result in your settlement conference being vacated.

The Settlement Conference Statement shall include the following:

- a. A brief statement of the facts of the case.
 - b. A brief statement of the claims and defenses including, but not limited to, statutory or other grounds upon which the claims are founded, and a candid evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute.
 - c. A summary of the proceedings to date and any pending motions.
 - d. The relief sought.
 - e. Any discrete issue that, if resolved, would facilitate the resolution of the case.
 - f. The party's position on settlement, including present demands and offers and a history of past settlement discussions.
6. **The optional, Confidential Settlement Letter** may not exceed 5 pages of text, and may include the following:
 - a. Separately for each principal claim and defense, a forthright evaluation of the strengths and weaknesses and likelihood that the party submitting the Confidential Letter will prevail. Citations to any key legal authorities relied upon by the parties as part of this evaluation shall be provided.

- b. An estimate of the out-of-pocket expenses, attorneys' fees, and time: (1) spent to date and (2) to be expended for further discovery, pretrial, and trial. If plaintiff seeks attorney fees and costs, plaintiff's counsel shall be prepared at the conference to provide sufficient information to enable the fee claim to be evaluated for purposes of settlement.
- c. A history of past settlement discussions (without revealing communications whose disclosure to a settlement judge is prohibited), a description of the principal obstacles (factual, legal, or other) to reaching agreement, and the reason the parties' assessments of the settlement value of the case differ.
- d. A realistic settlement figure or terms (including any non-monetary terms) that, given all the circumstances, the party submitting the Confidential Letter would consider seriously.
- e. Where the party is insured or is a governmental entity, any foreseeable barriers to insurance coverage or approval of a proposed settlement, or special concerns that the insurer or governmental entity might want addressed.
- f. A brief discussion of any of the subjects identified in Section 5 of this Order that might be significant in the settlement dynamic.

7. **Further Settlement Conferences**

- a. Updated Statements: Unless explicitly relieved of this requirement, the parties shall lodge updated settlement conferences statements **10** days prior to the further settlement conference, in accordance with Section 5, to inform the Court of the status of the action and any developments that have occurred since the last settlement conference.
 - b. Confidential Letters: The parties may also lodge a confidential settlement letter with chambers, in accordance with Section 6.
 - c. Email: In addition to lodging hardcopies, the parties shall email their updated statements and confidential letters, if applicable, in .pdf format to kawcrd@cand.uscourts.gov.
8. **If the case settles prior to the settlement conference**, the parties shall immediately file a notice of settlement, and notify Judge Westmore's Courtroom Deputy, Susan Imbriani, at (510) 637-3525 that the case has settled.
9. **Length of the Conference**: Settlement conferences routinely last 3 or more hours, and the parties and their representatives should be prepared to devote the entire day if necessary.
10. **Confidentiality**: Parties are encouraged to frankly discuss their case, and any statements made during the conference will not be admissible at trial in the event the case does not settle. The parties and their representatives should be prepared to discuss such issues as their settlement objectives; any impediments to settlement they perceive; whether they have enough information to discuss settlement and if not, what additional information is needed; and the possibility of a creative resolution of the dispute.