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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERANTH, INC.,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Member Case No.:
12-CV-2350-DMS(WVG)

Consolidated Case No.:
11-CV-1180-DMS(WVG)

**NOTICE AND ORDER FOR EARLY
NEUTRAL EVALUATION
CONFERENCE**

IT IS HEREBY ORDERED that an Early Neutral Evaluation (“ENE”) of your case will be held on **June 14, 2017, at 9:00 a.m.**, before United States Magistrate Judge William V. Gallo, United States Courthouse, Courtroom 2A, Second Floor, 221 West Broadway, San Diego, California.

Additionally, **on June 13, 2017, beginning at 8:00 a.m.**, the Court will hold an attorneys-only telephonic status conference with each party separately.¹ The purpose of this confidential, off-the-record teleconference is for the Court’s benefit in assessing each

¹ The Court will contact the first party and proceed to contact the remaining parties one at a time. Each call may be short or lengthy. Counsel are required to be available for the Court’s call beginning at the appointed time and remain available until they are called.

1 party's concerns, challenges, and whether the Court can assist in alleviating these. **No**
2 **later than 2:00 p.m. on June 9, 2017**, the attorney who will appear on the teleconference
3 shall notify chambers of the telephone number where he or she may reached directly at the
4 time and date of the teleconference.

5 Pursuant to Rule 16.1(c) of the Local Rules of the United States District Court for
6 the Southern District of California, both counsel **and the parties** who have full and
7 unlimited authority² to negotiate and enter into a binding settlement shall appear **in person**
8 at the conference and shall be prepared to discuss the claims, defenses and damages. Where
9 the suit involves the United States or one of its agencies, only counsel for the United States
10 with full settlement authority need appear. All conference discussions will be informal,
11 off the record, privileged and confidential.

12 Patent L.R. 2.1.a requires that an ENE take place within 60 days of the filing of the
13 first answer. Requests to continue ENEs are rarely granted. However, the Court will
14 consider formal, written *ex parte* requests to continue an ENE conference when
15 extraordinary circumstances exist that make a continuance appropriate. In and of itself,
16 having to travel a long distance to appear in person is not "extraordinary." **Absent**
17 **extraordinary circumstances, requests for continuances will not be considered unless**
18 **submitted in writing no less than seven days prior to the scheduled conference.**

23 ² "Full authority to settle" means that the individuals at the settlement conference must be
24 authorized to fully explore settlement options and to agree at that time to any settlement
25 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
26 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to
27 change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481,
28 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement
authority to attend the conference includes that the person's view of the case may be altered
during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is
not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

1 **Settlement Proposal and Response Required**

2 **No later than May 22, 2017**, Plaintiff shall submit to Defendant a written settlement
3 proposal. **No later than May 26, 2017**, Defendant shall submit a response to Plaintiff's
4 settlement proposal. All parties shall be prepared to address in their ENE Statements, and
5 discuss at the ENE conference, the settlement proposal and response.

6 **ENE Statements Required**

7 **In accordance with the Court's Chambers Rules, each party shall exchange its**
8 **settlement Statement with all opposing parties. Additionally, in accordance with the**
9 **Court's Chambers Rules, each party shall submit a confidential or non-confidential**
10 **Statement to the Court. Both the exchange of Statements between the parties and**
11 **submissions of Statements to the Court shall occur on or before June 1, 2017.** The
12 Statement each party submits directly to the chambers shall be five pages or less and shall
13 outline the nature of the case, the claims, the defenses, and the parties' positions regarding
14 settlement of, and attempts to settle the case. **All Statements must comply with the**
15 **Court's Chambers Rules.**

16 The parties shall meet and confer in good faith prior to the ENE Conference, and
17 verify that they have done so in their respective ENE Conference statements, outlining the
18 substance of their discussions and negotiations.

19 The parties shall also lodge with Magistrate Judge Gallo's chambers a chronology,
20 setting forth a timeline of the factual events that are the basis for the claims and defenses
21 asserted in this litigation. The chronology should be in a chart or column format with the
22 column headings "DATE" and "EVENT" and may be annotated with documents
23 significant to the facts or issues.

24 Pursuant to Patent L.R. 2.1.a, the Rule 26(f) conference shall be completed no later
25 than 21 days before the ENE.

26 Any objections made to initial disclosures pursuant to Federal Rule of Civil
27 Procedure, Rule 26(a)(1)(A-D) are overruled, and the parties are ordered to proceed with
28 the initial disclosure process. Any further objections to initial disclosure will be resolved

1 as required by Rule 26. The date of initial disclosure pursuant to Rule 26(a)(1)(A-D) shall
2 occur no later than seven days before the ENE;

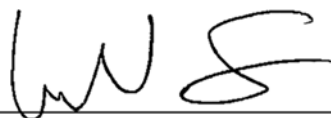
3 The parties' Federal Rule of Civil Procedure Rule 26(f) discovery plan including the
4 topics set forth in Patent L.R. 2.1.b.1-4 shall be lodged with Magistrate Judge Gallo no
5 later than seven days before the ENE;

6 In the event the case does not settle at the ENE Conference, the parties shall also be
7 prepared to participate in a Case Management Conference, pursuant to Federal Rule of
8 Civil Procedure 16(b).

9 Plaintiff's counsel shall notify all Defendants that have not yet made an appearance
10 in the case of the date and time of the ENE and Case Management Conference. Questions
11 regarding this case may be directed to the Magistrate Judge's research attorney at (619)
12 557-6384.

13 **IT IS SO ORDERED.**

14 DATED: April 21, 2017



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Hon. William V. Gallo
17 United States Magistrate Judge
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