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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

<p>AMERANTH, INC.,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p>v.</p> <p>PIZZA HUT, INC., et al.,</p> <p style="padding-left: 100px;">Defendants.</p> <hr style="width: 50%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Civil No. 11-CV-1810-DMS (WVG)</p> <p>NOTICE AND ORDER FOR EARLY NEUTRAL EVALUATION CONFERENCE</p>
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On September 30, 2013, this Court issued an Order Regarding Early Neutral Evaluation Conferences. (Doc. No. 510.) The Court Ordered the parties to file a Joint Statement and include a proposed schedule for the ENE Conferences. Id. at 4. On October 25, 2013, the parties filed a Joint Statement Regarding ENE Schedule, which included a proposed schedule for eighteen separate ENE Conferences. (Doc. No. 524.) The Court hereby ADOPTS the parties’ proposed ENE Conference schedule, and issues the Orders below.

**The following are mandatory guidelines for the parties preparing for the Early Neutral Evaluation Conference.**

**1. Purpose of the Conference**

The purpose of the ENE is to permit an informal discussion between the attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort

2 to achieve an early resolution of the case. All conference discussions will be informal,  
3 off the record, privileged, and confidential. Counsel for non-English speaking parties  
4 is responsible for arranging for the appearance of an interpreter at the conference.

### 5 **2. Personal Appearance of Parties Is Required**

6 All parties, adjusters for insured defendants, and other representatives of a  
7 party having full and complete authority<sup>1/</sup> to enter into a binding settlement, and the  
8 principal attorneys responsible for the litigation, must be present **in person** and legally  
9 and factually prepared to discuss settlement of the case. See S.D. Cal. Civ. L. R.  
10 16.1(c).

### 11 **3. Full Settlement Authority Required**

12 In addition to counsel who will try the case, a party or party representative  
13 with full settlement authority must be present for the conference. In the case of a  
14 corporate entity, an authorized representative of the corporation who is not retained  
15 outside counsel must be present and must have discretionary authority to commit the  
16 company to pay an amount up to the amount of the plaintiff's prayer (excluding  
17 punitive damage prayers). The purpose of this requirement is to have representatives  
18 present who can settle the case during the course of the conference without consulting  
19 a superior.

20 Counsel for a government entity may be excused from this requirement so  
21 long as the government attorney who attends the ENE conference (1) has primary  
22 \_\_\_\_\_

23 <sup>1/</sup> "Full authority to settle" means that the individuals at the settlement conference must  
24 be authorized to fully explore settlement options and to agree at that time to any  
25 settlement terms acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph Oat  
26 Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion  
27 and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc.,  
28 216 F.R.D. 481, 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. The person with full settlement authority  
must be able to negotiate a settlement without being restricted by any predetermined  
level of authority. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

2 responsibility for handling the case; and (2) may negotiate settlement offers which the  
3 attorney is willing to recommend to the government official who has ultimate  
4 settlement authority.

5 Unless there are **extraordinary circumstances**, persons required to attend the  
6 conference pursuant to this Order shall not be excused from personal attendance.  
7 Requests for excuse from attendance for extraordinary circumstances shall be made in  
8 writing at least one week before the conference. Failure to appear at the ENE  
9 conference will be grounds for sanctions.

10 **4. Settlement Proposal and Response Required**

11 No later than fifteen (15) days before the scheduled ENE Conference,  
12 Plaintiff(s) shall submit to Defendant(s) a written settlement proposal. No later than ten  
13 (10) days before the scheduled ENE Conference, Defendant(s) shall submit a response  
14 to Plaintiff(s)' settlement proposal. All parties shall be prepared to address in their ENE  
15 Statements, and discuss at the ENE Conference, the settlement proposal and the  
16 response.

17 **5. ENE Statements Required**

18 **The Court requires that the parties file ENE Statements, which may be**  
19 **confidentially submitted within the party's discretion.** No later than **five (5) court**  
20 **days prior to the ENE**, the parties shall submit the ENE Statements directly to the  
21 undersigned's chambers. The ENE Statements shall outline the nature of the case, the  
22 claims, the defenses, and the parties' positions regarding settlement of, and attempts to  
23 settle the case. **All briefs must comply with Judge Gallo's Chambers Rules.**

24 The parties shall meet and confer in good faith prior to the Early Neutral  
25 Evaluation Conference, and verify that they have done so in their respective Early  
26 Neutral Evaluation Conference statements, outlining the substance of their discussions  
27 and negotiations.

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2                   **a. Plaintiff's ENE Statements**

3                   The parties have agreed that Plaintiff may submit a single, ten (10) page ENE  
4 Statement to the Court addressing settlement issues generally, and need not submit  
5 additional individual ENE Statements to the Court pertaining to each Defendant unless  
6 Plaintiff desires to share additional, Defendant-specific information to the Court in  
7 connection with particular ENE Conferences. If Plaintiff decides to submit additional,  
8 Defendant-specific information to the Court, such additional statements shall not  
9 exceed three (3) pages.

10                   **b. Plaintiff's ENE Statements**

11                   Each Defendant shall submit a ENE Statement of five (5) pages or less to the  
12 Court. If more than one Defendant will be participating in an ENE Conference at the  
13 same time, those Defendants may choose to submit a Joint ENE Statement. Any Joint  
14 ENE Statement will be limited to five (5) pages, plus three (3) additional pages per each  
15 additional Defendant joining in the Statement.

16                   **6. Time Allotted**

17                   The Court generally allots two (2) hours for ENEs. Counsel should be  
18 prepared to be succinct and to the point. Requests for additional time must be made in  
19 writing in the party's ENE statement, accompanied by a short explanation.

20                   **7. New Parties Must Be Notified by Plaintiff's Counsel**

21                   Plaintiff's counsel shall give notice of the ENE Conference to all parties  
22 responding to the Complaint after the date of this Notice.

23                   **8. Requests to Continue an ENE Conference**

24                   Civil Local Rule 16.1(c) requires that an ENE take place within 45 days of the  
25 filing of the first answer. Requests to continue ENE conferences are rarely granted.  
26 Counsel seeking to reschedule an ENE must first confer with opposing counsel. The  
27 Court will consider formal, written *ex parte* requests to continue an ENE conference  
28 when extraordinary circumstances exist that make a continuance appropriate. In and  
of itself, having to travel a long distance to appear at the ENE conference is not an

2 extraordinary circumstance. **Absent extraordinary circumstances, requests for**  
3 **continuances of the ENE conference may not be considered *unless* submitted in**  
4 ***writing* no less than seven (7) calendar days prior to the scheduled conference.**

5 Please refer to the undersigned's Chambers Rules for additional guidance regarding the  
6 areas which must be addressed in the request.

7 The parties shall be prepared to engage in good faith settlement discussions  
8 with the Court and opposing parties during the ENE Conference. Failure to engage in  
9 good faith settlement discussions may result in the imposition of sanctions.

10 Questions regarding this case may be directed to the Magistrate Judge's  
11 Research Attorney at (619) 557-6384. Please consult the undersigned's Chambers  
12 Rules, available on the Court's website, before contacting chambers with any  
13 question(s).

14 **9. In the Event a Stay is Granted**

15 On October 22, 2013, all Defendants filed a Motion to Stay this Case Under  
16 Section 18(B) of the Leahy-Smith American Invents Act. (Doc. No. 520.) On October  
17 24, 2013, the Honorable Dana M. Sabraw, United States District Judge, issued an Order  
18 Setting Briefing Schedule on Motion to Stay. (Doc. No. 523.) The Motion is currently  
19 scheduled for a hearing before Judge Sabraw on December 13, 2013. Id.

20 In the event that Judge Sabraw grants Defendants' Motion to Stay, all  
21 scheduled ENE Conferences in this case will be vacated. The Court will work with the  
22 parties to reschedule the ENE Conferences when the stay is lifted.

23 **10. ENE Conference Schedule**

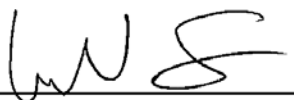
24 IT IS HEREBY ORDERED that an Early Neutral Evaluation ("ENE") of your  
25 case will be held on the dates and times listed below, before United States Magistrate  
26 Judge William V. Gallo, United States Courthouse, Courtroom 2A, Second Floor, 221  
27 West Broadway, San Diego, California.

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DATE/TIME	DEFENDANTS
January 15, at 9:00 a.m.	Expedia, Hotels.com, Travelocity
January 15, at 2:00 p.m.	Domino's Pizza
January 17, at 9:00 a.m.	Pizza Hut, QuikOrder
January 17, at 2:00 p.m.	Apple, Inc.
January 27, at 2:00 p.m.	Fandango, Live Nation, StubHub, Ticketmaster
January 29, at 2:00 p.m.	Eventbrite
January 31, at 9:00 a.m.	Hilton, Hyatt
January 31, at 2:00 p.m.	Marriott, Starwood
February 3, at 9:00 a.m.	Hotel Tonight, Kayak, Orbitz
February 3, at 2:00 p.m.	Papa John's
February 5, at 2:00 p.m.	GrubHub, Seamless
February 12, at 2:00 p.m.	OpenTable, Wanderspot
February 20, at 9:00 a.m.	O-Web Technologies
February 21, at 9:00 a.m.	Starbucks Corporation
February 21, at 2:00 p.m.	Agilysys, Micros Systems
February 24, at 2:00 p.m.	Ticketbiscuit, Ticketfly, ATX Innovation
February 27, at 9:00 a.m.	Ordr.in, Mobo Systems, Usablenet
February 28, at 9:00 a.m.	Best Western

IT IS SO ORDERED.

DATED: October 30, 2013

  
 Hon. William V. Gallo  
 U.S. Magistrate Judge