

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. XX-XXXXX-CIV-ROSENBERG/MAYNARD

YY,

Plaintiff,

v.

ZZ,

Defendant.

STANDING ORDER SETTING SETTLEMENT CONFERENCE

THIS CAUSE comes before this Court upon an Order of Reference to conduct a Settlement Conference in this case. This Court adjusts the terms of its Standing Order to reflect the limited time available. In scheduling the Settlement Conference, this Court instructs the parties as follows:

A. PREPARATION

1. To prepare for the Settlement Conference, the Plaintiff and the Defendant each shall submit to this Court a Memorandum setting forth its position. The parties shall send their respective Memoranda directly to the undersigned's Chambers by emailing them to: maynard@flsd.uscourts.gov. Given their confidential content, the Memoranda shall indicate clearly that they are **NOT** to be docketed in the case docket.

2. Given the limited time available, nor is this Court requiring the parties to engage in settlement negotiations before the Settlement Conference. This Court nevertheless encourages the parties to do so. This can be helpful, and sometimes parties are able to settle a

case before the Settlement Conference on their own. That will spare them the expense of attending the Settlement Conference at the courthouse.

3. ATTENDANCE OF PARTIES REQUIRED

Parties with full and complete settlement authority are required to personally attend the conference. An insured party shall appear by a representative of the insurer who is authorized to negotiate and commit to a binding settlement agreement. An uninsured corporate party shall appear by a representative authorized to negotiate and commit to a binding settlement agreement. Having a client with authority available by telephone is NOT an acceptable alternative. Because the Court generally sets aside at least two hours for each conference, it is impossible for a party who is not present to appreciate the process and the reasons which may justify a change in one's perspective towards settlement.

4. MEDIATION FORMAT

The Court will generally use a mediation format: that is, a joint session with opening presentations by the Court and each side followed by private caucusing by the Court with each side. The Court expects both sides and their representatives to be fully prepared to participate. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to discover creative means for resolving the dispute.

5. STATEMENTS INADMISSIBLE

The Court expects the parties to address each other with courtesy and respect. Parties are encouraged to be frank and open in their discussions. As a result, statements made by any party during the Settlement Conference are not to be used in discovery and will not be admissible at trial.

B. ISSUES TO BE DISCUSSED

Parties should be prepared to discuss the following at the Settlement Conference:

1. What are your goals in the litigation and what problems would you like to address in the Settlement Conference? What do you understand are the opposing side's goals?
2. What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
3. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?
4. What are the points of agreement and disagreement between the parties? Factual? Legal?
5. What are the impediments to settlement? Financial? Emotional? Legal?
6. Does settlement or further litigation better enable you to accomplish your goals?
7. Are there possibilities for a creative resolution of the dispute?
8. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?
9. Are there outstanding lien holders or third parties who should be invited to participate in the Settlement Conference?

C. INVOLVEMENT OF CLIENTS

For many clients, this will be the first time they will participate in a court-supervised Settlement Conference. Therefore counsel shall be sure to review this Order and its attachment carefully with them to prepare them for it.

D. PREPARE FOR SUCCESS

In anticipation of a settlement, the parties should review and be prepared to complete the Settlement Checklist/Term Sheet at the conclusion of the Settlement Conference. A copy of the Court's Settlement Checklist/Term Sheet is attached to this Standing Order.

Based upon the foregoing, it is hereby,

ORDERED AND ADJUDGED that the parties shall email their pre-Settlement Conference Memoranda to Chambers by **Wednesday, March 28, 2018 at 10:00 AM**. It is further,

ORDERED AND ADJUDGED that the parties shall appear for the Settlement Conference before U. S. Magistrate Judge Maynard in Courtroom No. 4074 (the magistrate courtroom) on **Thursday, March 29, 2018 at 2:00 PM** at the United States District Courthouse, 101 South U. S. Highway 1, Courtroom No. 4074, Fort Pierce, Florida 34950.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 26th day of March, 2018.

SHANIEK M. MAYNARD
UNITED STATES MAGISTRATE JUDGE

SETTLEMENT CHECKLIST/TERM SHEET

CASE NAME: _____ vs. _____

CASE NO. _____ DATE: _____

A. PAYMENT OF MONEY

1. To: _____ From: _____

2. Total amount to be paid: \$ _____

3. When: _____

4. Payment terms (e.g., to whom checks will be written, number of payments, payment schedule, etc.):

5. Does payment include attorney's fees? Yes or No

6. Any third party liens to be paid from proceeds? Yes or No

7. Tax Treatment (e.g., W-2, 1099): _____

B. SELECT A RELEASE OPTION

Release (relinquishment of a right) OR

Covenant Not to Sue
(agreement not to sue)

Choose one of the following: a. One Way From Plaintiff(s) to Defendant(s) or b. Mutual Scope of Release: a. General Release 1. All claims raised in the litigation, or 2. All existing claims, whether or not raised in the litigation. OR b. Limited Release: _____ _____

Scope of Covenant Not To Sue: _____ _____ _____ Exceptions to Covenant Not To Sue: _____ _____ Other Covenant Not To Sue Terms: _____ _____ _____

C. CONFIDENTIALITY

1. Settlement Agreement to be confidential: Yes or No

2. Mutual: Yes or No

3. What can be said about litigation?

a. Dispute amicably resolved, or

b. Other: _____

4. Exceptions to confidentiality?

a. Attorneys

b. Tax advisors

c. Immediate family

d. As otherwise required by law

e. Other: _____

5. Liquidated damages in event of breach of confidentiality agreement: Yes or No

a. Amount (Not too large to avoid being a penalty, e.g., no more than 5-10% of total settlement): \$ _____

D. OTHER SETTLEMENT TERMS

1. No admission of liability.

2. _____

E. EMPLOYMENT CASES ONLY

1. Ability to reapply: Yes or No

2. Type of reference: _____

F. EFFECTIVE DATE

1. A binding agreement today; or
2. No binding agreement until the typed Settlement Agreement is signed.
(Only select in instances where parties need to negotiate additional terms or obtain further approval.)

G. CONFIRMING AND DOCUMENTING SETTLEMENT

1. Do parties wish to place settlement terms on the record? Yes or No
2. Settlement terms to be incorporated in a typed written agreement? Yes or No
 - a. Typed agreement to be prepared by _____
and sent to other parties on or before _____
 - b. Other parties to respond with changes, if any, by _____
3. Typed Settlement Agreement to be executed on or before _____
4. Will Settlement Agreement be filed in court? Yes or No
5. Other terms regarding documenting settlement: _____

H. DISMISSAL OF LITIGATION AND ENFORCEMENT OF AGREEMENT (Circle one):

1. Immediate dismissal without prejudice that automatically converts to a dismissal with prejudice unless on or before _____ a party files a motion to reinstate, a motion to enforce the parties' Settlement Agreement, or a motion for additional time to file a motion to reinstate or a motion to enforce the Settlement Agreement. (Court cannot enforce agreement after dismissal with prejudice is entered.)
2. Dismissal with prejudice to be entered on _____. (Court cannot enforce agreement after that date. Choose date that allows sufficient time to execute written agreement and fulfill obligations or set a status date for presentation of an agreed order of dismissal.)

3. Dismissal with prejudice and parties agree in the dismissal order that the Court shall retain jurisdiction for the purpose of enforcing the terms of the Settlement Agreement through _____.

See Kokkonen v. Guardian Life Insurance Company of America, 511 U.S. 375 (1994) and Anago Franchising, Inc. v. Shaz, LLC, 677 F.3d 1272 (11th Cir. 2012).

I. DO PARTIES CONSENT TO MAGISTRATE JURISDICTION? Yes or No

J. DO PARTY REPRESENTATIVES HAVE FULL AUTHORITY TO ENTER INTO SETTLEMENT AGREEMENT? Yes or No

Print name, title, and identity of party:

Signatures of all party representatives:

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K. NEXT COURT DATE TO REPORT ON SETTLEMENT (if needed):
