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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BEN EZRA, WEINSTEIN AND COMPANY,

Plaintiff,

vs.

No. CIV 97-485 LH/LFG

AMERICA ONLINE INCORPORATED,

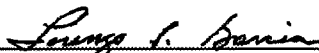
Defendant.

ORDER VACATING RULE 16 SETTLEMENT CONFERENCE

THIS MATTER came before the Court on the parties' telephonic request to vacate the Rule 16 settlement conference set for September 29, 1998. There are pending cross-motions for summary judgment. The parties indicate that a resolution of these motion would either eliminate the need for a Rule 16 settlement conference or, alternatively, sufficiently narrow the issues that would allow the parties to more appropriately prepare for such a conference. Further, the parties point out that, pursuant to the Court's stay of discovery order, they have been unable to engage in discovery necessary to prepare for a conference.

The Court advised the parties that should the conference be vacated, it may be difficult to reschedule. At any given time, the Court is booked approximately sixty days in advance. Moreover, an up-coming criminal docket assignment will preclude the Court from conducting civil settlement conferences for a two-month period. Being advised of these scheduling concerns, the parties agreed that should this case remain on the Court's docket following the Court's consideration and ruling on the pending motions for summary judgment, they will agree to participate in private mediation prior to trial in an effort to resolve their dispute.

Good cause has been shown to vacate the Rule 16 settlement conference, and, accordingly, the conference is vacated. Moreover, the parties are directed to participate in Court-ordered, private mediation if this case remains on the Court's docket following consideration and ruling on the cross-motions for summary judgment.



Lorenzo F. Garcia
United States Magistrate Judge