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4 **UNITED STATES DISTRICT COURT**  
5 **EASTERN DISTRICT OF CALIFORNIA**  
6

7 **TREVOR WEEKS,**

8 **Plaintiff**

9 **v.**

10 **UNION PACIFIC RAILROAD CO.,**

11 **Defendant**

**CASE NO. 1:13-CV-1641 AWI JLT**

**ORDER REGARDING DEFENDANT'S  
REQUEST TO FILE SECOND  
SUMMARY JUDGMENT MOTION**

(Doc. No. 44)

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13  
14 On October 7, 2015, the Court issued an order on Defendant's motion for summary  
15 judgment. See Doc. No. 43. As part of the order, the Court gave both parties the opportunity to  
16 file additional motions – a motion to amend for Plaintiff and a second summary judgment motion  
17 for Defendant. See id. However, the Court put restrictions on the parties. See id. First, the Court  
18 required the parties to have a good faith belief in the merits of their motion, consistent with Rule  
19 11. See id. Second, the Court required the parties to meet and confer. See id. In pertinent part,  
20 the Court held: "Prior to the parties pursuing either a motion to amend or a second summary  
21 judgment motion, the parties are to meet and confer in order to help determine the advisability of  
22 pursuing either motion. The failure of a party to meet and confer will result in the denial of that  
23 party's motion." Id. The Court gave Defendant 14 days in which to file a request to pursue a  
24 second summary judgment motion.

25 On October 21, 2015, Defendant filed a request and statement of intent to file a second  
26 summary judgment motion. See Doc. No. 44. In that request, defense counsel explains that it has  
27 a good faith belief that no genuine dispute of material fact exists, but that it may not file a motion  
28 if it later determines that a genuine dispute of material fact does exist. See id. Defense counsel

1 then states: “On more than one occasion, Defendant has reached out to Plaintiff’s new counsel to  
2 meet and confer regarding Defendant’s intent to seek leave to file a second summary judgment  
3 motion. In one e-communication, Defendant asked counsel to identify specific times during which  
4 counsel would be available to discuss the issues raised in the Order. Defendant did not receive a  
5 response. Defendant will continue to reach out to counsel.” Id.

6 Also on October 21, 2015, Plaintiff filed a response. See Doc. No. 45. Plaintiff’s counsel  
7 states that she “disagrees that defendant’s counsel attempted to meet and confer with plaintiff’s  
8 counsel as the Court ordered counsel to do prior to filing defendant’s instant request. Plaintiff’s  
9 counsel is now and has always been available to meet and confer during this 14-day period – via  
10 telephone, e-mail, U.S. Mail, fax or text, but has received no meet and confer communication from  
11 defendant’s counsel.” Id. (emphasis in original). Plaintiff’s counsel then states that Defendant’s  
12 request should be denied or Defendant should be made to meet and confer prior to the Court  
13 considering Defendant’s request. See id. Plaintiff’s counsel also indicates that she intends to  
14 pursue a motion to amend with the Magistrate Judge. See id.

15 The Court is very dismayed by the parties’ October 21 filings. Defense counsel states that  
16 he attempted to contact Plaintiff’s counsel “on several occasions,” but he does not state when or  
17 how those attempts were made. Plaintiff’s counsel states she received no attempts to meet and  
18 confer, but was available to meet within the 14 day period through a number of mediums. When  
19 the Court issues an order that requires parties to meet and confer, the Court expects its orders to be  
20 followed and the parties to act in good faith. The parties’ October 21 filings do not indicate good  
21 faith, and the situation is unacceptable.

22 The Court will give the parties another opportunity to meet and confer. The meet and  
23 confer will be through either telephone conversation(s) or face to face meeting(s) – fax, text, and  
24 e-mail are insufficient. The meet and confer session(s) shall be conducted in good faith and shall  
25 involve a legitimate discussion of the issues and possible material disputed facts. Perfunctory  
26 conversations are insufficient. If the parties do not meet and confer within the time allotted, and  
27 the Defendant still wishes to proceed on a second summary judgment motion, Defendant shall file  
28 a notice that includes a description of the meet and confer efforts, including the date and time and

1 medium that a meet and confer attempt was made, as well as the Plaintiff's response (if any) to the  
2 attempt. If the Court finds that Defendant made a good faith effort to attempt to meet and confer,  
3 but Plaintiff did not adequately cooperate, then Defendant will be permitted to file a second  
4 summary judgment motion and Plaintiff's counsel will be ordered to show cause why she should  
5 not be sanctioned. This procedure will also apply with respect to Plaintiff's motion to amend,  
6 should the case progress to that point. Whichever party the Court determines is responsible for a  
7 failure to meet and confer will face the withdrawal of permission to file the motion in question  
8 (either the motion to amend or the second summary judgment motion), monetary sanctions, or  
9 both.<sup>1</sup>

10 The Court expects both parties to use best to comply with the Court's orders. The Court  
11 does not expect to have to issue further orders or warnings.

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13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. As soon as possible, but no later than fourteen (14) days from the date of service of this  
15 order, the parties shall meet and confer regarding a second summary judgment motion by  
16 Defendant;
- 17 2. No later than five (5) days after the parties have met and conferred (as described above),  
18 Defendant shall notify the Court whether it wishes to file a second summary judgment  
19 motion;
- 20 3. The October 7, 2015 order's 28-day deadline for the parties to contact the Magistrate Judge  
21 is VACATED, and will be reset at a later time.

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23 IT IS SO ORDERED.

24 Dated: October 23, 2015

  
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28 SENIOR DISTRICT JUDGE

<sup>1</sup> Of course, if a party decides that it does not wish to pursue a motion, no meet and confer effort is necessary.