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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT WATTS, on behalf of  
himself individually and all others                      No. 2:08-cv-01877 LKK KJN  
similarly situated,

Plaintiff,

vs.

ALLSTATE INDEMNITY COMPANY, an  
Illinois corporation, ALLSTATE  
INSURANCE COMPANY, an Illinois  
corporation, ALLSTATE PROPERTY  
AND CASUALTY INSURANCE  
COMPANY, an Illinois corporation; and  
DOES 1 through 100, inclusive,

Defendants.

ORDER TO SHOW CAUSE

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Presently before this court is defendants Allstate Indemnity Company, Allstate Insurance Company and Allstate Property and Casualty Insurance Company’s (“Allstate” or “defendants”) Motion to Compel Supplemental Rule 26(a) Initial Disclosures (“Motion”) from plaintiff Robert Watts. (Motion, Dkt. No. 184.) The Motion was filed on January 28, 2011. (Dkt. Nos. 183-84.) The parties filed a Joint Statement Regarding Discovery Dispute (“Joint Statement”) relating to the Motion on February 24, 2011. (Joint Statement, Dkt. No. 185.) The Motion is set to be heard on March 3, 2011. (Motion at 1.) Because the Motion appears to have

1 been filed after the deadline for completion of non-expert, class discovery stated within the  
2 district judge's Scheduling Order, this order vacates the Motion's March 3, 2011 hearing date,  
3 and orders defendants to show cause why the Motion does not require Senior United States  
4 District Judge Lawrence K. Karlton to first modify the Scheduling Order governing discovery.

5           The timing of defendants' Motion is troubling. The Scheduling Order issued by  
6 Judge Karlton on July 28, 2010 ("Scheduling Order"), provides, in pertinent part, that "[a]ll non-  
7 expert, class discovery shall be conducted so as to be completed no later than December 15,  
8 2010. All motions to compel non-expert, class discovery shall be filed such that they will be  
9 heard no later than November 15, 2010." (Dkt. No. 143 at 1.) The Scheduling Order provides a  
10 period of 30 days between the deadline to file motions to compel class discovery (November 15,  
11 2010) and the deadline for "completion" of class discovery (December 15, 2010).

12           The July 29, 2010 Scheduling Order was modified on November 20, 2010,  
13 ("Modified Scheduling Order") to provide that "the parties' discovery cut off date pertaining to  
14 the discovery referenced in paragraph one of the Court's July 28, 2010 Order is to be extended to  
15 January 29, 2011." (Dkt. No. 180 at 2.) Under the Modified Scheduling Order, then, the parties  
16 had until January 29, 2011 to *complete* their non-expert, class discovery. Therefore, motions to  
17 compel such discovery had to have been heard 30 days before that cutoff in order for discovery to  
18 be completed by the cutoff. Even a more charitable reading of the Scheduling Order (and  
19 Modified Scheduling Order) would suggest that motions to compel such discovery must at least  
20 be "heard by" January 29, 2011, if not that such discovery be "complete" by that date.

21           The pending Motion is a motion to compel non-expert, class discovery. By  
22 defendants' own description, the "instant motion to compel seek[s] an order requiring Plaintiff to  
23 produce, or identify by category and location, any documents he intends to use in connection  
24 with the class certification phase of this proceeding. In the alternative, Plaintiff should be  
25 precluded from introducing or relying upon any documents he refuses to produce or disclose."  
26 (Joint Statement at 1-2, 5-6.)

1           The pending Motion is on calendar for March 3, 2011. It presents a dispute  
2 squarely pertaining to non-expert, class discovery, and the January 29, 2011 deadline for  
3 completion of such discovery has passed. Even if the January 29, 2011 deadline were generously  
4 construed as the cutoff for class discovery issues to be heard rather than for discovery to be  
5 completed, the pending Motion was plainly not heard by that date.

6           The undersigned does not have the authority to make changes to the district  
7 judge's Scheduling Order or to hear discovery disputes that are untimely under the terms of such  
8 Order. Therefore, the undersigned cannot order the requested relief unless the Scheduling Order  
9 is amended, and the parties have not moved to modify the completion deadline for non-expert,  
10 class discovery.

11           Accordingly, Defendants must show cause, in writing, on or before March 10,  
12 2011, why defendants' Motion does not require modification to the class discovery deadline  
13 established in the Scheduling Order. Defendants may satisfy this obligation by filing a written  
14 statement on or before March 10, 2011, informing the undersigned that they have decided to seek  
15 a modification to the Scheduling Order and that they will be making that request before Judge  
16 Karlton. If defendants choose to request such a modification, and if such request is granted,  
17 defendants may re-file their Motion for a determination by the undersigned.

18           If the undersigned finds that defendants have convincingly shown cause why their  
19 Motion does not require such modification to the Scheduling Order, or alternatively, if the  
20 Scheduling Order is modified, defendants may re-notice and re-file their Motion thereafter. The  
21 March 3, 2011 hearing on defendants' Motion to Compel Supplemental Rule 26(a) Initial  
22 Disclosures from plaintiff (Motion, Dkt. No. 184) is hereby dropped from the calendar without  
23 prejudice.

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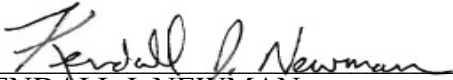
1 For the foregoing reasons, IT IS HEREBY ORDERED that:

2 1. The March 3, 2011 hearing on defendants' Motion to Compel  
3 Supplemental Rule 26(a) Initial Disclosures from plaintiff (Motion, Dkt. No. 184) is hereby  
4 dropped from the calender without prejudice.

5 2. Defendants must show cause, in writing, on or before March 10, 2011, why  
6 defendants' Motion does not require modification to the class discovery deadline established in  
7 the Scheduling Order. Defendants may satisfy this obligation by filing a written statement on or  
8 before March 10, 2011, informing the undersigned that they have decided to seek a modification  
9 to the Scheduling Order and that they will be making that request before Judge Karlton.

10 IT IS SO ORDERED.

11 DATED: February 24, 2011

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14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE  
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