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

RICHARD ADAMS,

Plaintiff,

No. 2:09-cv-01342 JAM KJN

v.

THYSSENKRUPP SAFWAY, INC., and  
DOES 1 through 60, inclusive,

Defendants.

ORDER

\_\_\_\_\_ /

Presently set for hearing on September 9, 2010, is defendant’s motion to compel a vocational rehabilitation examination of plaintiff pursuant to Federal Rule of Civil Procedure 35(a), with such examination scheduled to take place on September 13, 2010. (Dkt. No. 13.) Defendant filed its motion on September 1, 2010, and, in accordance with Eastern District Local Rule 251(a), the parties filed a Joint Statement Re Discovery Dispute (“Joint Statement”) concurrently with defendant’s notice of motion and motion to compel. (Dkt. No. 23, Doc. No. 23-1). Accordingly, pursuant to this court’s local rules, defendant’s motion was “placed on the next regularly scheduled calendar date for the Magistrate Judge . . . hearing the motion at least seven (7) days thereafter,” i.e., September 9, 2010. E. Dist. Local Rule 251(a) (“If the notice of motion and motion are filed concurrently with the Joint Statement, the motion shall be placed on

1 the next regularly scheduled calendar for the Magistrate Judge or Judge hearing the motion at  
2 least seven (7) days thereafter.”).

3           Despite having contributed to and signed the Joint Statement, plaintiff filed ex  
4 parte objections to the September 9, 2010 hearing date on the grounds that: (1) plaintiff’s counsel  
5 had inadequate notice of the proposed hearing, and (2) plaintiff’s counsel is scheduled to appear  
6 in Los Angeles Superior Court on an unrelated matter on September 9, 2010, at 9:00 a.m. (Dkt.  
7 No. 25.) Although this court generally uses the joint statement process insofar as discovery  
8 disputes are concerned, E. Dist Local Rule 251(a), (c), plaintiff’s counsel requests that the court  
9 set a briefing schedule so that plaintiff may adequately oppose defendant’s motion.

10           Plaintiff’s opportunity to oppose defendant’s motion came in the form of the Joint  
11 Statement, which plaintiff’s counsel contributed to and signed. Nothing in this court’s rules  
12 obligated plaintiff to execute the Joint Statement so that it would be filed concurrently with  
13 defendant’s notice of motion and motion to compel and result in a hearing on seven days notice,  
14 as opposed to twenty-one days notice. Accordingly, defendant’s motion will remain on calendar  
15 on September 9, 2010, but the court will specially set the hearing at 11:00 a.m., to accommodate  
16 plaintiff’s schedule. Counsel for both parties will also be permitted to appear telephonically if  
17 they provide the required contact information to the court in advance of the hearing.

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

19           1.     Plaintiff’s objections to the September 9, 2010 hearing date on defendant’s  
20 motion to compel are overruled.

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1           2.       Defendant's motion to compel a vocational rehabilitation examination will  
2 remain on calendar and will take place on September 9, 2010, before the undersigned. However,  
3 the hearing will commence at 11:00 a.m.

4                   IT IS SO ORDERED.

5 DATED: September 7, 2010

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9                   KENDALL J. NEWMAN  
                    UNITED STATES MAGISTRATE JUDGE