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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORGAN HILL CONCERNED  
PARENTS ASSOCIATION, et al.,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF  
EDUCATION, et al.,

Defendants.

No. 2:11-cv-3471 KJM AC

ORDER

Plaintiff has filed a Motion To Compel (ECF No. 129), currently scheduled to be heard on December 9, 2015.<sup>1</sup> Defendant California Department of Education (“CDE” or defendant) has filed a request (ECF No. 130) for a 60-day continuance or extension of (a) the several 30-day meet and confer requirements imposed by the district judge assigned to this case in her order of November 3, 2015 (ECF No. 127), and (b) the hearing on plaintiff’s Motion To Compel. Plaintiff has filed an opposition to the request for a continuance. ECF No. 131. District Judge Mueller will rule on the request to modify the deadlines she has imposed. The undersigned here addresses only the scheduling of the discovery motion hearing.

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<sup>1</sup> Discovery matters have been referred to the undersigned by E.D. Cal. R. (“Local Rule”) 302(c)(1). The district judge assigned to this case has lifted the stay on discovery, and the parties may now file their discovery motions before the magistrate judge. See ECF No. 124.

1 Defendant requests a continuance on grounds that (1) one of its lead counsels, R. Matthew  
2 Wise, had to take an unexpected leave of absence to deal with a family issue, and (2) another  
3 attorney on the case, Grant Lien, also took a leave of absence to deal with a family issue.  
4 Moreover, defendants argue that the hearing should be continued because plaintiffs failed to meet  
5 and confer before filing the motion. See ECF No. 130. Plaintiff opposes the requested  
6 continuance on the grounds that (1) defendant has other lawyers who can deal with the motion,  
7 (2) the delay will only add to past discovery delays, and (3) moving plaintiffs were not required to  
8 schedule a meet and confer before filing their motion, rather, they must only meet and confer  
9 before the hearing.

10 As for plaintiff's last argument, the Local Rules do state that the parties need only meet  
11 and confer "in advance of the filing of the motion *or* in advance of the hearing on the motion."  
12 Local Rule 251(b) (emphasis added). However, the parties are also governed by the Federal  
13 Rules of Civil Procedure, which provide that "the *motion* must include a certification that the  
14 movant has in good faith conferred or attempted to confer." Rule 37(a)(1) (emphasis added).<sup>2</sup>  
15 Thus, plaintiff's motion should have included a certification that the parties met and conferred, or  
16 attempted to do so.

17 Whatever the merits of the remainder of the parties' arguments, it seems prudent at this  
18 late date to permit a modest continuance so that the parties can productively meet and confer, and  
19 prepare a proper joint statement. Also, because of the complexity of the discovery issues  
20 involved in this case, the undersigned will order the parties to meet and confer *before filing* any  
21 discovery motion under Rules 26 through 37 and 45. See Local Rule 102(d) (procedures outside  
22 the Local Rules). The parties are also directed to familiarize themselves with the Standard  
23 Procedures of the undersigned, available on the court's website at  
24 [http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/united-states-magistrate-](http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/united-states-magistrate-judge-allison-claire-ac/)  
25 [judge-allison-claire-ac/](http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/united-states-magistrate-judge-allison-claire-ac/). Specifically, all meet and confer efforts related to discovery disputes  
26 must be conducted in person or via telephone or video conferencing; written correspondence,  
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28 <sup>2</sup> That requirement remains unchanged after the December 1, 2015 amendment of the Rules.

1 including email, is insufficient.

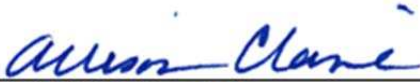
2 Accordingly, IT IS HEREBY ORDERED that defendant's request for a continuance (ECF  
3 No. 130), is GRANTED in part, as follows:

4 1. The hearing on plaintiff's motion to compel (ECF No. 129), is hereby CONTINUED to  
5 January 13, 2016 at 10:00 a.m. before the undersigned.

6 2. The parties shall file a Joint Statement fully complying with Local Rule 251 (including  
7 its meet and confer requirements), no later than January 6, 2016 at 3:30 p.m.

8 3. Going forward, no person or party shall file a discovery motion under Rules 26  
9 through 37 and 45, until it has first met and conferred with the affected person or party. The  
10 motion shall contain a certification that the movant has in good faith conferred or attempted to  
11 confer with other affected persons or parties in an effort to resolve the dispute without court  
12 action.

13 DATED: December 1, 2015

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15 ALLISON CLAIRE  
16 UNITED STATES MAGISTRATE JUDGE  
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