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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEREK FRIEDRICHS,

Plaintiff,

v.

BMW FINANCIAL SERVICES,

Defendant.

No. C 08-4486 PJH

**ORDER VACATING
HEARING DATE**

The court is in receipt of plaintiff's motion to compel, set for hearing on August 5, 2009, as well as defendant's June 25 response to plaintiff's motion requesting that the court vacate the August 5 hearing date, and plaintiff's June 26 reply to defendant's response.

Having reviewed the parties' filings, the court finds good cause for vacating the hearing date on plaintiff's motion to compel. The court's prior order dated June 12, 2009 instructed the parties to attempt to resolve all outstanding settlement issues no later than July 31, and further contemplated a return to litigation practice only once upcoming mediation efforts are proven unsuccessful. Plaintiff's motion to compel, although noticed with a hearing date of August 5, violates the spirit of the court's June 12 order establishing a July 31 mediation deadline for further settlement efforts. The parties must attempt to mediate their dispute. Only if the parties cannot agree upon final settlement terms, may the parties proceed with litigation.

If the parties are unable to successfully mediate their dispute as of July 31, 2009, the parties may request that a case management conference be set in August, at which point the court will re-calendar plaintiff's motion to compel, and set further class certification and pretrial deadlines.

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For the foregoing reasons, the August 5, 2009 hearing date in connection with plaintiff's motion to compel is VACATED. The motion to compel is administratively terminated.

IT IS SO ORDERED.

Dated: June 30, 2009



PHYLLIS J. HAMILTON
United States District Judge