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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

CAYLA R., by and through her
Conservator, CATHLEEN R.

Plaintiffs,

vs.

MORGAN HILL UNIFIED SCHOOL
DISTRICT; THOMAS FRIED;
CHRISTOPHER RIZZUTO; and JAY
TROTTER,

Defendants.

Case No. CV 10-04312-JW

Honorable James Ware

STIPULATION TO EXTEND
DEADLINE TO COMPLETE
MEDIATION AND [PROPOSED]
ORDER AMENDING THE
COURT'S PRIOR ORDER SETTING
MEDIATION COMPLETION DATE;

*[filed concurrently with Declaration of
Hans Gillinger Re the within
Stipulation]*

1 WHEREAS on September 23, 2010, this Court issued a Case Management
2 Order Setting Initial Case Management Conference and ADR Deadlines, Re ADR
3 (document 2), which required plaintiff CAYLA R. (hereinafter “Plaintiff”) and
4 defendants MORGAN HILL UNIFIED SCHOOL DISTRICT, JAY TOTTER,
5 THOMAS FRIED, and CHRISTOPHER RIZZUTO (collectively hereinafter
6 “Defendants”) to meet and confer regarding ADR selection;

7
8 WHEREAS Plaintiff and Defendants (collectively hereinafter “Parties”) met
9 and conferred to discuss ADR options (document 4, 5), and agreed to participate in
10 and select the ADR process of Mediation pursuant to ADR Local Rule 6
11 (Declaration of Hans Gillinger in support of the Parties Stipulation to Extend
12 Deadline to Extend Mediation Completion Date (See concurrently filed Declaration
13 of Hans Gillinger, Exhibit “A,” at ¶ 3);

14 WHEREAS on November 8, 2010, the Parties filed a stipulation and
15 [Proposed] Order (document 3) selecting Mediation, and agreeing to hold Mediation
16 by the presumptive deadline fixed by ADR Local Rule 6-4(b) (*Id.* at ¶ 3);

17 WHEREAS on November 19, 2010, Magistrate Judge Howard R. Lloyd
18 granted the Parties stipulation, referred the Parties to Mediation, and set a mediation
19 completion date of “90 days from the date of this order” (document 12) (*Id.* at ¶ 4);

20 WHEREAS February 17, 2011 is ninetieth day from the date of Magistrate
21 Judge Howard R. Lloyd November 19, 2010 Order;

22 WHEREAS on November 29, 2010, Defendants filed a Rule 12 Motion to
23 Dismiss and strike portions of the Complaint, which was properly noticed for
24 hearing on January 11, 2011 (document 14) (*Id.* at ¶ 5);

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1 WHEREAS on December 3, 2010 this Court issued a Reassignment Order
2 (document 18) vacating all pending all then-presently pending matters, and ordering
3 the Parties to re-file and re-notice any then-pending motions (Defendants' Rule 12
4 Motion (document 14) was the only pending motion at the time), following
5 reassignment of this case to the Honorable James Ware (*Id.* at ¶ 6);

6 WHEREAS on December 23, 2010 Defendants timely and properly re-filed
7 the Rule 12 Motion and Defendants also properly re-noticed the hearing on said
8 motion on March 14, 2011 (document 23) (*Id.* at ¶ 6);

9 WHEREAS on December 16, 2010, this Court issued a Notice of Assignment
10 of Mediator Gretchen Schnetzler (hereinafter "Mediator") to serve as the Parties
11 mediator in this matter (document 20) (*Id.* at ¶ 7);

12 WHEREAS the Mediator promptly set a telephonic pre-mediation status
13 conference under ADR Local Rule 6-6, and convened same on or about January 13,
14 2011 to discuss selection of a mutually convenient date and location for the
15 mediation within the deadlines set by the Court (*Id.* at ¶ 8);

16 WHEREAS at the pre-mediation status conference the Parties believed that
17 prior Orders of this Court vacated the February 17, 2011 Mediation Completion
18 date, and met and conferred about filing a stipulated request for an Order extending
19 the deadline to complete mediation, if necessary (*Id.* at ¶ 9);

20 WHEREAS at the pre-mediation status conference the Parties agreed that
21 mediation must follow the Court's ruling on Defendants' pending Rule 12 Motion
22 (document 23) in order to ascertain what, if anything, will be put in issue by the
23 Complaint of Plaintiff, and the Parties further agreed that settlement efforts are
24 premature until after the Court's rules on Defendants' pending Rule 12 Motion
25 (document 23) (*Id.* at ¶ 10);

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1 WHEREAS at the pre-mediation status conference the Parties agreed to
2 stipulate to request that this Court extend the deadline to complete mediation to a
3 date between thirty (30) and sixty (60) days after the March 14, 2011 hearing on
4 Defendants' Rule 12 Motion (document 23), and specifically agreed to May 13,
5 2011 as a mutually convenient date for the Parties and Mediator to hold Mediation,
6 if the Court grants the within requested request to extend the mediation completion
7 date (*Id.* at ¶ 10);

8 WHEREAS May 13, 2011 is sixty days after the March 14, 2011 hearing on
9 Defendants' Rule 12 Motion (document 23);

10 WHEREAS the Mediator conferred with the Parties and set a "default date"
11 for mediation of May 13, 2011 to begin at 10:00 a.m. and to be held at on the
12 sixteenth floor of the courthouse in San Francisco because the Mediator was not
13 able to confirm whether Orders of this Court continued the mediation completion
14 date and agreed to later notify the Parties whether the mediation completion date
15 remained, or whether the Parties must stipulate to an extension (*Id.* at ¶ 10);

16 WHEREAS the rescheduling of mediation to May 13, 2011 shall in no way
17 interfere with the progress of discovery or other aspects of the litigation and shall
18 not impact any dates set by this Court apart from the mediation completion date (*Id.*
19 at ¶ 11);

20 WHEREAS on January 19, 2011, the Mediator notified the Parties via email
21 correspondence that the Mediator had spoken with the ADR Case Administrator,
22 Claudia Forehand, who informed the Mediator that the current mediation
23 completion date is March 11, 2011, rather than February 17, 2011 as Ordered by
24 Magistrate Judge Howard R. Lloyd on November 19, 2010 (document 12) (*Id.* at ¶
25 12);

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1 WHEREUPON pursuant to *Federal Rule of Civil Procedure* 16(d), ADR
2 Local Rule 6-5(a), and Civil Local Rule 7, the Parties stipulate to an extension of the
3 deadline from the current date of either February 17, 2011 or March 11, 2011 to
4 **May 20, 2011** to allow the Parties to Mediate this matter on the agreed-upon date of
5 May 13, 2011, and respectfully seek an Order from this Court in this regard.
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7
8 DATED: January 25, 2011

RUDERMAN AND KNOX

9 By /S/ CHRISTIAN KNOX

10 CHRISTIAN KNOX

11 Attorneys for Plaintiff, CAYLA R. , by
12 and through her Conservator,
13 CATHLEEN R.
14

15 DATED: January 25, 2011

GIBEAUT, MAHAN & BRISCOE

16 By /S/ HANS GILLINGER

17 HANS ALBERT GILLINGER

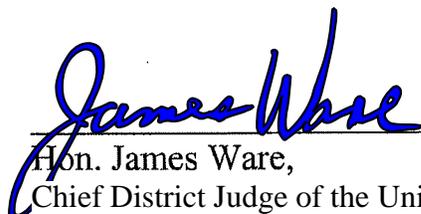
18 Attorneys for Defendants, MORGAN
19 HILL UNIFIED SCHOOL DISTRICT;
20 THOMAS FRIED; CHRISTOPHER
21 RIZZUTO; and JAY TROTTER
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1 **[~~PROPOSED~~]** ORDER

2 Pursuant to the stipulation of the parties hereto, the Court GRANTS the
3 parties' request and AMENDS the deadline to complete mediation from the current
4 date of [February 17, 2011] [March 11, 2011] to **May 20, 2011** to allow the parties
5 to Mediate this matter on May 13, 2011, the date mutually selected by the parties.
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7 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

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10 DATED: January 28, 2011

11 
12 Hon. James Ware,
13 Chief District Judge of the United States District
14 Court for the Northern District of California
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SIGNATURE ATTESTATION

Pursuant to General Order No. 45(x)(B), I hereby attest that I have obtained the concurrence in the filing of this document from all the signatories for whom a signature is indicated by a “conformed” signature (/S/) within this e-filed document and I have on file records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request.

DATED: January 25, 2011

GIBEAUT, MAHAN & BRISCOE

By /S/ HANS GILLINGER
HANS ALBERT GILLINGER
Attorneys for Defendants,
MORGAN HILL UNIFIED
SCHOOL DISTRICT;
THOMAS FRIED;
CHRISTOPHER RIZZUTO; and
JAY TROTTER