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 CATHLEEN R.

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;

Defendants.

Case No. CV 5:10-CV-04312-EJD

Honorable Edward J. Davila

STIPULATION TO EXTEND  
 DEADLINE TO COMPLETE  
 MEDIATION AND [~~PROPOSED~~]  
 ORDER

*[filed concurrently with declaration of  
 Hans Gillinger]*

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, THOMAS FRIED,  
5 and CHRISTOPHER RIZZUTO (collectively hereinafter “Defendants”) to meet and  
6 confer regarding ADR selection;

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

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

16           WHEREAS on January 26, 2011, Defendants filed a stipulation to extend the  
17 deadline to complete mediation (Document 27) to allow the Parties to mediate this  
18 matter on the agreed-upon date of May 13, 2011 (*Id.* at ¶ 8);

19           WHEREAS on January 28, 2011, this Court issued its order (Document 30)  
20 granting the Parties’ request to amend the deadline to complete mediation to May  
21 20, 2011 to allow the Parties to mediate this matter on May 13, 2011, the date  
22 mutually selected by the Parties (*Id.* at ¶ 9);

23           WHEREAS on March 10, 2011, this Court issued its order (Document 38)  
24 (“Order”) ruling on Defendants’ motion to dismiss the Complaint, which dismissed  
25 all claims in the Complaint. The Order granted Plaintiff leave to amend the  
26 Complaint as to all three claims to perfect its deficiencies (Order at Page 7 at ¶¶ 3,  
27 C) (*Id.* at ¶ 10);

28

1           WHEREAS on March 31, 2011, Plaintiff timely filed a First Amended  
2 Complaint (“FAC”) pursuant to Section 504 (document 39) (*Id.* at ¶ 11);

3           WHEREAS on April 14, 2011, Defendants timely moved for dismissal of the  
4 claims in the FAC, and noticed the hearing on said motion for May 23, 2011, at 9:00  
5 a.m. in the Honorable James Ware’s courtroom located at 280 South 1st Street, San  
6 Jose, California (Document 40-2). Subsequently said previously brought motion  
7 was re-set to September 26, 2011 by the Notice of the Clerk of the Honorable James  
8 Ware (Document 41) (*Id.* at ¶ 12);

9           WHEREAS on April 25, 2011, this Court issued a Reassignment Order  
10 (Document 42) vacating all pending and then-presently pending matters, and  
11 ordering the Parties to re-file and re-notice any then-pending motions, (Defendants’  
12 Rule 12 Motion (Documents 40, 40-1, 40-2) was the only pending motion at the  
13 time), following reassignment of this case to the Honorable Edward J. Davila  
14 (Document 42) (*Id.* at ¶ 14);

15           WHEREAS on April 25, 2011, Defendants withdrew its previous filed Rule  
16 12 Motion pursuant to paragraph seven (7) of the April 25, 2011 Reassignment  
17 Order (Document 42), and in accordance with Local Rule 7-7 of the Northern  
18 District of California United States District Court (*Id.* at ¶ 15);

19           WHEREAS on April 27, 2011, Defendants timely and properly re-filed its  
20 prior motion to dismiss and re-noticed said motion for hearing on August 26, 2011  
21 at 9:00 a.m. before this Court located in Courtroom 1 on the 5th Floor of the San  
22 Jose courthouse of the Northern District of California (Documents 44, 44-1, 44-2)  
23 (*Id.* at ¶ 15);

24           WHEREAS on May 2, 2011, the Parties met, conferred, and agreed that  
25 mediation must follow the Court’s ruling on Defendants’ pending Rule 12 Motion  
26 (Documents 44, 44-1, 44-2) in order to ascertain what, if anything, will be put in  
27 issue by the FAC of Plaintiff, and the Parties further agreed that settlement efforts  
28

1 are premature until after the Court rules on Defendants' pending Rule 12 Motion  
2 (Documents 44, 44-1, 44-2) (*Id.* at ¶ 16);

3 WHEREAS on May 2, 2011, the Parties agreed to stipulate to a request that  
4 this Court extend the deadline to complete mediation to a date no sooner than one  
5 (1) month after the re-noticed August 26, 2011 hearing on Defendants dispositive  
6 Rule 12 motion (Documents 44, 44-1, 44-2), if the Court grants the within requested  
7 request to extend the mediation completion date (*Id.* at ¶ 16);

8 WHEREAS the rescheduling of the mediation completion date shall in no  
9 way interfere with the progress of discovery or other aspects of the litigation and  
10 shall not impact any dates set by this Court apart from the mediation completion  
11 date (*Id.* at ¶ 17);

12 WHEREUPON pursuant to *Federal Rule of Civil Procedure* 16(d), ADR  
13 Local Rule 6-5(a), and Civil Local Rule 7, the Parties stipulate to an extension of the  
14 mediation deadline from the current date of May 20, 2011 to no sooner than one (1)  
15 month after the re-noticed August 26, 2011 hearing on Defendants' dispositive Rule  
16 12 motion. The Parties submit the following [proposed] Order to effect their  
17 stipulated agreement.

18 DATED: May 3, 2011

RUDERMAN AND KNOX

20 By /S/ CHRISTIAN KNOX

21 CHRISTIAN KNOX  
22 Attorneys for Plaintiff, CAYLA R., by and  
23 through her Conservator, CATHLEEN R.

24 DATED: May 3, 2011

GIBEAUT, MAHAN & BRISCOE

25 By /S/ HANS GILLINGER

26 HANS ALBERT GILLINGER  
27 Attorneys for Defendants, MORGAN  
28 HILL UNIFIED SCHOOL DISTRICT;  
THOMAS FRIED; and CHRISTOPHER  
RIZZUTO

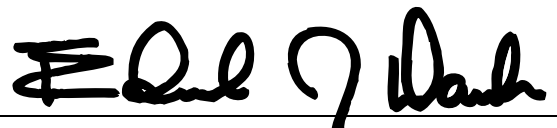
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~~PROPOSED~~ ORDER

Pursuant to the stipulation of the Parties hereto, the Court GRANTS the Parties' request and AMENDS the deadline to complete mediation to a date no sooner than one (1) month after the September 30, 2011 hearing on Defendants dispositive Rule 12 motion.

**PURSUANT TO STIPULATION, IT IS SO ORDERED**

DATED: May 5, 2011



Hon. Edward J. Davila,  
District Judge of the United States District  
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: May 3, 2011 GIBEAUT, MAHAN & BRISCOE

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