

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GIBEAUT, MAHAN & BRISCOE
GARY ROBERT GIBEAUT, ESQ. (State Bar No. 70951)
NANCY MAHAN-LAMB, ESQ. (State Bar No. 117997)
HANS ALBERT GILLINGER, ESQ. (State Bar No. 243973)
hans@gillinger.com
KAREN J. MANABO, ESQ. (State Bar No. 274527)
6701 Center Drive West, Suite 611
Los Angeles, California 90045
Telephone: (310) 410-2020 ♦ Facsimile: (310) 410-2010

Attorneys for Defendants, MORGAN HILL UNIFIED SCHOOL DISTRICT,
DR. THOMAS FRIED, and CHRISTOPHER RIZZUTO

RUDERMAN AND KNOX
CHRISTIAN KNOX, ESQ.
2020 Hurley Way, Suite 405
Sacramento, California 95825
Telephone: (916) 563-0100 ♦ Facsimile: (916) 563-0114

Attorneys for Plaintiff, CAYLA R., by and through her Conservator,
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 motion was re-set to
7 September 26, 2011 by the Notice of the Clerk of the Honorable James Ware
8 (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 are premature until after the Court rules on Defendants’ pending Rule 12 Motion

1 (Documents 44, 44-1, 44-2) (*Id.* at ¶ 16);

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

6 WHEREAS the Court granted the stipulation and extended the mediation
7 completion date for one (1) month after the September 30, 2011 hearing on
8 Defendants' dispositive Rule 12 motion (Documents 44, 44-1, 44-2). (Document
9 49). (*Id.* at ¶ 15);

10 WHEREAS this Honorable Court entertained oral arguments at the at the re-
11 set hearing on Defendants' dispositive Rule 12 motion (Documents 44, 44-1, 44-2)
12 on September 30, 2011, and issued an Amended Civil Minutes taking the matter
13 under submission with further Orders to follow. (Document 55). (*Id.* at ¶ 17);

14 WHEREAS the date for the Court's ruling on Defendants' dispositive Rule 12
15 motion (Documents 44, 44-1, 44-2) is uncertain and may issue subsequent to
16 October 30, 2011 – the current mediation cut-off date (Document 49) (*Id.* at ¶ 16);

17 WHEREAS the Parties require no less than forty-five (45) additional days,
18 and jointly request the Court vacate the current mediation completion date and order
19 the parties to complete mediation in this matter on or before December 15, 2011.
20 (*Id.* at ¶¶ 16, 17);

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

25 WHEREUPON pursuant to *Federal Rule of Civil Procedure* 16(d), ADR
26 Local Rule 6-5(a), and Civil Local Rule 7, the Parties stipulate to a forty-five (45)
27 day extension of the mediation deadline from the current date of October 30, 2011
28 to December 15, 2011 so that the Court may issue its ruling on Defendants'

1 dispositive Rule 12 motion, which is submitted for decision. The Parties submit the
2 following [proposed] Order to effect their stipulated agreement.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: November 2, 2011

RUDERMAN AND KNOX

By /S/ CHRISTIAN KNOX
CHRISTIAN KNOX
Attorneys for Plaintiff, CAYLA R., by and
through her Conservator, CATHLEEN R.

DATED: November 2, 2011

GIBEAUT, MAHAN & BRISCOE

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

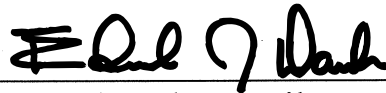
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

~~Proposed~~ ORDER

Pursuant to the stipulation of the Parties hereto, the Court GRANTS the Parties' request and AMENDS the deadline to complete mediation to December 15, 2011, an additional forty-five (45) days so that the Court may issue its ruling on Defendants' dispositive Rule 12 motion, which is submitted for decision

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: November 7, 2011



Hon. Edward J. Davila,
District Judge of the United States District
Court for the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: November 2, 2011

GIBEAUT, MAHAN & BRISCOE

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