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10 AMERICAN CIVIL LIBERTIES UNION
11 FOUNDATION OF SAN DIEGO & IMPERIAL
12 COUNTIES, INC.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/01/2018 at 09:30:00 AM
Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN DIEGO

15 REBECCA RAUBER, an individual,
16
17 Plaintiff,

18 v.

19 AMERICAN CIVIL LIBERTIES UNION
20 FOUNDATION OF SAN DIEGO &
21 IMPERIAL COUNTIES, INC., a
22 California corporation; and DOES 1
23 through 10, inclusive,
24 Defendants.

Case No. 37-2017-00008664-CU-WT-CTL

[Complaint Filed: March 10, 2017]

DEFENDANT'S NOTICE TO COURT OF
INABILITY TO COMPLY WITH COURT'S
ORDER TO MEDIATE DUE TO
PLAINTIFF'S UNILATERAL
CANCELLATION OF SCHEDULED
MEDIATION ; DECLARATION OF ROBERT
H. ROSE

25 TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 Please take notice that due to Plaintiff's unilateral decision to cancel the mediation scheduled
27 in this action for February 14, 2018, absent Court intervention, Defendant American Civil Liberties
28 Union Foundation of San Diego & Imperial Counties, Inc. ("Defendant") will be unable to comply
with the Court's Case Management Order of October 27, 2016 requiring the parties to engage in a
mediation within 120 days of that Order (i.e. prior to February 27, 2018).

On January 18, 2018, the parties reached agreement to retain Judge (Retired) Steven R.
Denton to mediate this matter and scheduled the mediation for February 14, 2018. (Decl. Rose ¶ 6)

1 However, on January 30, 2018, without any prior notice, Plaintiff’s Counsel informed
2 Defendant’s counsel that Plaintiff had unilaterally taken the scheduled mediation “off calendar”
3 because Defendant indicated that it intended to file a Motion for Summary Judgment. (Decl. Rose ¶
4 7) Although Plaintiff was aware of Defendant’s intention to file a Motion for Summary Judgment
5 as early as October 23, 2017, at no time prior to January 30, 2018 did Plaintiff express any concern
6 that Defendant’s intention to file a Motion for Summary Judgment would be an impediment to
7 mediation. (Decl. Rose ¶ 8)

8 Defendant notified Plaintiff and the Court of its intention to file a Motion for Summary
9 Judgment as well as its willingness to attend mediation, in its Case Management Statement filed with
10 the Court and served on Plaintiff on October 23, 2017. (Decl. Rose ¶ 3)¹ In Plaintiff’s Case
11 Management Statement, dated October 26, 2017, Plaintiff also indicated willingness to participate in
12 mediation. (Decl. Rose ¶ 4) On October 27, 2017, at the Court’s Case Management Conference, the
13 Court ordered parties to attend mediation within 120 days (i.e. prior to February 27, 2018). (Decl.
14 Rose ¶ 5)

15 Due to the order, Defendant’s Counsel reached out to Plaintiff’s Counsel to discuss mediators
16 who would be mutually agreeable to all parties, and to schedule a date for mediation prior to
17 February 27, 2018. (Decl. Rose ¶ 6) Defendant agreed to one of the mediators proposed by
18 Plaintiff’s Counsel, retired San Diego Superior Court Judge Steven Denton, and parties scheduled
19 mediation with Judge Denton for February 14, 2018. (Id.)

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27 ¹ Prior to the filing of Defendant’s Case Management Conference Statement, Defendant’s Counsel had already informed
28 Plaintiff’s Counsel of Defendant’s willingness to participate in mediation and intention to file a Motion for Summary
Judgment during the parties meet and confer related to the upcoming Case Management Conference. (Decl. Rose ¶ 2)

1 Due to Plaintiff's unilateral decision to cancel the mediation, and although Defendant acted
2 in good faith to meet its obligations under the Court's Case Management Order, Defendant is unable
3 to comply with the Court's order to participate in mediation prior to February 27, 2018. (Decl. Rose
4 ¶ 9)

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6 Dated: February 1, 2018

7 Respectfully submitted,

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9 ROBERT H. ROSE
10 THE ROSE GROUP, APLC
11 Attorneys for Defendant
12 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
13 OF SAN DIEGO & IMPERIAL COUNTIES, INC.
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DECLARATION OF ROBERT H. ROSE

I, Robert H. Rose, do hereby declare:

1. I am an attorney, licensed to practice law in California (Bar No. 277893), and am counsel to Defendant American Civil Liberties Union Foundation of San Diego & Imperial Counties, Inc. (“Defendant” or “ACLU-SD”) in the above captioned matter.

2. On October 23, 2017, I participated in a “meet and confer” telephone call with Plaintiff’s Counsel Charles Moore, regarding the Case Management Conference scheduled in this matter for October 27, 2017. During this conversation, I informed Mr. Moore that Defendant was willing to participate in mediation, and also intended to file a Motion for Summary Judgment.

3. After this phone conversation, also on October 23, 2017, Defendant filed its Case Management Conference Statement, and served the document on Plaintiff. Defendant’s Case Management Statement expresses Defendant’s willingness to participate in mediation, and intention to file a Motion for Summary Judgment.

4. On October 26, 2017, Plaintiff filed her Case Management Statement, in which she indicated her willingness to participate in mediation.

5. On October 27, 2017, the Court issued its Case Management Order, which orders the parties to participate in mediation within 120 days. Defendant has calculated 120 days to be on or prior to February 27, 2018.

6. Due to the Order, I reached out to Plaintiff’s Counsel to discuss mediators who would be mutually agreeable to all parties, and to schedule a date for mediation prior to February 27, 2018. Defendant agreed to one of the mediators proposed by Plaintiff’s Counsel, retired San Diego Superior Court Judge Steven Denton, and on January 18, 2018, parties scheduled mediation with Judge Denton for February 14, 2018.

7. Without warning, on January 30, 2018, Plaintiff’s Counsel notified Defendant’s counsel that Plaintiff had unilaterally taken the scheduled mediation “off calendar” due to Defendant’s Counsel’s representation that Defendant expected to file a Motion for Summary Judgment in this matter.

8. At no time prior to January 30, 2018, did Plaintiff express to Defendant any concern

1 that Defendant's intention to file a Motion for Summary Judgment would be an impediment to
2 mediation.

3 9. Due to Plaintiff's unilateral decision to cancel mediation, and although Defendant
4 acted in good faith to meet its obligations under the Court's Case Management Order, Defendant is
5 unable to comply with the Court's order to participate in mediation prior to February 27, 2018.

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7 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
8 and correct. Executed this 1st day of February, 2018, at San Diego, California.

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12 ROBERT H. ROSE