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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8
9 JAMES W. MILLNER,

10 Plaintiff,

11 v.

12 DR. DILEO, et al.,

13 Defendants.
14

Case No.: 1:17-cv-00507-LJO-SAB (PC)

ORDER REQUIRING DEFENDANTS TO
SUPPLEMENT MOTION TO COMPEL
FILED ON DECEMBER 5, 2018
(ECF No. 48)

FOURTEEN-DAY DEADLINE

15 Plaintiff James W. Millner is appearing *pro se* in this civil rights action pursuant to 42
16 U.S.C. § 1983.

17 On December 5, 2018, Defendants filed a motion to compel Plaintiff's deposition and to
18 modify the discovery and scheduling order, (ECF No. 48), supported by a declaration of counsel,
19 (Decl. of M. Sharma, ECF No. 48-1). In their motion, Defendants assert that Plaintiff refused to
20 participate in his deposition on November 30, 2018. Defense counsel declares that he appeared
21 to take Plaintiff's deposition and a discussion occurred, in which Plaintiff argued that he did not
22 receive notice of the deposition, that he was entitled to counsel, and that Defendants were
23 required to seek a court order to depose him. Defense counsel further declares that he attempted
24 to explain matters and question Plaintiff, and counsel also sought to attempt to contact the Court
25 to remedy the matter, but Plaintiff refused to wait and left the deposition room. (Decl. of M.
26 Sharma ¶¶ 6-7.)

27 On December 13, 2018, Plaintiff filed a motion opposing Defendants' motion, that was
28 entered on December 17, 2018. (ECF No. 49.)

1 Among the issues raised by Plaintiff is that he did not receive sufficient notice of the
2 deposition, as required by the Federal Rules of Civil Procedure and the Court’s discovery and
3 scheduling order, issued on April 6, 2018. Fed. R. Civ. P. 30(a)(2)(B). (ECF No. 35.) Plaintiff
4 also asserts that he requested to be dismissed from the deposition, but defense counsel made a
5 record, questioning him on why the deposition should not proceed and about the notice
6 requirement. (Id. at 2-3.) Plaintiff also asserts that he has requested the transcript from the
7 deposition, and intends to correct any errors.

8 Defendants did not submit any transcript from the November 30, 2018 with their motion.
9 Defendants have not yet had an opportunity to reply to Plaintiff’s opposition, but the Court finds
10 it necessary to issue this order to ensure that Defendants provide the transcript of what occurred
11 on November 30, 2018, so that the Court can fully understand the events at issue.

12 Accordingly, it is **HEREBY ORDERED** that within fourteen days of this order,
13 Defendants shall supplement their motion to compel with the transcript of the deposition
14 proceedings in this case from November 30, 2018. Defendants may make a separate filing, or
15 may include the transcript with a reply brief addressing the issues raised by Plaintiff in his
16 opposition. Their deadline to reply is extended to fourteen days of this order. Local Rule 230(1).
17 The failure to comply with this order will result in the imposition of sanctions.

18
19 IT IS SO ORDERED.

20 Dated: **December 18, 2018**



UNITED STATES MAGISTRATE JUDGE