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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. 2:90-cv-0520 LKK JFM P

vs.

EDMUND G. BROWN, JR., et al.,

Defendants.

ORDER

_____ /

On March 1, 2013, the parties filed a document styled Joint Statement Re Discovery Dispute (Joint Statement) (ECF 4364). By this document, defendants move to compel plaintiffs to produce their five experts for deposition by March 15, 2013, and to produce their experts' reports at least two days before the scheduled depositions. Plaintiffs seek a protective order prohibiting defendants from compelling depositions of plaintiffs' experts or production of draft expert reports or, in the alternative, limiting the time for any expert depositions to after March 15, 2013, when the experts' reports will have been filed with the court.

The dispute at bar arises in connection with defendants' motion to terminate this action and to vacate the judgment and orders entered herein pursuant to Fed. R. Civ. P. 60(b)(5) (hereafter "termination motion"). Defendants' termination motion was filed on January 7, 2013 (ECF 4275). Because defendants seek termination under 18 U.S.C. § 3626(b), thereby

1 implicating the automatic stay provisions of 18 U.S.C. § 3626(e)(2) and (3), on January 29, 2013
2 this court issued an order setting the following schedule for proceedings on defendants'
3 termination motion so that it can be timely¹ heard:

4 1. Defendants shall cooperate fully in discovery propounded
5 by plaintiffs so that all discovery required to respond to the
6 motion to terminate, including but not limited to depositions of
all individuals who have tendered declarations in support of said
motion, has been completed by March 1, 2013.

7 2. Plaintiff's Opposition to defendants' motion to terminate
8 is due no later than March 15, 2013, at 4:30 p.m.; [and]

9 3. Defendants' Reply, if any, is due no later than March 22,
2013, at 4:30 p.m.

10 Order filed January 29, 2013 (ECF 4316), at 4. Oral argument on the motion is set for March 27,
11 2013. Id.

12 Defendants contend that considerations of fundamental fairness require that they
13 be given an opportunity to review plaintiffs' expert reports and depose those experts, and to do
14 so with sufficient time remaining to prepare their reply brief. Plaintiffs counter that defendants
15 worked with their own experts, with no notice to plaintiffs, for a period of eighteen months prior
16 to filing the termination motion and that plaintiffs have had only six weeks to conduct discovery,
17 expert inspections, expert report writing, and prepare their opposition to the motion and that
18 there is not enough time to make the experts available for deposition in advance of March 15,
19 when their reports will be filed with plaintiffs' opposition to the termination motion. Plaintiffs
20 also contend that "[d]efendants sent multiple attorneys and CDCR officials to all of plaintiffs'
21 expert prison tours" and that defense counsel received a copy of every document provided to
22 plaintiffs' experts on those tours. Joint Statement at 2.

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25 ¹ Pursuant to this court's order filed January 9, 2013, the effective date of any automatic
26 stay has been postponed for a period of sixty days after the thirtieth day after defendants' motion
was filed. See Order filed January 9, 2013 (ECF 4290), at 2, 3. Thus, any automatic stay would
go into effect if defendants' motion is not resolved prior to April 7, 2013.

1 After review of the record, and good cause appearing, IT IS HEREBY


2 ORDERED that:

3 1. Defendants' March 1, 2013 motion to compel expert depositions and reports
4 on or prior to March 15, 2013 is denied;

5 2. Plaintiffs' March 1, 2013 motion for a protective order is granted in part in that
6 plaintiffs will not be required to produce expert reports or make their experts available for
7 deposition on or prior to March 15, 2013; and

8 3. The provisions of paragraph 2 notwithstanding, plaintiffs shall produce any
9 expert reports they receive promptly upon receipt.

10 DATED: March 6, 2013.

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13 LAWRENCE K. KARLTON
14 SENIOR JUDGE
15 UNITED STATES DISTRICT COURT
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