

1 including any motion to exceed discovery limitations or motion for
2 protective order, shall not be heard unless (1) the parties have
3 conferred and attempted to resolve their differences, and (2) the
4 parties have set forth differences and the bases therefor in a Joint
5 Statement re Discovery Disagreement. Counsel for all interested
6 parties shall confer in advance of the filing of the motion or in
7 advance of the hearing of the motion in a good faith effort to
8 resolve the differences that are the subject of the motion. Counsel
9 for the moving party or prospective moving party shall be
10 responsible for arranging the conference, which shall be held at a
11 time and place and in a manner mutually convenient to counsel.

12 E.D. Cal. L.R. 251(b). Local Rule 251(c) sets forth the specific requirements for the contents of
13 the parties' joint statement. Local Rule 251(d) provides that "[r]efusal of any counsel to
14 participate in a discovery conference, or refusal without good cause to execute the required joint
15 statement, shall be grounds, in the discretion of the Court, for entry of an order adverse to the
16 party represented by counsel so refusing or adverse to counsel." The court's Local Rules further
17 provide that "[a]ny individual representing himself or herself without an attorney is bound by the
18 Federal Rules of Civil or Criminal Procedure, these Rules, and all other applicable law. All
19 obligations placed on "counsel" by these Rules apply to individuals appearing in propria persona.
20 Failure to comply therewith may be ground for dismissal, judgment by default, or any other
21 sanction appropriate under these Rules." E.D. Cal. L.R. 183(a).

22 In light of the above, on August 9, 2013, the court issued an order requiring plaintiffs to
23 meet and confer in good faith with defendant Nevada County with respect to defendant's motions
24 to compel. (ECF No. 374.) The court's order specified that the parties' meet-and-confer efforts
25 must include at least one personal meet-and-confer session, which may be conducted by
26 telephone. (Id.) It further specified that if the parties were unable to resolve their dispute
27 informally, they were to prepare and file a joint statement regarding their discovery disagreement
28 in accordance with Local Rule 251 no later than September 6, 2013. (Id.) The order also
cautioned plaintiffs as follows:

Plaintiffs are cautioned that failure to cooperate in good faith in the
meet-and-confer process; failure to cooperate with the preparation
and filing of the joint statement regarding the discovery
disagreement; or failure to otherwise comply with their obligations
under Local Rule 251, the Federal Rules of Civil Procedure, and
this order, will result in the imposition of sanctions pursuant to
Rules 37 and 41(b) of the Federal Rules of Civil Procedure,

1 potentially including a summary grant of defendant's motion to
2 compel, monetary sanctions, and/or dismissal of the action with
prejudice.

3 (Id.)

4 Thereafter, on September 5, 2013, Nevada County filed a statement regarding the
5 discovery disagreement, indicating that, as of the date of filing that statement, plaintiffs had not
6 made any contact with Nevada County's counsel. According to counsel for Nevada County, he
7 was able to reach plaintiff Cacey Winters by telephone on September 4, 2013, but Ms. Winters
8 indicated that she was "in the middle of something" and unable to discuss the discovery
9 disagreement. Nevada County's counsel reminded Ms. Casey Winters that a joint statement was
10 due to the court by September 6, 2013, and Ms. Winters represented that she would contact her
11 father, plaintiff Brent Winters, regarding Nevada County's request to meet and confer with
12 plaintiffs regarding the discovery dispute. (ECF No. 375.) Later in the day on September 5,
13 2013, counsel for Nevada County filed a supplemental statement indicating that, after the filing of
14 the earlier statement, he finally received calls from plaintiffs, who essentially represented that
15 they were not willing to amend or supplement their responses to the discovery requests. (ECF
16 No. 376.)

17 Regardless of the merits of the underlying discovery dispute, it is apparent that plaintiffs
18 have failed to comply with the court's August 9, 2013 order. Although plaintiffs finally called
19 counsel for Nevada County on September 5, 2013, almost a month after the court's order issued
20 and one day before the joint statement was due, this did not allow for any meaningful meet-and-
21 confer discussions. Moreover, plaintiffs failed to participate in the preparation and filing of a
22 joint statement as required by the court's August 9, 2013 order and Local Rule 251. Additionally,
23 the docket in this case reveals that plaintiffs have been cautioned several times for failure to
24 comply with briefing deadlines and the Local Rules. (See, e.g. ECF Nos. 149, 170, 216, 224,
25 348.) Therefore, the court finds it appropriate to require each plaintiff to pay \$100 in monetary
26 sanctions within seven (7) days of this order. Plaintiffs may contact the Clerk's Office to make
27 arrangements to pay the sanctions.

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1 Additionally, in light of plaintiffs' failure to substantially comply with the court's August
2 9, 2013 order, the court requires all plaintiffs to personally appear at the September 19, 2013
3 hearing on the motions to compel. No telephonic appearances will be permitted. While the court
4 is cognizant of the travel costs involved and have previously allowed plaintiffs, who reside
5 outside of California, to appear by telephone, plaintiffs have forfeited their privilege to appear
6 telephonically by virtue of their conduct with respect to this discovery dispute. Moreover,
7 plaintiffs can hardly claim to be significantly prejudiced by an order requiring them to personally
8 appear for a hearing in the case, given that they elected to commence a lawsuit in this district.
9 At the hearing, plaintiffs shall be prepared to discuss the discovery dispute and why additional
10 sanctions, including payment of Nevada County's attorneys' fees related to the motions to
11 compel, should not be imposed.

12 In light of plaintiffs' conduct to date, the court could have recommended terminating
13 sanctions at this juncture. Nevertheless, given its desire to resolve plaintiffs' claims on the
14 merits, the court first attempts the lesser sanctions outlined above. However, plaintiffs are hereby
15 cautioned and put on notice that failure to timely pay the monetary sanctions imposed by this
16 order and/or failure to appear in person at the September 19, 2013 hearing by any plaintiff(s) will
17 result in a recommendation that all claims of that plaintiff(s) in this action be dismissed with
18 prejudice pursuant to Federal Rule of Civil Procedure 41(b).

19 Accordingly, IT IS HEREBY ORDERED that:

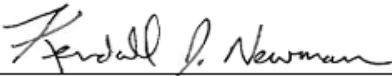
- 20 1. Within seven (7) days of this order, each plaintiff shall individually pay \$100 in
21 monetary sanctions based on their failure to substantially comply with the court's
22 August 9, 2013 order and Local Rule 251.
- 23 2. All plaintiffs shall personally appear at the September 19, 2013 hearing on Nevada
24 County's motions to compel, which will take place at 10:00 a.m. in Courtroom No. 25.
25 Plaintiffs shall be prepared to discuss the discovery dispute and why additional
26 sanctions, including payment of Nevada County's attorneys' fees related to the
27 motions to compel, should not be imposed. No telephonic appearances will be
28 permitted.

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3. *Failure to timely pay the monetary sanctions imposed by this order and/or failure to appear in person at the September 19, 2013 hearing by any plaintiff(s) will result in a recommendation that all claims of that plaintiff(s) in this action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).*

IT IS SO ORDERED

Dated: September 6, 2013


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE