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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA; THE STATES OF ARKANSAS, CALIFORNIA, DELAWARE, FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA, LOUISIANA, MICHIGAN, MASSACHUSETTS, MONTANA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS, VIRGINIA, AND WISCONSIN, AND THE DISTRICT OF COLUMBIA, ex rel. JOHN DOE, Relator,

Plaintiffs,

v.

BIOTRONIK, INC. and WESTERN MEDICAL, INC.,

Defendants.

No. 2:09-cv-3617-KJM-EFB

ORDER

Relator (and relator’s counsel Kershaw, Cutter & Ratinoff, LLP’s (“KCT”)) have filed motions for attorneys’ fees. Those motions are pending before the district judge and are set for hearing on April 24, 2015. The relator has also filed a discovery motion to compel the production of information that the relator intends to use in support of the attorneys’ fee motion. Specifically, the relator moves to compel production of defendant’s relevant billing records. That motion to compel is set for hearing on March 11, 2015. ECF No. 113. On March 3, 2015, defendant filed

1 an ex parte application to continue the hearing on the motion to compel to a date in mid-April or
2 later. ECF No. 114. Defendant contends that a continuance is necessary because its lead counsel,
3 Christopher Myers, underwent surgery in February and will be unavailable during the month of
4 March. *Id.* at 1-3. Relator and KCR oppose the motion. ECF No. 115. For the reasons set forth
5 below, the motion for continuance is denied.

6 Defendant is represented by an international law firm that lists having more than 1,000
7 attorneys in the United States and abroad.¹ Other attorneys from the firm have appeared in this
8 action on behalf of defendant. *See, e.g.*, ECF No. 115. Moreover, defendant has failed to
9 demonstrate that another attorney from the firm is incapable of handling what appears to be a
10 relatively routine discovery motion. *See Nielsen v. Wal-Mart Stores, Inc.*, No. C 05-1759SBA,
11 2006 WL 778627, at * 1 (N.D. Cal. Mar. 27, 2006) (“Indeed, at least one other attorney of [the
12 defense firm] has already appeared before this Court in the above-captioned matter and the Court
13 assumes that this attorney, as well as the other members of Defendant’s counsel’s firm, are
14 members of the bar and are fully qualified to try this case.”).

15 On the other hand, granting the requested continuance would disrupt the scheduling order
16 issued by the assigned district judge. ECF Nos. 107, 108. The relator seeks the information at
17 issue for use in the motions for attorneys’ fees that are pending before the district judge. *See* ECF
18 Nos. 80, 91. The current scheduling order requires the relator and KTC’s reply briefs to be
19 submitted by March 27, 2015. ECF Nos. 107, 108. Continuing the hearing on the motion to
20 compel until mid-April (when Mr. Myers will apparently be available) would leave inadequate
21 time for use of the evidence in the discovery motions.² Accordingly, the request to continue the
22 hearing is denied.


23 The parties’ joint statement regarding the motion to compel was due on March 4, 2015,
24 but was never filed. *See* E.D. Cal. L. R. 251(a). Thus, the motion has not been briefed, and the

25
26 ¹ <http://www.hklaw.com/offices/uniGC.aspx?xpST=OfficeList> (last checked March 5,
2015).

27
28 ² Defendant has not filed a motion before the assigned district judge to modify the
scheduling order.

1 court is unable to address the merits of the motion at the March 11 hearing. Accordingly, the
2 hearing on relator and KCT's motion to compel is continued to March 18, 2015, and the parties
3 are directed to file their joint statement on or before March 11, 2015.³

4 DATED: March 5, 2015.

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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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³ In its motion to continue the hearing, defendant requests the court's assistance in
27 creating a schedule for the preparation of the parties' joint statement. ECF No. 114 at 1. It is not
28 the court's duty to assist counsel in the preparation of their pleadings. Any issue in completing
the joint statement should be resolved through the required meet and confer process. *See* E.D.
Cal. L.R. 251.