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

MICHAEL CHESS,

Plaintiff,

No. 2: 10-cv-1261 LKK KJN P

vs.

TOM FELKER, et al.,

Defendants.

ORDER

_____ /

Pending before the court are plaintiff's motion to compel filed February 28, 2011, and defendants' motion to compel filed March 3, 2011. The background to these motions is set forth herein.

On January 28, 2011, defense counsel deposed plaintiff. The deposition notice requested that plaintiff produce various documents at the deposition in support of his claims. During the deposition, plaintiff identified twenty-two documents that were responsive to the production request. Plaintiff agreed to allow defense counsel to take the documents, copy them and return them to him because he did not have copies. At the end of the deposition, plaintiff kept the copies and defense counsel forgot to request them.

In his pending motion to compel, plaintiff claims that defense counsel has now requested that he give her the original documents that he brought to the deposition. It is

1 plaintiff's understanding that defense counsel intends to keep the original documents. Plaintiff
2 indicates that he is willing to send defense counsel the original documents so long as she agrees
3 to copy them and return the originals. In defendants' motion to compel, they argue that plaintiff
4 has refused their repeated requests to produce the documents that he brought to the deposition.


5 The pending motions to compel are based on an apparent misunderstanding
6 between the parties. Although not entirely clear from defense counsel's communications with
7 plaintiff after the deposition, the undersigned finds that defense counsel had no intention of
8 keeping the original documents. Rather, defense counsel intended to copy the original
9 documents for her own records then return the originals to plaintiff.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Plaintiff's motion to compel (Dkt. No. 39) and defendants' motion to compel
12 (Dkt. No. 40) are denied;

13 2. Within seven days of the date of this order, plaintiff shall serve defense counsel
14 with the documents referred to in defendants' motion to compel; within seven days thereafter,
15 defense counsel shall make copies of these documents and return the original documents to
16 plaintiff.

17 DATED: April 6, 2011

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE

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