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

GRANVILLE H. MARSHALL JR, M.D.,

Plaintiff,

No. CIV S-10-1286 JAM DAD PS

vs.

HAL MEADOWS, M.D., et al.,

Defendants.

ORDER

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For the second time in this case the pro se plaintiff has filed an untimely motion to continue the hearing of properly noticed motions filed by defendants.

Defendants' previous motions to dismiss or strike plaintiff's original complaint were set for hearing on August 6, 2010. Two days prior to the hearing, and twelve days after his opposition to that motion was due, plaintiff requested a continuance of the hearing. Plaintiff failed to appear at the hearing held on August 6, 2010. By order filed August 9, 2010, plaintiff was advised that the untimeliness of his request gave the court insufficient time to rule on it prior to the noticed hearing and that in the absence of an order granting his request he remained obligated to appear at the hearing. (Order filed Aug. 9, 2010 (Doc. No. 25) at 1-2.) Plaintiff was cautioned that any subsequent failure to appear may result in a recommendation that this action be dismissed. (Id. at 2 (citing Local Rules 110 & 183).) The August 9, 2010 order also advised

1 plaintiff that opposition or a statement of non-opposition to a properly noticed motion must be  
2 filed no later than two weeks prior to the date set for hearing and a party who requires an  
3 extension of time to respond to a motion must seek an extension prior to the due date of the  
4 response. (Id. at 2 (citing Local Rules 101, 144(d) & 230(c)).)

5           Despite the court’s advice and cautions, plaintiff has submitted an untimely and  
6 inadequate motion to continue the hearing of three pending motions to dismiss or strike his  
7 amended complaint. Defendants’ motions were filed on May 19, 2011 (Doc. No. 38) and May  
8 20, 2011 (Doc. Nos. 43 & 45) and were properly noticed for hearing on June 24, 2011. Plaintiff  
9 was required to file his opposition to defendants’ motions on or before June 10, 2011. Plaintiff  
10 did not file timely opposition and did not file a timely request for an extension of time to file his  
11 opposition. Instead, plaintiff seeks to extend his time to file opposition to July 8, 2011 by asking  
12 the court to unilaterally continue the hearing of defendants’ motions from June 24, 2011 to July  
13 22, 2011. Plaintiff does not indicate that he attempted to obtain a stipulation from defendants’  
14 attorneys or that he contacted the attorneys concerning the proposed new date for the hearing of  
15 their motions.

16           Turning to the merits of plaintiff’s motion to continue the hearing, the court finds  
17 the motion to be unsupported and unpersuasive. Plaintiff proclaims, without offering any details,  
18 evidence, or a supporting declaration under penalty of perjury, that his motion is based on his  
19 “inability to reschedule patients appropriately in a timely manner.” (Pl.’s Mot. for Continuance  
20 (Doc. No. 47) at 1.) Plaintiff was notified by moving papers mailed on May 19, 2011 and May  
21 20, 2011 that defendants’ motions were set for hearing on June 24, 2011. If in fact plaintiff had  
22 appointments already scheduled for June 24, 2011, the need for a continuance was apparent and  
23 plaintiff was required by Local Rule 144 to seek a continuance immediately. If plaintiff  
24 continued to schedule appointments after receiving notice of the June 24, 2011 hearing, then the  
25 conflict was his own creation and was not caused by “inability to reschedule.” Moreover,  
26 plaintiff has been advised more than once of the availability of telephonic appearance before the

1 undersigned. (See Order Re-Setting Status Pretrial Scheduling Conference filed June 2, 2010  
2 (Doc. No. 5) at 2; Order filed Aug. 9, 2010 (Doc. No. 25) at 2-3.) Thus, the only appointments  
3 plaintiff needed to reschedule were any appointments made prior to May 24, 2011 for the period  
4 between 10:00 a.m. and approximately 11:00 a.m. on June 24, 2011.

5 In the absence of any evidence of the number of appointments scheduled for the  
6 morning of June 24th as of May 24, 2011, of actual attempts to reschedule appointments set for  
7 the one-hour period between 10:00 a.m. and 11:00 a.m. on June 24, 2011, and of the reason for  
8 the alleged inability to reschedule, the court finds that plaintiff's motion lacks merit. Moreover,  
9 the asserted ground for a continuance of the hearing offers no justification for plaintiff's failing  
10 to file timely opposition to defendants' motions.

11 In light of the court's previous advice, plaintiff's disregard of numerous  
12 applicable rules, plaintiff's complete failure to justify an extension of time to file written  
13 opposition to defendants' motions, and plaintiff's inadequate argument in support of a  
14 continuance, the court will deny plaintiff's motion to continue the hearing of defendants' motions  
15 from June 24, 2011 to July 22, 2011. The June 24, 2011 hearing of defendants' motions will be  
16 vacated due to plaintiff's failure to file timely opposition, and plaintiff will be required to file and  
17 serve his opposition on or before July 5, 2011. "Filed" means that the filing is received by the  
18 Clerk for entry in the court's records on or before July 5, 2011. No further extension of time will  
19 be granted for the filing of opposition.

20 Plaintiff has waived his right to be heard in oral argument in opposition to  
21 defendants' pending motions. However, if, after receiving plaintiff's opposition, any defendant  
22 wishes to be heard, the defendant may re-notice the relevant motion or motions for hearing on  
23 fourteen days notice. Plaintiff may make a telephonic appearance at any re-noticed hearing,  
24 provided that he complies with the court's procedure for arranging telephonic appearance, but he  
25 may not be permitted to argue for the reasons noted above.

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