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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL GRESS,  
Plaintiff,  
v.  
DR. CHRISTOPHER SMITH, et al.,  
Defendants.

No. 2:13-cv-0328 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding through counsel. Plaintiff’s motion to compel the deposition of defendant Dr. Barnett is presently calendared for hearing on June 2, 2016. However, on May 27, 2016, defendants filed an objection and motion to strike, claiming that plaintiff changed the Local Rule 251 stipulation after defendants’ counsel electronically signed the document, without informing defendants’ counsel. Moreover, after plaintiff filed his motion to compel, defendants filed a motion to modify the scheduling order to allow the doctor defendants’ dispositive motions to proceed first, and to postpone the filing of dispositive motions by the remaining seven defendants until the doctor defendants’ motions are resolved. The five doctor defendants, including Dr. Barnett, filed motions for summary judgment.

The court has compared the two joint statements and notes that typographical errors were corrected, words were changed in the “Preliminary Statement” and “Plaintiff’s Statement” sections, and two paragraphs were added to the “Plaintiff’s Statement.” The “Defendants’

1 Statement” portion of the stipulation was not changed. Therefore, defendants’ motion to strike  
2 the May 26, 2016 joint statement is granted. Good cause appearing, plaintiff’s motion to compel  
3 is continued to Thursday, June 16, 2016, at 10:00 a.m., before the undersigned.

4 The parties are directed to meet and confer in good faith, as required under Local Rule  
5 251, and shall file a revised stipulation that comports with Local Rule 251. In addition, the  
6 parties shall address the issue of sanctions based on the allegations that plaintiff’s counsel  
7 changed, without permission or advisement, the May 26, 2016 joint statement after defense  
8 counsel electronically signed the statement.<sup>1 2</sup> In addition, on or before close of business on June  
9 6, 2016, plaintiff shall file his opposition, if any, to defendants’ motion to modify the scheduling  
10 order (ECF No. 100). On or before close of business on June 13, 2016, defendants shall file a  
11 reply and shall provide legal authority to support their request to modify this court’s summary  
12 judgment practice. Specifically, defendants shall explain how judicial economy is served by  
13 hearing twelve separate summary judgment motions rather than one.

14 Briefing on the five pending motions for summary judgment is stayed pending further  
15 order of this court. (ECF Nos. 103-107.)

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Defendants’ motion to strike the May 26, 2016 joint statement (ECF No. 109) is  
18 granted;
- 19 2. The May 26, 2012 joint statement (ECF No. 108) is stricken;
- 20 3. Plaintiff’s motion to compel, set for June 2, 2016, is continued to June 16, 2016, at  
21 10:00 a.m., in Courtroom #25 before the undersigned;

22  
23 <sup>1</sup> The court joins in defense counsel’s concern regarding changes made to the stipulation after  
24 defense counsel authorized his signature to be electronically attached to the stipulation.

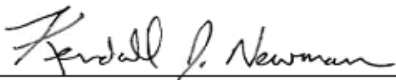
25 <sup>2</sup> The court expects counsel to cooperate and work together regarding the timing of depositions  
26 as well as the filing of dispositive motions in an economical fashion. Without prejudging the  
27 pending motion to compel, the court finds it curious that defense counsel stipulated to having Dr.  
28 Barnett deposed after the court ruled on the motion to dismiss (ECF No. 90 at 2), but then delayed  
filing an answer and now appears to claim it is too late to depose Dr. Barnett. If the parties are  
unable to resolve the issue of Dr. Barnett’s deposition, defense counsel shall be prepared to  
address this issue at the hearing.

1           4. The parties shall meet and confer in good faith, as required under Local Rule 251, and  
2 shall file a revised joint statement as set forth above;

3           5. Plaintiff shall file his opposition, if any, to defendants' motion to modify the  
4 scheduling order by close of business on June 6, 2016; defendants shall file a reply by close of  
5 business on June 13, 2016, as described above; and

6           6. Briefing on the pending motions for summary judgment (ECF Nos. 103-107) is stayed  
7 pending further order of this court.

8 Dated: May 31, 2016

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12 KENDALL J. NEWMAN  
13 UNITED STATES MAGISTRATE JUDGE

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