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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERNARD SMITH,  
Plaintiff,  
v.  
HAWKINS, et al.,  
Defendants.

No. 2:14-cv-2222-KJM-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Defendant has filed (1) a motion to compel plaintiff’s deposition and to recover costs; and (2) a motion to modify the scheduling order pending resolution of the motion to compel. ECF Nos. 50, 51. Plaintiff has not responded to defendant’s motions. Instead, he has filed a “Motion for Discovery Production of Documents” and a “Motion for Legal Expenses.” ECF Nos. 52, 53. Each motion is addressed below.

**I. Defendant’s Motion to Modify the Scheduling Order (ECF No. 51)**

In his motion to modify the discovery and scheduling order, defendant argues that plaintiff’s failure to cooperate in the discovery process by not appearing for his deposition unfairly impedes the progression of this case. ECF No. 51-1 at 1. Defendant asks the court to vacate the current discovery and scheduling order, and issue a modified scheduling order re-setting defendant’s deadline to depose plaintiff, and the parties’ deadline to file dispositive

1 motions, until after ruling on the concurrently filed motion to compel. Good cause appearing,  
2 defendant's motion to modify the discovery and scheduling order is granted.

3 **II. Defendant's Motion to Compel (ECF No. 50)**

4 Plaintiff failed to respond to defendant's motion to compel plaintiff's deposition and to  
5 recover costs. ECF No. 50. In cases in which one party is incarcerated and proceeding without  
6 counsel, motions ordinarily are submitted on the record without oral argument. *See* E.D. Cal.  
7 Local Rule, 230(1). "Opposition, if any, to the granting of the motion shall be served and filed  
8 with the Clerk by the responding party not more than eighteen (18) days, plus three (3) days for  
9 mailing or electronic service, after the date of service of the motion." *Id.* A responding party's  
10 failure "to file written opposition or to file a statement of no opposition may be deemed a waiver  
11 of any opposition to the granting of the motion and may result in the imposition of sanctions." *Id.*

12 Furthermore, a party's failure to comply with any order or with the Local Rules "may be  
13 grounds for imposition of any and all sanctions authorized by statute or Rule or within the  
14 inherent power of the Court." Local Rule 110. The court may recommend that an action be  
15 dismissed with or without prejudice, as appropriate, if a party disobeys an order or the Local  
16 Rules. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992) (district court did not abuse  
17 discretion in dismissing pro se plaintiff's complaint for failing to obey an order to re-file an  
18 amended complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d  
19 1439, 1440-41 (9th Cir. 1988) (dismissal for pro se plaintiff's failure to comply with local rule  
20 regarding notice of change of address affirmed).

21 Within 21 days of the date of this order, plaintiff shall file either an opposition to  
22 defendant's motion to compel and to recover costs or a statement of no opposition.

23 **III. Plaintiff's Motion for Discovery Production of Documents (ECF No. 52)**

24 Plaintiff has filed a document entitled "Motion for Discovery Production of Documents."  
25 ECF No. 52. Plaintiff is instructed that he must serve discovery documents on a defendant rather  
26 than filing them with the court. Pursuant to this court's local rules, interrogatories, requests for  
27 production, requests for admission, and responses thereto "shall not be filed with the clerk" unless  
28 there is a proceeding that puts the discovery request or response at issue. *See* E.D. Cal. Local

1 Rules 250.2-250.4. Further, when a discovery request or response is at issue, only the part of the  
2 request or response at issue “shall be filed.” *Id.* At this time, there is no proceeding before the  
3 court that requires plaintiff’s request for production for its resolution. Therefore, the court will  
4 disregard this filing.

5 **IV. Plaintiff’s Motion for Legal Expenses (ECF No. 53)**

6 Plaintiff requests \$5,000 in “legal expenses” on the grounds that he is homeless, has no  
7 income, and is in pain and lacks proper medication. Plaintiff offers no legal basis for his request  
8 for expenses. His circumstances, while unfortunate, do not entitle him to compensation from the  
9 court. The motion is denied.

10 **V. Order**

11 Accordingly, it is hereby ORDERED that:

- 12 1. Defendant’s motion for the court to modify the discovery and scheduling order and  
13 issue a modified scheduling order re-setting defendant’s deadline to depose plaintiff,  
14 and the parties’ deadline to file dispositive motions (ECF No. 51) is granted. A  
15 modified discovery and scheduling order shall issue after this court rules on  
16 defendant’s motion to compel.
- 17 2. Within 21 days of the date of this order, plaintiff shall file either an opposition to  
18 defendant’s motion to compel (ECF No. 50) or a statement of no opposition. Failure  
19 to comply with this order may result in a recommendation that this action be dismissed  
20 for lack of prosecution and/or for failure to comply with court orders and this court’s  
21 Local Rules. *See* Fed. R. Civ. P. 41(b); E.D. Cal. Local Rule 110.
- 22 3. Plaintiff’s “Motion for Discovery Production of Documents” (ECF No. 52) is  
23 disregarded and the Clerk of the Court shall reflect the same on the docket.
- 24 4. Plaintiff’s “Motion for Legal Expenses” (ECF No. 53) is denied.

25 DATED: December 19, 2016.

26   
27 EDMUND F. BRENNAN  
28 UNITED STATES MAGISTRATE JUDGE