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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL E. GONZALEZ,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

No. 2:15-cv-1997 MCE DB PS

ORDER

Plaintiff, Daniel Gonzalez, is proceeding pro se and in forma pauperis. (ECF No. 6.) This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff’s amended complaint alleges that medical professionals at the Veterans Administration Hospital, “negligently and inadvertently misdiagnosed and delayed” plaintiff’s medical treatment causing plaintiff harm. (Am. Compl. (ECF No. 11) at 2.)

On September 7, 2018, defendant filed a motion to compel the deposition of plaintiff’s expert witness, Dr. Craig Bash. (ECF No. 71.) The motion is noticed for hearing before the undersigned on October 5, 2018.¹ On September 21, 2018, plaintiff filed an opposition. (ECF ///)

¹ Pursuant to Local Rule 230(g), the undersigned finds that defendant’s motion may be decided without oral argument.

1 No. 73.) And on September 28, 2018, the parties filed a purported joint statement.² (ECF No.
2 75.) Plaintiff’s opposition argues that defendant’s motion “is designed to create a prejudice in
3 forcing Dr. Bash to testify without the benefit of having the testimony of Dr. Hu, a treating
4 orthopedic surgeon, to rely upon.” (ECF No. 73 at 6.)

5 However, pursuant to Rule 30 of the Federal Rules of Civil Procedure, subject to certain
6 exceptions, “a party may, by oral questions, depose any person . . . without leave of court[.]” Fed.
7 R. Civ. P. 30(a)(1). And “[a] party may depose any person who has been identified as an expert
8 whose opinions may be presented at trial.” FMC Corp. v. Vendo Co., 196 F.Supp.2d 1023, 1043
9 (E.D. Cal. 2002) (quoting Fed. R. Civ. P. 26(b)(4)(A)); see also Bio-Rad Laboratories, Inc. v.
10 Pharmacia, Inc., 130 F.R.D. 116, 125 (N.D. Cal. 1990) (“experts who are prospective witnesses
11 are normally produced for deposition by the opposing party as a matter of course”).

12 Rule 45 of the Federal Rules of Civil Procedure provides that a party may subpoena an
13 expert’s attendance at a deposition. The expert may move to quash or modify a subpoena that:

- 14 (i) fails to allow a reasonable time to comply;
- 15 (ii) requires a person to comply beyond the geographical limits
16 specified in Rule 45(c);
- 17 (iii) requires disclosure of privileged or other protected matter, if no
18 exception or waiver applies; or
- 19 (iv) subjects a person to undue burden.

20 Fed. R. Civ. P. 45(d)(3)(A).

21 Here, Dr. Bash is plaintiff’s expert witness, defendant may depose Dr. Bash, and Dr. Bash
22 has not moved to modify or quash a subpoena. However, defendant noticed Dr. Bash’s
23 deposition for October 10, 2018. (ECF No. 75 at 11-15.) Although plaintiff has asserted that Dr.
24 Bash will not appear for the October 10, 2018 deposition, the time for the deposition has not yet
25 come. Thus, there is nothing for the court to compel.

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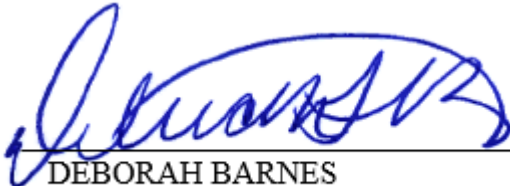
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28 ² It is unclear if plaintiff contributed to the drafting of the joint statement. (ECF No. 75 at 9.)

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5. The parties shall file a Joint Notice of Trial Readiness not later than thirty (30) days after receiving ruling on the last dispositive motion.

Dated: October 2, 2018



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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