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 6 *for the limited purpose of competency proceedings*

7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **OAKLAND DIVISION**

11 ANNETTE SHARLENE ELDER-EVINS, Tr.,)	CASE NO. 4:09-cv-05775 SBA (LB)
)	
12 Plaintiff,)	STIPULATION TO LIFT STAY OF
)	DEPOSITION OF DR. DONALD T.
13 vs.)	APOSTLE
)	
14 MICHAEL J. CASEY, et al.,)	
)	Judge: Hon. Laurel Beeler
15 Defendants.)	
)	
16)	
17)	

1 **JOINT STATEMENT IN SUPPORT OF STIPULATION**

2 On March 19, 2011, Plaintiff served Donald Apostle, M.D. (“Dr. Apostle”) with a deposition
3 subpoena and accompanying request for production of documents (ECF No. 122.) The deposition
4 was set for May 9, 2011. (*Id.*)

5 On April 4, 2011, Defendant Daniel Shacklett filed a motion to determine Plaintiff’s
6 competency to act as her own attorney, which also seeks dismissal of the case. (ECF No. 115-117.)
7 On April 5, 2011, Plaintiff filed a motion to compel in regard to the deposition subpoena and request
8 for production directed to Dr. Apostle. (ECF No. 120.) Dr. Apostle filed an opposition to that
9 motion on April 12, 2011. (ECF No. 125.)

10 On April 11, 2011, Dr. Apostle filed a motion for a protective order and for order quashing
11 his subpoena, or, in the alternative, to stay his deposition until the Court rules on Plaintiff’s
12 competency. (ECF No. 121.) Dr. Apostle argued that the deposition by a non-attorney would
13 impose an undue burden. (*Id.*)

14 On June 28, 2011, Defendant Shacklett’s competency motion was referred to a Magistrate
15 Judge. (ECF No. 148.)

16 On July 6, 2011, this Court entered its order staying the deposition of Dr. Apostle pending
17 resolution of Defendant Shacklett’s motion to determine competency. (ECF No. 152.)

18 On July 29, 2011, Magistrate Judge Laurel Beeler set the competency hearing for
19 August 25, 2011. (ECF No. 156.)

20 On August 10, 2011, this Court recommended that the District Court refer Plaintiff to the
21 Federal Pro Bono Project. (ECF No. 160.) The Court further recommended that the “attorney shall
22 be counsel solely for the purpose of assisting [Plaintiff] in the competency proceedings.” (*Id.* at
23 1:25-2:1.) Additionally, the Court continued the competency hearing until November 17, 2011.
24 (*Id.* at 2:4-5)

25 On October 5, 2011, counsel for Plaintiff—for the limited purpose of competency
26 proceedings—filed a motion for a continuance of the competency hearing to December 8, 2011.
27 (ECF No. 170.)

28 Counsel for Plaintiff and counsel for Dr. Apostle have met and conferred. As the deposition

1 will not be taken by a non-attorney and no undue burden will result, counsel for Dr. Apostle has
2 consented to allow counsel for Plaintiff to depose Dr. Apostle. The deposition is currently set for
3 October 25, 2011.

4 **THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

- 5 1. The deposition of Dr. Apostle will take place on October 25, 2011, before a certified
6 shorthand reporter.
- 7 2. Michael P. Esser, counsel for Plaintiff for the limited purpose of competency
8 proceedings, will conduct the deposition.
- 9 3. Plaintiff will not be present at the deposition.
- 10 4. The parties to this stipulation consent to lift the stay on Dr. Apostle's deposition.

11
12 DATED: October 7, 2011

Respectfully submitted,
KIRKLAND & ELLIS LLP

13
14 /s/ Michael P. Esser
Michael P. Esser

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16 Attorneys for Plaintiff
Annette Sharlene Elder-Evins,
17 *for the limited purpose of competency proceedings*

18 DATED: October 7, 2011

THE GOLDMAN LAW FIRM

19 /s/ Robert V. Good, Jr.
20 Robert V. Good, Jr.¹

21 Attorneys for Non-Party Donald T. Apostle, M.D.

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

23
24
25 Dated: October 12, 2011


26 UNITED STATES MAGISTRATE JUDGE
LAUREL BEELER

27 ¹ I, Michael P. Esser, am the ECF user whose ID and password are being used to file this Stipulation to Lift Stay of
28 Deposition of Dr. Donald T. Apostle. In compliance with General Order 45, X.B., I hereby attest that the following
attorneys have concurred in this filing: Robert V. Good, Jr., Attorney for Non-Party Donald T. Apostle, M.D.