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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION
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11 GREGORY NICHOLAS STESHENKO,
12

No. C 09-5543 RS

13 Plaintiff,

14 v.

**ORDER RE BRIEFING OF
CHALLENGES TO DISCOVERY
RULINGS**

15
16 THOMAS MCKAY, et al.,

17 Defendants.
18
19 _____/

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21 Plaintiff and the College Defendants each seek review of discovery rulings made by the
22 assigned magistrate judge on April 25, 2012. Plaintiff originally filed what he entitled as “notices
23 of appeal,” asserting that he would file “appellate briefs” within 14 days. Plaintiff has apparently
24 subsequently become aware that the appropriate procedural mechanism for challenging a non-
25 dispositive pre-trial order of a magistrate judge is to file a motion in compliance with Civil Local
26 Rule 72-2, and he filed such a motion on May 7, 2012 (Dkt. No. 298).¹ The docket entry for that

27 _____
28 ¹ That motion exceeds the page limits imposed by Rule 72-2. While that violation will be
disregarded in this instance, plaintiff is cautioned to comply with the rule in any future motions.

1 motion purports to set a due date for responsive and reply briefing. Those dates should be
2 disregarded, as Rule 72-2 provides that responses are not required unless specifically ordered.

3 Plaintiff additionally filed a noticed motion purporting to challenge portions of the
4 magistrate judge's rulings as "dispositive," within the meaning of Fed. R. Civ. P. 72(b), 28 U.S.C.
5 § 636(b)(1)(B), and Local Civil Rule 72-3 (Dkt. No. 298). Notwithstanding plaintiff's attempt to
6 characterize the ruling as "effectively" preventing him from pursuing certain of his claims, the
7 challenged order is only a non-dispositive ruling on discovery matters. Accordingly, the hearing
8 date of June 14, 2012 plaintiff noticed for that motion is vacated, and the briefing schedule set out
9 in the docket entry should be disregarded. Instead, that motion shall be deemed to have been
10 brought under Rule 72-2 as a challenge to a non-dispositive ruling. Defendants shall file a
11 response to both Docket No. 298 and No. 299, not to exceed 10 pages, no later than May 25,
12 2012. Plaintiff's challenges to the magistrate judge's rulings then will be taken under submission
13 without further briefing or argument.

14 The College Defendants' challenge to the discovery rulings, (1) seeks clarification as to
15 the scope of their obligation to produce documents under the order, and (2) asserts that the
16 magistrate judge did not rule on a motion seeking additional time for taking plaintiff's deposition.
17 The docket indicates that the College defendants' request for additional time to depose plaintiff
18 was filed as part of a document entitled as a "joinder," and that it was not entered into the ECF
19 system as a motion (Dkt. No. 185). It is counsel's obligation to ensure that motions are properly
20 entered as such in the ECF system. In any event, because the College defendants seek
21 clarification as to the intended scope of the order and a ruling on an issue that was not addressed,
22 their concerns should be presented to the magistrate judge in the first instance. Accordingly, the
23 College defendants' motion (Docket 297) is denied without prejudice.

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25 IT IS SO ORDERED.

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27 Dated: 5/9/12

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RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE