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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DARREN VINCENT FORD,

12 Plaintiff,

13 v.

14 G. SINKLIER, et al.,

15 Defendants.
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Case No.: 3:17-cv-00307-BAS-PCL

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL, DENYING
MOTION FOR SANCTIONS, AND
GRANTING MOTION TO MODIFY
SCHEDULING ORDER**

[Docs. 33, 41]
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18 **I. INTRODUCTION**

19 Before the Court now is Defendants' motion to compel Plaintiff's deposition and
20 for sanctions resulting in Plaintiff's refusal to attend his properly noticed deposition on
21 February 13, 2018, and Defendants' motion to modify the scheduling order. (Docs. 33,
22 41.) Defendants moved *ex parte* for the Court's leave to take Plaintiff's deposition. (Doc.
23 28.) The Court granted this request. (Doc. 30.) The day after the Court's granting this
24 request, Plaintiff was served with notice of his deposition, to be held on February 13,
25 2018, at 9:30 a.m. via video conference. (Doc. 33-3 at 4-6.)

26 On February 13, 2018, however, when Plaintiff was approached by a correctional
27 officer to be escorted to the deposition, Plaintiff refused. (Doc. 33-1 at 2.) Plaintiff, in a
28 later document filed with the Court, stated he was under the impression a public defender

1 would be representing him at the deposition. (Doc. 37 at 1.) Without such representation,
2 Plaintiff refused to attend the deposition. (*Id.*) Defendants note that Plaintiff stated at the
3 time of the attempted escort that Plaintiff was refusing to attend the deposition because
4 his counsel had not been noticed and therefore would not be attending. (Doc. 33-1 at 2.)
5 Plaintiff later conceded his belief that the public defender would represent him was
6 misinformed. (Doc. 37.)

7 **II. MOTION TO COMPEL**

8 From the filing of his complaint to the present, Plaintiff has been proceeding in this
9 matter *pro se*. (*See, e.g.*, Doc. 1.) In doing so, Plaintiff undertook his own representation
10 and was not to rely upon any other person to represent him in this case. *See Davis v.*
11 *Colvin*, 2014 U.S. Dist. LEXIS 198312 at *11 (N.D. Cal. Feb. 18, 2014). Because
12 Plaintiff was proceeding *pro se*, his purported reasoning for not attending his deposition –
13 that his counsel had not been noticed – was improper. In fact, Plaintiff was his own
14 counsel, and certainly Plaintiff had been noticed of his own deposition. (See Doc. 33-3 at
15 4-6.)

16 To proceed with this action, Plaintiff must cooperate in discovery, including being
17 deposed. Thus, the factors of timeliness, good cause, utility, and materiality weigh in
18 favor of granting Defendants’ motion to compel Plaintiff’s deposition. *See CSC*
19 *Holdings, Inc. v. Redisi*, 309 F.3d 988, 993 (7th Cir. 2002); Fed. R. Civ. P. 37(a)(3)(B)(i),
20 37 (d)(1)(A)(i). Therefore, Defendants’ motion to compel Plaintiff’s deposition is
21 **GRANTED.**

22 **III. MOTION FOR SANCTIONS**

23 Defendants’ further moved for sanctions in the amount of \$635.00, the cost of
24 attempting to take Plaintiff’s deposition. (Doc. 33-1 at 3-4.) Defendants seek only these
25 monetary sanctions in their motion. Plaintiff, however, is an indigent prisoner, who is
26 proceeding in this case *in forma pauperis* as a result of his indigent status. (Doc. 3 at 4.)

27 The payment of expenses incurred by the party seeking discovery, here the
28 Defendants attempting to take Plaintiff’s deposition, is enumerated as a specific sanction

1 available. Fed. R. Civ. P. 37 (a)(5). However, a court “must not order” this particular
2 sanction if there are circumstances which make an award of expenses unjust. Fed. R. Civ.
3 P. 37(a)(5)(A)(iii). Because Plaintiff is an indigent prisoner, proceeding *in forma*
4 *pauperis*, the Court finds an imposition of this type of monetary sanction would be unjust
5 because Plaintiff would not be able to pay the sanction amount. *See Diaz v. Fox*, 2017
6 U.S. Dist. LEXIS 186382 at *31 (E.D. Cal. Nov. 9, 2017) (“In light of [plaintiff’s] status
7 as an incarcerated plaintiff proceeding *pro se* and *in forma pauperis*, the court declines to
8 award [monetary] sanctions at this time.”) Given Plaintiff’s inability to pay any imposed
9 monetary sanction, the Court **DENIES** Defendants’ motion for such sanction.

10 **IV. MOTION TO MODIFY SCHEDULING ORDER**

11 Finally, on March 23, 2018, Defendants’ brought a motion to modify the
12 scheduling order based on Plaintiff’s refusal to participate in his deposition. (Doc. 41.)
13 Therein, Defendants request the deadline to depose Plaintiff be extended to June 15,
14 2018, and the motion deadline be extended to July 15, 2018. (*Id.* at 2.) Defendants base
15 this motion upon defense counsel’s schedule which now conflicts with imminent
16 discovery in this case as Plaintiff refused to attend his deposition. (Doc. 41-1 at 2.)
17 However, Defendants contend they will continue to go forward with the settlement
18 conference currently scheduled for April 16, 2018. (*Id.*) Good cause appearing, the Court
19 **GRANTS** this motion to so modify the scheduling order.

20 **V. CONCLUSION**

21 The Court hereby **GRANTS** Defendants’ motion to compel Plaintiff’s deposition,
22 and Defendants’ subsequent motion to modify the scheduling order. Accordingly,
23 Plaintiff is ordered to attend and participate in a properly noticed deposition held before
24 the extended deadline of June 15, 2018. However, because Plaintiff is an indigent
25 prisoner, the Court hereby **DENIES** Defendants’ motion for monetary sanctions.

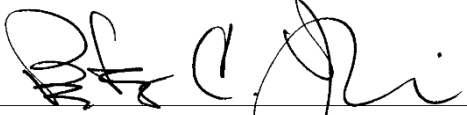
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IT IS SO ORDERED.

Dated: March 29, 2018



Hon. Peter C. Lewis
United States Magistrate Judge

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