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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DARREN HEYMAN,

Plaintiff,

v.

STATE OF NEVADA EX REL. BOARD OF
REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION ON BEHALF OF
UNIVERSITY OF NEVADA, LAS VEGAS,
et al.,

Defendants.

Case No. 2:15-cv-1228-RFB-GWF

ORDER

This matter is before the Court on Defendant Montgomery’s Motion for Sanctions (ECF No. 392), filed on July 31, 2018. Plaintiff filed his Response (ECF No. 398) on August 14, 2018.

BACKGROUND

Defendant Montgomery requests sanctions against Plaintiff for not complying with this Court’s order by failing to provide a proper HIPAA authorization. On February 9, 2018, the Court granted Defendant’s motion to compel and instructed Plaintiff to provide a HIPAA authorization form to Defendant’s counsel to obtain medical records. See ECF No. 309. He submitted an HIPAA authorization form that was limited to treatment related to “the false accusation made against Darren Heyman concerning the Qualifying Exam at UNLV and the effects that these accusations had on Darren Heyman...” See ECF No. 333, Exhibit A. Defendant filed a motion for contempt against Plaintiff for failing to abide by the Court’s Order. ECF No. 333. The Court granted Defendant’s motion for contempt and again instructed Plaintiff to provide an HIPAA authorization form to obtain all mental health records regarding treatment Plaintiff received from 2013 to the present. See ECF No. 362.

1 Defendant argues that Plaintiff again failed to comply with the Court’s order because he
2 limited the production of his mental health records to only Defendant Montgomery’s counsel and
3 counsel’s law firm. Defendant argues that Plaintiff’s self-imposed limitation should not prevent
4 her from disclosing mental health records obtained through supplemental Fed. R. Civ. P. 26
5 disclosures. Defendant requests that the Court grant her motion for sanctions and strike
6 Plaintiff’s intentional infliction of emotional distress claim. Plaintiff argues that Defendant does
7 not have standing to request relief for other parties and that the issue is not ripe. He further
8 argues that he complied with the Court’s order and that Defendant will not be prejudiced if she is
9 not permitted to share the medical records.

10 DISCUSSION

11 Parties and attorneys are required to follow pretrial orders. See Fed. R. Civ. P. 16(f). Rule
12 16(f) gives the court broad discretion to sanction attorneys and parties who fail to comply with
13 reasonable case management orders of the court. *Gutierrez-Howerton v. Gonzales*, 2014 WL
14 12694151, at *2 (D. Nev. June 11, 2014). “Violations of Rule 16 are neither technical nor trivial,
15 but involve a matter most critical to the court itself: management of its docket and the avoidance
16 of unnecessary delays in the administration of its cases.” *Robles v. APEX Linen LLC*, 2015 WL
17 5785499, at *2 (D. Nev. Oct. 1, 2015) (quoting *Martin Family Trust v. Heco/Nostalgia Enter. Co.*,
18 186 F.R.D. 601, 603 (E.D. Cal. 1999). “The goal is to get cases decided on the merits of issues
19 that are truly meritorious and in dispute. Rule 16(f) puts teeth into these objectives by permitting
20 the judge to make such orders as are just for a party’s failure to obey a scheduling or pretrial order,
21 including dismissal.” *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1227
22 (9th Cir. 2006). Similar to Rule 16(f), LR IA 11-8 also provides the Court with authority to impose
23 “any and all appropriate sanctions on an attorney or party” that fails to comply with any order of
24 this court. LR IA 11-8. Further, Rule 37 of the Federal Rules of Civil Procedure provides the
25 court with a wide range of sanctions for a party’s failure to adequately engage in discovery. Rule
26 37 provides that “[i]f a party...fails to obey an order to provide or permit discovery, including an
27 order under Rule 25(f), 35, or 37(a), the court where the action is pending may issue further just
28 orders.” Fed. R. Civ. P. 37(b)(2)(A).

1 The Court may exercise discretion in fashioning the appropriate sanctions for violations of
2 a court order. *Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1396 (9th Cir.1993). *Von Brimer*
3 *v. Whirlpool Corp.*, 536 F.2d 838, 844 (9th Cir.1976). The Court considers the objective of Rule
4 16(f) to deter conduct that “unnecessarily consumes the Court's time and resources that could have
5 been more productively utilized by litigants willing to follow the Court's procedures.” *Martin*
6 *Family Trust*, 186 F.R.D. at 603. The Court also considers the resources wasted by the parties due
7 to their violations of the court’s orders. *Hologram USA, Inc. v. Pulse Evolution Corp.*, 2015 WL
8 5165390, at *5 (D. Nev. Sept. 3, 2015), Fed. R. Civ. P. 16(f)(2).

9 The disclosure requirements of Rule 26(a)(1)(A) are designed to accelerate “the exchange
10 of basic information that is needed in most cases to prepare for trial or make an informed decision
11 about settlement.” Advisory Committee Notes to 1993 Amendments to Fed. R. Civ. Pro. 26(a).
12 See *R & R Sails, Inc. v. Insurance Co. of Pa.*, 673 F.3d 1240, 1246 (9th Cir. 2012); *Jones v. Wal-*
13 *Mart Stores, Inc.*, 2016 WL 1248707, at *3 (D. Nev. Mar. 28, 2016). “The Rule 26(a)(1) disclosure
14 requirements should be ‘applied with common sense in light of the principles of Rule 1, keeping
15 in mind the salutary purposes that the rule is intended to accomplish. The litigants should not
16 indulge in gamesmanship with respect to the disclosure obligations.’” *Sender v. Mann*, 225 F.R.D.
17 645, 650 (D.Colo. 2003); See also Advisory Committee Notes to 1993 Amendments to
18 Fed.R.Civ.P. 26(a).

19 Plaintiff once again has failed to follow an order of this Court despite warnings of the
20 consequences of doing so. He has not complied with his discovery obligations by refusing to
21 provide a proper HIPAA authorization form. Plaintiff provided an HIPAA authorization form to
22 Defendant with limitations regarding disclosure of his mental health records beyond the Court’s
23 order. Plaintiff’s conduct has required the Court to once again intervene in the discovery process
24 to manage Plaintiff’s technical contrivance of simple instructions. The Court, therefore, sanctions
25 Plaintiff and awards Defendant Montgomery reasonable costs and attorney’s fees incurred in
26 preparing and filing her motion for sanctions.

27 The Court, however, will allow Plaintiff a **final** opportunity to provide a proper HIPAA
28 authorization form to Defendant. Failure to provide such form as directed will result in a

1 recommendation for dismissal of Plaintiff's intentional infliction of emotional distress claim with
2 prejudice. Plaintiff shall within 14 days of the issuance of this order complete and provide a
3 HIPAA authorization form that does not contain any alteration or modification that limits
4 Defendant's disclosure of records to her Co-Defendants or otherwise to any party permitted to
5 disclosure under the Federal Rules of Civil Procedure. Accordingly,

6 **IT IS HEREBY ORDERED** that Defendant Montgomery's Motion for Sanctions (ECF
7 No. 392) is **granted**, in part, and **denied**, in part according to the provisions herein. The Court
8 sanctions Plaintiff in the amount of Defendant Montgomery's reasonable attorney's fees and costs
9 incurred in preparing and filing her motion for sanctions (ECF No. 392).

10 **IT IS FURTHER ORDERED** as follows

11 1. Defendant Montgomery shall no later than **October 31, 2018** serve and file a
12 memorandum, supported by affidavit of counsel, establishing the amount of attorneys' fees and
13 costs incurred as addressed in this order. The memorandum shall provide a reasonable itemization
14 and description of work performed, identify the attorney(s) or staff member(s) performing the
15 work, the customary fee of the attorney(s) or staff member(s) for such work, and the experience,
16 reputation and ability of the attorney performing the work. The attorney's affidavit shall
17 authenticate the information contained in the memorandum, provide a statement that the bill has
18 been reviewed and edited, and a statement that the fees and costs charged are reasonable.

19 2. Plaintiff shall have fourteen (14) days from service of the memorandum of costs
20 and attorney's fees, up to and including **November 14, 2018**, in which to file a responsive
21 memorandum addressing the reasonableness of the costs and fees sought, and any equitable
22 considerations deemed appropriate for the court to consider in determining the amount of costs
23 and fees which should be awarded.

24 **IT IS FURTHER ORDERED** that Plaintiff shall, no later than 14 days from the issuance
25 of this order, up to and including **October 31, 2018**, complete and provide a HIPAA authorization
26 form to Defendant Montgomery that does not contain any alteration or modification that limits
27 Defendant's disclosure of records to her Co-Defendants or otherwise to any party permitted to
28 disclosure under the Federal Rules of Civil Procedure. Failure to comply with this order will result

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in a recommendation that Plaintiff's intentional infliction of emotional distress claim be dismissed with prejudice.

Dated this 17th day of October, 2018.



GEORGE FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE