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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TROAS V. BARNETT,

CASE NO. 1:05-cv-01022-SKO PC

Plaintiff,

ORDER RE MOTIONS

v.

(Docs. 58, 66, 67)

DAVID NORMAN, et al.,

Defendants.

Plaintiff Troas V. Barnett (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Before the Court are three motions. Defendants filed a motion requesting leave to take Plaintiff’s deposition via a video conference on July 19, 2010. (Doc. #58.) Plaintiff filed two motions on August 2, 2010. Plaintiff filed a motion to “quash” Defendants’ discovery request and a second “discovery request” seeking the last known address for Defendant Martin Gamboa.

I. Discussion

A. Defendants’ Motion to Take Deposition Via a Video Conference

On July 19, 2010, Defendants filed a motion requesting leave to conduct Plaintiff’s deposition via a video conference. (Doc. #58.) Plaintiff filed objections to Defendants’ motion on July 30, 2010. (Doc. #63.)

Defendants request to take Plaintiff’s deposition via a video conference because it would be more expeditious and cost effective to conduct the deposition remotely. Plaintiff’s opposition does not object to the means of conducting the deposition, but instead objects to the deposition itself.

1 Plaintiff's opposition sets forth several unsupported boilerplate objections to the proposed
2 deposition. Plaintiff claims that a deposition would be unreasonably cumulative or duplicative
3 because Defendants can obtain the information they seek by more convenient methods such as
4 interrogatories or requests for admission. However, written interrogatories and requests for
5 admission are not adequate substitutes for conducting a deposition. As the Ninth Circuit aptly noted:

6 [w]ritten interrogatories are rarely, if ever, an adequate substitute for
7 a deposition Only by examining a witness live can a lawyer use
8 the skills of his trade to plumb the depths of a witness' recollection,
9 using to advantage not only what a witness may have admitted in
10 answering interrogatories, but also any new tidbits that usually come
11 out in the course of answering carefully framed and pin-pointed
12 deposition questions. Written interrogatories are not designed for that
13 purpose; pointed questions at deposition are the only effective way to
14 discover facts bottled up in a witness' recollection, particularly when
15 the witness is . . . hostile.

16 Shoen v. Shoen, 5 F.3d 1289, 1297 (9th Cir. 1993).

17 Plaintiff claims that the information Defendants are seeking can be obtained by less
18 burdensome and less expensive means. Plaintiff's objection is unavailing. First, Plaintiff has not
19 identified any expense that he must pay in order for Defendants to conduct the deposition. Plaintiff
20 has offered no explanation as to how the deposition is overly burdensome for him.

21 Plaintiff requests a protective order pursuant to Federal Rule of Civil Procedure 26(c) to
22 prohibit Defendants from deposing him. The purpose of a protective order under Rule 26(c) is to
23 protect a party "from annoyance, embarrassment, oppression, or undue burden or expense." Federal
24 Rule of Civil Procedure 26(c)(1). "The relevant standard for purposes of Rule 26(c) is whether good
25 cause exists to protect the information from being disclosed to the public by balancing the needs for
26 discovery against the need for confidentiality." Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 678
27 (9th Cir. 2010) (internal quotations and citations omitted). Plaintiff has failed to present a
28 compelling argument that any of these factors apply in this situation.

Plaintiff has not identified any confidential or private information that merits protection.
Plaintiff's objection to the proposed deposition is nothing more than a general complaint of having
to be deposed. However, Plaintiff brought Defendants into court by accusing them of violating his
constitutional rights. Defendants are entitled to a fair opportunity to defend against Plaintiff's

1 allegations. Given the nature of Plaintiff's allegations, a deposition of Plaintiff would likely be a
2 crucial procedure for formulating an effective defense. Plaintiff argues that Defendants are
3 "sufficiently . . . on notice" of the injuries Plaintiff suffered through the allegations made in his
4 complaint. However, that is not sufficient to formulate a complete defense against Plaintiff's
5 allegations. Defendants may be able to obtain information from Plaintiff's deposition that Plaintiff
6 did not allege in his complaint. There is nothing in the record to suggest that the deposition of
7 Plaintiff is being conducted for an improper purpose. The Court will deny Plaintiff's request for a
8 protective order.

9 Plaintiff next argues that Defendants are attempting to conduct a deposition before the time
10 frame specified in Federal Rule of Civil Procedure 26(d), which states that "[a] party may not seek
11 discovery from any source before the parties have conferred as required by Rule 26(f)." Apparently,
12 Plaintiff only read the first half of Rule 26(d). The rule further provides that: ". . . except in a
13 proceeding exempted from initial disclosure under Rule 26(a)(1)(B). . ." Under Rule 26(a)(1)(B),
14 "an action brought without an attorney by a person in the custody of the United States, a state, or a
15 state subdivision" is a "proceeding exempted from initial disclosure." Federal Rule of Civil
16 Procedure 26(a)(1)(B)(iv). Rule 26(d) further provides that a Rule 26(f) conference is not a
17 prerequisite for conducting discovery when discovery is "authorized . . . by court order." The
18 Court's July 20, 2010 discovery order expressly permitted the parties to conduct depositions.

19 Finally, Plaintiff requests that in the event that the Court permits Defendants to depose
20 Plaintiff, the Court should limit the duration of the deposition to 90 minutes. Under Rule 30(d)(1),
21 a deposition is limited to a single day of seven hours, unless otherwise stipulated or ordered by the
22 court. Plaintiff has failed to demonstrate any persuasive reason to shorten the default time limit.
23 Plaintiff's unsupported arguments that the deposition is being conducted for an improper purpose
24 are not persuasive. The Court will grant Defendants' request for leave to depose Plaintiff via remote
25 means.

26 Plaintiff is hereby forewarned that any further frivolous attempts to delay, hinder, or prevent
27 his deposition will result in sanctions. Sanctions may include an order that designated facts be taken
28 as established in Defendants' favor, an order prohibiting Plaintiff from supporting or opposing

1 designated claims or defenses, an order preventing Plaintiff from introducing designated matters into
2 evidence, monetary sanctions, or an order dismissing Plaintiff's claims in whole or in part.

3 **B. Plaintiff's Motion to Quash Defendants' Discovery Requests**

4 On August 2, 2010, Plaintiff filed a motion to "quash" or "modify" Defendants' "subpoena
5 for production of document." (Plaintiffs[sic] Mot. to Modify/Quash Defendants[sic] Subpoena
6 Request. Pursuant to Fed. R. Civ. P Rule #45(c)(3)(A)(iii) and (B)(iii) 1:26-27, ECF No. 66.)
7 Plaintiff is advised that discovery is a self-executing process. Plaintiff must direct his responses to
8 Defendants' discovery requests to Defendants, not the Court. Plaintiff may object to Defendants'
9 discovery requests by invoking a proper objection.

10 However, Plaintiff is also advised that if he responds to Defendants' discovery requests with
11 unjustified objections, Defendants may file a motion to compel pursuant to Federal Rule of Civil
12 Procedure 37. If Defendants' motion to compel is granted, the Court must require Plaintiff to "pay
13 the movant's reasonable expenses incurred in making the motion, including attorney's fees," unless
14 the Court determines that the objections were substantially justified or other circumstances make an
15 award of expenses unjust. Federal Rule of Civil Procedure 37(a)(5)(A). If Plaintiff refuses or is
16 unable to comply with an order awarding attorneys fees to Defendants, Plaintiff may be subject to
17 further sanctions under Rule 37(b), including evidentiary sanctions, or dismissal of this action in
18 whole or in part. The Court will refrain from addressing whether Plaintiff's objections to
19 Defendants' discovery requests are proper until the arguments are properly raised in a motion to
20 compel.

21 **C. Plaintiff's Motion/Discovery Request for Defendant's Last Known Address**

22 Plaintiff filed a "discovery request seeking the present or last known address of the Defendant
23 not served," Defendant Gamboa. It is unclear why Plaintiff filed his "discovery request" with the
24 Court and it is unclear whether Plaintiff's request is directed to Defendants, or whether Plaintiff is
25 requesting the Court to provide information on Defendant Gamboa's last known address. Plaintiff
26 is advised that the Court has no information regarding Gamboa's last known address. Further, as
27 previously noted, discovery is a self-executing process and Plaintiff's discovery requests must be
28 served directly to Defendants. Additionally, although Defendant Gamboa has not yet made an

1 appearance in this action, the deadline for the U.S. Marshal to effect service of process on Gamboa
2 has not yet passed. Thus, it is not yet clear whether the U.S. Marshal will be able to locate
3 Defendant Gamboa using the information provided by Plaintiff. Plaintiff's "motion/discovery
4 request" will be denied.

5 Plaintiff is advised that it is his burden to provide the U.S. Marshal with information
6 regarding Defendant Gamboa's address so that the U.S. Marshal can effect service of process.
7 Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir. 1994) (quoting Puett v. Blandford, 912 F.2d 270,
8 275 (9th Cir. 1990)), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). If
9 Plaintiff cannot obtain that information, through discovery or otherwise, the Court will dismiss
10 Defendant Gamboa pursuant to Federal Rule of Civil Procedure 4(m).

11 **II. Conclusion and Order**

12 Based on the foregoing, it is HEREBY ORDERED that:

- 13 1. Defendants' request for leave to conduct Plaintiff's deposition by remote means is
14 GRANTED;
- 15 2. Plaintiff's request for a protective order prohibiting Defendants from deposing him
16 is DENIED;
- 17 3. Plaintiff's request to limit the duration of his deposition to 90 minutes is DENIED;
- 18 4. Plaintiff's motion to quash Defendants' discovery requests is DENIED; and
- 19 5. Plaintiff's motion/discovery request for Defendant Gamboa's last known address is
20 DENIED.

21
22 IT IS SO ORDERED.

23 **Dated: August 10, 2010**

24 /s/ Sheila K. Oberto
25 UNITED STATES MAGISTRATE JUDGE
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