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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ALEX LAMOTA MARTI,

1:07-cv-00066-LJO-GSA-PC

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION
TO STRIKE DEPOSITION, AND DENYING
PLAINTIFF’S MOTION FOR STAY
(Doc. 210.)

vs.

F. PADILLA, et al.,

ORDER FOR DEFENDANTS TO SERVE
PLAINTIFF WITH COPY OF DEPOSITION
TRANSCRIPT WITHIN TWENTY DAYS
(Doc. 175.)

Defendants.

ORDER FOR PLAINTIFF TO FILE
DECLARATION WITHIN FORTY-FIVE
DAYS, AS INSTRUCTED BY THIS ORDER

ORDER FOR DEFENDANTS TO NOTIFY
COURT WITHIN THIRTY DAYS IF
SETTLEMENT CONFERENCE WOULD BE
BENEFICIAL

_____ /

I. BACKGROUND

Alex Marti (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on January 12, 2007. (Doc. 1.) This action now proceeds on the Amended Complaint filed by Plaintiff on July 9, 2007, against twenty-two defendants (“Defendants”), on Plaintiff’s claims for retaliation in violation of the First Amendment. (Doc. 20.)

1 On July 29, 2010, Defendants filed a motion for summary judgment and lodged
2 Plaintiff's deposition transcript with the Court. (Docs. 173, 175.) On June 14, 2011, Plaintiff
3 filed a motion to strike the deposition from the record. (Doc. 210.) On January 12, 2012,
4 Defendants filed a response. (Doc. 235.) On January 25, 2012, Plaintiff filed a reply. (Doc.
5 237.)

6 Plaintiff's motion to strike is now before the Court.

7 **II. MOTION TO STRIKE**

8 "The district court is given broad discretion in supervising the pretrial phase of
9 litigation." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir.1992) (citation
10 and internal quotation marks omitted). Plaintiff brings a motion to strike his deposition from
11 the record, on the ground that Defendants failed to comply with Rule 30(e) of the Federal Rules
12 of Civil Procedure, which provides:

13 (1) **Review; Statement of Changes.** On request by the deponent or a party before
14 the deposition is completed, the deponent must be allowed 30 days after being
15 notified by the officer that the transcript or recording is available in which:

16 (A) to review the transcript or recording; and

17 (B) if there are changes in form or substance, to sign a statement listing the
18 changes and the reasons for making them.

19 (2) **Changes Indicated in the Officer's Certificate.** The officer must note in the
20 certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so,
21 must attach any changes the deponent makes during the 30-day period.

22 Plaintiff asserts that Defendants did not afford him the opportunity to review his
23 deposition transcript for the purpose of noticing changes. Plaintiff claims that on November 9,
24 2009, the date of the deposition, he made a request to Defendants' counsel "to review the
25 transcript for the purpose of noticing changes in form or substance and to sign a statement
26 listing the changes and the reasons for making them." (Motion, Doc. 210 at 2.) Plaintiff claims

1 that he was never afforded the opportunity to review the transcript, nor given a copy of the
2 transcript. Plaintiff asserts that he was only provided with selected pages of the transcript
3 submitted by Defendants as evidence in support of their motion for summary judgment.

4 In response, Defendants assert that they have no record of Plaintiff having made a
5 timely request under Rule 30(e) to review the deposition transcript. Defendants propose that
6 the Court enter an order directing that a copy of the transcript be provided for Plaintiff's review,
7 after which Plaintiff may provide a written statement identifying any requested changes to the
8 transcript and his reasons for making them.

9 Plaintiff rejects Defendants' proposal. Plaintiff argues that his recollection of the
10 deposition is not fresh, and he would be prejudiced by being forced to review the transcript at
11 this late date. Plaintiff argues that the deposition should be stricken because Defendants failed
12 to comply with Rule 30(e). Plaintiff proposes that after the deposition is stricken, the Court
13 should impose a stay on this action, including Defendants' motion for summary judgment, and
14 initiate a settlement conference to enable the parties to dispose of this action.

15 **Discussion**

16 Plaintiff's unverified assertions, that he made a request to Defendants' counsel on
17 November 9, 2009 to review his deposition transcript, and that Defendants failed to respond to
18 his request, are not sufficient evidence to support his argument that Defendants failed to comply
19 with Rule 30(e). Plaintiff offers only a conclusory statement that he made a request "to review
20 the transcript for the purpose of noticing changes in form or substance and to sign a statement
21 listing the changes and the reasons for making them." (Motion, Doc. 210, at 2.) Defendants
22 have no record of such a request by Plaintiff, and Plaintiff fails to offer any explanation why he
23 waited more than two years to raise this objection. Moreover, Plaintiff has not made any
24 indication that he objects to the selected deposition excerpts offered as evidence in support of
25 Defendants' pending motion for summary judgment. Based on these facts, the Court finds no
26 good cause to strike the deposition from the record.

1 Plaintiff shall be granted an opportunity to review the deposition transcript. Within
2 twenty days, Defendants shall serve Plaintiff with a copy of the deposition transcript which was
3 lodged on July 30, 2010. Within forty-five days of the date of service of this order, Plaintiff
4 shall file a declaration signed under penalty of perjury, listing changes to the deposition and his
5 reasons for the changes, or indicating that no changes are needed. In light of the fact that
6 Plaintiff waited more than two years to bring this issue before the Court, with no evidence that
7 he attempted to find resolution earlier with Defendants, the Court finds no prejudice to Plaintiff
8 in requiring him to review the transcript at this late date.

9 With regard to Plaintiff's request for a settlement conference,¹ Defendants shall notify
10 the Court within thirty days whether they believe, in good faith, that settlement in this case is a
11 possibility and whether they are interested in having a settlement conference scheduled by the
12 Court.² With regard to Plaintiff's request for a stay of this action, the Court finds no good cause
13 to impose a stay at this stage of the proceedings.

14 **III. CONCLUSION**

15 Based on the foregoing, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's motion to strike his deposition from the record is DENIED;
- 17 2. Plaintiff's motion to stay this action is DENIED;
- 18 3. Within twenty days of the date of service of this order, Defendants shall serve
19 Plaintiff with a copy of the deposition transcript lodged on July 30, 2010, and
20 Defendants shall file proof of service with the Court;

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22 ///

24 ¹Plaintiff requests settlement proceedings to resolve this action and to resolve another of Plaintiff's pending
25 actions, case 1:08-cv-00653-AWI-SKO-PC; Marti v. Baires, et al. Plaintiff is advised that any request for settlement
26 proceedings to resolve his other action must be made by separate request filed in the other action.

27 ²The parties may wish to discuss the issue by telephone in determining whether they believe settlement is
28 feasible.

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- 4. Within forty-five days of service of this order, Plaintiff shall file a declaration signed under penalty of perjury, listing changes to the deposition transcript and his reasons for the changes, or indicating that no changes are needed;
- 5. Within thirty days of the date of service of this order, Defendants shall notify the Court in writing whether they believe, in good faith, that settlement in this case is a possibility and whether they are interested in having a settlement conference scheduled by the Court; and
- 6. Extensions of time shall not be granted without a showing of good cause.

IT IS SO ORDERED.

Dated: February 7, 2012

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE