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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARCO DE PUENTE-HUDSON,

Plaintiff,

v.

DERRAL G. ADAMS,

Defendant.

CASE NO. 1:08-cv-01228-OWW-GSA PC

ORDER DENYING MOTION TO COMPEL
DEFENDANT TO RESPOND TO WRITTEN
DEPOSITION QUESTIONS

(Doc. 31)

Plaintiff Marcos De Puente-Hudson is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Defendant Derral G. Adams removed this action from Kings County Superior Court on August 19, 2008, and pursuant to the Court’s order of February 19, 2009, this action is proceeding against Defendant Adams for enacting a magazine policy that violates the First Amendment of the United States Constitution.

On October 21, 2009, Plaintiff filed a motion seeking an order compelling Defendant to respond to the written deposition questions Plaintiff served on August 23, 2009. Because the motion seeks relief which cannot be granted, the Court will address the motion without waiting for Defendant to respond. Local Rule 78-230(m).

Plaintiff may draft and serve Defendant with interrogatories, requests for admission, and requests for the production of document, and anticipate a response. However, Plaintiff may not simply draft deposition questions, and serve them on Defendant.

A deposition by written questions must be conducted in compliance with Rule 31 of the Federal Rule of Civil Procedure. Depositions by written questions entail more than mailing

1 questions to the deponents and awaiting their written responses. The Court will direct the Clerk's
2 Office to send Plaintiff a copy of Rule 31. If, after reviewing the rule, Plaintiff believes he is able
3 to depose Defendant in compliance with the rule, Plaintiff shall notify the Court and make a
4 showing, under penalty of perjury, that he is able and willing to retain an officer to take responses
5 and prepare the record. Fed. R. Civ. P. 31(b). At that juncture, the Court will determine what course
6 of action is needed to facilitate the deposition.

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

- 8 1. Plaintiff's motion to compel Defendant to respond to written deposition questions,
9 filed October 21, 2009, is DENIED; and
- 10 2. The Clerk's Office shall send Plaintiff a copy of Rule 31.

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13 IT IS SO ORDERED.

14 **Dated: October 23, 2009**

15 /s/ Gary S. Austin
16 UNITED STATES MAGISTRATE JUDGE