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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

HOMER TYRONE LEWIS,	)	1:12-cv-00856-LJO-BAM (PC)
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF’S
	)	REQUEST FOR DEPOSITION OF
v.	)	DEFENDANT P. DENNY AND FORMER
	)	DEFENDANT R. GARZA
KATHLEEN ALISON, et al.,	)	(ECF No. 95)
	)	
Defendants.	)	
	)	
	)	
	)	

Plaintiff Homer Tyrone Lewis (“Plaintiff”) is a state prisoner proceeding in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Denny for retaliation in violation of the First Amendment to the United States Constitution. The discovery deadline in this matter is April 1, 2015. (ECF No. 90.)

On February 19, 2015, Plaintiff filed a motion requesting to depose Defendant Denny and former-Defendant Garza during Plaintiff’s own deposition on March 12, 2015. (ECF No. 95.) A response is unnecessary and the motion is deemed submitted. Local Rule 230(l).

To the extent Plaintiff seeks to depose Defendant Denny and former-Defendant Garza via oral questions, there are certain procedures for a party to depose a witness in this manner and for compelling a non-party witness to attend by subpoena. Fed. R. Civ. P. 30; Fed. R. Civ. P. 45. Further, unless the parties stipulate otherwise, “a deposition must be conducted before an officer appointed or designated under Rule 28.” Fed. R. Civ. P. 30(b)(5)(A).

1 To the extent Plaintiff seeks to depose Defendant Denny and former-Defendant Garza via  
2 written questions, such a deposition must be conducted in compliance with Rule 31 of the  
3 Federal Rules of Civil Procedure. Fed. R. Civ. P. 31. Among other things, the rule requires a  
4 party noticing the deposition to deliver a copy of all questions to an “officer” appointed or  
5 designated under Rule 28. The officer must then take the deponent’s testimony in response and  
6 prepare the deposition transcript. Fed. R. Civ. P. 31(b).

7 Although Plaintiff proposes to conduct the depositions before a Certified Court Reporter,  
8 there is no indication that Plaintiff can bear the costs for such depositions, including  
9 compensation of the court reporter, witness fees and mileage. Plaintiff’s in forma pauperis status  
10 does not entitle him to free services or to utilize Defendant’s resources for the deposition. See  
11 e.g., Brooks v. Tate, 2013 WL 4049053, \*1 (E.D. Cal. Aug. 7, 2013) (indigent prisoner not  
12 entitled to take the depositions of defendant and non-party witnesses during his own deposition).

13 If Plaintiff wishes to conduct written or oral depositions, he should review Federal Rules  
14 of Civil Procedure 28, 30, 31, and 45. If, after reviewing these rules, Plaintiff believes he is able  
15 to depose Defendant Denny and former-Defendant Garza in compliance with the rules, Plaintiff  
16 shall notify the Court and make a showing that he is able and willing to retain an officer to take  
17 responses and prepare the record. At that time, the Court will reconsider Plaintiff’s request for  
18 leave to depose Defendant Denny and former-Defendant Garza.

19 Based on the above, Plaintiff’s motion for leave of court to depose Defendant Denny and  
20 former-Defendant Garza, filed February 19, 2015, is DENIED without prejudice.

21  
22 IT IS SO ORDERED.

23 Dated: March 6, 2015

24 /s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE  
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