

1 **I. Motion to Suppress Deposition Transcript and Testimony¹**

2 **A. Parties' Positions**

3 Plaintiff was deposed by oral examination on September 23, 2016. (ECF No. 124 at p.
4 2.) During the course of his deposition, Plaintiff requested on the record that he be permitted to
5 review his deposition pursuant to Federal Rule of Civil Procedure 30. Plaintiff claims that it was
6 specifically covered that the transcript must be mailed to him because he is a prisoner. (*Id.* at p.
7 3.)

8 On October 16, 2016, Plaintiff received written notice that the transcript was available for
9 review at a location outside of the prison. The notice also indicated that the court reporter would
10 be unable to release the original transcript for review. (ECF No. 124 at Ex. 1.) Plaintiff
11 complains that because of this procedure (review at an outside location) he was unable to
12 conduct a Rule 30(e) review and sign of his deposition. Plaintiff argues that he “has no reason to
13 believe that the purported transcript is full, complete or accurate as he has not been afforded an
14 opportunity to review and sign as required by law.” (*Id.* at pp. 3-4.) Plaintiff now objects to the
15 use of the transcript in this or any other civil action. He also requests the award of costs related
16 to the instant motion and his attendance at the deposition. (ECF No. 125 at pp. 2-3.)

17 In opposition, Defendants do not dispute that Plaintiff requested to review and sign the
18 deposition transcript during the deposition. However, Defendants argue that there is no
19 indication that Plaintiff made any effort to contact the court reporter after receiving notice that
20 his deposition transcript was available for review. Defendants further argue that prohibiting use
21 of the deposition testimony would severely prejudice their ability to adequately defend against
22 Plaintiff’s claims, and there is no merit to Plaintiff’s contention that the purported transcript is
23 incomplete or inaccurate.

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28 ¹ In his motion to suppress, Plaintiff incorporates by reference his Verified Fifth Objection filed on the same
day. (ECF No. 124 and ECF No. 125 at p. 2.) The Court therefore considers both documents in addressing the
instant motion to suppress.

1 **B. Discussion**

2 Plaintiff moves, pursuant to Federal Rule of Civil Procedure 32, to suppress his
3 deposition testimony because he was not afforded the opportunity to review and sign his
4 deposition under Rule 30(e). Fed. R. Civ. P. 32(d)(4) (“An objection to how the officer
5 transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise
6 dealt with the deposition—is waived unless a motion to suppress is made promptly after the error
7 or irregularity becomes known or, with reasonable diligence, could have been known.”) In
8 relevant part, Federal Rule of Civil Procedure 30(e) provides as follows:

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

11 **(A)** to review the transcript or recording; and

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

14 Fed. R. Civ. P. 30(e)(1). Here, it is undisputed that Plaintiff timely requested review of his
15 deposition transcript, and that he was notified by the court reporter on October 11, 2016, that his
16 deposition was available for review. Although Plaintiff complains that the procedure specified
17 by the court reporter prevented his review, there is no indication that Plaintiff undertook *any*
18 measures to review his deposition transcript during the thirty (30) day period. Instead, a mere
19 seven (7) days after receiving notice from the court reporter, Plaintiff immediately moved this
20 Court to suppress the deposition transcript and testimony. The Court declines to do so.

21 As Defendants note, the rules of civil procedure require the court reporter to furnish a
22 copy of the deposition transcript to any party or the deponent “[w]hen paid reasonable charges.”
23 Fed. R. Civ. P. 30(f)(3). There is nothing in the record indicating that Plaintiff made any effort
24 to secure a copy of the transcript or that he contacted defense counsel to help facilitate a review.

25 More importantly, an order suppressing the deposition transcript and testimony appears
26 unnecessary. Plaintiff has not set forth any basis to suggest that he made errors in his deposition
27 testimony that require correction. Plaintiff merely speculates, without any support, that the
28 transcript may not be full, complete or accurate. Moreover, “[e]ven a testimony change under

1 Rule 30(e) does not expunge the original deposition testimony; both the original transcript and
2 recording are retained and can be shown to the trier of fact.” *See Ochoa v. McDonald’s Corp.*,
3 No. 14-cv-02098-JD, 2015 WL 13079032, at *1 (N.D. Cal. June 2, 2015).

4 Further, unless and until Plaintiff’s deposition testimony is at issue in any motion or
5 proceeding before this Court, Plaintiff cannot demonstrate any prejudice resulting from his
6 inability to a conduct a review, and any request to suppress the use of his deposition testimony is,
7 at best, premature. The Court notes that the two motions for summary judgment currently
8 pending do not rely on any portion of Plaintiff’s deposition testimony. *See* ECF Nos. 141, 142.

9 **II. Conclusion and Order**

10 Based on the foregoing, Plaintiff’s motion to suppress deposition transcript and testimony
11 (ECF No. 125) is HEREBY DENIED.

12 IT IS SO ORDERED.

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14 Dated: August 7, 2017

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE