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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID FLYNN,
Plaintiff,
v.
CANLAS, et al.,
Defendants.

Case No. 1:16-cv-01052-AWI-BAM (PC)
ORDER DENYING PLAINTIFF’S MOTION
TO STRIKE DEPOSITION
(ECF No. 47)

Plaintiff David Flynn (“Plaintiff”) is a former state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff was a prisoner at the time this action was initiated. This action proceeds against Defendant Maddox for deliberate indifference to serious medical needs in violation of the Eighth Amendment.

On August 23, 2018, Plaintiff filed a motion for a Court order striking his deposition testimony from the record on the ground that Defendant violated California Civil Code of Procedure § 2025.270(a), by serving the deposition notice less than ten days prior to the scheduled deposition. (ECF No. 47.) Defendant filed an opposition on August 24, 2018. (ECF No. 48.) The deadline for Plaintiff’s reply has expired, and the motion is deemed submitted. Local Rule 230(l).

As Defendant argued in opposition to Plaintiff’s motion, California Code of Civil Procedure is inapplicable to this action. The California Code of Civil Procedure governs suits

1 litigated in California Superior Court, whereas the instant action has been filed in United States
2 District Court. Therefore, the Federal Rules of Civil Procedure apply.

3 Defendant provided Plaintiff with “reasonable written notice” of the scheduling of the
4 deposition, as required by Federal Rule of Civil Procedure 30(b)(1). Plaintiff received defense
5 counsel’s communication via email and actively participating in the selection of the date and
6 location of the deposition. Plaintiff was able to attend and participate in the deposition, and never
7 objected to the timing or notice of the deposition as unreasonable.

8 Accordingly, Plaintiff’s motion to strike his deposition from the record, (ECF No. 47), is
9 HEREBY DENIED.

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11 IT IS SO ORDERED.

12 Dated: September 12, 2018

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

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