

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVE ROCKY NICKLAS,
Plaintiff,
v.
W. KOKOR and MS. MATA,
Defendants.

Case No. 1:18-cv-00119-LJO-EPG (PC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF Nos. 61 & 66)

Steve Rocky Nicklas (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 24, 2019, Defendants filed a motion for terminating sanctions on the grounds that Plaintiff failed “to comply with a court order and participate in a deposition.” (ECF No. 61, p. 1). On November 21, 2019, Magistrate Judge Erica P. Grosjean entered findings and recommendations, recommending that:

1. Defendants’ Motion for Terminating Sanctions (ECF No. 61) be DENIED; and
2. Defendants be allowed to continue Plaintiff’s deposition at another date if they choose to do so, with the following procedures in place:
 - a. Plaintiff must remain in the deposition until the conclusion and answer questions to the best of his ability.

- 1 b. If Plaintiff believes that a question is so objectionable as to not require
2 an answer, he should explain why he is not answering the question. In
3 that case, defense counsel should attempt to address Plaintiff's
4 concern, or move onto another question.
5 c. Defendants may move to compel an answer to a question either by
6 contacting the Court during the deposition or filing a motion to
7 compel after the deposition.

8 (ECF No. 66, p. 9).

9 The parties were provided an opportunity to file objections to the findings and
10 recommendations. The deadline to file objections has passed and no objections have been
11 filed.

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this
13 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
14 the Court finds the findings and recommendations to be supported by the record and proper
15 analysis.

16 Accordingly, THE COURT HEREBY ORDERS that:

- 17 1. The findings and recommendations issued by the magistrate judge on November 21,
18 2019, are ADOPTED IN FULL;
19 2. Defendants' Motion for Terminating Sanctions (ECF No. 61) is DENIED; and
20 3. Defendants may continue Plaintiff's deposition at another date if they choose to do
21 so, with the following procedures in place:
22 a. Plaintiff must remain in the deposition until the conclusion and answer
23 questions to the best of his ability.
24 b. If Plaintiff believes that a question is so objectionable as to not require an
25 answer, he should explain why he is not answering the question. In that
26 case, defense counsel should attempt to address Plaintiff's concern, or move
27 onto another question.

28 ///

///

///

1 c. Defendants may move to compel an answer to a question either by
2 contacting the Court during the deposition or filing a motion to compel after
3 the deposition.

4
5 IT IS SO ORDERED.

6 Dated: January 27, 2020

/s/ Lawrence J. O’Neill
7 UNITED STATES DISTRICT JUDGE

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28