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8   IN THE UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

10   DENNIS G. CLAIBORNE,

11   Plaintiff,   No. CIV S-06-2919 FCD EFB P

12   vs.

13   K. BATTEY, et al.,

14   Defendants.   ORDER

15   _____/

16   Plaintiff is a state prisoner proceeding without counsel in an action brought under 42

17   U.S.C. § 1983. Plaintiff objects to the notice defendants have served upon him for taking his

18   deposition on July 14, 2009. Plaintiff objects to the notice on the grounds that defendants

19   already deposed him on July 18, 2008 and that defendants are merely engaging in a fishing

20   expedition. Plaintiff's objections are not well-taken.

21   This court issued a discovery and scheduling order on April 8, 2008. That order states

22   that defendants may depose plaintiff "upon giving the notice required by Federal Rule of Civil

23   Procedure 30(b)(1) at least fourteen days before such a deposition." Apr. 8, 2008 Order at 1. At

24   that time, only defendant Battey had appeared in this action. The only other defendant in this

25   action, defendant Harrison, did not appear until May 18, 2009. In anticipation of the fact that

26   defendant Harrison would be joining this action, defense counsel requested that the scheduling

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order be modified to allow for discovery as to the new defendant. *See* Fed. R Civ. P. 30 (A party may take another party's duly noticed deposition in person as a matter of right). After an executed waiver of service was filed on behalf of defendant Harrison, the court modified its April 8, 2008 scheduling order, in relevant part, to permit defendant Harrison and plaintiff to conduct discovery until July 31, 2009. Apr. 23, 2009 Order at 1.

Accordingly, it is hereby ORDERED that plaintiff's July 8, 2009 motion to vacate the taking of his deposition is denied. Plaintiff is warned that if he fails to appear after being served with a proper notice of deposition, the court may make such orders concerning the failure as are just, including dismissal. *See* Fed. R. Civ. P. 37(b)(2)(A).

Dated: July 10, 2009.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE