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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,  
  
Plaintiff,  
  
v.  
  
G. KAUR, et al.,  
  
Defendants.

No. 2:16-cv-1828 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. This action proceeds on plaintiff's claim that in 2016, defendant Kaur retaliated against plaintiff at California State Prison, Solano. (See ECF Nos. 25, 27.) By this order, the undersigned addresses plaintiff's motions to strike, and his motion for protective order as to his deposition that took place on April 11, 2019. Following resolution of those motions, the undersigned addresses the impending dispositive motions deadline in light of the pendency of additional discovery motions, and plaintiff's motion to amend.

I. Plaintiff's Motions to Strike

Plaintiff moves to strike various filings by defendants, claiming the filings were untimely. (ECF Nos. 77, 79.) However, as argued by defendants, plaintiff failed to take into account Rules 6(a) and 6(d) of the Federal Rules of Civil Procedure, which extend response dates an additional

1 three days for mailing, and further extend deadlines to the following Monday where deadlines end  
2 on a Saturday or Sunday. Id. Moreover, as to his motion to compel with sanctions and request  
3 for protective order, plaintiff's service by mail dates were extended to April 15, 2019, by his own  
4 correction to the dates of service filed on April 22, 2019. (ECF No. 68.) Given such extensions,  
5 all of defendant's oppositions were timely filed and plaintiff's motions to strike are denied.

## 6 II. Plaintiff's Motion for Protective Order re Deposition

7 On April 18, 2019, plaintiff filed a motion for protective order in connection with his  
8 April 11, 2019 deposition, seeking an order striking the deposition, or limiting its use. Plaintiff  
9 contends that defendant bullied plaintiff for discovery, and circumvented the work-product  
10 doctrine by attempting to solicit plaintiff's thought process through deposition and  
11 interrogatories. (ECF No. 67 at 1.) Plaintiff also contends the deposition notice was defective.  
12 Defendant opposes the motion on multiple grounds: plaintiff does not seek to preclude  
13 prospective discovery; plaintiff failed to prove any of his deposition testimony was protected by  
14 the work product doctrine; plaintiff failed to prove he was improperly forced to produce  
15 documents; and failed to demonstrate the deposition was improperly noticed. Defendant argues  
16 that plaintiff failed to demonstrate good cause for a protective order by showing specific  
17 prejudice or harm, and there is no evidence that plaintiff's deposition testimony contains  
18 privileged information.

### 19 A. Applicable Standards

20 The party seeking a protective order must show good cause. Fed. R. Civ. P. 26(c)(1). The  
21 moving party must make a clear showing of a particular and specific need for the order.  
22 Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975). "The party who resists  
23 discovery has the burden to show discovery should not be allowed." Id. "[B]road allegations of  
24 harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c)  
25 test." Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003) (internal  
26 quotes omitted). Relevant factors include whether: (a) the information is being sought for a  
27 legitimate purpose; (b) disclosure will violate any privacy interest or cause a party  
28 embarrassment; (c) disclosure is important to public health and safety; (d) sharing such

1 information will promote fairness and efficiency in the litigation; (e) the party seeking the  
2 protective order is a public entity or official; and (f) the case involves issues of public importance.  
3 See In re Roman Catholic Archbishop of Portland in Oregon, 661 F.3d 417, 424 (9th Cir. 2011).

4 Upon a showing of good cause, a district court may issue a protective order “‘which  
5 justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue  
6 burden or expense,’ including any order prohibiting the requested discovery altogether, limiting  
7 the scope of the discovery, or fixing the terms of disclosure.” Fed. R. Civ. P. 26(c); see also  
8 Rivera v. NIBCO, Inc., 364 F.3d 1057, 1063 (9th Cir. 2004). “The burden is upon the party  
9 seeking the [protective] order to ‘show good cause’ by demonstrating harm or prejudice that will  
10 result from the discovery.” Rivera, 364 F.3d at 1063. “If a court finds particularized harm will  
11 result from disclosure of information to the public, then it balances the public and private interests  
12 to decide whether a protective order is necessary.” Phillips ex rel. Estates of Byrd v. General  
13 Motors Corp., 307 F.3d 1206, 1211 (9th Cir. 2002).

#### 14 B. Discussion

15 Generally, parties seek protective orders to prevent a deposition from taking place, and  
16 must demonstrate “good cause” -- specific prejudice or harm -- before the order will issue.  
17 Cadent Ltd. v. 3M Unitek Corp., 232 F.R.D. 625, 629 (C.D. Cal. 2005); Phillips v. GMC, 307  
18 F.3d 1206, 1210-11 (9th Cir. 2002) (party resisting discovery bears burden of demonstrating why  
19 it is entitled to relief). Logically, such protective orders must be sought before the deposition  
20 takes place. However, here, plaintiff seeks an order striking his entire deposition testimony after  
21 the deposition was completed. As argued by defendant, the purpose of a protective order is to  
22 excuse a party from producing information in response to a discovery request. (ECF No. 74 at 4.)  
23 Plaintiff fails to identify any legal authority to support striking an entire deposition after it was  
24 completed.

25 Rather, as defendant points out, an appropriate post-deposition remedy might be a request  
26 to seal the deposition under Fed. R. Civ. P. 26(c)(1)(A)(F). (ECF No. 74 at 4, n.3.) But plaintiff  
27 does not argue or adduce evidence that he has a compelling privacy interest in the deposition  
28 transcript, or that any such privacy interest would outweigh the public’s right to access such

1 deposition testimony. See Fed. R. Civ. P. 26(c)(1)(F)-(H); see also Kamakana v. City and County  
2 of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (party seeking to seal a judicial record must  
3 articulate compelling reasons in favor of sealing).

4 In any event, plaintiff fails to demonstrate good cause for an order striking the entire  
5 deposition transcript or limiting or prohibiting its use. Defendants are entitled to depose plaintiff,  
6 and to learn facts plaintiff alleges support his cause of action. As stated above, the purpose of  
7 discovery is to avoid surprises; if plaintiff has evidence pertinent to his claims, he has a duty and  
8 obligation to disclose such evidence during discovery or risk having such evidence barred at trial  
9 based on a failure to disclose. As to the documents provided to defense counsel at the deposition,  
10 plaintiff concedes that most or all of the documents he produced during the deposition were  
11 discovery motions “already in [defense counsel’s] possession.” (ECF No. 67 at 2; Spence Depo.  
12 at 13-14, 17-19.) The deposition transcript confirms that plaintiff withheld documents he  
13 believed were privileged. (Spence Depo. at 14:1-10; 20-21.) Plaintiff identifies no specific  
14 document he contends is privileged but he was required to turn over during the deposition.

15 Further, plaintiff contends that defense counsel “repeatedly asked about the beliefs,  
16 thoughts, theories, impressions, opinions, and conclusions, including ‘deliberative processes.’”  
17 (ECF No. 67 at 2-3.) Plaintiff claims such questions are improper and not subject to disclosure  
18 because they are protected by the “work product” privilege dealt with in the leading case of  
19 Hickman v. Taylor, 329 U.S. 495 (1947) (now governed by Fed. R. Civ. P. 26(b)(3)). However,  
20 plaintiff’s deposition is 126 pages long; plaintiff fails to identify a page number or even a specific  
21 question that he believes violated such work product privilege. This court is not required to  
22 review the entire deposition transcript in an attempt to figure out which questions plaintiff  
23 contends were inappropriate.<sup>1</sup> In addition, he fails to specifically identify what testimony would  
24 harm or prejudice him. His bald claims that he was required to divulge raw factual information,

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25 <sup>1</sup> **Error! Main Document Only.**The court is not required to scour the record in search of  
26 potential evidence or arguments. See Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996) (“It is  
27 not our task, or that of the district court, to scour the record in search of a genuine issue of triable  
28 fact.”). See also Error! Main Document Only.Swisher v. Collins, 2009 WL 1658031, \*15 (D.  
Idaho 2009) (“**Error! Main Document Only.**The court is not required to ferret out facts from the  
entire record to support the Plaintiffs’ arguments.”).

1 opinion work product, and impeachment or rebuttal information (ECF No. 67 at 3) are  
2 insufficiently detailed to demonstrate harm or prejudice. Thus, plaintiff's motion for a protective  
3 order is denied.<sup>2</sup>

#### 4 Improper Notice

5 Finally, as to his claim that the deposition was improperly noticed, the undersigned has  
6 reviewed the notice and finds the notice complies with Rule 30(b)(1) of the Federal Rules of Civil  
7 Procedure. (ECF No. 67 at 7-8.) Rule 30(b)(1) does not require the deposition notice to identify  
8 whether the deposition is being taken under Rule 30(b)(1) or 30(b)(6), or that the notice contain  
9 any of the information specified under Rule 30(b)(5)(A). Moreover, the deposition notice  
10 incorporated a request for production of documents which properly required plaintiff to produce  
11 pertinent documents for inspection and copying at the deposition. (ECF No. 67 at 8.) Finally, as  
12 argued by defendants, the failure to append, or provide plaintiff with, a proof of service for the  
13 deposition notice does not warrant an order striking the deposition because plaintiff confirmed  
14 during the deposition that he received the deposition notice. (Spence Depo. at 5:15-25; 6:1-2.)  
15 Moreover, the notice of deposition appended as an exhibit to the deposition reflects that plaintiff  
16 was personally delivered a copy of the notice on March 25, 2019. (Id., Ex. A.) Plaintiff's  
17 reliance on Rules 4 and 5 of the Federal Rules of Civil Procedure is unavailing because such rules  
18 are not relevant; neither rule requires that a deposition notice must be accompanied by a proof of  
19 service when served on deponent. Moreover, as argued by defendants, the cases cited by plaintiff  
20 do not impose such a requirement. (See ECF No. 74 at 12:15-22.) Thus, plaintiff's motion to  
21 strike the deposition based on an allegedly improper notice is denied.

#### 22 III. Scheduling Implications

23 At present, four motions remain pending: plaintiff's motion to amend and three motions  
24 to compel discovery. Because the court has not yet ruled on these motions, it is unclear whether  
25 additional responses to discovery will be required which could impact the briefing on dispositive  
26 motions. In light of the impending dispositive motion deadline, July 19, 2019, such deadline is

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27 <sup>2</sup> Plaintiff is advised that the denial of such motion does not preclude him from raising specific  
28 evidentiary objections at trial. See Fed. R. Civ. P. 32(b).

1 vacated and will be reset upon resolution of these remaining motions. See Johnson v. Mammoth  
2 Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (“The district court is given broad discretion  
3 in supervising the pretrial phase of litigation.”) No party shall file a dispositive motion until  
4 further court order.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff’s motions to strike (ECF Nos. 77, 79) are denied;
- 7 2. Plaintiff’s motion for protective order (ECF No. 67) is denied;
- 8 3. Discovery is closed;
- 9 4. The July 19, 2019 dispositive motion deadline is vacated; no party shall file a  
10 dispositive motion pending further order of the court.

11 Dated: June 20, 2019

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13 \_\_\_\_\_  
14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE

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