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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 ERIC ANTHONY ALSTON, JR.,

12 Plaintiff,

13 v.

14 COUNTY OF SACRAMENTO, et al.,

15 Defendants.  
16

No. 2:18-cv-02420-TLN-CKD PS

ORDER

17 Before the court is plaintiff Eric Alston, Jr.'s motion for sanctions against defendant Ken  
18 Lloyd. (ECF No. 64.) Defendant filed an opposition, (ECF No. 65), and plaintiff filed a reply.  
19 (ECF No. 66.) Pursuant to Local Rule 230(g), the court ordered that the matter be submitted on  
20 the papers. (ECF No. 67.) For the reasons below, the court denies plaintiff's motion.

21 **I. BACKGROUND**

22 Plaintiff filed this suit against the City of Sacramento, Sheriff Scott Jones, and other city  
23 officials for injuries he allegedly sustained while being arrested for a domestic violence incident.  
24 Plaintiff allegedly fell and hurt his knee while being loaded into the patrol car. (ECF No. 1 ¶ 24.)  
25 He was taken to the hospital, and after he was treated, the deputies took him to jail. Plaintiff  
26 alleges that upon arriving at the jail, Deputy Ken Lloyd "choke slam[med him] out of [his]  
27 wheelchair while [he was] handcuffed onto the ground." (Id. ¶ 27.) The next day, while still at  
28 the jail, plaintiff allegedly fell again. (Id. ¶ 30.) The deputies provided plaintiff with a

1 wheelchair, and he posted bail that afternoon. (Id. ¶ 30-31.) Two days later, doctors determined  
2 that plaintiff had suffered a concussion. (Id. ¶ 31.) All criminal charges against plaintiff were  
3 eventually dropped.

4 On May 30, 2019, the district court fully adopted the undersigned’s recommendation to  
5 dismiss all claims against all defendants, except for three claims against Deputy Lloyd: (1) a  
6 claim for excessive force under 42 U.S.C. section 1983, (2) a claim under California’s Bane Act,  
7 and (3) a battery claim. (ECF No. 20.)

8 On December 10, 2019, the undersigned issued a pretrial scheduling order which provided  
9 that all discovery must be “completed” by June 19, 2020. (ECF No. 46 at 2.) As defined in the  
10 order, “[t]he word ‘completed’ means that all discovery shall have been conducted so that all  
11 depositions have been taken and any disputes relative to discovery shall have been resolved by  
12 appropriate order if necessary and, where discovery has been ordered, the order has been  
13 complied with.” (Id.)

14 On June 11, 2020, defense counsel Jill Nathan deposed plaintiff remotely via  
15 teleconference. Plaintiff refused to answer questions on the grounds that defense counsel was  
16 inquiring about matters irrelevant to the claims against Deputy Lloyd. The deposition lasted less  
17 than an hour, and largely consisted of objections and argument regarding the relevance of defense  
18 counsel’s questioning.

19 On July 13, 2020, plaintiff filed the present motion for sanctions against defense counsel.  
20 Plaintiff contends that defense counsel badgered and harassed him during the deposition by  
21 repeatedly asking questions that pertained to dismissed claims and parties. Plaintiff asks the court  
22 to sanction defense counsel in the amount of \$50,000. Defendant responds that plaintiff’s motion  
23 is frivolous and asks the court to sanction plaintiff in the amount of \$2,000 for the costs and  
24 attorney’s fees incurred in responding to plaintiff’s motion. The court discusses the parties’  
25 arguments below.

## 26 **II. DISCUSSION**

27 Both plaintiff and defendant ask this court to impose monetary sanctions on the other  
28 party. Plaintiff asserts two legal bases to support his sanction request. First, he argues that

1 defense counsel violated this court's dismissal order by asking questions about dismissed claims  
2 and parties during plaintiff's deposition, thereby committing civil contempt under 18 U.S.C.  
3 section 401 and Federal Rule of Civil Procedure 70. Second, plaintiff argues that defense  
4 counsel's line of questioning impeded the deposition, warranting sanctions under Federal Rule of  
5 Civil Procedure 30(d)(2).

6 Defendant also requests sanctions against plaintiff in his opposition. Defendant argues  
7 that plaintiff's sanction motion is frivolous and misrepresentative, and thus the court should  
8 award defendant the attorney's fees incurred responding to the motion, as permitted by 28 U.S.C.  
9 section 1927. As discussed below, the court declines to sanction either party.

10 **A. Plaintiff has not shown that sanctions against defendant are warranted.**

11 Plaintiff contends that sanctions are warranted for contempt of court under 18 U.S.C.  
12 section 401 and Federal Rule of Civil Procedure 70, and for impeding a deposition under Federal  
13 Rule of Civil Procedure 30(d)(2).

14 i. Defense counsel did not commit civil contempt.

15 Courts have statutory authority to punish both civil and criminal contempt pursuant to 18  
16 U.S.C. section 401.<sup>1</sup> "Civil contempt . . . consists of a party's disobedience to a specific and  
17 definite court order by failure to take all reasonable steps within the party's power to comply."  
18 Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y, 774 F.3d 935, 945 (9th Cir.  
19 2014). "The party alleging civil contempt must demonstrate that the alleged contemnor violated  
20 the court's order by 'clear and convincing evidence,' not merely a preponderance of the  
21 evidence." Id.

22 Plaintiff argues that defense counsel committed civil contempt by disobeying the district  
23 court's order granting defendant's motion to dismiss. On May 30, 2019, the district court signed  
24 an order dismissing all claims against all defendants, except three of plaintiff's claims against  
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26 <sup>1</sup> Plaintiff also seeks to impose sanctions pursuant to Federal Rule of Civil Procedure 70. But that  
27 rule concerns the enforcement of judgments: it permits a court to hold a party in contempt for  
28 disobeying judgment requiring specific performance, such the conveyance of land. Fed. R. Civ.  
P. 70. The court has not entered any judgment against defendant Lloyd in this case, and thus Rule  
70 cannot support plaintiff's sanctions request.

1 defendant Ken Lloyd. Plaintiff argues that during his deposition on June 11, 2020, defense  
2 counsel inquired about matters irrelevant to the three remaining claims against Lloyd, and thus  
3 she violated the district court's dismissal order. For example, defense counsel asked whether  
4 plaintiff was wearing a walking boot on his right foot at the time of his arrest. Plaintiff refused to  
5 answer this question because he believed it was irrelevant to Deputy Lloyd and the "choke slam"  
6 incident.<sup>2</sup> (ECF No. 64 at 8.)

7       Upon reviewing the submitted deposition excerpts, the undersigned finds that defense  
8 counsel did not fail to comply with the district court's May 30, 2019 order. That order gave two  
9 directives: (1) plaintiff's claims were dismissed with prejudice as to all defendants, except as to  
10 defendant Lloyd; and (2) defendant Lloyd was ordered to answer plaintiff's section 1983, Bane  
11 Act, and battery claims no later than sixty days from the date of the order. (ECF No. 23.)  
12 Defendant complied with the order by timely answering plaintiff's three claims on July 25, 2019.  
13 (ECF No. 29.) Neither the May 30, 2019 order, nor any other order issued in this case, limited  
14 the scope of defendant's questioning during his deposition of plaintiff. Even assuming that  
15 defense counsel's questions were irrelevant to the claims against Lloyd, asking irrelevant  
16 questions cannot constitute contempt absent a specific and direct order proscribing such conduct.  
17 Thus, plaintiff's contempt argument fails.

18       ii. Defense counsel's deposition questions did not impede, delay, or frustrate the fair  
19 examination of plaintiff.

20       Plaintiff also argues that sanctions are appropriate under Federal Rule of Civil Procedure  
21 30. Rule 30 authorizes courts to "impose an appropriate sanction—including the reasonable  
22 expenses and attorney's fees incurred by any party—on a person who impedes, delays, or  
23 frustrates the fair examination of the deponent." Fed. R. Civ. P. 30(d)(2). Argumentative  
24 objections, suggestive objections, and improper refusals to answer questions are examples of  
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27 <sup>2</sup> Defense counsel attempted to explain that her questions were intended develop the foundation  
28 for plaintiff's allegations in the complaint, and that they were relevant to plaintiff's \$10,000,000  
damages request. Plaintiff, however, maintained his refusal to answer.

1 conduct that impede, delay, or frustrate the fair examination of the deponent. See Security Nat'l  
2 Bank v. Jones Day, 800 F.3d 936, 942 (8th Cir. 2015).

3 The submitted deposition excerpts show that defense counsel did not impede, delay, or  
4 frustrate the deposition. To the contrary, defense counsel appears to have asked reasonable  
5 questions and to have maintained professionalism, while attempting to explain to plaintiff the  
6 relevance of her line of questioning. Plaintiff, on the other hand, appears to have been  
7 obstreperous through his numerous speaking objections and improper refusals to answer.  
8 Because defense counsel's conduct did not impede, delay, or frustrate the deposition, the  
9 undersigned denies plaintiff's request for sanctions under Rule 30 as well.

10 **B. The court declines to sanction plaintiff under Rule 30 or 28 U.S.C. § 1927.**

11 In its opposition to plaintiff's motion for sanctions, defendant Lloyd requests counter-  
12 sanctions against plaintiff for "unreasonable and vexatious conduct, and for reckless  
13 misstatements of law and fact." (ECF No. 65 at 7.) Defendant argues that plaintiff's deposition  
14 conduct is sanctionable under Rule 30(d)(2). Defendant also argues that sanctions are appropriate  
15 under 28 U.S.C. section 1927, which authorizes a court to hold a party who unreasonably and  
16 vexatiously multiplies proceedings in a case liable for the other party's excess attorney's fees  
17 reasonably incurred as a result of the unnecessary proceedings. 28 U.S.C. § 1927; see also Wages  
18 v. Internal Revenue Serv., 915 F.2d 1230 (9th Cir. 1990) (holding that pro se litigants may be  
19 sanctioned under section 1927).

20 To support his argument that sanctions are warranted under Rule 30, defendant avers that  
21 plaintiff objected more than twenty times during a one-hour deposition. Defendant avers that  
22 nearly all of plaintiff's objections were for relevance, and that plaintiff repeatedly refused to  
23 answer questions that he deemed irrelevant to the claims against Deputy Lloyd.<sup>3</sup> Defendant notes  
24 that plaintiff's refusals were improper, because a deponent may refuse to answer questions only to

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26 <sup>3</sup> Defendant notes that a deponent may refuse to answer questions only "to preserve a privilege, to  
27 enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)," which  
28 allows a party to move to terminate a deposition on the ground that it is being conducted in bad  
faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent. Fed. R.  
Civ. P. 30(d).

1 preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under  
2 Rule 30(d)(3).<sup>4</sup> Fed. R. Civ. P. 30(d). Thus, defendant contends that it was plaintiff—not defense  
3 counsel—who impeded, delayed, or frustrated the deposition.

4 In addition, defendant contends that plaintiff’s motion for sanctions is “reckless” and  
5 potentially made in bad faith, warranting sanctions under section 1927. Defendant argues that  
6 plaintiff: (1) filed the motion for sanctions one month after discovery closed and all disputes  
7 related to discovery were to have been presented to the court and resolved; (2) recklessly  
8 mischaracterized the court’s dismissal order as a protective order limiting the scope of discovery;  
9 and (3) provided no legal support for the imposition of punitive sanctions against defense counsel.  
10 In short, defendant argues that plaintiff’s frivolous motion caused an unreasonable multiplication  
11 of proceedings, causing defendant to incur unnecessary attorney’s fees in the amount of \$2,000,  
12 which should be paid by plaintiff.

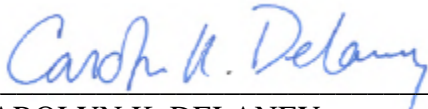
13 Although the court does not approve of plaintiff’s obstructive deposition conduct, and  
14 although the court finds that plaintiff’s motion for sanctions is meritless, the undersigned declines  
15 to sanction plaintiff at this time. As a pro se litigant, plaintiff is afforded leniency with regard to  
16 his knowledge of the law. Plaintiff is nevertheless cautioned that his objections and refusals to  
17 answer—as shown by the deposition transcripts—were improper and disruptive. Similar  
18 disruptive behavior in the future may result in monetary or terminating sanctions, as appropriate.

### 19 **III. CONCLUSION**

20 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff’s motion for sanctions (ECF No. 64) is DENIED; and
- 22 2. Defendant’s request for sanctions against plaintiff is DENIED.

23 Dated: September 14, 2020

24   
25 CAROLYN K. DELANEY  
26 UNITED STATES MAGISTRATE JUDGE

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28 <sup>4</sup> Rule 30(d)(3) allows a party to move to terminate a deposition “on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent.”