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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE GEORGE HASH,

No. C 08-03729 MMC (DMR)

Plaintiff(s),

**ORDER GRANTING DEFENDANTS'
 MOTION TO COMPEL AND DENYING
 PLAINTIFF'S CROSS-MOTION TO
 COMPEL**

v.

MATTHEW CATE,

Defendant(s).

Defendants in this civil rights case move pursuant to Federal Rule of Civil Procedure 37 and Civil Local Rule 37-1 (1) to compel *pro se* Plaintiff Lawrence G. Hash to appear for deposition for up to an additional 15 hours, (2) to compel him to testify during deposition, irrespective of whether correctional officers are present, and (3) to admonish him that further refusal to participate in his deposition without solid legal justification may result in sanctions. Plaintiff cross-moves to compel Defendants to provide him with all previous transcripts of his deposition testimony and the transcripts of “inmate Bengar” and “inmate Sidley’s” deposition testimony. For the following reasons, the court grants Defendants’ motion and denies Plaintiff’s cross-motion.

I. Background

Plaintiff, currently incarcerated in Solano State Prison, filed this civil rights action on August 4, 2008 against numerous defendants whom he claims repeatedly violated his civil rights at Salinas Valley State Prison. [Docket No. 1.] He filed an amended complaint, which lists 84 defendants, on June 29, 2009. [Docket No. 12.] On November 5, 2009, the court dismissed several defendants without prejudice and allowed the case to proceed against 31 individuals (“Defendants”). [Docket No. 14.] The court subsequently dismissed without prejudice five other defendants. [Docket Nos. 71, 82.]

1 Plaintiff's deposition has been the subject of previous discovery disputes. Despite the
2 District Court's November 5, 2009 order, which held that "[n]o further court order under Federal
3 Rule of Civil Procedure 30(a)(2) . . . is required before the parties may conduct discovery," [Docket
4 No. 14 at 10-11], Plaintiff invoked Rule 30(a)(2) to resist deposition. In response, defense counsel
5 filed a motion to compel him to submit to a deposition, [Docket No. 46], which the court granted,
6 [Docket No. 48]. The commencement of the next deposition was delayed while prison officials
7 located Plaintiff's security clearance, and the parties were forced to vacate the deposition room early
8 so that it could be used for another inmate's parole hearing. (Grigg Decl. ¶¶ 5, 7, Sept. 22, 2010.)
9 Moreover, during that attempted deposition, Plaintiff allegedly refused to testify and raised
10 numerous objections. (Grigg Decl. ¶ 6.) By the time these multiple issues were resolved, defense
11 counsel had only two hours in which to depose him. (Grigg Decl. ¶ 7.) Plaintiff refused to continue
12 the deposition at a later date, citing the general rule that depositions should span a single day.
13 (Defs.' Mot. Compel 2.) Defense counsel thereafter filed another motion to compel, [Docket No.
14 50], which the District Court granted, [Docket No. 59]. The next deposition session took place with
15 correctional officers present in an adjoining room so that the officers could watch, but not hear,
16 Plaintiff's testimony per an agreement between the parties. Defense counsel avers that during that
17 session, Plaintiff raised unfounded, often already-resolved objections to the proceedings that allowed
18 defense counsel to glean only limited testimony from Plaintiff. During the following session,
19 Plaintiff refused to testify with any of the correctional officers in the room. (Grigg Decl. ¶ 2, Aug.
20 20, 2012.)

21 In response to this impasse, defense counsel filed the present motion to compel, asking the
22 court to compel Plaintiff (1) to appear for deposition for up to an additional 15 hours, given
23 Plaintiff's record of delaying the proceedings and the large number of defendants and claims, and (2)
24 to testify irrespective of whether correctional officers are present. (Grigg Decl. ¶ 6, Aug. 20, 2012.)
25 Defense counsel also asks the court to admonish Plaintiff that further refusal to participate in his
26 deposition without solid legal justification may result in sanctions. Plaintiff has cross-moved to
27 compel Defendants to provide him with all previous transcripts of his deposition testimony and the
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1 transcripts of “inmate Bengar” and “inmate Sidley’s” deposition testimony. (Pl.’s Opp’n 13-15.)
2 The Honorable Maxine M. Chesney referred this motion to the undersigned. [Docket No. 97.]

3 **II. Defendants’ Motion to Compel**

4 **A. Defendants’ Arguments**

5 Defense counsel maintains that he requires up to 15 additional hours to complete Plaintiff’s
6 deposition. The complexity of Plaintiff’s claims, which are brought against 31 defendants, and
7 allege “a variety of purported instances of deliberate indifference, excessive force and retaliation,”
8 effectively make the case “dozens of cases in one.” (Defs.’ Mot. Compel 4 (citing Grigg Decl. ¶ 4).)
9 Moreover, defense counsel asserts that Plaintiff’s penchant for “asserting lengthy baseless objections
10 about everything from the length of breaks taken during the deposition to court reporter’s
11 qualifications” necessitate this extra time. (Defs.’ Mot. Compel 4.)

12 Defense counsel also asserts that legitimate safety concerns warrant the presence of
13 correctional officers in the room during the deposition. He notes that Plaintiff has been convicted of
14 murder, and is of sizeable physical stature, with a history of prison violence and “an anger
15 problem.” (Grigg Decl. ¶¶ 3-4, Aug. 20, 2012.) Although during the prior deposition session
16 defense counsel agreed to proceed with correctional officers present in an adjoining viewing room,
17 he asserts that he is “not inclined to again endanger his safety,” and that the court reporter has stated
18 that there is “no way” that she wants to proceed without correctional officers present. (Defs.’ Mot.
19 Compel 3 (citing Grigg Decl.).)

20 **B. Plaintiff’s Arguments**

21 Plaintiff opposes the request for additional deposition time and further contends that defense
22 counsel waived Defendants’ remaining time to depose Plaintiff when defense counsel refused,
23 without notice, to proceed with the deposition without correctional officers in the room. (Pl.’s
24 Opp’n 10-12.) Plaintiff likewise takes issue with defense counsel’s allegation that Plaintiff “used up
25 a portion of [defense counsel’s] deposition time with . . . extensive objections” as not supported by
26 evidence. (Pl.’s Opp’n 12.)

27 Plaintiff also contends that he legitimately objects to “having correctional officers sit in on,
28 and listen to his deposition, which involve[s] adverse claims against various other correctional

1 officers.” (Pl.’s Opp’n 3.) He asserts that various correctional officers at his current prison have
2 harassed and taunted him in retaliation for bringing suit against other correctional officers. For
3 example, Plaintiff asserts that shortly after the April 20, 2012 deposition proceeding, two
4 correctional officers made demeaning and threatening remarks to him regarding his suit. (Hash
5 Decl. ¶ 2, Oct. 17, 2012.) According to Plaintiff, later that day, two correctional referred to him as
6 “that inmate that likes to sue [correctional officers]” and took him to program office, “where they
7 had [him] strip naked to examine the inside of [his] mouth, arm pits [sic], genitals, buttocks, and
8 [his] feet, shoes and clothing. The two officers harassed [him] about suing [correctional officers]
9 and made demeaning and threatening remarks” (Hash Decl. ¶ 4.) Plaintiff fears that if
10 correctional officers “are allowed to actually listen in on his deposition regarding his allegations
11 against their fellow correctional officers, there is a strong likelihood that [he] will suffer additional
12 retaliation.” (Pl.’s Opp’n 9 (quotation marks omitted); *accord* Hash Decl. ¶ 6.) Further, he disputes
13 defense counsel’s characterization of him as a violent prisoner and notes that defense counsel
14 previously agreed to depose him in a manner which allowed correctional officers to view the
15 deposition through a neighboring room with a large viewing window. (Pl.’s Opp’n 3, 6, 9.) In this
16 manner, the officers maintained security and safety measures, but could not listen in on his
17 allegations against other correctional officers. According to Plaintiff this procedure “worked
18 flawlessly.” (Pl.’s Opp’n 3.)

19 Plaintiff also contends that Federal Rule of Civil Procedure 26(c)(1)(E) and California Code
20 of Regulations Title 15, Section 3178(m) provide grounds for proceeding with the deposition
21 without the correctional officers’ presence. (Pl.’s Opp’n 7.) The former states, in relevant part, that:

22 (1) In General. A party . . . from whom discovery is sought may move for a
23 protective order in the court where the action is pending The court may, for good
24 cause, issue an order to protect a party . . . from annoyance, embarrassment,
oppression, or undue burden or expense, including one or more of the following: . . .
(E) designating the persons who may be present while the discovery is conducted.

25 Fed. R. Civ. P. 26(c)(1). The latter mandates that “[c]onversations between an inmate and an
26 attorney and/or attorney representative shall not be listened to or monitored, except for that visual
27 observation by staff which is necessary for the safety and security of the institution/facility.” Cal.
28 Code Regs. tit. 15, § 31378(m).

1 **III. Applicable Law and Discussion**

2 **A. Defendants’ Request for Extra Time to Depose Plaintiff**

3 Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, a party may move the court
4 to compel the deposition of a party who improperly fails to testify at deposition. Fed. R. Civ. P.
5 37(a); *see Hart v. PAE Gov’t Servs., Inc.*, No. 10-1672, 2011 WL 2580389, at *1 (E.D. Cal. June 28,
6 2011). In circumstances when the time allotted for deposition does not permit the deponent to be
7 “fairly examine[d],” the court “must allow additional time” for the deposition. Fed. R. Civ. P.
8 30(d)(1). This mandate applies to situations where the complexity of the case necessitates additional
9 time, as well as when the deponent or other circumstances have “impede[d] or delay[ed] the
10 examination.” *Id.*

11 The record demonstrates that deposing Plaintiff has proven difficult. Defense counsel
12 repeatedly has had to turn to the court for assistance in completing the deposition. [*See, e.g.*, Docket
13 Nos. 46, 48, 50, 59.] In addition, Plaintiff has objected and improperly refused to respond to defense
14 counsel’s questions. Rule 30(c)(2) of the Federal Rules of Civil Procedure, however, makes clear
15 that an objection during a deposition “must be noted on the record, *but the examination still*
16 *proceeds; the testimony is taken subject to any objection.*” Fed. R. Civ. P. 30(c)(2) (emphasis
17 added). A deponent may refuse to answer a question “only when necessary to preserve a privilege,
18 to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).” *Id.*; *accord*
19 *Craig v. St. Anthony’s Med. Ctr.*, 384 F. App’x 531, 532-33 (8th Cir. 2010) (“The advisory
20 committee’s comments explain that argumentative objections, suggestive objections, and directions
21 to a deponent not to answer often disrupt, unduly prolong, and unfairly frustrate deposition
22 testimony.”). Plaintiff has not abided by these requirements. In addition, Plaintiff has brought a
23 complex case, encompassing 31 defendants and myriad legal claims. (*See generally* Am. Compl.)
24 The standard amount of time allotted for a deposition is not adequate to meet Defendants’ needs.
25 Plaintiff’s improper delays of the deposition process and the complexity of the case have not
26 permitted defense counsel to “fairly examine” Plaintiff and warrant granting additional time to finish
27 Plaintiff’s deposition. *See E.E.O.C. v. Lowe’s HIW, Inc.*, Nos. 08-331; 08-5053, 2009 WL 811495,
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1 at *2 (W.D. Wash. Mar. 27, 2009). The court therefore grants Defendants 15 additional hours to
2 depose Plaintiff, exclusive of breaks.

3 **B. Defendants’ Request to Have Correctional Officers Present During the Deposition**

4 A party to a deposition may obtain a protective order from the court which “designat[es] the
5 persons who may be present” during the deposition upon showing “good cause” that the party
6 requires protection from “annoyance, embarrassment, oppression or undue burden or expense.” Fed.
7 R. Civ. P. 26(c)(1). Courts often employ a balancing test to determine whether good cause exists to
8 issue the protective order. *See See Eisai Inc. v. Sanofi-Aventis U.S., LLC*, No. 08-4168, 2012 WL
9 1299701, at *6 (D.N.J. Apr. 16, 2012); *Crable v. State Farm Mut. Auto. Ins. Co.*, No. 10-CV-402,
10 2012 WL 602752, at *2 (M.D. Fla. Feb. 24, 2012).

11 The court understands Plaintiff’s concern that providing deposition testimony about
12 allegedly illegal acts by Salinas Valley State Prison correctional officers within hearing range of
13 correctional officers from his current prison may subject him to harassment. However, the court
14 also recognizes that defense counsel and the court reporter have reasonable safety concerns, (*see*
15 Grigg Decl. ¶ 5), about proceeding with the deposition of a violent convicted murderer of imposing
16 stature without a security presence in the room. Moreover, any feared retaliation that Plaintiff
17 believes he may face will be tempered by the fact that his lawsuit does not implicate correctional
18 officers or other individuals from his current prison. The court finds that, on balance, Plaintiff has
19 not shown good cause for entry of a protective order excluding correctional officers from his
20 deposition.¹ However, defense counsel is ordered to inform the correctional officers who are
21 present during the deposition that the court orders the following: The correctional officers may not
22 discuss the contents of the deposition with others.

23 **IV. Plaintiff’s Cross-Motion to Compel**

24 According to Plaintiff, Defendants promised to provide him with a copy of his September 20,
25 2010 deposition transcript within 30 days of the deposition. However, despite several attempts to

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27 ¹ Plaintiff’s contention that Title 15, Section 3178(m) of the California Code of Regulations
28 obliges prison officials to visually observe his deposition outside of hearing distance is baseless. This
subsection concerns only “conversations” between a prisoner and his attorney or attorney representative.
Defense counsel is not Plaintiff’s attorney, and a deposition is not a conversation.

1 have Defendants fulfill this promise, Plaintiff still has not received the full transcript for review, in
2 violation of Federal Rule of Civil Procedure 30(e). (Pl.'s Opp'n 3, 14-15; Pl.'s Supplemental Br. 3.)
3 In addition, Plaintiff notes that, although Defendants have deposed an inmate Begar and an inmate
4 Sidley due to their involvement in this action, Defendants have refused to produce copies of those
5 deposition transcripts as well. (Defs.' Opp'n 3.) On November 16, 2012, in response to an order for
6 supplemental briefing, [Docket No. 114], Defendants informed the court that they had provided
7 Plaintiff with copies of the deposition transcripts. [Docket No. 116.] The court therefore denies
8 Plaintiff's cross-motion as moot.

9 **V. Conclusion**

10 For the reasons above, the court grants Defendants' motion to compel and denies Plaintiff's
11 cross-motion to compel as moot. Defendants shall have a total of 15 remaining hours of deposition
12 time from the date of this order. Plaintiff may not refuse to participate in his deposition if defense
13 counsel or the court reporter requests that correctional officers be placed in the room for their safety.
14 Defense counsel is ordered to inform the correctional officers who are present during the deposition
15 that the court orders the following: The correctional officers may not discuss the contents of the
16 deposition with others.

17 Although Plaintiff may make objections to defense counsel's inquiries for the record, he
18 nevertheless must proceed to the questions to the best of his ability. The court warns Plaintiff that
19 failure to participate in his deposition without sound legal cause may lead to sanctions, including
20 adverse factual inferences, the striking of the Amended Complaint, or even dismissal of the case.
21 *See* Fed. R. Civ. P. 37(b)(2)(A).

22
23 IT IS SO ORDERED.

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25 Dated: December 4, 2012

