

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS MANUEL GARCES,

Plaintiff,

v.

J. PICKETT, et al.,

Defendants.

No. 2:17-cv-0319 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are defendants' motion to compel plaintiff's deposition and a motion for monetary sanctions (ECF No. 171) and plaintiff's request for a conference (ECF No. 172).

I. Procedural History

By order filed June 25, 2021, the undersigned granted defendants' motion to compel plaintiff to appear for his deposition. ECF No. 161. Plaintiff was warned that failure to participate in the deposition would result in sanctions that could range from exclusion of evidence all the way up to dismissal of the case, depending upon the degree of non-compliance. Id. at 3. Defendants have now filed another motion to compel plaintiff to participate in his deposition. ECF No. 171.

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II. Motion to Compel

Defendants seek an order compelling plaintiff to participate in his deposition and provide his testimony in Spanish through the use of a Spanish interpreter. ECF No. 171. They assert that after the court granted their previous motion, they attempted to take plaintiff's deposition on July 15, 2021. ECF No. 171-1 at 5. Prior to the start of the deposition, it became clear that counsel and the court reporter required the assistance of a Spanish language interpreter in order to fully understand plaintiff, and the parties agreed to postpone the deposition so that an interpreter could be retained. Id. The deposition was rescheduled for August 12, 2021, and counsel retained two court-licensed Spanish interpreters. Id. at 5-6.

Plaintiff appeared for his deposition on August 12, 2021, but before the parties were on the record he stated that the audio connection via Zoom was choppy. Id. at 6. Plaintiff was then set up to communicate with counsel on speaker over the phone, at which point it appeared he could hear all participants very well, and the audio quality on plaintiff's side was later confirmed by an officer. Id. at 6-7. After the audio issues were resolved, plaintiff refused to proceed with the translators and stated that he preferred to conduct the deposition in English. Id. at 6. Counsel explained several times that she and the court reporter needed the translators because they had difficulty understanding plaintiff when he spoke in English, but plaintiff continued to refuse to be deposed through the interpreters. Id. The court reporter also clarified that though she had initially stated that she could not *hear* plaintiff, what meant was that she could not *understand* him. Id. After plaintiff continued to refuse to use the interpreters, counsel chose to end the deposition and gave plaintiff an opportunity to state his position on the record in English or Spanish. Id. Plaintiff chose to speak in English, and though the participants were able to hear him well, they had difficulty understanding him and the court reporter had to interrupt him ten times in eighteen minutes because she could not understand him. Id. at 7.

In his request for a conference and opposition to the motion to compel, plaintiff accuses defendants' counsel of perjury and manipulating the record.<sup>1</sup> ECF Nos. 172, 178. Specifically,

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<sup>1</sup> Plaintiff has also filed an unauthorized surreply that largely reiterates the arguments in his opposition and will be disregarded. See ECF No. 181.

1 plaintiff claims that he could understand counsel without an interpreter, he never agreed to use an  
2 interpreter, counsel manipulated the audio and conspired with the court reporters to make it  
3 appear that they could not understand plaintiff, and that he was unable to understand what the  
4 interpreters were saying. Id. He requests that the court conduct a hearing to resolve the discovery  
5 disputes, including defendants' failure to provide responses to requests for production, and that  
6 his deposition be conducted in front of the undersigned. Id.

7 Plaintiff's claims that he never agreed to be deposed through an interpreter, and that  
8 counsel and the court reporter could understand him when he spoke in English, are directly  
9 contradicted by the transcripts provided by defendants. See ECF No. 171-3 at 3-20. The  
10 transcript from the attempted deposition on July 15, 2021, reflects that defendants' counsel had  
11 difficulties understanding plaintiff and that plaintiff declined the opportunity to add to or correct  
12 counsel's statements that there had been an agreement that a Spanish interpreter was necessary.  
13 Id. at 5-6. The transcript of the attempted deposition on August 12, 2021, also reflects that there  
14 were no problems with hearing plaintiff, but that counsel and the court reporter were both  
15 regularly unable to understand him and that portions of plaintiff's statement remained  
16 indiscernible despite the court reporter requesting clarification. Id. at 12-19.

17 Though plaintiff argues that he is able to understand counsel and does not require an  
18 interpreter, the same clearly cannot be said for counsel and the court reporter, and defendants are  
19 entitled to a clear record of plaintiff's deposition testimony. Plaintiff has not offered any  
20 legitimate reason why he should not be required to provide his deposition testimony in Spanish  
21 through an interpreter and the motion to compel therefore will be granted. See Hunt v. County of  
22 Orange, 672 F.3d 606, 616 (9th Cir. 2012) ("District courts have 'broad discretion to manage  
23 discovery and to control the course of litigation under Federal Rule of Civil Procedure 16.'" (quoting Avila v. Willits Env't Remediation Tr., 633 F. 3d 828, 833 (9th Cir. 2011))).

24 With respect to plaintiff's requests to compel further discovery responses, except for  
25 motions to compel related to plaintiff's deposition, motions to compel were to be filed by October  
26 23, 2020 (ECF No. 115), and plaintiff's time to file a motion for sanctions for failure to comply  
27 with the court's March 16, 2021 order compelling discovery expired on June 25, 2021 (ECF No.  
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151). Plaintiff's requests for the court to issue an order compelling discovery responses from defendants are therefore untimely and will be denied.<sup>2</sup> The requests that the court conduct a hearing on the discovery issues and oversee plaintiff's deposition will also be denied.

III. Defendant's Motion for Monetary Sanctions

When a motion to compel is granted, "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees" unless the movant filed the motion before making a good faith attempt to obtain the discovery without court action, the opposing party's conduct was substantially justified, or "other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5). In light of plaintiff's indigence and his status as a pro se prisoner-plaintiff, the court finds that an award of expenses would be unjust and the request will be denied on that basis. However, given plaintiff's history of non-compliance with being deposed, he is cautioned that failure to fully participate in the deposition or refusal to provide his testimony in Spanish through a translator is likely to result in terminating sanctions.

IV. Summary for Pro Se Plaintiff

The magistrate judge is granting defendants' motion to depose you again, in Spanish, with the assistance of Spanish-language interpreters. You will not be sanctioned for what has happened so far, but **if you do not cooperate with a final deposition using interpreters, the magistrate judge will probably recommend that your case be dismissed.** Your requests for discovery, for a conference, and for the deposition to happen in front of the judge are all denied.

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants' motion to compel plaintiff's deposition (ECF No. 171) is GRANTED.
2. Within forty-five days of the service of this order, defendants may take plaintiff's

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<sup>2</sup> The court further notes that it has already addressed the alleged deficiencies with the supplemental responses defendants provided in response to the March 16, 2021 order, which comprise half of the requests plaintiff identifies in his current requests. See ECF No. 161.

1 deposition either in person or by videoconference. Defendants shall serve all parties with the  
2 notice required by Federal Rule of Civil Procedure 30(b)(1) at least fourteen days before such a  
3 deposition.

4 3. Plaintiff shall fully participate in his deposition and provide his testimony at the  
5 deposition in Spanish through the use of Spanish translators. If plaintiff refuses to fully  
6 participate in his deposition or refuses to testify in Spanish through a translator, defendants may  
7 bring a motion for sanctions within fourteen days of being advised of plaintiff's refusal.

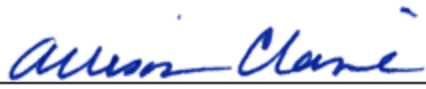
8 4. Defendants' request for monetary sanctions (ECF No. 171) is DENIED.

9 5. Plaintiff's request for a conference (ECF No. 172) is DENIED.

10 6. Plaintiff's requests to have the deposition conducted before the undersigned and to  
11 compel discovery responses from defendants (ECF Nos. 172, 178) are DENIED.

12 7. Plaintiff's surreply (ECF No. 181) is DISREGARDED.

13 DATED: April 7, 2022

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15 ALLISON CLAIRE  
16 UNITED STATES MAGISTRATE JUDGE  
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