

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Anthony M. Herrera v. Jeff Lynch, et al.

Herrera v. Lynch · No. 2:24-cv-1660 DJC CSK P · Decided October 9, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ANTHONY M. HERRERA, No. 2:24-cv-1660 DJC CSK P 12 Plaintiff, 13
v. ORDER 14 JEFF LYNCH, et al., 15 Defendants. 16 17 I. INTRODUCTION 18 Plaintiff is a
state prisoner, proceeding without counsel, with a civil rights action pursuant 19 to 42 U.S.C. §
1983. Pending before the Court is defendants’ motion to compel plaintiff’s 20 deposition and
plaintiff’s request to remove defense counsel.

(ECF Nos. 46, 49.) For the 21 following reasons, defendants’ motion to compel is granted,
plaintiff’s motion to remove defense 22 counsel is denied, and discovery is reopened for the
limited purpose of permitting defendants to 23 complete plaintiff’s deposition. 24 II. MOTION
TO COMPEL 25 A. Legal Standards 26 Because the motion to compel was filed after discovery
closed on August 29, 2025, this 27 Court analyzes defendants’ motion under the legal standards
for motions to compel and motions 28 to reopen discovery.

1 1. Motion to Compel 2 Defendants are entitled to conduct discovery, which includes taking the
deposition of 3 plaintiff, to obtain information pertaining to the factual allegations, legal claims
and defenses at 4 issue in this action. Fed. R. Civ. P. 26(b)(1), 30.

Under Federal Rule of Civil Procedure 37, 5 when an adverse party fails to cooperate in discovery,
the party seeking discovery may move to 6 compel disclosure or discovery. Fed. R. Civ. P. 37(a)
(1). In particular, this type of motion may 7 be made if a deponent fails to answer a deposition
question: “[A]n evasive or incomplete 8 disclosure, answer, or response must be treated as a
failure to disclose, answer or respond.” Fed.

9 R. Civ P. 37(a)(4). If the motion is granted and the deponent thereafter fails to comply with the
10 court’s order to answer a deposition question, the failure may be treated as contempt of court
and 11 the court may issue a variety of sanctions, including dismissal of the action. Fed. R. Civ. P.
12 37(b). 13 2. Motion to Reopen Discovery 14 Once a scheduling order has been filed pursuant
to Federal Rule of Civil Procedure 16, the 15 “schedule may be modified only for good cause and
with the judge’s consent.” Fed.

R. Civ. P. 16 16(b)(4). The Ninth Circuit instructs district courts to consider the following factors
in 17 determining whether to amend a Rule 16 scheduling order to reopen discovery: 18 (1)

whether trial is imminent[;] (2) whether the request is opposed[;] (3) whether the non-moving party would be prejudiced[;] 19 (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court[;] (5) the foreseeability 20 of the need for additional discovery in light of the time allowed for discovery by the district court[;] and (6) the likelihood that the 21 discovery will lead to relevant evidence.

22 City of Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017) (internal citations 23 omitted). Furthermore, “[d]istrict courts have ‘broad discretion to manage discovery and to 24 control the course of litigation under [Rule] 16.’” Hunt v. County of Orange, 672 F.3d 606, 616 25 (9th Cir. 2012) (quoting Avila v. Willits Envtl. Remediation Trust, 633 F.3d 828, 833 (9th Cir.

26 2011)). 27 /// 28 /// 1 B. Discussion 2 1. Defendants’ Position 3 In support of the motion to compel, defendants state that on June 25, 2025, defendants 4 deposed plaintiff, with plaintiff appearing from the California State Prison-Los Angeles County 5 (CSP-LAC) and defense counsel and the court reporter appearing by video. (ECF No. 49 at 3.) 6 During the deposition, which began at 9:06 a.m., defense counsel observed plaintiff was 7 disoriented, lethargic and unfocused.

(Id.) Plaintiff frequently slurred his words, mumbled his 8 answers, gave disjointed or nonresponsive statements, and at times appeared to fall asleep. (Id.) 9 At approximately 9:29 a.m., defense counsel texted his supervisor, expressing his concerns that 10 plaintiff was under the influence of a substance because he was mumbling and continued to get 11 confused or distracted.

(Id.) At approximately 10:10 a.m., defense counsel paused the deposition 12 for a recess. During the break, the court reporter emailed defense counsel, stating that plaintiff 13 was “sniffing or sucking on something.” (Id.) Defense counsel observed plaintiff inhaling an 14 unknown substance from a container in his shirt pocket. (Id.) At 10:32 a.m., defense counsel 15 emailed the litigation coordinator to report what he and the court reporter had observed.

(Id.) 16 When the deposition resumed after the break, defense counsel told plaintiff about his observations 17 and that for plaintiff’s health and safety, defense counsel had emailed the litigation coordinator. 18 6/25/2025 Plaintiff Depo. Tr. at 52:10-12. Defense counsel told plaintiff that once defense 19 counsel heard back from the litigation coordinator, defense counsel intended to suspend the 20 deposition and resume it another day.

Id. at 52:13-16. Plaintiff denied being under the influence 21 of any substance. Id. at 52:25-53:1-6. Due to a miscommunication between counsel and the 22 litigation coordinator, plaintiff was removed from the room by custody staff prior to the 23 deposition being terminated. Id. at 59:7-9, 61:1-6. Defendants terminated the deposition at 11:11 24 a.m. Id. at 59-60.

25 As a result, defendants move to compel plaintiff’s further deposition to ensure that 26 plaintiff adequately participates in the deposition while not under the influence of any non- 27 prescribed

substances. 28 Attached to the motion to compel is a copy of the rules violation report charging plaintiff 1 with disobeying an order. (ECF No. 49 at 47-48.)

The report states that on June 25, 2025, 2 plaintiff was put in a holding cell and refused to provide a urine sample. (Id. at 48.) The rules 3 violation report was later reduced to a counseling chrono. (Id. at 4, 48.) 4 2. Plaintiff's Position 5 Plaintiff did not file an opposition to defendants' motion to compel.

However, on August 6 25, 2025, plaintiff filed the pending request to remove defense counsel, which addresses the 7 circumstances of the deposition, and a request for a sixty day extension to respond to defendants' 8 written discovery requests. (ECF No. 46.)

In a separate order, the Court granted Plaintiff until 9 October 24, 2025 to serve his responses. (ECF No. 50.) 10 In plaintiff's August 25, 2025 filing, plaintiff states that during the June 25, 2025 11 deposition, defense counsel falsely accused plaintiff of doing drugs during the deposition. (Id. at 12 1.) Plaintiff states that during the deposition, he informed defense counsel that he was not feeling 13 well.

(Id. at 2.) Plaintiff states that at the time of the deposition, custody staff were standing right 14 outside the room. (Id.) On the day of the deposition, plaintiff was very sick and on medication. 15 (Id.) Plaintiff states that before he was taken to the deposition, plaintiff agreed to an unclothed 16 body search and was thoroughly searched before he came out of his cell.

(Id. at 3.) Plaintiff 17 states that after he was removed from the deposition, prison officials asked plaintiff to give a 18 urine sample. (Id.) Plaintiff states that he was later falsely charged with refusing to give a urine 19 sample. (Id.) Plaintiff appears to claim that after being removed from the deposition, he was 20 placed in a holding cage, where plaintiff threw up and defecated at the same time, possibly due to 21 diabetic medicine plaintiff was taking.

(Id.) Plaintiff states that he asked to be taken to his cell 22 where plaintiff would give the urine sample. (Id. at 4.) Plaintiff states that he has been in prison 23 for a very long time and has never refused to give a urine sample. (Id.) Plaintiff states that it was 24 well documented that he was sick and had not been able to get out of his bed for weeks to do his 25 normal program.

(Id. at 7.) 26 At the deposition, plaintiff testified that he was sick: 27 Q: And I notice that, you know, you seem a little tired and a little sleepy. And I'm wondering are any of the medications that you are 28 currently on causing you to feel a little tired? 1 A: I'm—I'm sick, yeah. I mean, I been—I been real—very sick. You hear me? So I'm taking—I'm coming down—like, I'm on a lot 2 of medication right now anyway because I'm sick.

I'm under the weather. 3 Q: Okay. 4 A: I just—I was on antibiotics. And the antibiotics, I just had strep 5 throat and all of that. So yeah. 6 6/25/2025 Plaintiff Depo. Tr. at 24:4-16. 7 3. Analysis 8

For the following reasons, defendants' motion to compel is granted.

As discussed above, 9 defendants are entitled to take plaintiff's deposition. This Court need not reach the cause of 10 plaintiff's condition at the deposition because, regardless of the cause, defendants were unable to 11 complete plaintiff's deposition.

For these reasons, defendants' motion to compel is granted. See 12 Fed. R. Civ. P. 26(b)(1), 30. 13 For the following reasons, this Court finds good cause to reopen discovery so that 14 defendants may conduct a further deposition of plaintiff. Except for plaintiff's responses to 15 defendants' written discovery, discovery closed on August 29, 2025.¹ (ECF No. 44.)

Applying 16 the six factors to reopen discovery set forth above, this Court first finds that trial is not imminent 17 because no trial date has been set. As to the third factor, there is no prejudice to plaintiff in 18 permitting defendants to complete plaintiff's deposition.

As to the fourth factor, defendants were 19 diligent in seeking to depose plaintiff. As to the fifth factor, it was foreseeable that defendants 20 would need to further depose plaintiff following the June 25, 2025 deposition.

In making this 21 finding, this Court finds that there is no evidence that defense counsel acted in bad faith during 22 the deposition when he expressed concerns for plaintiff based on plaintiff's conduct at the 23 deposition.

As to the final factor, the further deposition of plaintiff will likely lead to relevant 24 evidence. Though it appears that plaintiff opposes defendants' request to compel a further 25 deposition (second factor), this Court finds that the other five factors weigh in favor of re-opening 26 27 1 The Court previously granted plaintiff's request for an extension until October 24, 2025 to 28 serve his responses.

(ECF No. 50.) 1 discovery to allow defendants to complete plaintiff's deposition. In this analysis, the Court does 2 not make and need not make any findings as to the parties' arguments regarding the cause of 3 plaintiff's condition during the June 25, 2025 deposition, whether any substances were ingested 4 during the deposition, or conduct after the deposition.

5 Turning to the length of plaintiff's further deposition, Federal Rule of Civil Procedure 6 30(d)(1) provides that, unless otherwise stipulated or ordered, a deposition is limited to one day of 7 seven hours but that "the court must allow additional time consistent with Rule 26(b)(1) and (2) if 8 needed to fairly examine the deponent or if the deponent, another person, or any other 9 circumstances impedes, or delays, the examination." Fed.

R. Civ. P. 30(d)(1). In the motion to 10 compel, defendants claim that plaintiff's deposition was suspended due to plaintiff's condition, 11 which impeded defendants' fair examination of plaintiff.

(ECF No. 49 at 6.) Defendants request 12 that they be allowed to continue plaintiff's deposition beyond the normal single-day limit to 13 obtain the discovery needed for their defense.

(Id.) Good cause appearing, defendants' request is 14 granted, discovery is reopened, and the further deposition of plaintiff may be taken in one day for 15 up to seven hours.² 16 Plaintiff is cautioned that if he refuses to participate in the further deposition, defendants 17 may move for sanctions, including terminating sanctions. 18 Discovery is reopened for 45 days for the limited purpose of defendants' further 19 deposition of plaintiff.

Because 45 days from the date of this order falls on a Saturday, discovery 20 is reopened up to and including November 24, 2025 for defendants to complete the further 21 deposition of plaintiff. 22

III. PLAINTIFF'S REQUEST TO REMOVE DEFENSE COUNSEL 23 Plaintiff requests that the Deputy Attorney General who conducted the deposition be 24 removed from this action because he falsely accused plaintiff of being impaired at the deposition.

25 (ECF No. 46.) This Court does not have the authority to remove the Deputy Attorney General 26 from this action. To the extent plaintiff seeks sanctions against the Deputy Attorney General 27 2 The deposition transcript from the June 25, 2025 deposition reflects that it began at 9:06 a.m. 28 and ended at 11:11 a.m. 1 || based on the June 25, 2025 deposition, this Court finds no grounds for sanctions.

Accordingly, 2 | plaintiffs request to remove the Deputy Attorney General is denied. 3 | IV. PRETRIAL MOTION DEADLINE 4 The current pretrial motion deadline is November 21, 2025. (ECF No. 44.) Because 5 || discovery is reopened up to and including November 24, 2025, the pretrial motion deadline is 6 || reset to Friday, January 9, 2026. 7 | V. CONCLUSION 8 Accordingly, IT IS HEREBY ORDERED that: 9 1.

Plaintiffs request to remove defense counsel (ECF No. 46) is denied; 10 2. Defendants' motion to compel plaintiff's further deposition (ECF No. 49) is granted; 11 3. Discovery is reopened up to and including November 24, 2025 for the limited purpose 12 | of defendants completing plaintiffs further deposition; and 13 4.

The pretrial motion deadline of November 21, 2025 is vacated and reset to Friday, 14 | January 9, 2026. 15 16 || Dated: October 9, 2025 xv - ¢. Chan Spo M7 CHI SOO KIM 18 | Herr1660.com/2 UNITED STATES MAGISTRATE JUDGE 19 20 21 22 23 24 25 26 27 28