

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Keen v. Cross

No. 2:24-cv-0299-JDP (P), slip op. (E.D. Cal. Aug. 4, 2025) · No. 2:24-cv-0299-JDP (P) · Decided August 4, 2025

SUMMARY

The Eastern District of California grants defendants’ motion to compel plaintiff Brandon Keen to resume his deposition in this § 1983 action. The court holds that plaintiff’s desire to review video evidence and obtain counsel did not justify refusing to answer deposition questions, and it warns that further noncooperation could result in terminating sanctions. The court also extends the discovery and dispositive-motion deadlines for the limited purpose of completing the deposition, while denying plaintiff’s motion to compel production of the video as procedurally improper and untimely.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 4, 2025
DOCKET	2:24-cv-0299-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	In this § 1983 prisoner civil-rights action, defendants moved to compel plaintiff to resume his deposition and to modify the discovery and scheduling deadlines. Plaintiff separately moved to compel production of a video. The magistrate judge granted defendants' motion and denied plaintiff's motion.
STANDARD OF REVIEW	The court applied the Federal Rules of Civil Procedure governing depositions and motions to compel, including whether the moving party demonstrated actual and substantial prejudice from denial of discovery and whether good cause supported modifying the scheduling order.
PRECEDENTIAL VALUE	unpublished

TOPICS

discovery dispute

civil procedure

prisoners rights

section 1983

sanctions

PRACTICE AREAS

civil procedure

prisoner civil rights

federal discovery

QUESTIONS PRESENTED

1. Whether defendants were entitled to an order compelling plaintiff to resume and participate in his deposition.
2. Whether plaintiff could refuse to answer deposition questions because he had not viewed a video of the incident or lacked appointed counsel.
3. Whether good cause supported extending the discovery and dispositive-motion deadlines for the limited purpose of completing plaintiff's deposition.
4. Whether plaintiff's motion to compel production of the video was proper when he had not shown that he first served a discovery request and filed the motion after the applicable deadlines.

HOLDINGS

1. A deponent may not refuse to answer deposition questions on those grounds. Plaintiff was required to appear and participate in the properly noticed deposition without appointed counsel.
2. Defendants were entitled to an order compelling plaintiff to resume and complete his deposition.
3. The scheduling order was modified to extend the discovery deadline for 90 days from the date of the order for the limited purpose of taking plaintiff's deposition, with the dispositive-motion deadline extended to 90 days after the new discovery deadline.
4. Plaintiff's motion to compel was properly denied because he did not show that defendants had failed to respond to a discovery request and because he filed the motion after the applicable discovery deadlines.

KEY QUOTATIONS

“An objection at the time of the examination—whether to evidence, to a party’s conduct, to the officer’s qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds.” (slip op. at 3)

“Plaintiff is informed that he is required to appear at a properly noticed deposition and respond to questions by defendants’ counsel.” (slip op. at 5)

FACTUAL BACKGROUND

Plaintiff, a pro se state inmate, alleged that defendants violated his Eighth Amendment rights after becoming aware that he had set a fire in his cell but failed to assist him. During a properly noticed deposition, plaintiff stopped answering questions, stating that he needed counsel or court assistance, had not viewed a video of the incident, and could not recall certain matters because of his medications. Defendants ended the deposition, requested that plaintiff agree to resume it, and received no response. Plaintiff later sought production of the

video, but he did not establish that he had previously requested it from defendants and filed his motion after the discovery deadlines had expired.

PROCEDURAL HISTORY

Plaintiff, a state inmate proceeding pro se, filed an Eighth Amendment § 1983 action against Cross and Wallace. After plaintiff stopped answering questions during a properly noticed deposition, defendants moved to compel his continued deposition and to extend the discovery and dispositive-motion deadlines. Plaintiff moved to compel production of video evidence, but the motion was filed after the relevant discovery deadlines and without showing that he had first served a proper discovery request.

DISPOSITION

other

CASES CITED

- Veterans for Common Sense v. Shinseki, 644 F.3d 845, 888 (9th Cir. 2011)
- Hallen v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002)
- Madrid v. De La Cruz, No. 1:18-cv-00947-DAD-EPG, 2019 WL 2994301, at *3 (E.D. Cal. July 9, 2019)
- Tene v. City and County of San Francisco, No. C 00-03868 WHA, 2004 WL 1465726 (N.D. Cal. May 12, 2004)
- Green v. CDCR, No. 2:14-cv-2854-TLN-AC, 2018 WL 4963122, at *2 (E.D. Cal. Oct. 15, 2018)
- Pulliam v. Lozano, No. 1:07-cv-964-LJO-MJS, 2011 WL 335866, at *3 (E.D. Cal. Jan. 31, 2011)
- Nicholson v. Rushen, 767 F.2d 1426, 1427 (9th Cir. 1985) (per curiam)
- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 BRANDON KEEN, Case No. 2:24-cv-0299-JDP (P) 12 Plaintiff, 13 v.
ORDER 14 CROSS, et al., 15 Defendants. 16 17 18 Plaintiff, a state inmate proceeding pro se,
brought this § 1983 action against defendants 19 Cross and Wallace, alleging that they violated his
Eighth Amendment rights when they became 20 aware that plaintiff had set a fire in his cell but
failed to help him.

Now pending before the court 21 are defendants’ and plaintiff’s motions to compel. Defendants
further seek to modify the 22 discovery and scheduling order to allow additional time to retake
plaintiff’s deposition. For the 23 following reasons, defendants’ motion is granted and plaintiff’s is
denied. 24 Defendants’ Motion to Compel Plaintiff’s Deposition 25 Defendants’ move to compel
plaintiff to resume his deposition testimony.

ECF No. 43. 26 Discovery opened February 20, 2025, and the deadline for completion of discovery was June 13, 27 2025. ECF No. 35. On March 13, 2025, defendants served plaintiff with a deposition notice for 28 1 April 30, 2025. ECF No. 43-2 at 5-6.

The deposition was scheduled for April 30, 2025, at 9:00 2 a.m. at California Men's Colony via audio-visual conference. Id. 3 On April 30, 2025, plaintiff and defense counsel appeared for the deposition. ECF No. 4 43-2 at 12-16.

The deposition started at 9:09 a.m., id. at 16, and defense counsel ended the 5 deposition for the day at 10:33 a.m., id. at 55. At 10:07 a.m., the parties took a break and 6 resumed the deposition at 10:24 a.m. Id. at 47-48. Prior to the break, plaintiff informed defense 7 counsel that he was finished with the deposition because he did not have counsel and because 8 defense counsel had not shown plaintiff the video recording of the alleged fire.

Id. at 44-47. 9 Q. Sir, are you refusing to participate in the rest of this deposition? 10 A. I need to get hold of somebody to help me for assistance. 11 Q. I get that, sir. But we're going to still continue with this deposition today. Okay? 12 A. I'm done. Done answering questions. I'm not refusing. I'm 13 done. That's it. I don't know what to tell you. I don't recall anything else.

14 Q. Okay. Well -- 15 A. I need help. I need assistance and help with this issue. Because 16 if I don't recall, the only thing you are going to twist it against me. And it's all on camera. You seen the film over and over. And I 17 haven't had the opportunity to look at it. 18 Id. at 46. When the parties returned from the break, defense counsel verbalized for the record that 19 plaintiff had placed a sheet over his holding cell such that he was not visible on the screen.1 Id. at 20 48.

21 Defense counsel asked plaintiff is he was refusing to answer questions based on plaintiff's 22 lack of recall and lack of desire to continue the deposition. Id. at 49-50. Plaintiff responded that 23 he needed to view the video of the incident to refresh his memory to answer defense counsel's 24 questions, that he could not answer questions due to his mental health medications, and that he 25 needed first to speak with the court.

Id. at 50-51. Following the deposition, defense counsel sent 26 plaintiff a letter that explained that if plaintiff did not inform him that he would sit for another 27 1 Defendants lodged with the court a video recording on the deposition and the court 28 agrees that plaintiff had placed a white sheet over the holding cell and was not visible. 1 deposition, defendants would file a motion to compel plaintiff's deposition.

Id. at 60. Defendants 2 did not receive a response. 3 Defendants are entitled to conduct discovery, which includes the deposition of plaintiff, to 4 obtain all information pertaining to the factual allegations, and legal claims and defenses at issue 5 in this action. Fed. R. Civ. P. 26(b)(1) & 30. "An objection at the time of the examination-- 6 whether to evidence, to a party's conduct, to the

officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds.” Fed.

R. Civ. P. 30(c)(2). Objections must be stated concisely in a non-argumentative and non-suggestive manner. *Id.* The deponent may refuse to answer a question “only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).” *Id.* The court may impose a sanction—including of reasonable expenses and attorney's fees—on any person who “impedes, delays, or frustrates the fair examination of the deponent.” Fed.

R. Civ. P. 30(d)(2). Under Rule 37(a), a party seeking discovery may move for an order compelling discovery when an opposing party has failed to respond. Fed. R. Civ. P. 37(a). In filing a motion to compel, the moving party bears the burden of demonstrating that he will suffer “actual and substantial prejudice” from the denial of discovery. *Veterans for Common Sense v. Shinseki*, 644 F.3d 845, 888 (9th Cir.

2011) (citing *Hallen v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)). During the deposition, plaintiff advanced two primary bases for refusing to answer defense counsel's questions. First, he objected that he could not recall the answers to certain questions because he had not seen the video. ECF No. 43-2 at 50-52.

Second, he stated that he needed either to speak with the court or to be represented by counsel before answering questions. *Id.* Both objections are unavailing. Plaintiff's first objection, that he could not recall answers without first seeing the video of the incident, is not a valid basis under Rule 30 for refusing to answer a question. Plaintiff voluntarily invoked the procedures of this court when he filed this lawsuit, and he must comply with his discovery obligations.

Madrid v. De La Cruz, No. 1:18-cv-00947-DAD-EPG, 2019 WL 28 2994301, at *3 (E.D. Cal. July 9, 2019) (quoting *Tene v. City and Cnty of San Francisco*, No. C 1 00-03868 WHA, 2004 1465726 (N.D. Cal. May 12, 2004)). Defendants have a fundamental right to discovery and to effectively defend themselves. Fed. R. Civ. P. 26, 30. Plaintiff's refusal to answer questions at his deposition prejudices defendants' ability to defend against this case.

See *Green v. CDCR*, No. 2:14-cv-2854-TLN-AC, 2018 WL 4963122, at *2 (E.D. Cal. Oct. 15, 2018) (“It would be fundamentally unfair and prejudicial to defendants to permit plaintiff to continue to pursue this action without requiring his attendance and cooperation at his deposition.”). Plaintiff's second argument, that he may refuse to participate in his deposition unless he is represented by counsel or talks to the court first, is equally without merit.

See *Pulliam v. Lozano*, 9 No. 1:07-cv-964-LJO-MJS, 2011 WL 335866, at *3 (E.D. Cal. Jan. 31, 2011) (noting that a pro se inmate must fully participate and cooperate in properly noticed

deposition despite his 11 preference for appointed counsel); Green, 2018 WL 4963122, at *2 (noting that a pro se plaintiff 12 is “required to fully participate in all stages of the proceedings”).

As I have explained to plaintiff 13 previously, see ECF Nos. 7, 17, & 42, there is no right to counsel in 1983 cases. See *Nicholson v. 14 Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) (per curiam). Although a court may request counsel 15 to represent an inmate, such requests are only warranted when justified by exceptional 16 circumstances. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir.

1997). And as previously 17 evaluated, this case does not present exceptional circumstances justifying the appointment of 18 counsel. Because defendants’ ability to adequately defend against plaintiff’s claims will be 19 prejudiced without his deposition testimony, plaintiff will be compelled to sit for his deposition 20 without court appointed counsel. 21 Plaintiff is informed that he is required to appear at a properly noticed deposition and 22 respond to questions by defendants’ counsel.

In answering questions, plaintiff is not required to 23 speculate or guess, although he may be asked to give an estimate of matters where estimates are 24 commonly made (e.g., distance, size, weight, etc.). Plaintiff may review documents or other 25 evidence available at the deposition for the purpose of refreshing his memory. If plaintiff does 26 not have to certain documentation, through no fault of his own, he must still appear for a properly 27 noticed deposition.

Plaintiff is further advised that if he fails to cooperate with discovery, this 28 1 action may be subject to terminating sanctions due to his failure to obey a court order and failure 2 to cooperate in discovery. See Fed. R. Civ. P. 37(b)(2)(a)(v). 3 Defendants’ Motion to Modify the Scheduling Order 4 Defendants move to modify the scheduling order (1) to extend the discovery cutoff 5 deadline from June 13, 2025 to 90 days from the date of the court’s order on defendants’ motion 6 to compel for the limited purpose of permitting plaintiff’s deposition, and (2) to extend the 7 pretrial motion deadline from September 5, 2025 to 90 days from the new discovery cutoff 8 deadline.

ECF No. 43-1 at 16. Plaintiff has not filed an opposition. Good cause appearing, the 9 motion is granted. The discovery deadline, for the limited purpose of allowing defendants to 10 depose plaintiff is set for 90 days from the date of this order, and the deadline to file dispositive 11 motions is 90 days from the date of the new discovery deadline. 12 Plaintiff’s Motion to Compel 13 Plaintiff has filed a motion requesting that defendants provide production of the video.

14 ECF No. 44. Defendants oppose the motion, arguing that the motion is untimely, that is in 15 improper because plaintiff did not previously seek discovery of the video, and plaintiff offers no 16 reason for why he has delayed seeking the video. ECF No. 45. 17 Plaintiff’s motion is denied. At bottom, plaintiff’s motion does not state whether he 18 previously sought production of the

video from defendants through a request for production of 19 documents.² Plaintiff cannot file a motion to compel before defendants fail to adequately respond ²⁰ to his discovery requests.

See Fed. R. Civ. P. 37(a) (A motion to compel may be brought “[i]f a ²¹ party fails to make a disclosure required by Rule 26(a)” or replies to a discovery request with an ²² “evasive or incomplete disclosure, answer, or response.”).

In addition, the deadline for plaintiff ²³ to seek discovery expired April 14, 2025, and the discovery cutoff, including filing motions to ²⁴ compel, was on June 13. See ECF No. 35. Plaintiff signed the instant motion on June 22, 2025, ²⁵ after both deadlines expired. See ECF No. 44 at 2. ²⁶ ²⁷ ² Defendants assert that plaintiff has not sought discovery of the video evidence.

ECF No. 28 ⁴⁵ at 3-4. ¹ Lastly, plaintiff does not explain why he was unable to seek this discovery from ² | defendants prior to the cutoff of discovery. As early as July 2024, the court informed plaintiff ³ | that he must comply with the Federal Rules of Civil Procedure, which includes seeking discovery ⁴ | from defendants. See ECF No. 17 at 1 (“Plaintiff is informed that court permission is not ⁵ || necessary for discovery requests and that neither discovery requests served on an opposing party ⁶ || nor that party’s responses should be filed until such time as a party becomes dissatisfied with a ⁷ | response and seeks relief from the court pursuant to the Federal Rules of Civil Procedure.

⁸ | Discovery requests between the parties shall not be filed with the court unless, and until, they are ⁹ | at issue.”); ECF No. 42 at 2 (“On February 20, 2025, I issued the scheduling order in this case, in ¹⁰ | which I informed both parties that discovery requests must be served by the party seeking ¹¹ || discovery on all parties to the action. ECF No. 35 at 5.

I warned that discovery requests should ¹² | not be filed with the court unless required by Local Rules. *Jd.* As it currently stands, no Local ¹³ | Rule requires this court to review plaintiff’s discovery request, and, as I have previously informed ¹⁴ | plaintiff, see ECF No. 17, court permission is not necessary for discovery requests. Additionally, ¹⁵ | to the extent that plaintiff intended to serve defendants with his discovery request by filing them ¹⁶ | with the court, that approach is improper.

Plaintiff must serve his discovery requests on ¹⁷ | defendants. See Fed. R. Civ. P. 30-36.”). Plaintiff’s motion to compel is denied. ¹⁸ Accordingly, it is ORDERED that: ¹⁹ 1. Defendants’ motion to compel and modify the scheduling order, ECF No. 43, is ²⁰ | GRANTED.

The discovery deadline, for the limited purpose of allowing defendants to depose ²¹ | plaintiff is set for 90 days from the date of this order, and the deadline to file dispositive motions ²² | is 90 days from the date of the new discovery deadline. ²³ 2. Plaintiff’s motion to compel, ECF No. 44, is DENIED. IT IS SO ORDERED. ²⁵ (q oy — Dated: _ August 4, 2025 ow—— ²⁶ JEREMY D.,

PETERSON UNITED STATES MAGISTRATE JUDGE 28 &

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-eastern-district-of-cal/2025/keen-v-cross-jath82fj>