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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Kenneth W. Reed,

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No. CV 11-1339-PHX-JAT

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Plaintiff,

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ORDER

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vs.

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Karen Barcklay et al,

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Defendant.

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Pending before the Court is Plaintiff Kenneth Reed’s interlocutory appeal of Magistrate Judge Metcalf’s Order of June 22, 2012. (Doc. 106). The Court now rules on the appeal.

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I. BACKGROUND

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On May 23, 2011, Plaintiff, who is confined in the Arizona State Prison Complex-Yuma in San Luis, Arizona, filed a pro se civil rights Complaint in the Superior Court of Yuma County, Arizona, seeking redress pursuant to 42 U.S.C. § 1983. On July 6, 2011, Defendant Chenail filed a Notice of Removal. This Court concluded that removal was appropriate, dismissed Plaintiff’s original complaint for failure to state a claim, and gave him leave to amend. After Plaintiff filed his First Amended Complaint, further pretrial proceedings were assigned to Magistrate Judge Irwin, and subsequently to Magistrate Judge Metcalf.

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Magistrate Judge Metcalf issued an Order on June 22, 2012, resolving a discovery

1 dispute that had arisen regarding Plaintiff's medical records. (Doc. 100). Essentially, Plaintiff
2 sought to have his medical records released directly to him, while Defendants sought to
3 compel the release of the records to them to enable redactions for security and privacy
4 reasons. *Id.* at 5-6. The Magistrate Judge ordered that Plaintiff's medical records be produced
5 to Defendants, and that Defendants provide Plaintiff a copy (with any redactions noted and
6 explained) within fourteen days of that release. *Id.* at 14. The Order also provided for
7 protection of those documents from disclosure. *Id.* at 13-14.

8 Plaintiff objects to the Magistrate Judge's: (1) ruling on alleged noncompliance with
9 an allegedly nonexistent discovery request; (2) finding of substantial justification for the
10 Defendant's proposed course of discovery; (3) adoption of Defendants' proposed course of
11 discovery; and (4) alleged denial of the Rule 34 discovery process. (Doc. 106 at 4-5). The
12 Court now rules on Plaintiff's objections.

13 II. STANDARD OF REVIEW

14 The Federal Magistrates Act, 28 U.S.C. §§ 631-639, "distinguishes between
15 nondispositive matters under 28 U.S.C. § 636(b)(1)(A) and dispositive matters heard
16 pursuant to 28 U.S.C. § 636(b)(1)(B)." *United States v. Abonce-Barrera*, 257 F.3d 959, 968
17 (9th Cir. 2001). "Under 28 U.S.C. § 636(b)(1)(A), a district judge may designate a magistrate
18 judge to hear any *nondispositive pretrial* matter pending before the court." *Estate of Connors*
19 *v. O'Connor*, 6 F.3d 656, 658 (9th Cir. 1993) (emphasis in original). Regarding
20 nondispositive pretrial matters heard by a magistrate judge, the Federal Magistrate Act
21 provides, in pertinent part:

22 [A] judge may designate a magistrate to hear and determine any pretrial matter
23 pending before the court, except a motion for injunctive relief, for judgment
24 on the pleadings, for summary judgment, . . . to dismiss for failure to state a
25 claim upon which relief can be granted, and to involuntarily dismiss an action.
A judge of the court may reconsider any pretrial matter under this
subparagraph (A) where it has been shown that the magistrate's order is clearly
erroneous or contrary to law.

26 28 U.S.C. § 636(b)(1)(A); *see Abonce-Barrera*, 257 F.3d at 967. The Court will thus review
27 the Magistrate Judge's decisions of law *de novo*, and decisions of fact only for clear error.

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1 **III. ANALYSIS**

2 Plaintiff first argues that the Magistrate Judge ordered discovery of documents that
3 were never actually requested by Defendants. However, as the Magistrate Judge’s Order
4 states, Defendants requested “all documents relied on in responding to discovery, or relevant
5 or likely lead to relevant evidence, and records on the claims maintained by Plaintiff.” (Doc.
6 100 at 2) (quoting Doc. 71 at Exhibit 1). Although not explicit, this request includes
7 Plaintiff’s medical records. Further, in a letter to Defendant, Plaintiff also indicated he would
8 “consider [Defendants] letter of December 21, 2011 as a request for production of
9 [Plaintiff’s] medical records.” *Id.* (quoting Doc. 71, Exhibit 2, Letter 1/14/12.). Accordingly,
10 this objection is without merit.

11 Plaintiff next objects to the finding of substantial justification for ordering an
12 alternative discovery process. (Doc. 106 at 4). Plaintiff argues that this finding is
13 unsupported. *Id.* However, the Magistrate Judge did discuss the justifications for his Order.
14 (Doc. 100 at 7-9 (discussing privacy concerns), 9-10 (discussing security concerns)). Based
15 on these justifications, the Magistrate Judge found the alternative discovery process proper,
16 and this Court finds no clear error in his reliance upon these justifications.

17 Plaintiff finally objects that the Federal Rules of Civil Procedure entitle him to direct
18 production of his records, and that the terms of discovery adopted by the Magistrate Judge
19 are unfair. (Doc. 106 at 4-5). The Magistrate Judge addressed this argument, stating that the
20 discovery rules allow for flexibility in the production of the documents, and that the Court
21 has broad authority to limit discovery. (Doc. 100 at 11) (citing Fed. R. Civ. P. 26(b)(2)(C),
22 34(b)(2)(E)(i)). The Magistrate Judge correctly stated the law. *See In re Anonymous Online*
23 *Speakers*, 661 F.3d 1168, 1176 (9th Cir. 2011) (“district court has wide latitude in controlling
24 discovery and . . . decisions governing discovery are highly fact-intensive”) (internal
25 citations omitted). As discussed above, there is no clear error in his finding that the present
26 discovery dispute warranted the exercise of that flexibility. Nor is there any clear error in the
27 course of discovery ordered by the Magistrate Judge, given that Plaintiff has presented no
28 evidence to suggest that Defendants will not honestly participate in the discovery process.

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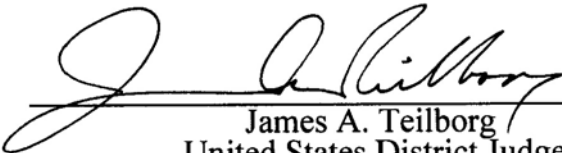
IV. CONCLUSION

Accordingly,

IT IS ORDERED affirming Magistrate Judge Metcalf's Order of June 22, 2012.

IT IS FURTHER ORDERED that and Plaintiff's Objection to Magistrate Judge's Order Dated June 22, 2012 (Doc. 106) is denied.

DATED this 19th day of July, 2012.



James A. Teilborg
United States District Judge