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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Justin Dwayne Hill,

10 Plaintiff,

11 v.

12 County of Maricopa, et al.,

13 Defendants.
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No. CV-20-00603-PHX-GMS (MTM)

ORDER

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16 Before the Court are Plaintiff's Motions to Appeal of Magistrate Judge Decision to
17 District Court (Doc. 151), (Doc. 176). For the reasons below, Both appeals are denied.

18 **BACKGROUND**

19 Plaintiff is an inmate who is suing a corrections officer for defamation. His
20 complaint alleges that the corrections officer made public allegations about Plaintiff's
21 sexual orientation after he felt Plaintiff expressed an interest in a nurse who worked in the
22 jail. Plaintiff claims these allegations were incorrect and may put Plaintiff at risk among
23 his fellow inmates. Thus, Plaintiff filed this lawsuit.

24 Currently at issue before the Court are Plaintiff's Appeals of the Magistrate Judge's
25 Orders at (Doc. 134) and (Doc. 174). The first order, (Doc. 134), denied Plaintiff's
26 untimely motions for subpoenas for the nurse, (Doc. 123), and the Arizona Department of
27 Corrections ("ADOC"), (Doc. 125). The court first set a discovery schedule in May 2021,
28 which called for the close of discovery on September 3, 2021. (Doc. 30.) However, the

1 court extended the deadline several times. (*See* Doc. 55 (extending deadline for written
2 discovery to October 1, 2021)); (*see also* Doc. 94 (extending deadline for written discovery
3 to December 13, 2021).) On September 10, 2021, Plaintiff filed a motion to access the
4 nurse’s address, which the court rejected on September 30, 2021, stating “Plaintiff must
5 say why he is seeking the information she has and how he would like to obtain it, such as
6 with a deposition or subpoena.” (Doc. 80 at 2.) On October 27, 2021, Plaintiff asked the
7 Defendants, or in the alternative, the court, to contact the nurse on his behalf. On
8 November 1, 2022, the court rejected this request, and soon thereafter, the December
9 deadline to serve written discovery lapsed. However, Plaintiff filed both motions at issue
10 in late February 2022 because he claims that he was not sent Defendants’ responses, could
11 not access his legal files from November 2021 to February 2022, and was unaware of the
12 medical diagnosis that made his ADOC subpoena necessary until the end of January 2022.
13 Both motions were denied as untimely.

14 The second order (Doc. 174) denied Plaintiff’s Motion for Spoliation Sanctions
15 (Doc. 126) because sanctions were not “warranted under either the [c]ourt’s inherent
16 authority or under Federal Rule of Civil Procedure 37(e).” (Doc. 174 at 1.) Effectively,
17 Plaintiff requested videos to support his allegations that officers refused to move him to
18 another cell or provide him with cleaning supplies after another inmate “flooded his cell
19 with urine and feces.” (Doc. 174 at 2.) Videos from two dates could not be found, and so
20 Plaintiff alleged that Defendants “intentionally deprived him of the videos,” and, as a
21 result, he requested the court impose various sanctions including, “[a] request[] the [c]ourt
22 enter judgment in his favor, presume the lost videos were unfavorable to the Defendants,
23 order Defendants to pay him, and ‘instruct the jury it may or must presume the video
24 footage was unfavorable to the Defendants.’” (*See* Doc. 174 at 2 (quoting Doc. 126 at 1).)
25 But, in order for the court to impose sanctions pursuant to its inherent authority or to satisfy
26 the sanctions standard set out in Fed. R. Civ. P. 37(e), Plaintiff needed to show that
27 Defendants had the intent to deprive him of the videos. Finding that Plaintiff failed to
28 make this showing, the court denied his motion.

DISCUSSION

I. Legal Standard

Under 28 U.S.C. § 636(b)(1)(A), a district court only overturns a Magistrate Judge’s non-dispositive order if it is contrary to law or clearly erroneous. *See also* Fed. R. Civ. P. 72(a). “A magistrate judge’s decision is ‘contrary to law’ if it applies an incorrect legal standard, fails to consider an element of [the] applicable standard, or fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *Martin v. Loadholt*, No. 1:10-cv-00156-LJO-MJS, 2014 WL 3563312, at *1 (E.D. Cal. July 18, 2014). “The clearly erroneous standard . . . is significantly deferential, requiring a definite and firm conviction that a mistake has been committed.” *Jones v. Corr. Corp. of Am.*, No. CIV-10-2769-PHX-RCB(JRI), 2011 WL 1706838, at *4 (D. Ariz. May 5, 2011) (quoting *Moore v. Garnand*, No. CV1900290TUCRMLAB, 2022 WL 992662, at *1 (D. Ariz. Apr. 1, 2022)).

II. First Order (Doc. 134)

The Court finds the first order (Doc. 134) is neither contrary to law nor clearly erroneous. To start, the holding was not contrary to law. There are no specific deadlines for discovery in the Federal Rules of Civil Procedure or any other statutory authority. Thus, a court’s scheduling order “controls the course of the action unless the court modifies it.” *Herndon v. City of Henderson*, 507 F. Supp. 3d 1243, 1247 (D. Nev. 2020). Where a motion to compel is untimely, courts may analyze the following factors to assess whether it should be permitted: “[sic] (1) the length of time since the expiration of the deadline, (2) the length of time that the moving party has known about the discovery, (3) whether the discovery deadline has been extended, (4) the explanation for the tardiness or delay, (5) whether dispositive motions have been scheduled or filed, (7) the age of the case, (8) any prejudice to the party from whom late discovery was sought, and (9) disruption of the court’s schedule.” *Rogers v. Brauer L. Offs., PLC*, No. CV-10-1693-PHX-LOA, 2011 WL 3665346, at *4 (D. Ariz. Aug. 22, 2011). Ultimately, a court may weigh the factors within its “broad discretionary power to control discovery.” *Agha-Khan v. Pac. Cmty. Mortg. Inc.*, No. 2:16-CV-01124-JCM-NJK, 2017 WL 10489852, at *1 (D. Nev. July 25,

1 2016) citing *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988).

2 Here, the Magistrate Judge properly exercised his discretion in setting and adhering
3 to the court’s scheduling order. Further, the Magistrate Judge considered some of the
4 discretionary factors when denying Plaintiff’s motions, e.g., whether the deadline was
5 extended (it was), the age of the case (over two years old), and the length of time since the
6 expiration of the deadline (several months). (Doc. 80 at 2.) Nothing in the filings suggests
7 that the court applied an incorrect legal standard or misapplied relevant statutes, case law,
8 or rules of procedure. Therefore, the order is not contrary to law.

9 The Magistrate Judge’s order was also not “clearly erroneous.” The court’s
10 discovery deadlines were clear, and Plaintiff had ample time to file his motions for
11 subpoenas. And, at least with respect to his subpoena of the nurse, the Magistrate Judge
12 gave Plaintiff multiple opportunities to correct his filings and provided explicit instructions
13 about how Plaintiff should style his motion. Likewise, the Magistrate Judge considered
14 Plaintiff’s argument that he received a relevant diagnosis after the discovery deadline
15 lapsed. However, because the proceedings had been ongoing for over two years, the Judge
16 was not persuaded that Plaintiff’s motion should be permitted. In light of the highly
17 deferential standard of review, the Court will not re-evaluate the Magistrate Judge’s
18 assessment of these facts because his assessment does not raise “a definite and firm
19 conviction that a mistake has been committed.” In other words, it is not clearly erroneous.

20 Thus, Plaintiff’s Motion to Appeal of Magistrate Judge Decision to District Court
21 (Doc. 151) is denied.

22 **III. Second Order (Doc. 174)**

23 The Magistrate Judge’s second order (Doc. 174) is also neither contrary to law nor
24 clearly erroneous. In the Ninth Circuit, a court has the inherent authority to impose
25 sanctions for bad faith, willfulness, or “fault by the offending party.” *Pettit v. Smith*, 45 F.
26 Supp. 3d 1099, 1111–12 (D. Ariz. 2014) (quoting *Unigard Sec. Ins. Co. v. Lakewood Eng'g*
27 *& Mfg. Co.*, 982 F.2d 363, 368 n.2 (9th Cir.1992)). To show sanctions are warranted,
28 Plaintiff must establish: “(1) that the party having control over the evidence had an

1 obligation to preserve it at the time it was destroyed; (2) that the records were destroyed
2 ‘with a culpable state of mind’; and (3) that the evidence was ‘relevant’ to the party’s claim
3 or defense such that a reasonable trier of fact could find that it would support that claim or
4 defense.” *Apple Inc. v. Samsung Electronics Co., Ltd.*, 888 F. Supp. 2d 976, 997 (N.D.
5 Cal. 2012). Where evidence is lost for an innocent or merely negligent reason, requests for
6 sanctions may be rejected. *Med. Lab. Mgmt. Consultants v. Am. Broad. Cos., Inc.*, 306
7 F.3d 806, 824 (9th Cir. 2002).

8 The requirements under Rule 37(e) are fairly similar. Rule 37(e) dictates that a court
9 may impose sanctions when electronic information that should have been stored in
10 anticipation of litigation was lost because a “party failed to take reasonable steps to
11 preserve it.” Fed. R. Civ. P. 37(e). However, sanctions are appropriate only where the
12 electronically stored information cannot be replaced through additional discovery, and the
13 loss of information prejudiced the opposing party. *Id.* And even then, a court “may order
14 measures no greater than necessary to cure the prejudice.” Fed. R. Civ. P. 37(e)(1). More
15 severe sanctions, like case dismissal, can only be imposed where it is shown that a party
16 acted with an “intent to deprive another party of the information’s use in the litigation.”
17 *Fast v. GoDaddy.com LLC*, 340 F.R.D. 326, 335 (D. Ariz. 2022).

18 Here, the Magistrate Judge found that Plaintiff failed to show more than mere
19 negligence. Witnesses testified that the relevant parties did not know when or how the
20 videos went missing. In light of this testimony, the court noted that evidence “did not
21 evince [] a purposeful intent to destroy the videos, let alone” an intent to destroy “the videos
22 to deprive Plaintiff the ability to use them as evidence in this action.” (Doc. 174 at 5.) As
23 a result, the court held that Plaintiff failed to prove the culpable mental state needed to
24 impose sanctions via the court’s inherent authority or under Rule 37(e). This analysis is
25 correct—it comports with the well-established law and rules of procedure outlined above,
26 and Plaintiff has not presented compelling arguments that suggest otherwise. Therefore,
27 the Magistrate Judge’s second order is not contrary to law.

28 Finally, the second order is not clearly erroneous. Plaintiff merely alleges that he

1 told Defendants he needed the video footage and that they did not store the footage, which
2 was at odds with the Maricopa County Sheriff's Office's policy of holding "all video
3 footage for 6 months." (Doc. 126 at 5.) However, Plaintiff presents no evidence that
4 suggests Defendants acted with an intent to deprive him of the opportunity to use the video
5 footage in litigation, nor does he establish that he would have been unable to establish the
6 point for which he sought the videos through other means. The Magistrate Judge's order,
7 therefore, reflects an accurate understanding of the facts at issue and is not clearly
8 erroneous.

9 Thus, Plaintiff's Motion to Appeal of Magistrate Judge Decision to District Court
10 (Doc. 176) is also denied.

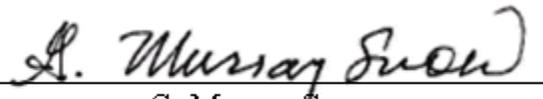
11 CONCLUSION

12 Accordingly,

13 **IT IS HEREBY ORDERED** Plaintiff's Motion to Appeal of Magistrate Judge
14 Decision to District Court (Doc. 151) is **DENIED**.

15 **IT IS FURTHER ORDERED** Plaintiff's Motion to Appeal of Magistrate Judge
16 Decision to District Court (Doc. 176) is **DENIED**.

17 Dated this 17th day of November, 2022.

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20 G. Murray Snow
21 Chief United States District Judge
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