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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KOFI OBENG-AMPONSAH,

Plaintiff,

v.

DON MIGUEL APARTMENTS,
et. al,

Defendants.

Case No. 5:16-cv-01054-PA (AFMx)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Report and Recommendation of United States Magistrate Judge (“Report”) issued on May 17, 2021 (ECF 272), the Objections and Affidavit filed by Plaintiff on July 12, 2021 (ECF 289-290), the Amended Memorandum in Support of Objections filed on July 13, 2021 (ECF 294), the additional exhibits submitted by Plaintiff on July 13, 2021 (ECF 293), and Defendants’ Reply to Plaintiff’s Objections (ECF 292). After engaging in a *de novo* review of those portions of the Report to which objections have been made, the Court concludes that Petitioner’s Objections lack merit.

As set forth in detail in the Report, Plaintiff has failed to comply with orders from the Magistrate Judge directing him to fulfill his discovery obligations. In particular, the following is undisputed:

- 1 • On April 5, 2021, the Magistrate Judge granted Defendants’ motion to
2 compel responses to Defendants’ Set One Discovery Requests and
3 ordered Plaintiff to serve responses to those requests on or before
4 April 19, 2021. Plaintiff failed to do so.
- 5 • On March 30, 2021, the Magistrate Judge ordered Plaintiff to provide a
6 date on which to complete his deposition on or before April 2, 2021.
7 Plaintiff failed to do so.
- 8 • On April 5, 2021, the Magistrate Judge set Plaintiff’s deposition for
9 April 12, 2021. Plaintiff failed to appear.
- 10 • On April 23, 2021, the Magistrate Judge ordered Plaintiff to file and
11 serve an opposition to Defendants’ motion to dismiss under FRCP Rule
12 37 on or before May 7, 2021. Plaintiff failed to do so.

13 In his Objections and associated Affidavit, Plaintiff sets forth a litany of
14 contentions that can be divided into two categories: (1) those aimed at demonstrating
15 that defense counsel engaged in misconduct and (2) those describing personal
16 circumstances and problems that he contends excuse his failures to comply with his
17 obligations. As discussed below, none undermines the Report’s conclusion that
18 Defendants’ motion should be granted.

19 Plaintiff argues that defense counsel filed “bogus motions” to frustrate him and
20 that Defendants’ requests for production of documents were intended to harass him
21 because they sought production of documents already attached to Plaintiff’s
22 complaints. This, however, fails to explain why Plaintiff did not file an opposition to
23 Defendants’ motion to compel discovery responses or why Plaintiff failed to comply
24 with the Magistrate Judge’s order directing him to provide the discovery responses
25 by April 19, 2021. Plaintiff’s Affidavit appears to state that he served defense counsel
26 with responses to the requests for production of documents and interrogatories on
27 April 28, 2021. (ECF 290 at 7.) But, even if true, that does not show compliance with
28 the order requiring responses by April 19, 2021. As for Plaintiff’s contention that

1 defense counsel “profiled” him by claiming that Plaintiff’s accent made him difficult
2 to understand, the record does not reflect any such profiling, and in any event, this
3 does not explain why Plaintiff failed to appear at his deposition as ordered by the
4 Court.

5 Plaintiff further contends that his personal circumstances and difficulties
6 excuse his non-compliance with the discovery orders. Specifically, Plaintiff asserts:
7 (1) He was homeless from December 2020 until April 25, 2021, slept in his car or in
8 hotel rooms, and stored his possessions (including a printer) in a storage facility.
9 (2) His car broke down in December 2020, and after spending \$1,400 on futile
10 repairs, he purchased a used car. That car could not pass a smog test even after
11 another \$700 in repairs and, as a result, moving it required permits from the DMV.
12 (3) On March 30, 2021, he broke both his cell phone and his printer and “lost
13 communication” with “his contacts” from March 30, 2021 to April 15, 2021 when
14 his phone was repaired. (4) Plaintiff did not have access to a personal printer from
15 March 30, 2021 until April 7, 2021 when he purchased a new printer. (5) On or
16 around April 25, 2021, Plaintiff began to feel ill and eventually tested positive for
17 COVID. (ECF 290 at 4-13.)

18 Despite these contentions, the record reflects that Plaintiff engaged in willful
19 disregard of the Magistrate Judge’s discovery orders. To begin with, Plaintiff cannot
20 demonstrate that any of these circumstances prevented him from complying with the
21 order requiring him to provide his discovery responses by April 19. Plaintiff was able
22 to file numerous documents during the period he was homeless and dealing with his
23 car and lack of access to his possessions. (*See, e.g.*, ECF 176, 187, 188, 191-193,
24 199-201, 209, 216.) To the extent Plaintiff now complains that Defendants’ discovery
25 requests were improper, he failed to present any such claim to the Court in opposition
26 to Defendants’ motion to compel discovery responses or in opposition to Defendants’
27 motion to dismiss under Rule 37.

28 While Plaintiff alleges that he was not served with Defendants’ Motion to

1 Dismiss Under Rule 37, he also concedes that he was aware that the Motion to
2 Dismiss had been filed and that his opposition was due by May 7, 2021. (ECF 290 at
3 13-14; *see also* ECF 290 at 87.) Nevertheless, Plaintiff did not alert the Court to the
4 alleged lack of service, did not oppose the motion to dismiss on the ground that he
5 had not been served, and did not request additional time within which to oppose the
6 motion. Instead, he waited until July 7, 2021 – two months after his opposition was
7 due and more than seven weeks after the Magistrate Judge issued the Report
8 recommending that Defendants’ motion be granted – to raise his allegation regarding
9 lack of service. Plaintiff also sent defense counsel letters dated June 12 and June 19,
10 2021, in which he continued to complain that he had not been served with a copy of
11 Defendants’ motions. (ECF 290 at 88, 89.) In light of Plaintiff’s ability to prepare
12 these letters, one of which indicates that he was able to drive to his process server in
13 Santa Ana, there is no explanation for his decision not to file anything in this Court
14 raising his allegations sooner. Perhaps to explain these failures, Plaintiff alleges that
15 he was “afraid to file a motion for protective order” due to the Court’s “continuing
16 threats of sanctions, and/or dismissal of my action if I were to file any motion.” (ECF
17 290 at 6.) Yet the record demonstrates that Plaintiff has not hesitated to file
18 voluminous pleadings when it suited him, and he has exhibited no reluctance to make
19 accusations of bias, discrimination, and abuse of judicial powers. (*See* ECF 268, 290
20 at 16-23.)

21 Moreover, nothing in the Objections justifies Plaintiff’s refusal to provide a
22 date for his deposition as ordered by the Court or his failure to attend his deposition
23 on the date set by the Court. Plaintiff was present during the March 30, 2021
24 telephonic conference in which the Magistrate Judge ordered him to provide a date
25 for his continued deposition by April 2, 2021. Plaintiff concedes that he was aware
26 of this deadline, but states that, “due to unforeseen circumstances [namely, the loss
27 of his cell phone and printer], I was unable to do so.” (ECF 290 at 10.) Litigants,
28 however, are expected to maintain contact with the parties and the Court, and there

1 are methods of doing so that do not require a cell phone or a personal printer. Without
2 more, the loss of his cell phone and printer does not explain Plaintiff's failure to
3 contact defense counsel or the Court before April 2, 2021. Indeed, even after the loss
4 of his cell phone and printer, Plaintiff was able to prepare a 22-page Reply to
5 Defendant's Opposition to Plaintiff's Motion to Dismiss/Strike the Answer (signed
6 March 31, 2021), serve it on Defendants (Proof of service dated April 2, 2021), and
7 file it in this Court on April 5, 2021. (ECF 241.)

8 As to his failure to appear for his Court-ordered deposition, Plaintiff argues
9 that he was not aware that it had been set for April 12, 2021. (ECF 290 at 11.)
10 However, there is no dispute that the order setting the date for the deposition was
11 mailed to Plaintiff by the Court and by Defendant. Moreover, any lack of knowledge
12 by Plaintiff can only be attributable to a willful dereliction of his obligation as a
13 federal court litigant. Plaintiff's Affidavit reveals that he had sufficient funds to spend
14 substantial amounts fixing his car, renting hotel rooms and a storage unit, purchasing
15 a new printer, and signing a lease on a house. Thus, there is no reason why he could
16 not have paid for a taxi to the post office to check his mail, purchased a new phone,
17 or borrowed a phone to contact the Court. Knowing that the deposition date would
18 be set by the Court, Plaintiff was obligated to contact the Court or opposing counsel
19 to inform himself of that date. The fact that Plaintiff never contacted the Court to
20 inquire about the status of his continued deposition even after Plaintiff regained
21 possession of his cell phone on April 15, 2021 plainly shows that he never intended
22 to attend it.


23 Finally, Plaintiff's assertion that he began to feel "tired, et al." beginning
24 April 25, 2021 does not justify his failures, nearly all of which occurred before that
25 date. Plaintiff admits that he received mail from the Court on April 27, 2021 and
26 May 1, 2021 (ECF 290 at 87), which undermines his claims that he was unable to
27 receive mail because of lack of transportation or physical illness. In addition, Plaintiff
28 was well enough to send a letter to defense counsel on May 3, 2021, in which he

1 acknowledges receipt of the Court’s orders and his obligation to file oppositions to
2 Defendants’ motions to dismiss on or before May 7, 2021. (ECF 290 at 87.)

3 In sum, Petitioner’s Objections are insufficient to demonstrate that his failures
4 to comply with the Magistrate Judge’s discovery orders were anything but willful.
5 Accordingly, the Objections are overruled, and the Court accepts the findings and
6 recommendations of the Magistrate Judge.

7 IT THEREFORE IS ORDERED that (1) the Report and Recommendation of
8 the Magistrate Judge is accepted and adopted; (2) Defendants’ motion to dismiss
9 under Fed. R. Civ. P. 37 (ECF 249) is GRANTED; (3) Defendants are awarded \$200
10 as reasonable expenses incurred in connection with this motion; and (4) Judgment
11 shall be entered dismissing the action with prejudice.

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13 DATED: July 22, 2021

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17 PERCY ANDERSON
18 UNITED STATES DISTRICT JUDGE
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