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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONTE ROLANDO HARRIS,

Plaintiff,

v.

H. A. RIOS, et al.,

Defendants.

CASE No. 1:09-cv-00781-MJS (PC)

ORDER DENYING PLAINTIFF'S PARTIAL
OBJECTION TO DISCOVERY ORDER

(ECF No. 82)

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Plaintiff Donte Rolando Harris, a federal prisoner proceeding pro se, filed this civil rights action on April 27, 2009 pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971). (ECF No. 1.)

This matter proceeds on Plaintiff's Second Amended Complaint against Defendants Gonzaga, Cobb, Zaragoza, and Valero for interfering with incoming mail in violation of Plaintiff's rights under the First Amendment; against Defendant Cobb for interfering with outgoing mail in violation of Plaintiff's rights under the First Amendment; and against Defendants Estrada, Cobb, Valero, and Zaragoza for violating Plaintiff's Fourteenth Amendment due process rights in connection with Plaintiff's mail.

Defendants filed their Answer on October 25, 2012. (ECF No. 69.) This matter is in the

1 discovery phase.

2 On January 15, 2013, Plaintiff filed a Motion to Compel Discovery Dispute
3 Resolution. (ECF No. 74.) In it he sought responses to his Second Set Request for
4 Admissions and First Set Request for Production. On February 19, 2013, Plaintiff,
5 acknowledging receipt of Defendants' discovery responses, filed a Motion to Dismiss
6 Discovery Dispute Resolution. (ECF No. 76.) Based thereon, on February 22, 2013 the
7 Court denied Plaintiff Motion to Compel without prejudice. (ECF No. 77.)

8 Pending before the Court is Plaintiff's Partial Objection to Order. (ECF No. 82.)
9 Therein Plaintiff objects to the Court's February 22, 2013 Order on grounds prison
10 officials at his facility have not delivered the subject discovery responses to him.

11 The Court construes Plaintiff's Objection as a request for reconsideration of its
12 February 22, 2013 Order denying his Motion to Compel.

13 Rule 60(b)(6) allows the Court to relieve a party from an order and judgment for
14 any reason that justifies relief. Rule 60(b)(6) "is to be used sparingly as an equitable
15 remedy to prevent manifest injustice and is to be utilized only where extraordinary
16 circumstances . . ." exist. Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008). The
17 moving party "must demonstrate both injury and circumstances beyond his control . . ."
18 Id. In seeking reconsideration of an order, Local Rule 230(j) requires a party to identify
19 the motion or order in issue and when it was made, and show "what new or different
20 facts or circumstances are claimed to exist which did not exist or were not shown upon
21 such prior motion, or what other grounds exist for the motion."

22 "A motion for reconsideration should not be granted, absent highly unusual
23 circumstances, unless the . . . court is presented with newly discovered evidence,
24 committed clear error, or if there is an intervening change in the controlling law," Marlyn
25 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009),
26 and "[a] party seeking reconsideration must show more than a disagreement with the
27 [c]ourt's decision, and recapitulation . . ." of that which was already considered by the
28 court in rendering its decision. U.S. v. Westlands Water Dist., 134 F.Supp.2d 1111,

1 1131 (E.D. Cal. 2001).

2 Plaintiff's Objection shall be denied. Plaintiff concedes Defendants delivered the
3 required responses, but objects that facility staff have not delivered these responses to
4 him.

5 Plaintiff has not identified any new facts, or legal or factual error, or any other
6 reasonable grounds to justify reconsideration of the Court's February 22, 2013 Order.
7 Plaintiff does not dispute that Defendants served the discovery responses in issue to
8 his prison address of record. Defendants complied with their discovery obligations. Fed.
9 R. Civ. P. 37. Failure of prison authorities to deliver material to Plaintiff may justify other
10 action by Plaintiff against the prison, but not relief against Defendants in this litigation
11 who reportedly have done what they were required to do with regard to this discovery.

12 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's Partial
13 Objection to Order construed as a request for reconsideration of the Court's February
14 22, 2013 Order Denying Motion to Compel (ECF No. 82) is DENIED.

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22 IT IS SO ORDERED.

23 Dated: March 17, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE