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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE E. JACOBS,

 Plaintiff,

 v.

QUINONES, et al ,

 Defendants.

1:10-cv-02349-AWI-JLT (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION OF ORDER
GRANTING IN PART DEFENDANTS'
MOTION FOR PROTECTIVE ORDER

(Doc. 61, 74, 81)

Plaintiff is a prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the First Amended Complaint for Plaintiff's Eighth Amendment claims against Defendants Does #1-3, Pruitt, Magana, and Davis for deprivation of basic necessities; against Defendants Cogdill, Scaiffe, Quinones, and Davis for excessive force; and against Defendants Bardonnex and Williams for depriving Plaintiff of yard time. (Docs. 11, 17, 19, 24.)

On January 23, 2014, Defendants filed a motion for protective order seeking relief from responding to discovery that Plaintiff served on October 27 and October 31, 2013. (Doc. 50, Mot for P.O., 1:21-24.) Plaintiff requested and received an extension of time to file an opposition with which he complied. (Docs. 51, 52, 55.) On May 16, 2014, an order issued granting in part Defendants' motion for a protective order, limiting which of Plaintiff's voluminous propounded discovery Defendants were required to respond to, and modifying the discovery and scheduling order to allow time for Defendants to prepare and serve their responses on Plaintiff, for Plaintiff

1 to file a subsequent motion to compel should he feel it necessary, and setting a new dispositive
2 motion filing deadline. (Doc. 61.) On that same date, an order issued granting in part Plaintiff's
3 motions for issuance of subpoenas duces tecum under which two subpoenas were issued and have
4 been served (Docs. 62, 63, 66, 69.) On July 18, 2014, Plaintiff filed a motion for reconsideration
5 of the order granting in part Defendants' motion for protective order. (Doc. 74, 81¹.)

6 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from an order
7 for any reason that justifies relief. Rule 60(b)(6) "is to be used sparingly as an equitable remedy
8 to prevent manifest injustice and is to be utilized only where extraordinary circumstances . . ." exist.
9 *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and
10 citation omitted). The moving party "must demonstrate both injury and circumstances beyond his
11 control . . ." *Id.* (internal quotation marks and citation omitted). Further, Local Rule 230(j)
12 requires, in relevant part, that Plaintiff show "what new or different facts or circumstances are
13 claimed to exist which did not exist or were not shown upon such prior motion, or what other
14 grounds exist for the motion," and "why the facts or circumstances were not shown at the time of
15 the prior motion."

16 "A motion for reconsideration should not be granted, absent highly unusual
17 circumstances, unless the district court is presented with newly discovered evidence, committed
18 clear error, or if there is an intervening change in the controlling law," and it "may *not* be used to
19 raise arguments or present evidence for the first time when they could reasonably have been
20 raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
21 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
22 original).

23 Plaintiff has not shown any new or different facts or circumstances, newly discovered
24 evidence, or an intervening change of law to support his motion. Plaintiff argues that the
25 Magistrate Judge exceeded proper discretion by limiting the number of his requests for
26 admissions ("RFAs") and requests for production of documents ("RFPDs") which Defendants

27 ¹ On July 30, 2014, a notice was filed from Plaintiff which stated that his motion for reconsideration had been
28 errantly, previously returned to him (Doc. 81) and in fact his motion for reconsideration and proof of service thereon
are dated June 8, 2014 (Doc. 74). However, this is irrelevant as Plaintiff's motion for reconsideration is neither
considered nor denied based on tardiness.

1 were required to respond to and that by doing so, Plaintiff is being denied a full and fair
2 opportunity to discover information essential to his case. Plaintiff specifically argues that the
3 Magistrate Judge did not utilize the proper standards/factors in arriving at the ruling and made no
4 determination that Plaintiff's RFAs were "unreasonable, unduly burdensome, or expensive" to
5 justify limiting the number to which Defendants are required to respond. (Doc. 74, p. 4.)
6 Plaintiff further argues that the Defendants did not meet their burden as the party seeking a
7 protective order such that their motion should have been denied.

8 However, while it was noted that Defendants' motion did not meet their burden for every
9 aspect of their motion, it was also noted that Plaintiff had propounded numerous discovery
10 requests -- to wit, 733 RFAs, 71 RFPDs, and 172 Interrogatories with multiple subparts, which
11 were found to be excessive under the circumstances of the case. The Magistrate Judge ruled that
12 Defendants had not met their burden for wholesale relief from responding to all discovery
13 propounded by Plaintiff (as they sought), but specifically addressed the issues raised by
14 Defendants and Plaintiff's opposition and then formed a detailed order directing Defendants to
15 provide responses to 25 RFPDs, 25 RFAs, and 25 interrogatories with caveats clarifying the
16 scope of issues to be encompassed by Defendants' responses (i.e. that they must provide
17 responses/documents pertaining to prior complaints against them for acts similar to those on
18 which Plaintiff proceeds against each of them in this action) and illuminating fallacies in various
19 of Defendants' objections which were not valid to raise with their responses (i.e. which types of
20 subparts to interrogatories are acceptable).

21 As propounded, Plaintiff's discovery was oppressive under Rule 26(b)(2) of the Federal
22 Rules of Civil Procedure and was properly curtailed in the Protective Order. The court has broad
23 powers to limit discovery, within which the order granting in part Defendants' request for
24 discovery protection was issued. The discovery that Defendants were ordered to respond to,
25 combined with the recent issuance of two subpoenas duces tecum provide more than ample
26 opportunity for Plaintiff to obtain the information he seeks by discovery in this action, justifying
27 the limits on the extent of Plaintiff's discovery imposed by the Magistrate Judge's order. *See Fed.*
28 *R. Civ. P. 26(b)(2)(C)(ii).*

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In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 303, this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the Magistrate Judge's order granting in part Defendants' motion for protective order to be supported by the record and proper analysis.

Accordingly, Plaintiff's motion for reconsideration of the Magistrate Judge's order granting in part Defendants' motion for protective order, filed July 18, 2014 (Doc. 74), is **HEREBY DENIED.**

IT IS SO ORDERED.

Dated: September 30, 2014



SENIOR DISTRICT JUDGE