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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 LEONARD RANSOM, JR.,

11 Plaintiff,

12 v.

13 DANNY HERRERA and RICKY
14 BRANNUM,

15 Defendants.

Case No. 1:11-cv-01709-LJO-EPG (PC)

ORDER OVERRULING DEFENDANTS'
OBJECTIONS TO THE MAGISTRATE
JUDGE'S AUGUST 7, 2018 ORDER

(ECF NO. 200)

16 Leonard Ransom, Jr. ("Plaintiff"), is a state prisoner proceeding *pro se* in this civil
17 rights action filed pursuant to 42 U.S.C. § 1983.

18 On August 20, 2018, Defendants filed an objection with this Court contesting a portion
19 of the Magistrate Judge's order which had permitted Defendants to take a second deposition of
20 Plaintiff. (ECF No. 200). Specifically, while the Magistrate Judge granted Defendants' motion
21 for leave to depose Plaintiff a second time, the Magistrate Judge provided the limitation that
22 "the deposition shall cover issues not already addressed in Plaintiff's prior deposition." (ECF
23 No. 193, p. 2). In other words, Defendants claim that the Magistrate Judge committed legal
24 error by not permitting Defendants to cover issues already addressed in Plaintiff's prior
25 deposition.

26 This Court disagrees and will overrule Defendants' objection.

27 **I. PROCEDURAL BACKGROUND AND DEFENDANTS' OBJECTION**

28 On August 6, 2018, Defendants filed their motion for leave to take Plaintiff's

1 deposition. (ECF No. 191). Defendants noted at the outset that “Defendant[s] must obtain
2 leave of court to depose Plaintiff a second time.” (ECF No. 191-1, at p. 2). Defendants
3 requested leave of the Court for a second deposition on the ground that “Defendants have not
4 had the opportunity to depose Plaintiff regarding all his claims....” (ECF No. 191-1, at p. 2).

5 Because the additional testimony could affect Defendants’ need for expert witnesses
6 and because Defendants may need to provide the additional testimony to their experts,
7 Defendants also sought an extension of the expert disclosure deadline. (ECF No. 191-1, at p.
8 3).

9 The Magistrate Judge granted Defendants’ motion in part. (ECF No. 193). The
10 Magistrate Judge found good cause for a second deposition as well as for an extension of the
11 expert disclosure deadline. (ECF No. 193). However the Magistrate Judge limited the second
12 deposition as follows: “Defendants have until September 14, 2018 to depose Plaintiff.
13 Defendants may depose Plaintiff for up to two hours. Defendants may only cover topics that
14 were not covered in the first deposition.” (ECF No. 193, at p. 2).

15 Defendants filed their objection to the order on August 20, 2018. (ECF No. 200).
16 Defendants argue that the “Order is contrary to the plain language of the Federal Rules of Civil
17 Procedure and risks prejudicing Defendants,” and so “respectfully object to the Magistrate
18 Judge’s Order and request review of this Order by the District Court under Federal Rule of
19 Civil Procedure 72(a).” (ECF No. 200, at p. 1).

20 **II. LEGAL STANDARDS FOR OBJECTIONS TO A MAGISTRATE** 21 **JUDGE’S ORDER**

22 Pursuant to Federal Rule of Civil Procedure 72(a), when reviewing a magistrate judge's
23 order, “[t]he district judge in the case must consider timely objections and modify or set aside
24 any part of the order that is clearly erroneous or is contrary to law.” See also 28 U.S.C. §
25 636(b)(1)(A); Local Rule 303. Under the clearly erroneous standard of review, a district court
26 may overturn a magistrate judge's ruling ““ only if the district court is left with the definite and
27 firm conviction that a mistake has been made.”” Computer Economics, Inc. v. Gartner Group,
28 Inc., 50 F.Supp.2d 980, 983 (S.D.Cal.1999) (quoting Weeks v. Samsung Heavy Indus. Co.,

1 Ltd., 126 F.3d 926, 943 (7th Cir.1997)). Under the contrary to law standard, a district court
2 may conduct independent review of purely legal determinations by a magistrate judge. Id.

3 **III. DISCUSSION**

4 As Defendants concede, there is no automatic right to take a second deposition.
5 According to the Federal Rules of Civil Procedure, a party must obtain leave of the court if “the
6 deponent has already been deposed in the case.” Fed. R. Civ. P. 30(a)(2)(A)(ii). Whether to
7 permit a second deposition lies in the court's discretion. Dixon v. Certainteed Corp., 164
8 F.R.D. 685, 690 (D. Kan. 1996); City of Rialto v. Dep't of Def., No. 04-00079-PSG (SSX),
9 2008 WL 11343315, at *3 (C.D. Cal. Mar. 18, 2008) (“Once a deposition has been concluded,
10 a party is required to obtain leave of Court before noticing the deposition of a witness who has
11 previously been examined in the same litigation. Fed. R. Civ. Proc. 30 (a)(2)(B). In those
12 instances where leave of Court is required the granting or denial of discovery requests is left to
13 the discretion of the trial court.”); Bookhamer v. Sunbeam Prod. Inc., No. C 09-6027 EMC
14 DMR, 2012 WL 5188302, at *2 (N.D. Cal. Oct. 19, 2012) (“Whether to re-open a deposition
15 lies within the court's discretion.”).

16 Without a showing of need or good reason, courts generally will not require a
17 deponent's reopened deposition. Dixon, 164 F.R.D. at 690. Reopened depositions are
18 disfavored, except in certain circumstances, such as, long passage of time with new evidence or
19 new theories added to the complaint. Graebner v. James River Corp., 130 F.R.D. 440, 441
20 (N.D. Cal. 1990).

21 Additionally, the Federal Rules of Civil Procedure require a court to limit discovery if
22 “the discovery sought is unreasonably cumulative or duplicative.” Fed. R. Civ. P.
23 26(b)(2)(C)(i). This is a factor in determining whether to allow a second deposition. City of
24 Rialto, 2008 WL 11343315, at *3 (“In exercising its discretion whether to grant
25 a second deposition the Court should consider the limiting factors stated in Rule 26 (b)(2): (1)
26 whether the discovery is cumulative or duplicative or is readily obtainable from another more
27 convenient source; (2) whether the party seeking the discovery has had ample opportunity to
28 obtain the information; and/or (3) whether the burden or the additional expense outweigh the

1 benefit sought.”); Bookhamer, 2012 WL 5188302, at *2 (alteration in original) (“The court will
2 not find good need if it determines that one of the following factors applies: (i) the discovery
3 [second deposition] sought is unreasonably cumulative or duplicative, or can be obtained from
4 some other source that is more convenient, less burdensome, or less expensive....”).

5 In light of these settled legal principles, the Magistrate Judge did not commit legal error
6 in ordering that the second deposition be limited to two hours and not cover issues already
7 addressed in Plaintiff’s prior deposition. That decision was left soundly within her discretion.
8 It also appears she correctly exercised that discretion through the limitation imposed so that the
9 second deposition would not be cumulative or duplicative of the first deposition.

10 In fact, this Court finds Defendants’ objection to be frivolous. Whether to allow a
11 second deposition at all is clearly within the discretion of the Court. It is clearly not legal error
12 to limit that second deposition to matters that have not already been covered. In fact, not only
13 is there no legal right to question a witness on ground already covered, a judge *must* limit
14 discovery to the extent it is “unreasonably cumulative or duplicative.”

15 The Court also notes that Defendants have not established any good cause to reopen any
16 specific topic that has already covered. In neither Defendants’ initial motion or their objections
17 to this Court did Defendants identify an earlier question that was insufficiently answered or
18 required additional questioning. Defendants have not brought a motion to compel any answer
19 to a question already posed. On the contrary, Defendants’ underlying motion requested leave
20 to take a deposition precisely because they had not had the opportunity to question Plaintiff yet
21 on certain claims. Rather than request leave to inquire about a specific topic already covered,
22 Defendants assert it is their legal right to tread over the same ground so long as a deposition
23 does not pass the seven-hour limit. This is incorrect, and indeed counter to the rules that
24 expressly limit cumulative and duplicative discovery.

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