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3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
5

6 **JOSEPH RAYMOND McCOY,**

7 **Plaintiff**

8 **v.**

9 **J. CLARK KELSO, et al.,**

10 **Defendants**
11

CASE NO. 1:12-CV-0983 AWI SAB (PC)

**ORDER ON PLAINTIFF'S MOTIONS
FOR RECONSIDERATION**

(Doc. No. 192, 238, 239)

12
13 This is a civil rights lawsuit brought by pro se prisoner Joseph McCoy against personnel
14 employed at the California Substance Abuse Treatment Facility. Currently pending before the
15 Court are three motions by Plaintiff that request reconsideration of various rulings made by the
16 Magistrate Judge.

17 *Legal Standard*

18 A district court may refer pretrial issues to a magistrate judge to either hear and decide or
19 issue findings and recommendations. See 28 U.S.C. § 636(b)(1); Khrapunov v. Prosyankin, 931
20 F.3d 922, 930-31 (9th Cir. 2019); Bhan v.NME Hosp., Inc., 929 F.2d 1404, 1414 (9th Cir. 1991).
21 If a party objects to a non-dispositive pretrial ruling by a magistrate judge, the district court will
22 review or reconsider the ruling under the “clearly erroneous or contrary to law” standard. 28
23 U.S.C. § 626(b)(1)(A); Fed. R. Civ. P. 72(a); Khrapunov, 931 F.3d at 931; Grimes v. City of San
24 Francisco, 951 F.2d 236, 240-41 (9th Cir. 1991). A magistrate judge’s factual findings or
25 discretionary decisions are “clearly erroneous” when the district court is left with the definite and
26 firm conviction that a mistake has been committed. Security Farms v. International Bhd. of
27 Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997); Avalos v. Foster Poultry Farms, 798 F.Supp.2d
28 1156, 1160 (E.D. Cal. 2011). This standard is significantly deferential. Avalos, 798 F.Supp.2d at

1 1160. The district court “may not simply substitute its judgment for that of the deciding court.”
2 Grimes, 951 F.2d at 241; Avalos, 798 F.Supp.2d at 1160. The “contrary to law” standard allows
3 independent, plenary review of purely legal determinations by the magistrate judge. See
4 PowerShare, Inc. v. Syntel, Inc., 597 F.3d 10, 15 (5th Cir. 2010); Haines v. Liggett Group, Inc.,
5 975 F.2d 81, 91 (3d Cir.1992); Avalos, 798 F.Supp.2d at 1160; Jadwin v. County of Kern, 767
6 F.Supp.2d 1069, 1110-11 (E.D. Cal. 2011). “An order is contrary to law when it fails to apply or
7 misapplies relevant statutes, case law, or rules of procedure.” Calderon v. Experian Info.
8 Solutions, Inc., 290 F.R.D. 508, 511 (D. Idaho 2013); 290 F.R.D. at 511; Jadwin, 767 F.Supp.2d at
9 1011.

10 Discussion

11 Plaintiff’s first motion is unclear but appears to seek reconsideration of the Magistrate
12 Judge’s order that expanded the discovery deadline for Defendants to take Plaintiff’s deposition.
13 See Doc. No. 192. The Magistrate Judge’s order is Doc. No. 177 and was issued on October 8,
14 2019. Plaintiff argues that the district court was divested of jurisdiction through operation of Rule
15 of Appellate Procedure 15(b)(2) because he filed a document with the Ninth Circuit. However,
16 the Ninth Circuit had previously reversed and remanded this case on April 1, 2019. See Doc. No.
17 126. Mandate issued on April 23, 2019. See Doc. No. 128. Therefore, by the time that the
18 Magistrate Judge issued the discovery order, proceedings at the Ninth Circuit had ended and this
19 Court was properly exercising jurisdiction and following the Ninth Circuit’s remand. Plaintiff has
20 not identified any aspect of the October 8, 2019 discovery order that was clearly erroneous or
21 contrary to law. Therefore, reconsideration of the October 8, 2019 order will be denied.

22 Plaintiff’s second motion challenges the Magistrate Judge’s June 26, 2020 order (Doc. No.
23 236), which denied Plaintiff’s motion for appointment of an expert witness pursuant to Fed. R.
24 Evid. 706. See Doc. No. 238. Plaintiff argues that the order is contrary to the express language of
25 Rule 706(a). See id. Decisions under Fed. R. of Evid. 706(a) regarding the appointment of an
26 expert witness are reviewed for an abuse of discretion. See Walker v. American Home Shield
27 Long Term Disability Plan, 180 F.3d 1065, 1071 (9th Cir. 1999). Here, the Magistrate Judge
28 found that an expert should not be appointed who will serve as an advocate for Plaintiff and that

1 this case was not so complex that an expert was needed. The Court detects no abuse of discretion
2 and cannot hold that the order was clearly erroneous or contrary to law. Therefore,
3 reconsideration of the June 26, 2020 order will be denied.

4 Plaintiff's third motion seeks reconsideration of a June 29, 2020 order by the Magistrate
5 Judge (Doc. No. 237) that denied a motion for deemed admissions under Fed. R. Civ. P. 8(b)(6).
6 See Doc. No. 239. Plaintiff had attempted to obtain a ruling that Defendants' failure to address a
7 contention regarding a pre-existing medical condition that was made in a motion for temporary
8 restraining order had the effect of admitting the contention. See Doc. No. 228. The Magistrate
9 Judge had ordered the Defendants to reply to the motion for temporary restraining order. See Doc.
10 No. 219. After review, reconsideration is not warranted. First, Rule 8(b)(6) applies to
11 "responsive pleadings." See Fed. R. Civ. P. 8(b)(6). A "pleading" is defined by Rule 7. See Fed.
12 R. Civ. P. 7(a). A response to a motion for a temporary restraining order is not a "pleading" under
13 Rule 7(a). See id. Thus, Rule 8(b)(6) would not apply to Defendants' response/opposition to the
14 motion for temporary restraining order. Second, the Magistrate Judge was correct that the
15 Defendants were ordered only to respond to the motion for temporary restraining order, not
16 Plaintiff's medical conditions. The Defendants responded by making largely jurisdictional
17 arguments that were accepted by the Magistrate Judge and this Court. See Doc. Nos. 224, 225,
18 246. The Court cannot hold that the June 29, 2020 order was clearly erroneous or contrary to law.
19 Therefore, reconsideration of the June 29, 2020 order will be denied.

20
21 **ORDER**

22 Accordingly, IT IS HEREBY ORDERED that Plaintiff's three motions for reconsideration
23 (Doc. Nos. 192, 238, and 239) are all DENIED.

24
25 IT IS SO ORDERED.

26 Dated: September 2, 2020


27 _____
28 SENIOR DISTRICT JUDGE