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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

ROBERT D. MIX,

1:13-cv-00823-AWI-MJS

Plaintiff,

**ORDER DENYING PLAINTIFF’S
MOTION TO VACATE TRIAL DATE**

v.

**AUDREY KING, Executive Director,
CSH; LINDSEY CUNNINGHAM,
Psychologist, CSH; DR. SALOUM,
Psychiatrist, CHS,**

(Doc. 137)

Defendants.

_____/

Plaintiff Robert Mix has filed a motion to vacate the trial date in this matter now scheduled for January 11, 2017. Plaintiff’s motion is brought on two bases. First, Plaintiff contends that Defendants’ counsel failed to meet and confer regarding exhibits. As the Court understands it, the parties individually pre-marked all exhibits with the exception of one joint exhibit. Doc. 130 at 2. The Court has delayed the jury trial one day in order to hold a hearing resolving all other outstanding issues of law and to allow the parties to meet and confer regarding exhibits. That procedure should ameliorate any prejudice that Plaintiff might otherwise suffer as a result of not having met and conferred with defense counsel at an earlier date.

Second, Plaintiff alleges that Defendants failed to provide discovery regarding the information Defendants Saloum and Cunningham considered in making their evaluations of whether Patient Jackson posed a risk of violence. Doc. 137 Specifically, Plaintiff contends that

1 Defendants failed to provide copies of the Sexually Violent Predator (“SVP”) evaluation report,
2 prepared on May 5, 2012, by Jeremy Coles, Ph.D., and the SVP evaluation report prepared on
3 June 9, 2012, by Robert Cassidy, Ph.D., both of which were relied upon by Dr. Saloum in
4 forming her opinion on whether Patient Jackson posed a risk of violence. Further, Plaintiff
5 contends that defendants failed to provide a copy of the intake comprehensive psychiatric
6 assessment that Dr. Saloum also relied upon in forming her opinion on whether Patient Jackson
7 posed a risk of violence.

8 Plaintiff has sought these records before. *See* Docs. 30, 48, 58, 63. However, Plaintiff did
9 not seek the records until after the close of discovery. Despite that failure, the Magistrate Judge
10 considered Plaintiff’s request, reviewed documents (including the psychiatrist’s comprehensive
11 psychiatric assessment), and determined that good cause did not exist to reopen discovery and, in
12 any event, found that Plaintiff is not prejudiced by the decision not to reopen discovery because
13 the records reviewed by the Court were cumulative of the evidence already available to Plaintiff.
14 *See* Docs. 55, 80. Moreover, after the Magistrate Judge denied Plaintiff’s discovery motions,
15 Plaintiff was permitted by Local Rule 303(b) and (c) to file a motion for reconsideration to this
16 Court within fourteen days of the denial of his motions. Plaintiff failed to do so in the time
17 allowed. Even if Plaintiff had done so, the Magistrate Judge’s determination was not “clearly
18 erroneous or contrary to law.” Local Rule 303(f); *see* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P.
19 72(a).

20 Aside from the fact that the Magistrate Judge’s discovery decision was correct at the time
21 and is now final, Plaintiff waited over a year from the date of his first mention to the Court of the
22 records that he now seeks to delay the trial to obtain and the date of filing of the instant motion.
23 As a result, even if the discovery requests presented in Plaintiff’s motion had not already been
24 conclusively resolved, plaintiff has failed to demonstrate that he “diligently pursued [his]
25 previous discovery opportunities” such that reopening of discovery would now be warranted.
26 *Panatronic USA v. AT&T Corp.*, 287 F.3d 840, 846 (9th Cir. 2002).

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1 Based on the foregoing, Plaintiff's motion to vacate the trial date is DENIED.

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3 IT IS SO ORDERED.

4 Dated: January 5, 2017



5 SENIOR DISTRICT JUDGE

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