

1 First, Plaintiff did not file the instant request until 13 days before
2 the discovery deadline, i.e. March 30, 2020. Second, Plaintiff
3 simply has not shown that he was diligent during the six-month
4 period in which discovery was open. Plaintiff has not
5 demonstrated any efforts to obtain discovery until less than two
6 months before to the expiration of the deadline. (Declaration of
7 Arthur Mark ¶¶ 1-2.) The fact that Plaintiff had other civil
8 matters/deadlines, difficulty communicating with Plaintiff,
9 vacation, and/or lost luggage, are all circumstances which counsel
10 could and should have foreseen at the time the first extension was
11 sought and granted. Indeed, the fact that Plaintiff admits he was
12 busy attending to other matters belies a claim of due diligence.
13 *See, e.g., Mondares v. Kaiser Foundation Hosp.*, No. 10-CV-2676-
14 BTM (WVG), 2011 WL 5374613, at *2 (S.D. Cal. Nov. 7, 2011)
15 (“other trials and a busy schedule do nothing to advance Plaintiff’s
16 burden to show she was diligent in *this* case. Quite to the contrary,
17 these actually militate against a finding of diligence, as counsel
18 essentially admitted she was not diligent in this case because she
19 was busy litigating *other* cases.”) (emphasis in original). Third,
20 the fact that this case is not and may not be assigned to a District
21 Judge until the vacancy is filled is of no consequence to the
22 preparation of written discovery or the resolution of discovery as is
23 handled by the magistrate judges. Lastly, Plaintiff cannot now rely
24 on the recent onset of the COVID-19 virus to justify an extension
25 of the deadline when he has not demonstrated due diligence during
26 the prior six-month discovery period.

17 (Doc. No. 104 at 3–4.)

18 Plaintiff contends that the magistrate judge’s order denying his request “is based entirely on the
19 ... finding that Plaintiff was not diligent for ‘six’ months[,]” which is a mistake and a clearly
20 erroneous finding of fact. (Doc. No. 107 at 4.) Plaintiff’s motion for reconsideration must be denied
21 because he has failed to show that the magistrate judge’s decision was clearly erroneous or contrary to
22 law.

23 As an initial matter, on July 16, 2019, the court lifted the previously imposed stay in this action
24 and set a discovery deadline of October 2, 2019, and a dispositive motion deadline of December 2,
25 2019. (Doc. No. 93.) On September 24, 2019, the court approved the parties’ stipulation to extend the
26 discovery deadline to March 30, 2020, and the dispositive motion deadline to June 1, 2020. (Doc. No.
27 96.) On October 16, 2019, the court granted plaintiff’s first ex parte request to the extend the March
28 30, 2020 discovery deadline to written requests as well as depositions. (Doc. No. 99.) This discovery

1 period was in addition to the discovery propounded previously by plaintiff before the appeal and
2 remand in this action. (Doc. No. 108 ¶ 5.)

3 In the instant motion, plaintiff’s counsel essentially argues that he did not get the “file” from
4 his client until late December 2019 and, therefore, did not know what discovery to propound until
5 sometime thereafter. (Doc. No. 107 at 4–7.) However, in evaluating whether plaintiff was diligent,
6 the magistrate judge considered plaintiff’s argument but rejected it, finding that plaintiff made the
7 request for an extension only thirteen days before the expiration of the discovery deadline, negating a
8 finding that the discovery was unduly truncated due to circumstances were beyond his control. (Doc.
9 No. 104.) Furthermore, plaintiff’s counsel was aware of the extent of the discovery previously served
10 by plaintiff in this matter in October 2019, as defendants’ counsel listed the very discovery in a
11 declaration filed in opposition to plaintiff’s first motion to reopen discovery. (Doc. No. 98-1.)
12 Moreover, plaintiff’s incarceration status as well as the Christmas holiday were circumstances that
13 should have been accounted for when the previous extension was sought and obtained in October
14 2019. (Doc. Nos. 95, 96, 97.)

15 Despite being warned that no further extensions of the discovery deadline would be granted
16 absent “extraordinary circumstances” (Doc. No. 96), plaintiff waited until the beginning of February
17 2020 to propound discovery. Defendants submit that they received a total of 74 requests for
18 production, with responses due March 20, 2020. (Doc. No. 108 ¶ 1.) On February 13 and 14, 2020,
19 defendants received thirteen sets of requests for admissions, including three “corrected” sets; after
20 subtracting the “corrected” questions this totaled 136 requests for admissions requiring a response; six
21 sets of interrogatories, including one “corrected” set, totaling 89 interrogatories requiring a response;
22 and an additional 39 requests for production. (*Id.* ¶ 2.) Plaintiff’s counsel also contacted defendants’
23 counsel to set the depositions of all five defendants. (*Id.* ¶¶ 3–4.) Therefore, despite having six
24 months to conduct discovery, plaintiff attempted to condense his discovery into a period of less than
25 two months. In finding that plaintiff failed to demonstrate good cause, the magistrate judge
26 considered these factors, and plaintiff has not shown that the denial of a further extension of the
27 discovery deadline is an abuse of discretion or contrary to law.

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1 The recent onset of the COVID-19-related issues also does not excuse plaintiff's failure to
2 propound written discovery in a timely manner. In fact, the COVID-19 situation did not arise until
3 around March 19, 2020 and, by that time, plaintiff had deposed four of the five defendants in this case.
4 (Doc. No. 107 at 11.) The only remaining potential deposition would be of defendant Acebedo, but it
5 was not set before the restrictions arose. Nonetheless, defendants submit that they have agreed to
6 allow plaintiff to proceed with this deposition (without a request for production) in light of the
7 COVID-19 pandemic. (Doc. No. 108 ¶ 3.) However, the prospective Rule 30(b) deposition has not
8 been set and plaintiff never served a notice or subpoena for such deposition. (*Id.* ¶ 4.) In addition, this
9 court's lack of available district judges has no bearing on discovery or plaintiff's lack of diligence in
10 conducting discovery because discovery is handled by magistrate judges, not district judges.
11 Accordingly, neither the COVID-19 pandemic nor the lack of available district judges demonstrates
12 that the magistrate judge's March 26, 2020 order was clearly erroneous or contrary to law.

13 Lastly, the court finds that defendants will be prejudiced by a further extension of the
14 discovery deadline. Plaintiff has propounded numerous discovery requests and conducted several
15 depositions, and plaintiff has not shown how a further extension of the discovery deadline would not
16 be proportional to the needs of this case under Federal Rule of Civil Procedure 26(b)(1).

17 CONCLUSION

18 Based on the foregoing, it is HEREBY ORDERED that plaintiff's motion for reconsideration
19 (Doc. No. 107) of the magistrate judge's March 26, 2020 order is denied.

20 IT IS SO ORDERED.

21 Dated: June 15, 2020

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23 UNITED STATES DISTRICT JUDGE