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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JARED M. VILLERY,
Plaintiff,
v.
JAY JONES, et al.,
Defendants.

No. 1:15-cv-01360-DAD-JDP (PC)

ORDER GRANTING PLAINTIFF'S
REQUEST FOR RECONSIDERATION OF
THE ASSIGNED MAGISTRATE JUDGE'S
MARCH 18, 2020 ORDER

(Doc. No. 82)

Plaintiff Jared M. Villery is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

This matter is before the court on plaintiff's request for limited reconsideration of the assigned magistrate judge's order of March 18, 2020 ruling on plaintiff's motion to compel discovery responses from defendants. (Doc. No. 82.) For the reasons set forth below, plaintiff's request for reconsideration will be granted.

BACKGROUND

On May 29, 2019, plaintiff filed a motion to compel discovery responses from defendants. (Doc. No. 57.) On March 18, 2020, the assigned magistrate judge issued an order granting in part and denying in part plaintiff's motion to compel. (Doc. No. 81.) On April 6, 2020, plaintiff filed the pending request for limited reconsideration of the magistrate judge's March 18, 2020 order.

1 (Doc. No. 82.) Therein, plaintiff argues that: (1) “[t]he Court’s conclusion that Defendants Jones
2 and Escarcega do not have constructive possession, custody, or control over specific [California
3 Department of Corrections and Rehabilitation (“CDCR”)] Internal Affairs records is clearly
4 erroneous and contrary to law,” and (2) “[t]he Court clearly erred when finding that Defendant
5 Jones’s response to Request for Production No. 6 was adequate.” (*Id.* at 5.)¹

6 Pursuant to Local Rule 303(d), defendants’ opposition, if any, needed to be filed by April
7 14, 2020. However, defendants have not filed an opposition to the pending request for
8 reconsideration and the time in which to do so has long since passed.

9 LEGAL STANDARD

10 Federal Rule of Civil Procedure 72(a) provides that non-dispositive pretrial matters may
11 be referred to and decided by a magistrate judge, subject to review by the assigned district judge.
12 Fed. R. Civ. P. 72(a); *see also* L.R. 303(c). The district judge shall modify or set aside any part of
13 the magistrate judge’s order which is “found to be clearly erroneous or contrary to law.” L.R.
14 303(f); *see also* 28 U.S.C. § 636(b)(1)(A). Discovery motions are non-dispositive pretrial
15 motions which come within the scope of Rule 72(a) and 28 U.S.C. § 636(b)(1)(A). Thus, the
16 orders of a magistrate judge addressing discovery motions are subject to the “clearly erroneous or
17 contrary to law” standard of review. *Rockwell Int’l, Inc. v. Pos-A-Traction Indus., Inc.*, 712 F.2d
18 1324, 1325 (9th Cir. 1983). The magistrate judge’s factual determinations are reviewed for clear
19 error, while legal conclusions are reviewed to determine whether they are contrary to law. *United*
20 *States v. McConney*, 728 F.2d 1195, 1200–01 (9th Cir. 1984), *overruled on other grounds by*
21 *Estate of Merchant v. CIR*, 947 F.2d 1390 (9th Cir. 1991). “A magistrate judge’s decision is
22 ‘contrary to law’ if it applies an incorrect legal standard, fails to consider an element of [the]
23 applicable standard, or fails to apply or misapplies relevant statutes, case law, or rules of
24 procedure.” *Martin v. Loadholt*, No. 1:10-cv-00156-LJO-MJS, 2014 WL 3563312, at *1 (E.D.

25 ¹ In the pending request for reconsideration, plaintiff also argues that “[t]he Court committed
26 clear error when failing to reopen discovery and reset the Discovery cut-off deadline,” as
27 previously requested by plaintiff. (Doc. No. 82 at 5; *see also* Doc. No. 58.) That basis for
28 reconsideration, however, has been rendered moot by the magistrate judge’s September 1, 2020
order reopening discovery for ninety days and continuing the dispositive motion deadline for an
additional sixty days thereafter. (Doc. No. 98.)

1 Cal. July 18, 2014). “[R]eview under the clearly erroneous standard is significantly deferential,
2 requiring a definite and firm conviction that a mistake has been committed.” *Concrete Pipe &*
3 *Prod. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 623 (1993) (internal
4 quotation marks omitted); *see also Sec. Farms v. Int’l Bhd. of Teamsters*, 124 F.3d 999, 1014 (9th
5 Cir. 1997).

6 DISCUSSION

7 In denying plaintiff’s motion to compel defendants Escarcega and Jones to produce the
8 documents requested by him, the magistrate judge ruled that:

9 Rule 34(a)(1) of the Federal Rules of Civil Procedure allows parties
10 to serve discovery request for certain relevant items “in the
11 responding party’s possession, custody, or control.” “[F]ederal
12 courts have consistently held that documents are deemed to be within
13 the ‘possession, custody or control’ for purposes of Rule 34 if the
14 party has actual possession, custody or control, or has the legal right
15 to obtain the documents on demand.” *In re Bankers Tr. Co.*, 61 F.3d
16 465, 469 (6th Cir. 1995); *see also United States v. International*
Union of Petroleum & Indus. Workers, 870 F.2d 1450, 1452 (9th
17 Cir.[1989) (“Control is defined as the legal right to obtain
18 documents upon demand.”). Here, plaintiff has failed to show that
19 defendants have the legal right to obtain more documents. The court
20 finds that defendants’ responses are adequate and denies plaintiff’s
21 request for more.

22 (Doc. No. 81 at 4.)

23 Plaintiff argues that the magistrate judge erroneously concluded that defendant Escarcega
24 and Jones did not have possession, custody, or control over CDCR Internal Affairs documents
25 that he had requested from them in his Requests for Production Number 18 and 24, respectively.
26 (Doc. No. 82 at 4). The magistrate judge did not address plaintiff’s contention that defendants
27 Escarcega and Jones have *constructive* control of the requested documents by virtue of their
28 employment with CDCR and the fact that they are both represented in this action by the
California Attorney General’s Office. (Doc. No. 57 at 31; Doc. No. 82 at 7–8). Indeed, judges of
this district have often compelled defendants to produce CDCR documents that they have
constructive control over. *See Mundo v. Carmona*, No. 1:16-cv-01687-AWI-MJS, 2018 WL
1083889, at *2 (E.D. Cal. Feb. 28, 2018) (noting that in the court’s experience “individual
defendants who are employed by CDCR and/or the Attorney General can generally obtain

1 documents . . . from CDCR by requesting them,” and ruling that defendant had control over
2 requested documents and had to produce them because he was employed by non-party CDCR and
3 was represented by the Attorney General’s Office); *Mitchell v. Adams*, No. 2:06-cv-02321-GGH,
4 2009 WL 674348, at *9 (E.D. Cal. Mar. 6, 2009) (requiring documents to be produced because,
5 “[w]hile the defendant warden in his personal or individual capacity may not have custody of the
6 documents at issue, because ‘control’ is determined by authority, he has constructive possession,
7 custody or control”). Although motions to compel discovery from CDCR employees who have
8 contended that they do not have constructive possession over the requested documents and have
9 provide factual support for that contention have been denied, *see Woodall v. California*, No. 1:08-
10 cv-01948-LJO-DLB, 2011 WL 240717, at *1 (E.D. Cal. Jan. 24, 2011), here defendants
11 Escarcega and Jones have not argued that they do not have ready access to the requested
12 documents or that they cannot request them from CDCR.²

13 Accordingly, defendants Escarcega and Jones will be ordered to produce the documents
14 requested by plaintiff in his Requests for Production Number 18 and 24, respectively.

15 Next, the court addresses plaintiff’s contention that the magistrate judge erred in finding
16 that defendant Jones adequately responded to plaintiff’s Request for Production Number 6, which
17 sought identification and production from each defendant of any and all staff complaints that have
18 ever been filed by other inmates against them while employed with CDCR. (Doc. Nos. 57 at 25;
19 82 at 11.) Defendant Jones responded and produced lists of staff complaints filed against him and
20 some of the other defendants in this action with redactions. (*See* Doc. No. 71 at 20–24.) Plaintiff
21 contends that “it is impossible for [him] to glean anything from a list of Complaints, which
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23 ² The undersigned acknowledges that after the magistrate judge reopened discovery in this case,
24 *see* footnote 1 above, the magistrate judge granted plaintiff’s motion for the issuance of
25 subpoenas *duces tecum* on the warden of the facility at issue in this action, the chief of the office
26 of CDCR’s Internal Affairs Office, and the inspector general for the State of California, seeking
27 what appear to be the same documents that he is seeking from defendants Escarcega and Jones.
28 (*Compare* Doc. Nos. 100, 101, *with* Doc. No. 57 at 30.) Even if the documents plaintiff is
seeking from non-parties overlap with those he is seeking from defendants Escarcega and Jones,
the fact that plaintiff may be able to obtain copies of the requested documents from those non-
parties does not absolve defendants of their obligations to comply with plaintiff’s appropriate
discovery requests.

1 provides no information whatsoever pertaining to the substance of the complaints, or the basis for
2 why they were filed . . .” (Doc. No. 82 at 11.)

3 The magistrate judge’s order as to this issue provided no analysis as to why producing a
4 list of complaints filed by inmates against some of the defendants is an “adequate” response to
5 plaintiff’s request for production of copies of the complaints themselves. Because plaintiff
6 alleges that defendants engaged “in a pattern of repeated violations of his right to be free from
7 retaliation, occurring as retribution for [his] pursuit of constitutionally protected activities” (Doc.
8 No 16 at 2), the substance of any complaints by other inmates alleging similar conduct by some
9 or all of the defendants is relevant to plaintiff’s claims at issue in this action. *See* Fed. R. Civ. P.
10 26 (“Parties may obtain discovery regarding any nonprivileged matter that is *relevant* to any
11 party’s claim or defense and proportional to the needs of the case.”) (emphasis added). Indeed,
12 courts have recognized that “[c]omplaints against officers . . . may show, among other things, the
13 character or proclivity of such officers toward violent behavior or possible bias.” *Taylor v. Los*
14 *Angeles Police Dep’t*, No. 99-cv-0383-RT(RCX), 1999 WL 33101661, at *4 (C.D. Cal. Nov. 10,
15 1999). Moreover, “such documents would bear upon [each defendants’] . . . previous alleged
16 misconduct and/or responses to such alleged misconduct.” *Ramirez v. Cty. of Los Angeles*, 231
17 F.R.D. 407, 412 (C.D. Cal. 2005). Thus, the magistrate judge’s ruling that defendant Jones’
18 production of a list of complaints that failed to describe the substance of those complaints was an
19 adequate response to plaintiff’s Request for Production Number 6—is clearly erroneous and
20 contrary to law.

21 Accordingly, defendants will also be ordered to produce documents responsive to
22 plaintiff’s Request for Production Number 6.

23 CONCLUSION

24 For the reasons set forth above,

- 25 1. Plaintiff’s request for reconsideration (Doc. No. 82) of the magistrate judge’s
26 March 18, 2020 order is granted; and
- 27 2. Within thirty (30) days of the date of issuance of this order:

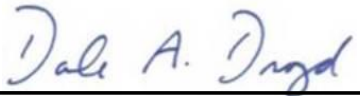
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- a. Defendant Escarcega shall respond to and produce the documents requested by plaintiff in Request for Production No. 18;
- b. Defendant Jones shall respond to and produce the documents requested by plaintiff in Request for Production No. 24; and
- c. Defendants shall respond to and produce the documents requested by plaintiff in Request for Production No. 6.

IT IS SO ORDERED.

Dated: October 28, 2020


UNITED STATES DISTRICT JUDGE