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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 REGINALD RAY YORK,

12 Plaintiff,

13 v.

14 G. GARCIA, et al.,

15 Defendants.  
16  
17

No. 1:15-cv-01828-DAD-BAM (PC)

ORDER DENYING PLAINTIFF'S  
OBJECTIONS TO MAGISTRATE JUDGE'S  
ORDER

(Doc. No. 120)

18 Plaintiff Reginald Ray York is a state prisoner proceeding pro se in this civil rights action  
19 pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge  
20 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

21 On December 4, 2019, plaintiff filed a letter addressed to the Clerk of this Court in which  
22 he requested blank subpoena forms pursuant to Federal Rule of Civil Procedure 45. (Doc. No.  
23 92.) On March 23, 2020, the assigned magistrate judge construed that letter as a motion for the  
24 issuance of subpoenas and denied the motion. (Doc. No. 101.) On April 30, 2020, plaintiff filed  
25 a second motion seeking the issuance of subpoenas for nonparties pursuant to Federal Rule of  
26 Civil Procedure 45. (Doc. No. 102.) On July 22, 2020, the magistrate judge issued an order  
27 denying plaintiff's second motion. (Doc. No. 119.) On August 27, 2020, plaintiff filed

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1 objections to the magistrate judge's order denying his second motion for subpoenas<sup>1</sup> and a request  
2 to disqualify the magistrate judge. (Doc. No. 120.)<sup>2</sup>

3 Federal Rule of Civil Procedure 72(a) provides that non-dispositive pretrial matters may  
4 be decided by a magistrate judge, subject to reconsideration by the district judge. *See also* Local  
5 Rule 303(c).<sup>3</sup> The assigned district judge shall, upon reconsideration, modify or set aside any part  
6 of the magistrate judge's order which is "found to be clearly erroneous or contrary to law." Local  
7 Rule 303(f); *see also* 28 U.S.C. § 636(b)(1)(A). Discovery motions are non-dispositive pretrial  
8 motions within the scope of Rule 72(a) and 28 U.S.C. § 636(b)(1)(A), and are thus subject to the  
9 "clearly erroneous or contrary to law" standard of review. *Rockwell Intern., Inc. v. Pos-A-*  
10 *Traction Industries, Inc.*, 712 F.2d 1324, 1325 (9th Cir. 1983). "A finding is 'clearly erroneous'  
11 when although there is evidence to support it, the reviewing court on the entire evidence is left  
12 with the definite and firm conviction that a mistake has been committed." *United States v. United*  
13 *States Gypsum Co.*, 333 U.S. 364, 395 (1948).

14 In the order denying plaintiff's second motion, the magistrate judge noted that "the  
15 discovery deadline in this action expired on November 16, 2017, and was extended to June 22,  
16 2018 solely for the purpose of allowing Defendants to depose Plaintiff and to file any necessary  
17 motion to compel." (Doc. No. 119 at 4.) The magistrate judge explained that plaintiff had "not  
18 provide[d] sufficient justification for the Court to reopen discovery more than two years later,  
19 after the resolution of several rounds of dispositive motions, when this action is ready to proceed

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21 <sup>1</sup> The same order denied, without prejudice, plaintiff's motions seeking the attendance of  
22 unincarcerated and incarcerated witnesses at trial as premature. (Doc. No. 119.) Plaintiff does  
not seek reconsideration of that decision.

23 <sup>2</sup> In his objections, plaintiff argues that there was no deficiency in his December 4, 2019 motion  
24 seeking subpoena forms, and that any deficiency identified was fabricated by the magistrate judge  
25 to rule for defendant J. Neighbors. (Doc. No. 120 at 3, 5.) This argument is irrelevant to  
26 resolution of the pending motion because plaintiff is currently objecting to the July 22, 2020 order  
denying his *second* motion for subpoena and he did not object to the order denying his December  
4, 2019 motion.

27 <sup>3</sup> Plaintiff objects that he did not consent to magistrate judge jurisdiction. (Doc. No. 120 at 3.)  
28 This is immaterial, however, because the magistrate judge has the authority to rule on pretrial  
matters, such as the one currently at issue, under 28 U.S.C. § 636(b)(1) and Local Rule 302.

1 to trial.” (*Id.*) In his objections, plaintiff asserts that his motion for subpoenas was in fact timely.  
2 (Doc. No. 120 at 8–15.)

3 According to plaintiff, on April 18, 2018, he was asked by defendant Neighbors in his first  
4 set of interrogatories to identify every person by name and address who plaintiff contended had  
5 knowledge of any fact supporting the complaint’s allegation that defendant Neighbors could have  
6 stopped defendant G. Garcia from dragging plaintiff from his cell. (Doc. No. 102 at 3.) Plaintiff  
7 answered that interrogatory by telling defendant Neighbors that the information could be found in  
8 his personnel files, and that he would like access to that information to answer the question. (*Id.*)  
9 Plaintiff states that defendant Neighbors obtained the requested information and turned it over in  
10 bad faith, in part because plaintiff received it in the form of a declaration significantly later on  
11 February 7, 2019, and in part because all the names were blacked out and additional documents  
12 with additional names of witnesses were removed. (*Id.*) Plaintiff contends that this deprived him  
13 of information or statements from correctional officers. (*Id.* at 3–4.) Plaintiff also avers that he  
14 objected to the use of this evidence—thus giving notice to the court that defendant Neighbors did  
15 not turn over the requested information—when he filed his opposition to defendant Garcia and  
16 Neighbors’ motion for summary judgment on February 28, 2019 and when he objected on  
17 September 16, 2019 to the magistrate judge’s findings and recommendations addressing  
18 defendants’ motion for summary judgment. (*Id.* at 4.) Finally, plaintiff avers that he made  
19 another request to defendant Neighbors’ attorney to turn over the requested information at the  
20 settlement conference held in this action on November 8, 2019, and that request was denied. (*Id.*)

21 The undersigned is not persuaded that the history of this action as recounted by plaintiff  
22 justifies the reopening of discovery in this case. As the magistrate judge explained,

23 As stated in the Court’s March 16, 2017 Discovery and Scheduling  
24 Order, discovery would proceed pursuant to Federal Rules of Civil  
25 Procedure 1, 16, and 26–36. (ECF No. 21.) As such, Plaintiff could  
26 have served, for example: written interrogatories (pursuant to Rule  
27 33), requests for production of documents (pursuant to Rule 34), or  
written requests for admission (pursuant to Rule 36), at any time  
during the discovery period. It is undisputed that Plaintiff did not  
serve any such requests on Defendants.

28 (Doc. No. 119 at 4.) But even if plaintiff’s response to defendant Neighbors’ interrogatory, his

1 opposition to defendants' motion for summary judgment, and his objections to the magistrate  
2 judge's findings and recommendation are all liberally construed as requests for production, given  
3 his *pro se* status, the magistrate judge is correct in observing that plaintiff should have filed a  
4 timely motion to compel pursuant to Federal Rule of Civil Procedure 37 if he believed he had  
5 properly served a discovery request for the document(s) in question and had been denied the  
6 requested discovery. (*See id.* at 4.) The undersigned also agrees that "if Plaintiff believed that  
7 the document constituted an incomplete response to his discovery 'request,' Plaintiff again should  
8 have filed a motion to compel pursuant to Federal Rule of Civil Procedure 37." (*See id.* at 5); *see*  
9 *also United States v. Griffin*, No. CR 02-938(A)-RGK, 2006 WL 8429329, at \*2 (C.D. Cal. Oct.  
10 20, 2006) (Defendant filed a motion to compel further discovery to "object[] to the allegedly  
11 "excessive redactions" in the discovery material produced by the government.") The court need  
12 not issue subpoenas given plaintiff's failure in this regard. *See Cantu v. Garcia*, No. 1:09-cv-  
13 00177-AWI-DLB, 2013 WL 101667, at \*1 (E.D. Cal. Jan. 8, 2013), *on reconsideration in part*,  
14 No. 1:09-cv-00177-AWI-DLB, 2013 WL 595100 (E.D. Cal. Feb. 15, 2013) ("If Defendant  
15 objects to Plaintiff's discovery request, a motion to compel is the next required step. If the Court  
16 rules that the documents or tangible things are discoverable but Defendants do not have care,  
17 custody, and control of them, Plaintiff may then seek a subpoena of a nonparty. Alternatively, if  
18 the Court rules that the documents are not discoverable, the inquiry ends. The Court will not  
19 issue a subpoena for a nonparty individual without Plaintiff first following the procedure outlined  
20 above."). Thus, the undersigned does finds that the magistrate judge's discovery order was not  
21 "clearly erroneous or contrary to law." *See Rockwell Intern., Inc.*, 712 F.2d at 1325; *United*  
22 *States Gypsum Co.*, 333 U.S. at 395.

23 Finally, plaintiff argues that the assigned magistrate judge should be disqualified from this  
24 case, asserting that the magistrate judge

25 has demonstrate[d] a pattern of personal bias or prejudice towards  
26 the Plaintiff as an African American prisoner when it comes to his  
27 claims and issues against Defendant Neighbors, where she uses her  
28 influence as a magistrate judge to make her Findings and  
Recommendations and Orders to denied the Plaintiff's claims and  
arguments to benefit Defendant Neighbors in this case.

1 (Doc. No. 120 at 16.) Plaintiff alleges that the magistrate judge has omitted facts when issuing  
2 findings and recommendations, and that “in order for the magistrate judge to continue to omit  
3 facts from the Plaintiff motion in favor of Defendant Neighbors, there has to be some form of bias  
4 or personal prejudice towards the Plaintiff.” (*Id.* at 16–18.) The motion seeking disqualification  
5 is baseless and will be denied.

6 First, to the extent plaintiff suggests that the magistrate judge has erred omitting facts  
7 from findings and recommendations, “[t]his argument does not support a recusal motion. ‘Judges  
8 are known to make procedural and even substantive errors on occasion. The errors alleged here  
9 would be the basis for appeal, not recusal.’” *In re Focus Media, Inc.*, 378 F.3d 916, 930 (9th Cir.  
10 2004) (quoting *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1145 (9th  
11 Cir.2001)). Moreover, plaintiff has provided absolutely no evidence that would give the  
12 undersigned any reason to question whether the magistrate judge was biased or prejudiced against  
13 him in any way. *See id.* (explaining that “judicial rulings alone almost never constitute a valid  
14 basis for a bias or partiality motion. In and of themselves (*i.e.*, apart from surrounding comments  
15 or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and  
16 can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . .  
17 when no extrajudicial source is involved”) (quoting *Liteky v. United States*, 510 U.S. 540, 555  
18 (1994)).

19 Accordingly, plaintiff’s objections, construed as a motion for reconsideration of the  
20 magistrate judge’s order denying his motion seeking subpoenas of nonparties, as well as his  
21 request to disqualify the magistrate judge (Doc. No. 120) are denied.

22 IT IS SO ORDERED.

23 Dated: November 18, 2020

24   
UNITED STATES DISTRICT JUDGE