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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DENNIS CURTIS HISLE,)	Case No. 1:17-cv-01400-LJO-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S MOTION FOR RECONSIDERATION
v.)	
)	
MARLYN CONANON, et al.,)	[ECF No. 65]
)	
Defendants.)	
)	

Plaintiff Dennis Curtis Hisle is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for reconsideration, filed May 13, 2019.

**I.
RELEVANT BACKGROUND**

This action is proceeding against Defendants Marlyn Conanon and John Doe (at Mercy Hospital) for deliberate indifference to a serious medical need.¹

On April 10, 2018, Defendant Conanon filed an answer to the complaint. On April 11, 2018, the Court issued the discovery and scheduling order.

¹ The John Doe Defendant has not yet been identified or served with process.

1 On March 22, 2019, Plaintiff filed a request for subpoenas. Defendant filed an opposition on
2 April 12, 2019, and Plaintiff filed a reply on April 24, 2019.

3 On April 30, 2019, the Magistrate Judge granted in part and denied in part, Plaintiff's motion
4 for issuance of subpoenas.

5 As previously stated, on May 13, 2019, Plaintiff filed a motion for reconsideration of the
6 Court's April 30, 2019 order.

7 **II.**
8 **DISCUSSION**

9 Reconsideration motions are committed to the discretion of the trial court. Rodgers v. Watt,
10 722 F.2d 456, 460 (9th Cir. 1983) (en banc); Combs v. Nick Garin Trucking, 825 F.2d 437, 441 (D.C.
11 Cir. 1987). A party seeking reconsideration must set forth facts or law of a strongly convincing nature
12 to induce the court to reverse a prior decision. See, e.g., Kern-Tulare Water Dist. v. City of
13 Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986).

14 Federal Rule of Civil Procedure 72(a) provides that nondispositive pretrial matters may be
15 referred to and decided by a magistrate judge, subject to review by the assigned district judge. See
16 also Local Rule 303(c). The district judge shall modify or set aside any part of the magistrate judge's
17 order which is "found to be clearly erroneous or contrary to law." Local Rule 303(f); see also 28
18 U.S.C. § 636(b)(1)(A). Discovery motions are nondispositive pretrial motions which fall under Rule
19 72(a) and 28 U.S.C. § 636(b)(1)(A), and the orders resolving such motions are subject to the "clearly
20 erroneous or contrary to law" standard of review. Rockwell Inter., Inc. v. Pos-A-Traction Indus., Inc.,
21 712 F.2d 1324, 1325 (9th Cir. 1983).

22 The magistrate judge's factual determinations are reviewed for clear error and the legal
23 conclusions are reviewed to determine if they are contrary to the law. United States v. McConney,
24 728 F.2d 1195, 1200-01 (9th Cir. 1984), overruled on other grounds in Estate of Merchant v. CIR, 947
25 F.2d 1390 (9th Cir. 1991). "A magistrate judge's decision is 'contrary to law' if it applies an incorrect
26 legal standard, fails to consider an element of applicable standard, or fails to apply or misapplies
27 relevant statutes, case law, or rules of procedure." Martin v. Loadholt, No. 1:10-cv-00156-LJO-MJS,
28 2014 WL 3563312, at *1 (E.D. Cal. July 18, 2014) (citing Morgal v. Maricopa County Bd. of Sup'rs,

1 284 F.R.D. 452, 459 (D. Ariz. 2012)). A magistrate judge’s factual findings are “clearly erroneous”
2 when the district court is left with the definite and firm conviction that a mistake has been committed.
3 Security Farms v. International Bhd. of Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997).

4 In his motion for reconsideration, Plaintiff contends the Magistrate Judge erred by failing to
5 consider and/or deny his request for issuance of a subpoena to obtain the radiologic images of his
6 injury from Mercy Hospital. In the April 30, 2019 order, the Magistrate Judge denied Plaintiff’s first
7 request for a subpoena of the x-ray imaging because he already has access to such records, but granted
8 Plaintiff’s second request for a subpoena to identify the x-ray technician or person who performed the
9 imaging on May 1 through May 16, 2016. (ECF No. 63.)

10 Plaintiff contends that he did not request a subpoena for the x-ray images on DVD, but rather
11 the radiologic copies of the x-ray images to “be presented to juror at trial to exhibit the progression of
12 growth development of the hematoma.” (Mot. at 3:12-14, ECF No. 65.) Plaintiff further submits that
13 he is now in possession of the identity of the x-ray technician and a subpoena is no longer necessary.

14 Plaintiff’s motion must be denied. The Magistrate Judge previously denied Plaintiff’s motion
15 to compel Defendant to produce the radiologic images in a specific format. (ECF No. 33.) The Court
16 specifically found that Plaintiff’s request to have the material produced in a specific format was
17 outside of the scope of discovery under Federal Rule of Civil Procedure 26(b)(1):

18 Lastly, Plaintiff has not demonstrated that the material produced in the format requested is
19 proportional to the needs of the case. Indeed, as Defendants point out, Plaintiff is not an expert
20 and is not qualified to interpret the x-ray and CT scan images. Defendant has provided
21 Plaintiff with the accompanying radiology reports that explain the observations of the
22 examining radiologist. Plaintiff fails to explain how his personal ability to view these images
23 is of any greater importance or relevant to his claims than the reports of the non-party
24 radiologists who interpreted these images during his examination.

25 (Id.)

26 Here, Plaintiff is not an expert, and Defendant has produced Xerox copies of the images and
27 conclusion of the examining radiologist. Other than Plaintiff’s claim that he wishes to present these
28 images if and when the case goes to trial, Plaintiff fails to present a valid reason why he needs to view
these images in that specific format. Further, Plaintiff’s unqualified opinion of what he believes these
images may show is insufficient to warrant further disclosure of the images for which he already has

1 access. Accordingly, Plaintiff's motion for reconsideration of the April 30, 2019, order shall be
2 denied.

3 **III.**

4 **ORDER**

5 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motion for reconsideration
6 of the Magistrate Judge's April 30, 2019, order is DENIED.

7
8 IT IS SO ORDERED.

9 Dated: June 19, 2019

/s/ Lawrence J. O'Neill
10 UNITED STATES CHIEF DISTRICT JUDGE