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

ROBERT DUANE FRANKIN,

Plaintiff,

No. CIV S-07-0656 JAM KJM P

vs.

BUTLER, et al.,

Defendants.

ORDER

_____ /

On September 28, 2009, plaintiff filed a request for reconsideration of the magistrate judge's order filed September 11, 2009, which struck plaintiff's second amended complaint, denied plaintiff's request for additional time in which to file a motion to compel discovery, denied plaintiff's motion for additional time to conduct discovery under Rule 56(f) of the Federal Rules of Civil Procedure, granted defendants' motion for a protective order, denied plaintiff's motion to strike defendants' motion for a protective order, struck plaintiff's sur-reply, but granted plaintiff's request for an extension of time to file a sur-reply limited as discussed in the body of the order.

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1 Pursuant to Local Rule 72-303(f), a magistrate judge's orders shall be upheld
2 unless "clearly erroneous or contrary to law." Upon review of the entire file, the court finds that
3 it does not appear that the magistrate judge's ruling was clearly erroneous or contrary to law.

4 In his objections, plaintiff asks for an extension of time in which to file an
5 interlocutory appeal. The court declines to make such an order because none of these rulings are
6 appealable orders. See Sell v. United States, 539 U.S. 166, 176 (2003). In addition, the matters
7 plaintiff seeks to appeal do not present controlling questions of law about which there is
8 substantial difference of opinion and so the court declines to certify them for interlocutory
9 appeal. 28 U.S.C. § 1292(b).

10 Therefore, IT IS HEREBY ORDERED that:

11 1. Upon reconsideration, the order of the magistrate judge filed September 11,
12 2009, is affirmed;

13 2. Plaintiff's request for additional time in which to pursue an interlocutory
14 appeal is denied; and

15 3. The court declines to certify these issues for interlocutory appeal.

16 DATED: January 4, 2010

17 /s/ John A. Mendez
18 UNITED STATES DISTRICT JUDGE