

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

MAURICE C. CAMPBELL,
Plaintiff,

NO. CIV. 07-1419 WBS GGH P

v.

ORDER

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,
Defendants.

_____ /

-----oo0oo-----

Pursuant 28 U.S.C. § 636(b)(1)(A) and Federal Rule of
Civil Procedure 72(a), plaintiff requests reconsideration of the
Magistrate Judge's Order of July 7, 2009 ("July 7 Order") denying
plaintiff's request for an extension of the discovery deadlines
set by the December 23, 2008 Scheduling Order (Docket No. 19).

A district court must defer to a magistrate judge's
non-dispositive order unless it is "clearly erroneous or
contrary to law." Grimes v. City & County of San Francisco, 951
F.2d 236, 241 (9th Cir. 1991) (quoting Fed. R. Civ. P. 72(a)).
The Magistrate Judge's July 7 Order was neither clearly erroneous

1 nor contrary to law. In his request for an extension of the
2 discovery deadlines, plaintiff made no attempt to demonstrate
3 that, despite his diligence, he could not have served his
4 untimely requests for document production by March 23, 2009--the
5 deadline for discovery requests set by the Scheduling Order. See
6 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 608-09 (9th
7 Cir. 1992) (providing that a party seeking to modify a Rule 16(b)
8 scheduling order must make a showing of "good cause," a standard
9 focusing on the diligence of the moving party).

10 In his motion for reconsideration, plaintiff now argues
11 for the first time that he was delayed in serving his requests
12 because the Magistrate Judge had previously granted defendants a
13 seventeen-day extension to respond to plaintiff's
14 interrogatories, and his requests were based upon those
15 responses. (Pl.'s Mot. 8:7-15.) Because plaintiff could have
16 presented this argument in his request to the Magistrate Judge,
17 he has improperly raised it for the first time in the instant
18 motion for reconsideration of the Magistrate Judge's Order. See
19 Jones v. Sweeney, No. 04-6214, 2008 WL 3892111, at *2 (E.D. Cal.
20 Aug. 21, 2008) (Ishii, C.J.) ("Motions for reconsideration and
21 objections to a Magistrate Judge's order are not the place for a
22 party to make a new argument and raise facts not addressed in his
23 original brief." (citing Zimmerman v. City of Oakland, 255 F.3d
24 734, 740 (9th Cir. 2001); Rosenfeld v. U.S. Dep't of Justice, 57
25 F.3d 803, 811 (9th Cir. 1995); Nw. Acceptance Corp. v. Lynnwood
26 Equip., Inc., 841 F.2d 918, 925-26 (9th Cir. 1988))).

27 Even considering this new argument, plaintiff has
28 failed to show "good cause" to modify the Scheduling Order.

1 According to the extension granted by the Magistrate Judge,
2 defendants' responses to plaintiff's interrogatories were due on
3 or before February 19, 2009. (January 13, 2009 Order 1:19-20.)
4 After receiving those responses, plaintiff waited until April 5--
5 nearly two weeks after the March 23 discovery deadline--to serve
6 his production requests. (Docket No. 22 at 1:27-2:1.) Plaintiff
7 provides no explanation for why he could not have served his
8 requests by the March 23 deadline, or why he delayed until May 5
9 to file his request for an extension of the discovery deadline.
10 See Jackson v. Laureate, Inc., 186 F.R.D. 605, 608 (E.D. Cal.
11 1999) (Burrell, J.) (explaining that Rule 16(b) requires
12 diligence both in complying with the deadlines established by a
13 scheduling order and in seeking amendment once it becomes
14 apparent that compliance is not possible).

15 IT IS THEREFORE ORDERED that plaintiff's request for
16 reconsideration of the Magistrate Judge's July 7 Order be, and
17 the same hereby is, DENIED.

18 DATED: August 4, 2009

19
20 

21 WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28