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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-
profit corporation,

Plaintiff,

v.

CHICO SCRAP METAL, INC., a
California corporation;
GEROGE W. SCOTT, SR.
REVOCABLE INTER VIVOS TRUST;
GEORGE SCOTT, SR., an
individual; and GEORGE SCOTT,
JR., an individual,

Defendants.

No. 2:10-cv-01207-GEB-AC

**ORDER RE DEFENDANTS' MOTION TO
BIFURCATE OR, IN THE
ALTERANTIVE, MOTION FOR A
PROTECTIVE ORDER AND MOTION TO
RECONSIDER DISCOVERY ORDER;
ORDER AMENDING DEADLINE TO
COMPLETE CERTAIN EXPERT
DISCOVERY***

Defendants argue in alternative motions that they
"renew their motion for bifurcation" of the liability and penalty
phases of this action "in light of th[e] Court's earlier Order
[denying their original bifurcation motion] and further evidence
now presented[;]" "seek . . . protective order[s] staying
discovery of defendants' financial information[,]" or "limiting
the scope of discovery[;]" and "seek reconsideration and/or
modification of [Magistrate Judge Claire's October 9, 2014]
Discovery Order." (Mem. P.&A. in Supp. of Defs.' Am. Mot. to

* The hearing on December 22, 2014, is vacated since this matter is
suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 Bifurcate ("Defcs.' Mot.") 1:9-19, ECF No. 159-1.) For the reasons
2 stated below, each request is denied.

3 **A. Reconsideration of Defendants' Bifurcation Motion**

4 Defendants essentially seek, in what they characterize
5 as their "renewed" motion for bifurcation, reconsideration of the
6 Court's June 4, 2014 Order Denying [Their Original] Motion to
7 Bifurcate. However, Defendants neither address, nor show they
8 have satisfied, the legal standard which governs reconsideration
9 of that order. See Sch. Dist. No. 1J, Multnomah Cnty., Or. v.
10 ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993) ("Rule 60(b)
11 provides for reconsideration only upon a showing of (1) mistake,
12 surprise, or excusable neglect; (2) newly discovered evidence;
13 (3) fraud; . . . or (6) 'extraordinary circumstances' which would
14 justify relief." (internal quotation marks and citation
15 omitted)). Further, Defendants' reconsideration request does not
16 comply with Local Rule 230(j), which prescribes in relevant part:

17 Whenever . . . a . . . motion for
18 reconsideration is made upon the same or any
19 alleged different set of facts, counsel shall
20 present to the Judge . . . an affidavit or
21 brief . . . setting forth . . . (3) what new
22 or different facts or circumstances are
23 claimed to exist which did not exist or were
24 not shown upon such prior motion, or what
25 other grounds exist for the motion; and (4)
26 why the facts or circumstances were not shown
27 at the time of the prior motion.

23 Although Defendants state their "renew[ed] motion for
24 bifurcation" is based on "further evidence now presented[,]"
25 Defendants do not specify what additional evidence is offered or
26 explain why such evidence was not presented in their original
27 bifurcation motion. Therefore, Defendants' "renew[ed] motion for
28 bifurcation" is denied.

1 **B. Alternative Request for a Protective Order(s)**

2 Defendants' alternative request under Federal Rule of
3 Civil Procedure ("Rule") 26(c)(1) for a protective order(s) is
4 not decided since "all . . . motions relating to protective
5 orders . . . submitted or filed for hearing before discovery
6 cutoff"¹ are to be decided by the Magistrate Judge. E.D. Cal.
7 302(c)(1).

8 **C. Reconsideration of Discovery Order**

9 Defendants also seek under Rule 72(a) and Local Rule
10 303(c) "reconsideration of a portion of . . . Magistrate Judge
11 Claire['s October 9, 2014 Discovery Order]," specifically, "[her]
12 failure to consider [D]efendants' objections to scope of the
13 requested discovery." (Defs.' Mot. 2:18-19, 3:1-6, 15:14-17.)
14 Defendants contend "[t]he [Magistrate Judge's] passing remark
15 that the objections were not timely introduced is contrary to
16 law, which does not deem objections waived unless a party clearly
17 makes no effort until after an adverse ruling to interpose an
18 objection." (Id. at 3:4-6.)

19 "If a party objects to a nondispositive pretrial ruling
20 by a magistrate judge, the district court will review or
21 reconsider the ruling under the 'clearly erroneous or contrary to
22 law' standard." Mackey v. Frazier Park Pub. Util. Dist., No.
23 1:12-CV-00116-LJO-JLT, 2012 WL 5304758, at *2 (E.D. Cal. Oct. 25,
24 2012) (quoting Fed. R. Civ. P. 72(a)). "A magistrate judge's
25 factual findings are 'clearly erroneous' when the district court

26 _____
27 ¹ "The final day to 'complete' . . . discovery [is] Monday, January 26,
28 2015" (Stipulation Modifying Pretrial Scheduling Order 3:16-17, ECF
No. 151; see also Minute Order approving the referenced stipulation, ECF No.
152.)

1 is left with the definite and firm conviction that a mistake has
2 been committed." Id. (quoting Sec. Farms v. Int'l Bhd. of
3 Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997). "However, the
4 district court 'may not simply substitute its judgment for that
5 of the deciding court.'" Id. (quoting Grimes v. City of S.F., 951
6 F.2d 236, 241 (9th Cir. 1991)). "An order 'is contrary to law
7 when it fails to apply or misapplies relevant statutes, case law,
8 or rules of procedure.'" Id. (quoting Knutson v. Blue Cross &
9 Blue Shield of Minn., 254 F.R.D. 553, 556 (D. Minn. 2008)). "A
10 magistrate judge's pre-trial discovery orders are generally
11 considered nondispositive orders." Id. (citing Thomas E. Hoar,
12 Inc. v. Sara Lee Corp., 900 F.2d 522, 525 (2d Cir. 1990)).

13 Here, the Magistrate Judge held in the Discovery Order,
14 *inter alia*, that "Defendants' supplemental response [to
15 Plaintiff's third set of requests for production] was . . .
16 untimely and w[ould] not be considered . . . to the extent that
17 it raise[d] objections not raised in its original response."
18 (Discovery Order 7:13-16, ECF No. 158.) Defendant has not shown
19 the Magistrate Judge's ruling on this issue was clearly erroneous
20 or contrary to law. See, e.g., Safeco Ins. Co. of Amer. v.
21 Rawstrom, 183 F.R.D. 668, 671-72 (C.D. Cal. 1998) ("[O]bjections
22 not included in a timely response are waived even if the
23 objections are contained in a later untimely response, absent a
24 showing of good cause."). Therefore, Defendants' request for
25 reconsideration of the Discovery Order is denied.

26 **D. Extension of Certain Discovery Deadlines**

27 Lastly, on November 24, 2014, the parties stipulated to
28 extend the deadline to conduct certain expert discovery, as

1 follows:

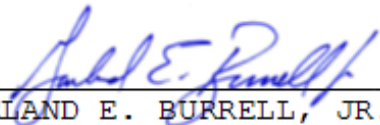
2 (1) The last day to exchange expert
3 witness disclosures for experts designated to
4 provide opinion testimony regarding
5 Defendants' financial wherewithal and the
6 alleged economic benefit Defendants derived
7 from violating the Clean Water Act and shall
8 be extended from November 24, 2014 to the
9 date 45 days following the date of production
10 of Defendants' financial records; [and]

11 (2) The last day to designate rebuttal
12 experts or provide supplementary reports will
13 be twenty days (20) following the designation
14 of experts in Paragraph (1)

15 (Stipulation & Proposed Order Modifying Expert Disc. Deadlines
16 3:2-11, ECF No. 162.)

17 The parties' stipulation to extend the expert
18 disclosure deadlines concerning the specified expert opinion
19 testimony is approved.

20 Dated: December 2, 2014

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GARIAND E. BURRELL, JR.
Senior United States District Judge