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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN ALAN KELLEY,
Petitioner,
v.
JOE A. LIZARRAGA, Warden,
Respondent.

No. 2:16-cv-01088-MCE-GGH

ORDER

In bringing the present Motion for Reconsideration (ECF No. 28), Plaintiff John Alan Kelley (“Plaintiff”) asks this Court to reverse the Magistrate Judge’s March 23, 2017 Order denying Plaintiff’s Motion to Compel (ECF No. 24). Plaintiff’s Motion to Compel sought an order from this Court compelling the Clerk of the Placer County Superior Court to produce a CD that was placed in evidence during his trial but, according to Plaintiff’s Motion, was not made part of the official record of trial proceedings. In his Order denying Plaintiff’s Motion to Compel, the Magistrate Judge noted that federal courts are without power to issue what amounts to mandamus in directing state courts, state judicial officers, or other state officials in the performance of their duties. On May 18, 2017, Plaintiff moved to reconsider that decision.

In reviewing a magistrate judge’s determination, the assigned judge shall apply the “clearly erroneous or contrary to law” standard of review set forth in Local Rule

1 303(f), as specifically authorized by Federal Rule of Civil Procedure 72(a) and 28 U.S.C.
2 § 636(b)(1)(A).¹ Under this standard, the Court must accept the Magistrate Judge's
3 decision unless it has a "definite and firm conviction that a mistake has been committed."
4 Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for So. Cal., 508
5 U.S. 602, 622 (1993). If the Court believes the conclusions reached by the Magistrate
6 Judge were at least plausible, after considering the record in its entirety, the Court will
7 not reverse even if convinced that it would have weighed the evidence differently.
8 Phoenix Eng. & Supply Inc. v. Universal Elec. Co., Inc., 104 F.3d 1137, 1141 (9th Cir.
9 1997).

10 After reviewing the entire file, this Court cannot say that the Magistrate Judge's
11 decision denying Plaintiff's Motion to Compel was clearly erroneous. In fact, the decision
12 appears to be correct since the exhibit in question was apparently not part of the official
13 state court record, and under 28 U.S.C. 2254(f) the Court can only direct production of
14 that actual record in habeas proceedings like this one. Plaintiff's Motion for
15 Reconsideration (ECF No. 28) is accordingly DENIED.

16 IT IS SO ORDERED.

17 Dated: January 3, 2018

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19 MORRISON C. ENGLAND, JR.
20 UNITED STATES DISTRICT JUDGE

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27 ¹ Federal Rule of Civil Procedure 72(a) directs the district court judge to "modify or set aside any
28 portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Similarly, under
28 U.S.C. § 636(b)(1)(A), the district judge may reconsider any pretrial order "where it is shown that the
magistrate's order is clearly erroneous or contrary to law."