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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 GERALD SPENCE,

12 Plaintiff,

13 v.

14 G. KAUR, et al.,

15 Defendants.  
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No. 2:16-cv-01828-TLN-KJN

**ORDER**

17 This matter is before the Court on Plaintiff Gerald Spence's ("Plaintiff") Request for  
18 Reconsideration of the magistrate judge's Order denying in part Plaintiff's Motion to Compel  
19 Discovery and granting in part Defendant Kaur's Motion to Compel (ECF No. 83). (ECF No.  
20 85.) For the reasons set forth below, Plaintiff's motion is DENIED.

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1           **I.       FACTUAL AND PROCEDURAL BACKGROUND**

2           Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief  
3           under 42 U.S.C. § 1983. Plaintiff alleges that in 2016, while he was housed at California State  
4           Prison-Solano, Defendants Kaur (the Sr. Librarian) and Sgt. Chambers issued a 128-B and a  
5           CDCR-115 Rules Violation Report<sup>1</sup> (“RVR”) against Plaintiff on false charges, in retaliation for  
6           Plaintiff’s filing of a prison grievance against Kaur. (ECF No. 89.) The hearing on the RVR took  
7           place on November 18, 2016. (ECF Nos. 89, 90, 92.) The RVR was subsequently reversed, but  
8           Plaintiff lost 30 days of privileges, including access to the yard and the law library. Plaintiff  
9           seeks unspecified injunctive relief and monetary damages. This action is proceeding on  
10          Plaintiff’s Third Amended Complaint. (See ECF Nos. 89–90.)

11          Plaintiff and Defendant Kaur (“Defendant”) filed Motions to Compel Discovery on April  
12          8 and 16, 2019, respectively. (ECF Nos. 63, 65.) On August 15, 2019, the magistrate judge  
13          addressed the parties’ motions to compel discovery responses, granting in part and denying in part  
14          each motion and ordering the parties to produce further responses. (ECF No. 83.) Plaintiff filed a  
15          Request for Reconsideration of the magistrate judge’s discovery order on September 3, 2019.<sup>2</sup>  
16          (See ECF No. 85 at 13.)

17           **II.       STANDARD OF LAW**

18          A party may object to a non-dispositive pretrial order of a magistrate judge within  
19          fourteen days after service of the order. See Fed. R. Civ. P. 72(a). The magistrate judge’s order  
20          will be upheld unless it is “clearly erroneous or contrary to law.” *Id.*; 28 U.S.C. § 636(b)(1)(A).  
21          The objecting party has the burden of showing that the magistrate judge’s ruling is clearly  
22          erroneous or contrary to law. In re eBay Seller Antitrust Litig., No. C 07-1882 JF (RS), 2009 WL  
23          3613511, at \*1 (N.D. Cal. Oct. 28, 2009). “A party seeking reconsideration must set forth facts  
24          or law of a strongly convincing nature to induce the court to reverse a prior decision.” Martinez

25          <sup>1</sup>       “128-B” and “CDCR-115” are references to forms used by prison staff to document  
26          various degrees of disciplinary action. See 15 C.C.R. §§ 3312, 3326.

27          <sup>2</sup>       Plaintiff’s motion was entered on the Court’s docket on September 10, 2019. (ECF No.  
28          85.) However, as discussed herein, pursuant to the mailbox rule, the motion is deemed to have  
            been filed on September 3, 2019.

1 v. Lawless, No. 1:12-CV-01301-LJO-SKO, 2015 WL 5732549, at \*1 (E.D. Cal. Sept. 29, 2015)  
2 (citing Kern-Tulare Water Dist. v. City of Bakersfield, 634 F. Supp. 656, 665 (E.D. Cal. 1986),  
3 *aff'd in part and rev'd in part on other grounds*, 828 F.2d 514 (9th Cir. 1987)).

4 “The ‘clearly erroneous’ standard applies to factual findings and discretionary decisions  
5 made in connection with non-dispositive pretrial discovery matters.” *Comput. Econ., Inc. v.*  
6 *Gartner Grp., Inc.*, 50 F. Supp. 2d 980, 983 (S.D. Cal. 1999) (citing *Maisonville v. F2 Am., Inc.*,  
7 902 F.2d 746, 748 (9th Cir. 1990)). Under the “clearly erroneous” standard, “the district court  
8 can overturn the magistrate judge’s ruling only if the district court is left with the ‘definite and  
9 firm conviction that a mistake has been committed.’” *E.E.O.C. v. Peters’ Bakery*, 301 F.R.D.  
10 482, 484 (N.D. Cal. 2014) (quoting *Burdick v. C.I.R.*, 979 F.2d 1369, 1370 (9th Cir. 1992)).

11 “Thus, review under the ‘clearly erroneous’ standard is significantly deferential.” *Concrete Pipe*  
12 *and Products of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 623 (1993).

13 The magistrate’s legal conclusions are reviewed de novo. See *Bhan v. NME Hospitals,*  
14 *Inc.*, 929 F.2d 1404, 1414 (9th Cir. 1991). “An order is contrary to law when it fails to apply or  
15 misapplies relevant statutes, case law, or rules of procedure.” *Cochran v. Aguirre*, No. 1:15-cv-  
16 01092-AWI-SAB (PC), 2017 WL 2505230, at \*1 (E.D. Cal. June 9, 2017). However, the district  
17 court “may not simply substitute its judgment for that of the deciding court.” *Grimes v. City of*  
18 *S.F.*, 951 F.2d 236, 241 (9th Cir. 1991). Rather, “a magistrate judge’s decision is contrary to law  
19 only where it runs counter to controlling authority.” *Pall Corp. v. Entegris, Inc.*, 655 F. Supp. 2d  
20 169, 172 (E.D. N.Y. 2008). “Consequently, “a magistrate judge’s order simply cannot be  
21 contrary to law when the law itself is unsettled.” *Id.*

### 22 **III. ANALYSIS**

#### 23 **A. Plaintiff’s Request is Untimely**

24 Under the mailbox rule, a pro se prisoner’s pleading is deemed filed at the time he  
25 delivers it to prison authorities for forwarding to the court clerk. *Douglas v. Noelle*, 567 F.3d  
26 1103, 1106–07 (9th Cir. 2009); see also *Jenkins v. Johnson*, 330 F.3d 1146, 1149 n.2 (9th Cir.  
27 2003) (date petition is signed may be considered earliest possible date an inmate could submit his  
28 petition to prison authorities for filing under the mailbox rule). On August 15, 2019, the

1 magistrate judge issued an order denying in part Plaintiff's motion to compel discovery. (ECF  
2 No. 83.) Any objections to the magistrate judge's order were due by August 29, 2019. Fed. R.  
3 Civ. P. 72(a). Pursuant to the mailbox rule, Plaintiff's Request for Reconsideration of the  
4 magistrate judge's order is deemed as filed on September 3, 2019. (See ECF No. 85 at 13);  
5 Douglas, 567 F.3d at 1106–07; Jenkins, 330 F.3d at 1149 n.2. The Request is therefore untimely.  
6 Accordingly, Plaintiff's Request for Reconsideration is DENIED.

7 B. Plaintiff's Request is Unavailing

8 Regardless, Plaintiff's Request for Reconsideration is without merit. The Request is  
9 based on Plaintiff's disagreement with the magistrate judge's decisions. But Plaintiff fails to  
10 demonstrate the order was clearly erroneous or contrary to law. Rather, Plaintiff's Request for  
11 Reconsideration reflects his misunderstanding about the discovery process. For example,  
12 Plaintiff states that "[d]iscovery does not have to be relevant to be discovered." (ECF No. 85 at  
13 5.) Plaintiff is mistaken.

14 (1) Unless otherwise limited by court order, the scope of discovery  
15 is as follows: Parties may obtain discovery regarding any  
16 nonprivileged matter that **is relevant** to any party's claim or defense  
17 and proportional to the needs of the case, considering the importance  
18 of the issues at stake in the action, the amount in controversy, the  
19 parties' relative access to relevant information, the parties' resources,  
the importance of the discovery in resolving the issues, and whether  
the burden or expense of the proposed discovery outweighs its likely  
benefit. Information within this scope of discovery need not be  
admissible in evidence to be discoverable.

20 Fed. R. Civ. P. 26(b)(1) (emphasis added). In addition,

21 [t]he Court does not hold prisoners proceeding pro se to the same  
22 standards that it holds attorneys. However, at a minimum, as the  
23 moving party plaintiff bears the burden of informing the court of  
24 which discovery requests are the subject of his motion to compel and,  
for each disputed response, why defendant's objection is not  
justified.

25 Waterbury v. Scribner, No. 1:05-cv-0764 OWW DLB PC, 2008 WL 2018432, at \*1 (E.D. Cal.  
26 May 8, 2008). Here, Plaintiff was required to explain why Defendant's objections were not well-  
27 taken. Id.; see also McCoy v. Ramirez, No. 1:13-cv-01808-MJS (PC), 2016 WL 3196738 at \*1

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1 (E.D. Cal. Jun. 9, 2016) (quoting *Ellis v. Cambra*, No. 1:02-cv-05646-AWI-SMS PC, 2008 WL  
2 860523, at \*4 (E.D. Cal. Mar. 27, 2008)). Plaintiff failed to meet this burden.

3 Plaintiff objects that he “should not be required to reveal every thought or impression for  
4 Defendant to perform their statutory duty.” (ECF No. 85 at 5.) However, Plaintiff is required to  
5 identify facts and provide documents relevant to his retaliation claim against Defendant, just as  
6 Defendant is required to identify facts and provide documents relevant to her defenses against  
7 Plaintiff’s retaliation claim. Thus, it is not just Defendant who is required to provide discovery to  
8 Plaintiff; Plaintiff is also required to provide such discovery. Accordingly, this objection is  
9 overruled.

10 Through objection, Plaintiff also attempts to expand the basis of his lawsuit by seeking  
11 discovery concerning access to the law library. (ECF No. 85 at 6.) Yet this action is not  
12 proceeding on an access to the courts claim.<sup>3</sup> Rather, the instant action proceeds solely on  
13 Plaintiff’s claim that Defendant retaliated against Plaintiff as set forth above. Furthermore,  
14 Plaintiff’s retaliation claim is discrete and does not include allegations that Defendant labored to  
15 keep Plaintiff out of the library. (See ECF No. 89 at 3–6.) Accordingly, this objection is  
16 overruled.

17 Plaintiff also objected that the magistrate judge had not addressed his Request for Judicial  
18 Notice (ECF No. 63 at 16; ECF No. 60) or his Motion to Amend (ECF No. 61). (ECF No. 85 at  
19 11–12.) However, the magistrate judge appropriately addressed Plaintiff’s Request for Judicial  
20 Notice in its August 15, 2019 Order (see ECF No. 83 at 43–44), as well as subsequently ruling on  
21 these requests (see ECF Nos. 90, 95). Therefore, Plaintiff’s objections are overruled and his  
22 Request for Reconsideration with respect to the denial of his Request for Judicial Notice is  
23 DENIED as moot.

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26 <sup>3</sup> In the June 20, 2017 Order screening the Amended Complaint, Plaintiff was advised that  
27 he must allege an actual injury, as defined and required under *Lewis v. Casey*, 518 U.S. 343, 346  
28 (1996), in order to state a cognizable access to the courts claim. (ECF No. 20 at 6.) Plaintiff  
failed to do so, and the claim was dismissed through the screening process. (See ECF Nos. 25,  
27, 90.)

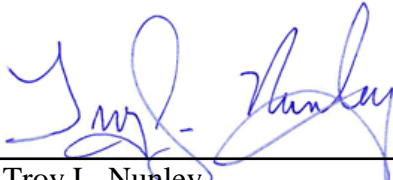
1 Finally, it is not appropriate for Plaintiff to provide his amended or supplemental  
2 discovery responses in the Request for Reconsideration. Plaintiff must provide Defendant  
3 supplemental discovery responses consistent with the Federal Rules of Civil Procedure. Fed. R.  
4 Civ. P. 33–34. If Plaintiff does not have documents responsive to a request for production of  
5 documents, he must state such in the supplemental responses he provides to Defendant.

6 **IV. CONCLUSION**

7 For the forgoing reasons, Plaintiff's Request for Reconsideration (ECF No. 85) is  
8 DENIED. Within 45 days from the date of electronic filing of this Order, Plaintiff shall provide  
9 Defendant with supplemental responses as required under the August 15, 2019 Order (ECF No.  
10 83).

11 IT IS SO ORDERED.

12 DATED: May 12, 2020

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Troy L. Nunley  
United States District Judge