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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

YASIR MEHMOOD,

Plaintiff,

v.

TABASSUM SARANI,

Defendant.

No. 2:17-cv-0970 KJM AC PS

ORDER

Plaintiff and defendant are each proceeding pro se in this action. The matter was referred to a United States Magistrate Judge as provided by Local Rule 302(c)(21).

On February 12, 2019, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 73. Plaintiff has filed objections to the findings and recommendations. Objections, ECF No. 74.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by proper analysis, and provides the following clarifications.

Plaintiff filed an interlocutory appeal of the magistrate judge’s January 15, 2019 order sua sponte granting defendant an extension of time to file a motion to dismiss or a motion for summary judgment but prohibiting further dispositive motions from plaintiff. See ECF No. 68

1 (magistrate judge’s order signed Jan. 15, 2019 and docketed Jan. 16, 2019); ECF No. 70 (clerk of
2 court’s notice of appeal). Plaintiff filed two notices of interlocutory appeal in this court. In his
3 first notice, addressed to the “Deputy Clerk,” plaintiff challenged the magistrate judge’s January
4 15, 2019 order as “biased” and “giving legal advice to defendant.” ECF No. 69 (notice of
5 interlocutory appeal dated Jan. 22, 2019, filed Jan. 28, 2019). The second notice, addressed to the
6 undersigned, raised the same issues as the first, but added that plaintiff was “prejudice[d]” by the
7 magistrate judge’s order, and also stated:

8 Dear Judge, this is not the first time magistrate judge showed bias (a)
9 my motion for summary judgment is denied on technicalities not on
10 merits (b) my motion for discovery was filed and properly served on
11 defendant but was denied on technicalities (c) after this case,
12 defendant put a restraining order on me so I can’t serve anything but,
13 [sic] the court refuse to direct USMS to serve motions as requested
14 by me.

15 ECF No. 71 (notice of interlocutory appeal dated Jan. 22, 2019 and filed Feb. 1, 2019). Plaintiff
16 closed his notice stating, “Because I file motion to recuse b/c M. Judge knows defendant from my
17 criminal case #cr-12-154-jam.” *Id.*

18 On February 15, 2019, plaintiff filed a letter in his Ninth Circuit appeal, stating:

19 The issue presented in this interlocutory appeal is under review by
20 U.S. District Court Judge, which will serve the purpose of the appeal.
21 My contention was that magistrate judge is without power and
22 jurisdiction to decide dispositive matters such as denying me to file
23 motion for summary judgment.

24 I hope that USDJ Ms. Kimberly Mueller will look into this matter
25 and allow me to file summary judgment motion. So, I request to
26 dismiss this appeal in the interest of justice and to save judicial
27 resources.

28 Ninth Circuit Appeal No. 19-15244, Dkt. Entry No. 3. On March 15, 2019, the Ninth Circuit
construed plaintiff’s letter as a motion for voluntary dismissal of his appeal and granted the
motion, so construed. ECF No. 79.

The court now addresses plaintiff’s objections to the magistrate judge’s findings
and recommendations as well as his complaints on appeal. Turning first to plaintiff’s notice of
interlocutory appeal addressed to the undersigned, ECF No. 71, the court notes that the magistrate
judge denied plaintiff’s motions for summary judgment, ECF Nos. 54, 57, because neither motion

1 complied with the court’s local rules. ECF No. 59 (minute order denying motions for summary
2 judgment as “defective pursuant to Local Rule 260”); *see* E.D. Cal. R 260 (identifying
3 requirements for filing a motion for summary judgment). While plaintiff complains that he is not
4 familiar with those rules, his lack of familiarity is no excuse under the law. *See* ECF No. 60
5 (requesting magistrate judge “clarify” the “defect” in his motions and provide him with “a copy
6 of the local rules”); *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (“[P]ro se litigants are
7 bound by the rules of procedure.”). The court will provide plaintiff with a copy of the local rules
8 to aid him moving forward, but again cautions him that his pro se status does not relieve him from
9 complying with procedural requirements. Second, the magistrate judge adequately addressed
10 plaintiff’s premature requests for discovery, ECF No. 28 at 1 (denying as premature plaintiff’s
11 request for discovery because he had not yet completed the summons form and no scheduling
12 order had issued); ECF No. 41 at 3 (“[A]s communicated in this court’s previous court order,
13 discovery for this case will not commence until the defendant has filed an answer and a
14 scheduling order has been issued.”), and, later, his incomplete motion to compel discovery, ECF
15 No. 65 at 3 (“[P]laintiff has not complied with the threshold requirements for court
16 intervention.”). Plaintiff did not timely object to the magistrate judge’s orders on these motions
17 and he raises no cogent objection now. *See* Fed. R. Civ. P. 72(a) (allowing a party to “serve and
18 file objections to [a magistrate judge’s] order [on a nondispositive issue] within 14 days after
19 being served with a copy.”). Finally, the magistrate judge properly resolved plaintiff’s allegations
20 of bias arising from her minimal involvement in his prior criminal case. ECF No. 41 (April 20,
21 2018 findings and recommendations denying motion to recuse); ECF No. 50 (May 30, 2018 order
22 from the undersigned adopting findings and recommendations).

23 Regarding plaintiff’s objections, plaintiff complains that the magistrate judge
24 lacked jurisdiction to issue the findings and recommendations because plaintiff’s appeal was
25 pending, but that appeal has been dismissed and plaintiff cannot properly claim that this court
26 now lacks jurisdiction to enter this order. *See* Objections at 1. Because the scheduling order in
27 this case required the parties to file “[a]ll pretrial motions, except motions to compel discovery,
28 . . . on or before December 12, 2018,” ECF No. 47 at 5, the court rejects plaintiff’s complaint that

1 the “magistrate judge violated due process when it [sic] never notifies plaintiff a [sic] time limit
2 . . . he can file dispositive motions,” Objections at 3. Plaintiff did not properly move for summary
3 judgment within the time prescribed under the scheduling order. Despite his frustration, he was
4 not prejudiced by the magistrate judge’s sua sponte extension of defendant’s time to file a
5 dispositive motion without affording him the same extension, nor was he prejudiced when
6 defendant purportedly did not serve him with that motion, as the motion to dismiss was
7 unsuccessful and this case is proceeding to trial. *See* Objections at 1. Plaintiff also complains
8 that the court ignored his request to order the United States Marshals to serve his pleadings on
9 defendant in light of her restraining order against him, with “fees [to] be paid by defendant,” *see*
10 ECF No. 58 at 2, but the court is not required to assist plaintiff in meeting his obligations in this
11 litigation and will not require defendant to bear the costs of plaintiff’s compliance, *see* Objections
12 at 2. Plaintiff complains he has been “den[ied] relief because [he] was hospitalized,” *id.*, but none
13 of his notices of hospitalization indicated plaintiff needed additional time to file any motion, *see*
14 ECF No. 56 (notifying court of hospitalization “caused by defendants [sic] conduct as she filed
15 restraining order on plaintiff”), ECF No. 61 (notifying court of hospitalization without requesting
16 additional time to file motions), ECF No. 63 (same), ECF No. 64 (same). The court again rejects
17 plaintiff’s unsupported allegations that the undersigned and the magistrate judge are biased or
18 conspiring against plaintiff “because the judge and defendant are females and U.S. citizens” or
19 because plaintiff is an immigrant. *See* Objections at 2. The court also rejects plaintiff’s
20 allegations that the court waited to address this case “because defendant hinted” that plaintiff
21 would be deported in June 2018. *Id.* at 4. This court is one of the most impacted in the nation
22 and delays, though unfortunate, are unavoidable.

23 Finally, the court notes that in his “motion for bench trial and motion for summary
24 judgment,” plaintiff requested “a bench trial” because of his “health and repeated
25 hospitalization,” “ICE refusal to plaintiff for participation in trial through video court and refusal
26 to transport him in Sacramento” and defendant’s restraining order against plaintiff. ECF No. 57.
27 In his objections, plaintiff notes his “motion for summary judgment was (and) will be ‘without’ a
28 jury trial.” Objections at 4. To the extent plaintiff believes a motion for summary judgment and

1 a trial are one in the same, he is mistaken. A bench trial, like a jury trial, requires in court
2 testimony and evidence. In certain circumstances, testimony can be provided by remote video.

3 With these clarifications, the court ORDERS:

4 1. The findings and recommendations filed February 12, 2019, are adopted in full.

5 2. Defendant's motion to dismiss (ECF No. 72) is DENIED.

6 3. Plaintiff's request for leave to file a motion for summary judgment is DENIED.

7 3. The clerk of the court is DIRECTED to serve plaintiff with a copy of the local
8 rules.

9 4. The clerk of the court is further DIRECTED to re-serve the items returned to
10 the court as undeliverable on January 29, 2018 and February 5, 2018 on plaintiff at his current
11 address.

12 5. Each party is directed to file a Final Pretrial Status Report, within 30 days of
13 the filed date of this order. The Report must include the following:

- 14 ■ A list of witnesses the party plans to call. After the name of each witness, each party
15 shall provide a brief statement of the nature of the testimony to be proffered.
- 16 ■ A list of exhibits the party plans to introduce. Plaintiff's exhibits shall be listed
17 numerically. Defendant's exhibits shall be listed alphabetically.
- 18 ■ A concise, joint list of undisputed core facts that are relevant to each claim. Disputed
19 core facts should then be identified in the same manner. The parties are reminded not
20 to identify every fact in dispute but only those disputed facts that are essential to the
21 formulation of each claim. Each disputed fact and undisputed fact should be
22 separately numbered or lettered.
- 23 ■ Concise lists of disputed evidentiary issues that will be the subject of a party's motion
24 *in limine* (pretrial motion).
- 25 ■ The party's points of law, which concisely describe the legal basis or theory
26 underlying his or her claims and defenses. Points of law should reflect issues derived
27 from the core undisputed and disputed facts. A party shall not include argument with
28 any point of law.
- A proposed statement of the case in plain concise language, which will be read to the
jury during voir dire and at the beginning of the trial. The purpose of the statement is
to inform the jury what the case is about.

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- The party’s position on the number of jurors to be impaneled to try the case.
- Any special request, for example to appear at trial by video conference, or have witnesses appear by video conference.

6. The final pretrial order will contain a stringent standard for the offering at trial of witnesses and exhibits not listed in the final pretrial order, and the parties are cautioned that the standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a party does not intend to offer will be viewed as an abuse of the court’s processes.

Following review of the parties’ reports, the court anticipates setting a trial date.

So ORDERED.

DATED: March 26, 2019.


UNITED STATES DISTRICT JUDGE