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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEENAN WILKINS, aka NERRAH  
BROWN,

Plaintiff,

v.

DR. CHRISTINE S. BARBER, et al.,

Defendants.

No. 2:19-cv-1338 WBS KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se. Plaintiff’s motions for reconsideration are before the court pursuant to the district court’s October 5, 2021 order. (ECF No. 203.) As discussed below, plaintiff’s motions should be denied.

A. Legal Standard

A magistrate judge’s ruling on non-dispositive matters, including motions to compel, must not be disturbed unless “clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); E.D. Local Rule 303(f). The “clearly erroneous” standard applies to “factual determinations and discretionary decisions.” Nevis v. Rideout Memorial Hospital, No. 2:17-cv-02295 JAM AC, 2019 WL 6310155 at \*1 (E.D. Cal. Nov. 25, 2019). A finding is only clearly erroneous, when the district court is “left with a ‘definite and firm conviction that a mistake has been committed.’” Cohen v. U.S. Dist. Court. For N. Dist. Of California, 586 F.3d 703, 708 (9th Cir. 2009) (citations omitted). In contrast, the “contrary to law standard,” allows the independent

1 review “of purely legal determinations by the magistrate judge.” Enns Pontiac, Buick, & GMC  
2 Truck v. Flores, No. 1:07-cv-01043-LJO-BAM, 2012 WL 639541 at \*4 (E.D. Cal. Feb. 27,  
3 2012). A magistrate judge’s decision is “contrary to law,” if it “contradict[s] or ignore[s]  
4 applicable precepts of law, as found in the Constitution, statutes or case precedent.” Id.

5 B. Discussion

6 *September 20, 2021 Motion for Reconsideration*

7 First, plaintiff asks the court to “address this (and all) motions due to the inherent conflict  
8 with Magistrate [Judge] Newman.” (ECF No. 194 at 2.) Local Rule 230(j) requires that a motion  
9 for reconsideration must identify the “ruling, decision or order” for which reconsideration is  
10 sought. L.R. 230(j)(2). Plaintiff is advised that to the extent he asks the district court to review  
11 and reconsider all motions filed in this action, such request fails to comply with Local Rule 230(j)  
12 and is denied.

13 Second, to the extent plaintiff asks the court to review or address matters pending in a  
14 Ninth Circuit Judicial complaint or a forthcoming judicial complaint (ECF No. 194 at 3), the  
15 request is inappropriate. Such matters will be addressed by the authorities to whom plaintiff  
16 submits them, and it would be inappropriate for the undersigned, or the district court for that  
17 matter, to address such complaints in this civil rights action.

18 Third, plaintiff claims that it is “widely known media knowledge” that the undersigned is  
19 a former federal prosecutor with a pro-government, pro-law enforcement bias in adjudicating  
20 federal civil rights cases, fails to disclose conflicts, and “is partly responsible for the cover-up of  
21 systemic civil rights violations. . . .” (ECF No. 194 at 3-4.) But plaintiff cites no media article or  
22 other source, and provides no evidence to support such claims. Such unsubstantiated claims  
23 cannot serve as grounds for reconsideration.

24 Fourth, plaintiff complains that the undersigned failed to address all of the facts and  
25 evidence plaintiff submitted in connection with his motion for sanctions. Plaintiff reiterates all  
26 the evidence he claims establishes that defendant Barber falsified her declaration which was  
27 submitted in response to plaintiff’s motion to expand discovery. The undersigned has reviewed  
28 the September 7, 2021 ruling on plaintiff’s motion for sanctions, and finds such ruling was not

1 clearly erroneous or contrary to law. Discovery responses are expressly exempt from sanctions  
2 under Rule 11 of the Federal Rules of Civil Procedure. Moreover, as for imposing sanctions  
3 under the court’s inherent power, sanctions may be imposed “when a party has acted in bad faith,  
4 vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken  
5 actions in the litigation for an improper purpose.” Fink v. Gomez, 239 F.3d 989, 992 (9th Cir.  
6 2001) (citing Chambers v. NASCO, Inc., 501 U.S. 32, 45-47 & n.10 (1991); Roadway Express,  
7 Inc. v. Piper, 447 U.S. 752, 766 (1980)). Although plaintiff characterizes defendant Barber’s  
8 declaration as false, and firmly believes defendant Barber manufactured the chrono 128 appended  
9 to her declaration, defendant Barber, as well as her attorney, stands by her declaration. The  
10 undersigned found that plaintiff was attempting to litigate the merits of his claim through the  
11 motion for sanctions, and appropriately exercised discretion in denying the motion for sanctions  
12 under inherent authority.

13 *September 22, 2021 Motion for Reconsideration*

14 Plaintiff reiterates his claim that defendant Barber’s declaration is false, and “simply  
15 wants . . . defendants to disclose how could it be even possible in light of the evidence N. Thai  
16 obtained a cup of morphine residue of plaintiff’s on 2/18/19 and took it to Barber.” (ECF No.  
17 197 at 4.) Plaintiff contends that because defendants refuse to acknowledge such “falsehood,” he  
18 is “entitled to propound the discovery of where, when how etc. N. Thai came to possess this cup  
19 of residue.” (ECF No. 197 at 4-5.) Plaintiff appears to seek reconsideration of the undersigned’s  
20 denial of plaintiff’s motion to compel defendant Barber to produce documents in response to  
21 requests numbers 1 and 4, seeking N. Thai’s written report or “dictated statement.” (ECF No.  
22 189 at 7.) But plaintiff fails to demonstrate how the denial of plaintiff’s motion to compel a  
23 further response was clearly erroneous or contrary to law. Indeed, the undersigned noted that  
24 defendant Singh responded to the same discovery requests that no such documents exist, which  
25 was also confirmed by Singh’s phone interview with Psych Tech N. Thai. (ECF No. 189 at 7.)

26 But to the extent plaintiff seeks reconsideration concerning discovery requests not yet  
27 propounded, such effort is unavailing. Plaintiff points to no specific order for the court to  
28 reconsider. If plaintiff is attempting to reopen discovery, or seeking leave to obtain discovery

1 under Rule 56(d) of the Federal Rules of Civil Procedure, plaintiff must make an appropriate  
2 motion.<sup>1</sup>

3 Plaintiff also seeks reconsideration of the court's order denying plaintiff's motion to  
4 compel defendant Barber to produce copies of grievances in response to request for production  
5 number 2, which sought all investigation reports and/or notes for four medical grievance  
6 numbers. (ECF No. 189 at 5-6.) Plaintiff claims he does not have "documents related to the  
7 denial decision." (ECF No. 197 at 5.) But plaintiff fails to demonstrate how the denial of his  
8 motion to compel was clearly erroneous or contrary to law. Plaintiff again fails to demonstrate  
9 defendant Barber has the legal right to obtain documents maintained by the CDCR Office of  
10 Appeals, or has access or control over such office of appeals. Indeed, the record confirms that  
11 plaintiff also sought such documents from other defendants who do have such access or control.<sup>2</sup>

12 Plaintiff again contends that the 128 Chrono appended to defendant Barber's declaration  
13 is false, but objects that if defendant Barber can disclose this document, how can she claim she  
14 does not have access to other documents. (ECF No. 194 at 5.) Defendant Barber did not disclose  
15 in her declaration where she obtained the 128 Chrono. (ECF No. 169-1 at 4-7.) But in this  
16 court's experience, 128 Chronos are usually maintained in an inmate's file, not with the office of  
17 appeals unless appended to an inmate's grievance. Plaintiff's objection is overruled.

18 Plaintiff appears to seek reconsideration of the ruling on interrogatory No. 5,<sup>3</sup> objecting  
19 that referring plaintiff to documents does not answer the question. (ECF No. 197 at 6.) As noted  
20 in the court's ruling, and conceded by plaintiff, he filed his motion to compel while his meet and  
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22 <sup>1</sup> Plaintiff's efforts may be frustrated if none of the defendants have personal knowledge of such  
23 matters.

24 <sup>2</sup> Plaintiff concedes that the requested documents were provided for grievance 19000126, but  
25 claims that "the others are being withheld." (ECF No. 197 at 5.) However, defendant Adams  
26 responded to the same request for production: "[a]fter a diligent search and reasonable inquiry,  
Defendant [Adams] has not located reports for statements made in CHCF HC 19000402 and  
CHCF HC 19000491 in her possession, custody or control." (ECF No. 163 at 13.)

27 <sup>3</sup> "After you interviewed Plaintiff and he informed you about the false checking reports of Psych  
28 Tech Le dated 2/17/19, did you interview any of the present officer Le reports assisted him?"  
(ECF No. 189 at 11.)

1 confer letter was pending. In the opposition to the motion to compel, defendant Singh modified  
2 the response to refer plaintiff to CHCF HC 19000176, and the response indicated such grievance  
3 would identify the witnesses interviewed. Plaintiff did not provide a copy of CHCF HC  
4 19000176, and plaintiff does not claim that the appeal response did not identify such witnesses.  
5 Rather, plaintiff now objects that defendant Singh would have the answer regarding N. Thai as  
6 Singh investigated the grievance and found Barber violated policy and then after litigation began,  
7 re-investigated the issue. (ECF No. 197 at 7.) But interrogatory No. 5 does not address Barber or  
8 a violation of policy or any reinvestigation. Rather, plaintiff simply asked whether defendant  
9 Singh interviewed officers. Plaintiff fails to demonstrate that the order was clearly erroneous.

10 Finally, as to plaintiff's request for reconsideration of his second motion to compel (ECF  
11 No. 197 at 7), review of plaintiff's motion confirms that plaintiff did not set forth the specific  
12 discovery requests or responses that he challenged, as required.<sup>4</sup> Rather, he only provided  
13 argument under the production request numbers. (ECF No. 167 at 1-5) Plaintiff did not provide a  
14 copy of the propounded discovery requests or the discovery responses, so the court was unable to  
15 properly address plaintiff's motion. Accordingly, the undersigned's denial of plaintiff's second  
16 motion to compel was not clearly erroneous or contrary to law.<sup>5</sup>

17 *Motions Under 60(b) or Rule 59(e)*

18 Plaintiff claims to seek reconsideration under Rule 59(e) or Rule 60(b) of the Federal

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19 <sup>4</sup> Plaintiff bears the burden of informing the court (1) which discovery requests are the subject of  
20 his motion to compel, (2) which of the responses are disputed, (3) why he believes the response is  
21 deficient, (4) why defendants' objections are not justified, and (5) why the information he seeks  
22 through discovery is relevant to the prosecution of this action. McCoy v. Ramirez, 2016 WL  
23 3196738 at \*1 (E.D. Cal. 2016); Ellis v. Cambra, 2008 WL 860523, at \*4 (E.D. Cal. 2008)  
24 (“Plaintiff must inform the court which discovery requests are the subject of his motion to  
25 compel, and, for each disputed response, inform the court why the information sought is relevant  
26 and why defendant's objections are not justified.”).

25 <sup>5</sup> Plaintiff objects that the undersigned “wholly failed to address the requests for camera footage  
26 (Requests 1, 2 and 3 in Second Motion to Compel dated 6/21/21). (ECF No. 197 at 7.) However,  
27 as discussed above, plaintiff did not provide copies of his discovery requests and responses to his  
28 second motion. Moreover, in the order denying plaintiff's motion on such basis, the court noted  
that defendants' counsel confirmed “that plaintiff has been informed that there is no video footage  
of any of the relevant incidents in this case in the possession, custody, or control of Defendants or  
CDCR, and there is no reason to believe any such footage ever existed.” (ECF No. 177 at 2.)

1 Rules of Civil Procedure.

2 Rule 59(e) addresses motions to alter or amend a judgment. Fed. R. Civ. P. 59(e). “Under  
3 Rule 59(e), three grounds may justify reconsideration: (1) an intervening change in controlling  
4 law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest  
5 injustice.” Wilson v. Marin, No. 2:14-CV-1829-WBS, 2014 WL 7336348, at \*1 (E.D. Cal. Dec.  
6 22, 2014) (citations omitted).

7 Rule 60(b) provides:

8 On motion and just terms, the court may relieve a party or its legal  
9 representative from a final judgment, order, or proceeding for the  
10 following reasons: (1) mistake, inadvertence, surprise, or excusable  
11 neglect; (2) newly discovered evidence that, with reasonable  
12 diligence, could not have been discovered in time to move for a new  
13 trial under Rule 59(b); (3) fraud (whether previously called intrinsic  
14 or extrinsic), misrepresentation, or misconduct by an opposing party;  
15 (4) the judgment is void; (5) the judgment has been satisfied,  
16 released, or discharged; it is based on an earlier judgment that has  
17 been reversed or vacated; or applying it prospectively is no longer  
18 equitable; or (6) any other reason that justifies relief.

14 Fed. R. Civ. P. 60(b). “A motion for reconsideration should not be granted, absent highly unusual  
15 circumstances, unless the . . . court is presented with newly discovered evidence, committed clear  
16 error, or if there is an intervening change in the controlling law.” Marlyn Nutraceuticals, Inc. v.  
17 Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).

18 In addition, Local Rule 230(j) requires that a motion for reconsideration state “what new  
19 or different facts or circumstances are claimed to exist which did not exist or were not shown  
20 upon such prior motion, or what other grounds exist for the motion,” and “why the facts or  
21 circumstances were not shown at the time of the prior motion.” E.D. Cal., Local Rule 230(j)(3)-  
22 (4).

23 As discussed above, plaintiff has not shown that the undersigned rendered decisions that  
24 were clearly erroneous or contrary to law. Plaintiff identifies no facts, circumstances or newly  
25 discovered evidence that did not exist at the time of the challenged rulings. Plaintiff cites no  
26 intervening change in controlling law. Motions for reconsideration under Rule 59(e) or Rule  
27 60(b) “are not the proper vehicles for rehashing old arguments and are not intended to give an  
28 unhappy litigant one additional chance to sway the judge.” Kilbourne v. Coca-Cola Co., No. 14-


1 cv-984-MMA, 2015 WL 10943610, at \*2 (S.D. Cal. Sept. 11, 2015). The fact that a litigant  
2 merely disagrees with the court’s decision does not render relief appropriate. Salem v. Federal  
3 Deposit Insurance Corporation for La Jolla Bank, FSB, No. 15-cv-1114-AJB-BGS, 2017 WL  
4 1375616 at \*3 (S.D. Cal. Apr. 17, 2017).

5 For all of the above reasons, plaintiff’s motions should be denied.

6 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motions for  
7 reconsideration (ECF Nos. 194, 197) be denied.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
10 after being served with these findings and recommendations, any party may file written  
11 objections with the court and serve a copy on all parties. Such a document should be captioned  
12 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
13 objections shall be filed and served within fourteen days after service of the objections. The  
14 parties are advised that failure to file objections within the specified time may waive the right to  
15 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: October 28, 2021

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19 KENDALL J. NEWMAN  
20 UNITED STATES MAGISTRATE JUDGE

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