

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PARKER DAVIS, on behalf of herself  
and all others similarly situated, and  
on behalf of the general public,

Plaintiff,

v.

DS WATERS OF AMERICA, INC.,

Defendants.

Case No. 14-cv-250-BAS(NLS)

**ORDER OVERRULING  
DEFENDANT'S OBJECTION TO  
MAGISTRATE JUDGE'S  
OCTOBER 2, 2014 ORDERS**

**[ECF No. 37]**

On September 24, 2014, Defendant DS Waters of America, Inc. filed an *ex parte* motion for “an injunction, ‘turn over’ order, and other corrective measures associated with Plaintiff [Parker Davis] illicit ‘self-help’ discovery.” (ECF No. 28.) Despite mentioning “injunction” in the title of the motion, Defendant specifically sought an order for the following relief:

(a) Requiring that any and all documents obtained through “self-help” means be immediately relinquished and returned (including paper and electronic copies), including the “fruits” of any such efforts.

(b) Ordering Plaintiff and his counsel to immediately cease and desist from engaging in any “self-help” discovery, whereby Plaintiff obtains DSS documents from former/current employees of DSS (or other impermissible means) as opposed to through the discovery process.

1 (c) Ordering Plaintiff’s counsel to provide defense counsel  
2 with the identity of the individual(s) from whom they  
3 obtained Exhibits 47, 48, and 52, and any other internal  
4 documents of DSS, so that DSS can fairly conduct its own  
investigation, determine what occurred, and take appropriate  
preventative/corrective steps, actions and/or measures.

5 (d) Ordering that Exhibits 47, 48, and 52 and any associated  
6 testimony be stricken from the record in the Garrity  
7 deposition and prohibiting the use of Exhibits 47, 48, and 52  
(as well as any other documents obtained through “self-help”  
and/or motions.

8 (Def.’s Sept. 24, 2014 *Ex Parte* Mot. 16:13–17:5.)

9 On October 2, 2014, United States Magistrate Judge Nita L. Stormes issued an  
10 order determining that Defendant’s *ex parte* motion was improperly filed and thus  
11 would not be considered. Judge Stormes issued a Further Order on the same day  
12 adding that “[t]o the extent that defense counsel in fact intended his *ex parte* motion  
13 to be a motion for an injunction or an application for a Temporary Restraining Order  
14 (‘TRO’) properly brought before the District Judge, the *ex parte* motion was not  
15 properly filed as a noticed motion for an injunction, nor was it styled as an application  
16 for a TRO[,]” and that “counsel contacted [Judge Stormes’] chambers regarding  
17 briefing on the *ex parte* motion and related motions, not Judge Bashant’s chambers.”

18 (Oct. 2, 2014 Further Order 1:23–2:2.)

19 Now pending before the Court is Defendant’s objection to Judge Stormes’  
20 October 2, 2014 orders. Plaintiff Parker Davis has not filed a response to Defendant’s  
21 objection. However, the Court neither ordered nor requires any further briefing to  
22 make its determination. The Court **DENIES** Defendant’s request for an oral  
23 argument because it will not materially assist the Court in making its determination,  
24 and will instead decide the matter on the papers submitted. *See* Civ. L.R. 7.1(d)(1).  
25 For the following reasons, the Court **OVERRULES** Defendant’s objections.

26 //

27 //

28 //

1 **I. STANDARD OF REVIEW**

2 A party may object to a non-dispositive pretrial order of a magistrate judge  
3 within fourteen days after service of the order. *See* Fed. R. Civ. P. 72(a). The  
4 magistrate judge’s order will be upheld unless it is “clearly erroneous or contrary to  
5 law.” *Id.*; 28 U.S.C. § 636(b)(1)(A). The “clearly erroneous” standard applies to  
6 factual findings and discretionary decisions made in connection with non-dispositive  
7 pretrial discovery matters. *F.D.I.C. v. Fid. & Deposit Co. of Md.*, 196 F.R.D. 375, 378  
8 (S.D. Cal. 2000); *Joiner v. Hercules, Inc.*, 169 F.R.D. 695, 697 (S.D. Ga. 1996)  
9 (reviewing magistrate judge’s order addressing attorney-client issues in discovery for  
10 clear error). Review under this standard is “significantly deferential, requiring a  
11 definite and firm conviction that a mistake has been committed.” *Concrete Pipe &*  
12 *Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. of S. Cal.*, 508 U.S. 602, 623  
13 (1993) (internal quotation marks omitted).

14 On the other hand, the “contrary to law” standard permits independent review  
15 of purely legal determinations by a magistrate judge. *See, e.g., Haines v. Liggett*  
16 *Group, Inc.*, 975 F.2d 81, 91 (3d Cir. 1992) (“the phrase ‘contrary to law’ indicates  
17 plenary review as to matters of law.”); *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D.  
18 Ohio 1992), *aff’d*, 19 F.3d 1432 (6th Cir. 1994); 12 Charles A. Wright, et al., *Federal*  
19 *Practice and Procedure* § 3069 (2d ed., 2010 update). “Thus, [the district court] must  
20 exercise its independent judgment with respect to a magistrate judge’s legal  
21 conclusions.” *Gandee*, 785 F. Supp. at 686. “A decision is contrary to law if it fails  
22 to apply or misapplies relevant statutes, case law, or rules of procedure.” *United States*  
23 *v. Cathcart*, No. C 07-4762 PJH, 2009 WL 1764642, at \*2 (N.D. Cal. June 18, 2009).

24  
25 **II. DISCUSSION**

26 The crux of Defendant’s objection is that Judge Stormes’ orders were outside the  
27 scope of her authority as prescribed by Federal Rule of Civil Procedure 72 and 28  
28 U.S.C. § 636. In particular, Defendant emphasizes that § 636(b)(1)(A) states that “a

1 [district] judge may designate a magistrate judge to hear and determine any pretrial  
2 matter pending before the Court, except a *motion for injunctive relief*[,]” suggesting  
3 that motions for injunctive relief require a designation from the district judge.  
4 Defendant argues that this restriction of a magistrate judge’s authority applies in this  
5 case, and that Judge Stormes improperly exercised jurisdiction over Defendant’s *ex*  
6 *parte* motion. (Def.’s Objection 6:17–7:28.) The Court disagrees.

7 In *Anaya v. Campbell*, No. CIV S-07-0029, 2009 WL 425034, at \*1 (E.D. Cal.  
8 Feb. 19, 2009), the court explained:

9 The fact that parties are directed in their activities by a  
10 magistrate judge, cannot, without more, transform the matter  
11 at hand into an ‘injunctive’ relief situation governed by §  
12 636(b)(1)(B). It is only where the relief sought goes to the  
13 merits of plaintiff’s action or to complete stays of an action  
14 are orders under § 636(b)(1)(A) precluded. In other words,  
15 a motion for injunctive relief must relate to the allegations in  
the complaint. If there is no relation, it is not an injunctive  
relief situation. A party seeking preliminary injunctive relief  
“must necessarily establish a relationship between the injury  
claimed in the party’s motion and the conduct asserted in the  
complaint.” In other words, [a] [p]laintiff must seek  
injunctive relief related to the merits of his underlying claim.

16 *Anaya*, 2009 WL 425034, at \*1 (quoting *Devose v. Herrington*, 42 F.3d 470, 471 (8th  
17 Cir. 1994) (citations omitted). The reasoning in *Anaya* is persuasive and this Court is  
18 compelled to follow it.

19 Defendant’s request clearly did not seek dispositive relief on the merits of the  
20 complaint. Rather, it sought to prohibit certain purported “self-help” discovery and  
21 compel other discovery. The requests are purely discovery matters, which were  
22 properly before the magistrate judge. *See* Civ. L.R. 72.1(a), (b), (h).

23 Furthermore, Defendant did not even explicitly request injunctive relief in its *ex*  
24 *parte* motion. (*See* Def.’s Sept. 24, 2014 *Ex Parte* Mot. 16:13–17:5.) Instead, it merely  
25 appended the word “injunction” throughout the *ex parte* motion. Specifically,  
26 Defendant uses the word “injunction” six times in the body of its *ex parte* motion,  
27 where the word is used once referring to the title of the motion and five other times to  
28 either quote or describe other legal authority. (*See id.* at 1:4, 8:25, 13:4, 13:24, 13:25,

1 13:27.) The characterization of the *ex parte* motion as a dispositive motion for  
2 injunctive relief is, at best, a disingenuous attempt to circumvent the authority of Judge  
3 Stormes and her well-reasoned orders. In deciding not to consider Defendant's *ex*  
4 *parte* motion, Judge Stormes properly exercised her authority, but also reasonably  
5 expected the parties to comply with her chambers rules. Apparently, Defendant failed  
6 to meet Judge Stormes' expectations.

7 In sum, Defendant fails to demonstrate that Judge Stormes' October 2, 2014  
8 orders are clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R.  
9 Civ. P. 72(a).

10

11 **III. CONCLUSION & ORDER**

12 In light of the foregoing, the Court **OVERRULES** Defendant's objection to  
13 Judge Stormes' October 2, 2014 orders.

14 **IT IS SO ORDERED.**

15

16 **DATED: March 24, 2014**

17



18

**Hon. Cynthia Bashant  
United States District Judge**

19

20

21

22

23

24

25

26

27

28