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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 CLAYTON DEL THIBODEAU, Pro Se,
11 Plaintiff,

12 v.

13 ADT SECURITY SERVICES, a/k/a/
14 ADT HOLDINGS, INC.,
15 Defendant.

Case No.: 3:16-cv-02680-GPC-AGS

ORDER:

**(1) GRANTING PLAINTIFF'S
REQUEST TO CONTINUE FINAL
PRETRIAL STATUS CONFERENCE
AND AMEND THE SCHEDULING
ORDER;**

**(2) DIRECTING PLAINTIFF TO
CONSIDER SERVICE BY CM/ECF;**

**(3) DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

[DKT. NO. 106.]

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24 On July 23, 2018, Plaintiff Clayton Del Thibodeau ("Plaintiff" or "Thibodeau")
25 filed a Motion requesting (1) to continue the final pretrial status conference; (2) to amend
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1 the scheduling order regulating pretrial proceedings; (3) to properly serve plaintiff in
2 accordance with law; and (4) to reconsider self-recusal. Dkt. No. 106.

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4 **I. SERVICE**

5 Plaintiff asserts *inter alia* in his motion that Magistrate Judge Schopler failed to
6 serve him with Dkt. No. 90, a scheduling order setting forth the amended pre-trial
7 deadlines in this case. As a result, Plaintiff states that he was not able to comply with the
8 requirements of this scheduling order. The Court will accept Plaintiff's claim that he did
9 not receive the scheduling order and will suggest that the Plaintiff seek permission to
10 request access to the CM/ECF system to avoid any further issues with service of court
11 orders.

12 As background, the Court sets forth the process by which an Order, issued by a
13 judge in the Southern District of California, is sent to a pro se plaintiff. When an order is
14 docketed, a prompt in the Court's electronic filing system (known as CM/ECF) asks
15 whether the document needs to be sent U.S. mail (as is required for a pro se plaintiff).
16 This generates a "non-registered users served via U.S. mail service" notification in the
17 docket text for the docket entry of the order. Once the order is docketed in CM/ECF and
18 has a docket entry number, the Clerk of Court will print the order, create an envelope for
19 the party to be served via U.S. mail, and place the envelope in the outbox to be picked up
20 and sent out to the litigant. If the United States postal service is unable to deliver the
21 mail to the litigant, then the mail will be "returned" and the Clerk of Court will stamp the
22 envelope and docket the returned envelope and document within the envelope. Given
23 these established procedures, it is highly unlikely that the various orders Plaintiff asserts
24 have not been "served" have not been mailed to him. In particular, no docket entry
25 reflects that any mail has been returned as undeliverable.
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1 Recognizing Plaintiff's pro se status, the Court will describe opportunities
2 available to Plaintiff to ensure that each order and document in the docket of this case is
3 received. First, the Court will allow Plaintiff the opportunity to request access to the
4 CM/ECF system. The Casement/Electronic Case Files system referred to generally as
5 CM/ECF allows registered users to electronically file documents with the court and
6 allows the court to issue orders and notices. Whenever a filing is docketed by either a
7 party or the Court, a notice of electronic filing is generated and sent to the registered
8 user's email address. Plaintiff has previously asserted that the service by mail process
9 usually takes place between three to four days after filing. Dkt. No. 95 at 19.
10 Accordingly, recognizing Plaintiff's pro se status and desire to obtain instantaneous
11 notice of filings and notices, the Court will allow Plaintiff the opportunity to request
12 access to the CM/ECF system.

13 Plaintiff is **DIRECTED** to review Civil Rule 5.4¹ and the Southern District of
14 California's Electronic Case Filing Administrative Policies and Procedures.² The Clerk's
15 Office can provide required training on the CM/ECF system. If Plaintiff wishes to obtain
16 access to CM/ECF, he may submit a motion to this Court requesting access to the Court's
17 electronic filing system.

18 In the alternative, Plaintiff may access the docket at the public terminal available at
19 the federal district courthouse to ensure that he has received all filings. To the extent that
20 there are docket entries listed on the public docket that he has not received, Plaintiff
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24 ¹ Available at
<https://www.casd.uscourts.gov/Rules/SiteAssets/SitePages/LocalRules/Local%20Rules%202018.pdf>

25 ² Available at
26 https://www.casd.uscourts.gov/CMECF/Lists/Policies%20and%20Procedures/Attachments/8/CASDPolicies_03-02-2018.pdf

1 should affirmatively contact the Clerk’s Office to make them aware of any further service
2 issues.

3 Finally, the Court also wishes to inform Plaintiff that the telephone call made to
4 him by Magistrate Judge Schopler’s law clerk was outside of any rule of court, statute or
5 the usual procedures of the Southern District of California. The standard procedure of
6 this Court is to issue notices and filings via mail or the CM/ECF system, as described
7 above. Plaintiff should not expect any telephone calls or follow-up emails from this
8 Court or from Magistrate Judges Schopler and Averitte.

9 By following the above procedures, any service issues can be properly addressed
10 and this case can move forward expeditiously.

11 **II. MOTION FOR RECONSIDERATION**

12 Plaintiff also requests that the Court reconsider its denial of Plaintiff’s request for
13 the recusal of this undersigned Court and that of Magistrate Judge Schopler. Generally,
14 reconsideration of a prior order is appropriate only if the district court is (1) presented
15 with newly discovered evidence; (2) committed clear error or the initial decision was
16 manifestly unjust or (3) if there is an intervening change in controlling law. *Sch. Dist.*
17 *No. 1J, Multnomah Cty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

18 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of
19 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*,
20 229 F.3d 877, 890 (9th Cir. 2000). Whether to grant or deny a motion for reconsideration
21 is committed to the “sound discretion” of the district court. *Navajo Nation v.*
22 *Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th
23 Cir. 2003). A party may not raise new arguments or present new evidence if it could
24 have raised them earlier. *Kona Enters.*, 229 F.3d at 890.

1 Plaintiff has not provided any basis—under the above case law—to warrant
2 reconsideration of the Court’s prior order. There is no newly discovered evidence of
3 bias, the Court determines it has not committed any clear error, and no intervening
4 change in controlling law exists. Plaintiff request on reconsideration does not allege bias
5 stemming from an extrajudicial source. Accordingly, the Court will deny Plaintiff’s
6 request for reconsideration. *See In re Focus Media, Inc.*, 378 F.3d 916, 930 (9th Cir.
7 2004).

8 **III. REVISED SCHEDULING ORDER**

9 Finally, recognizing Plaintiff’s alleged service issues, the Court will **GRANT**
10 Plaintiff’s request for an amended scheduling order and will reset the pre-trial conference
11 date in order to allow Plaintiff an opportunity to fully litigate this case. Accordingly, the
12 revised scheduling order is as follows:

13 1. A Settlement Conference is rescheduled for **September 12, 2018** at **9:00**
14 **a.m.** in the chambers of **Magistrate Judge Lewis**.³ Counsel or any party representing
15 himself or herself who has not yet lodged a confidential settlement brief or who wishes to
16 file a supplemental brief may submit one via email to efile_schopler@casd.uscourts.gov
17 by **September 5, 2018**. All parties are ordered to read and to fully comply with the
18 Chamber Rules of the assigned magistrate judge.

19 2. Pursuant to Honorable Gonzalo P. Curiel’s Civil Pretrial & Trial Procedures,
20 the parties are excused from the requirement of Local Rule 16.1(f)(2)(a); no Memoranda
21 of Law or Contentions of Fact are to be filed.

22 3. Counsel or any party representing himself shall comply with the pre-trial
23 disclosure requirements of Fed. R. Civ. P. 26(a)(3) by **September 28, 2018**. Failure to
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25 ³ Magistrate Judge Lewis, at that time, will be sitting in the San Diego Courthouse. The parties should
26 confirm the location of the settlement conference prior to this date.

1 comply with these disclosure requirements could result in evidence preclusion or other
2 sanctions under Fed. R. Civ. P. 37.

3 4. Counsel and any party representing himself shall meet and take the action
4 required by Local Rule 16.1(f)(4) by **October 5, 2018**. At this meeting, the parties shall
5 discuss and attempt to enter into stipulations and agreements resulting in simplification of
6 the triable issues. They shall exchange copies and/or display all exhibits other than those
7 to be used for impeachment. The exhibits shall be prepared in accordance with Local
8 Rule 16.1(f)(4)(c). Counsel and any party representing himself shall note any objections
9 they have to any other parties' Pretrial Disclosures under Fed. R. Civ. P. 26(a)(3). They
10 shall cooperate in the preparation of the proposed pretrial conference order.

11 5. Counsel for defendants will be responsible for preparing the pretrial order
12 and arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **October**
13 **12, 2018**, defense's counsel must provide plaintiff with the proposed pretrial order for
14 review and approval. Plaintiff must communicate promptly with defendants' attorney
15 concerning any objections to form or content of the pretrial order, and both parties shall
16 attempt promptly to resolve their differences, if any, concerning the order.

17 6. The Proposed Final Pretrial Conference Order, including objections to any
18 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
19 lodged with the assigned district judge by **October 19, 2018**, and shall be in the form
20 prescribed in and comply with Local Rule 16.1(f)(6).

21 7. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
22 **Gonzalo P. Curiel** on **October 26, 2018** at **1:30pm**. The Court will set a trial date
23 during the pretrial conference. The Court will also schedule a motion in limine hearing
24 date during the pretrial conference.

25 8. The parties must review the chambers' rules for the assigned district judge
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1 and magistrate judge.

2 9. A post trial settlement conference before a magistrate judge may be held
3 within 30 days of verdict in the case.

4 10. The dates and times set forth herein will not be modified except for good
5 cause shown.

6 11. Briefs or memoranda in support of or in opposition to all motions noticed for
7 the same motion day shall not exceed twenty-five (25) pages in length, per party, without
8 leave of the judge who will hear the motion. No reply memorandum shall exceed ten
9 (10) pages without leave of a district court judge. Briefs and memoranda exceeding ten
10 (10) pages in length shall have a table of contents and a table of authorities cited.

11 12. Plaintiff's counsel shall serve a copy of this order on all parties that enter
12 this case hereafter.

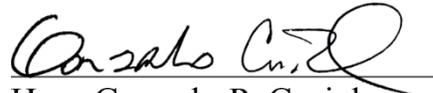
13 14 **CONCLUSION**

15 Having considered the motion, the Court will:

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- 17 • (1) **GRANT** Plaintiff's Request for an Amended Scheduling Order and Pre-Trial
18 Conference Date. The revised deadlines are set forth above. The Pre-Trial
19 Conference is set for **October 26, 2018 at 1:30 PM in Courtroom 2D**.
 - 20 • (2) **DIRECT** Plaintiff to consider the use of the CM/ECF system. If Plaintiff
21 wishes to use the CM/ECF system, Plaintiff should file a motion to request access
22 promptly so that he can obtain access and training on the system for future use and
23 access.
 - 24 • (3) **DENY** Plaintiff's Request for Reconsideration of the Court's Dkt. No. 103
25 Order.
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1 **IT IS SO ORDERED.**

2 Dated: July 24, 2018

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4 Hon. Gonzalo P. Curiel
5 United States District Judge

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