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

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11 LA JOLLA SPA MD, INC,

12 Plaintiff,

13 v.

14 AVIDAS PHARMACEUTICALS, LLC,

15 Defendant.

Case No. 3:17-CV-01124-MMA-WVG

**ORDER RE: OBJECTION TO
MAGISTRATE JUDGE'S
SANCTIONS ORDER**

[Doc. No. 105]

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17 Defense Counsel Julie Chovanes (“Defense Counsel”) for Avidas Pharmaceuticals,
18 LLC (“Defendant”) filed an objection to Magistrate Judge William V. Gallo’s Order
19 Granting Plaintiff’s Motion for Sanctions. Doc. No. 93.¹ La Jolla Spa MD, Inc.
20 (“Plaintiff”) filed an opposition to the objection. Doc. No. 107. Defense Counsel did not
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23 ¹ The Court refers to Julie Chovanes as “Defense Counsel” even though it received two ex parte
24 communications on October 7, 2019, noting that Defendant terminated the attorney-client relationship
25 and intends to retain new counsel. *See* Doc. No. 110. However, she is still counsel of record for
26 Defendant. As such, the Court refers to her as “Defense Counsel” for the purposes of this Order.

27 Further, despite Ms. Chovanes filing the objection on behalf of Defendant, an ex parte
28 communication received from President of Defendant states that Chovanes filed the objection “without
any consultation of me, and despite the fact that the sanctions order was directed against her personally
without contribution by Avidas.” Therefore, the Court treats the objection as an objection made
personally by Ms. Chovanes.

1 file a reply.² For the reasons set forth below, the Court finds the objection untimely and
2 declines to rule on the merits of Defense Counsel’s objection to the Magistrate Judge’s
3 order.

4 **BACKGROUND**

5 Defense Counsel objects to a sanctions order issued by the Magistrate Judge on
6 August 30, 2019. The underlying dispute centers on the deposition of Margaret Gardner
7 on May 3, 2019, in Philadelphia, Pennsylvania. Doc. No. 103 at 3–4. The Magistrate
8 Judge found that Defense Counsel went beyond the bounds of professionalism and
9 “continuously interrupted, lodged frivolous objections, improperly instructed Gardner to
10 not answer questions, and extensively argued with [Plaintiff’s Counsel] Ryan.” *Id.* at 2,
11 4.

12 After a hearing on Friday, August 16, 2019, the Magistrate Judge issued an Order
13 Granting Plaintiff’s Motion for Sanctions. Doc. No. 103. The Magistrate Judge ordered
14 as follows:

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16 Plaintiff’s motion for sanctions is GRANTED, and Chovanes is sanctioned
17 for the conduct, reasons, and under the authority set forth above.
18 Accordingly:

19 1. Without reimbursement from Defendant, Chovanes is sanctioned in
20 the amount of \$28,502.03 payable to Ryan’s trust account **on or before**
21 **September 17, 2019.**

22 2. Chovanes shall self-report to the State Bar of Pennsylvania **on or**
23 **before September 24, 2019.** The reporting shall consist of a copy of this
24 Order, the full transcript of the Gardner deposition, the full transcript of the
25 August 16, 2019 sanctions hearing, and the 128 video clips submitted as part

26 ² The Court’s Minute Order on September 17, 2019, established the briefing schedule for the objection.
27 Doc. No. 106. The Minute Order called for a reply brief due on or before October 7, 2019. *Id.* Defense
28 Counsel failed to file a reply, apparently due to the breakdown in the attorney-client relationship.
Regardless, no reply brief is necessary because the Court disposes of the matter on procedural grounds.
See infra.

1 of Plaintiff's sanctions motion. **On or before October 1, 2019**, Chovanes
2 shall file a declaration under oath that confirms compliance with this Order
3 and that all documents and video clips were submitted to the State Bar of
4 Pennsylvania.

5 3. Chovanes shall henceforth attach a copy of this Order as an exhibit to
6 any pro hac vice application for admission to practice before the United
7 States District Court for the Southern District of California. This
8 requirement shall have no expiration date and shall remain in effect *in*
9 *perpetuity*.

10 Doc. No. 103 at 47. The Magistrate Judge found sanctions appropriate based on the
11 power conferred by Federal Rule of Civil Procedure 30(d)(2), 28 U.S.C. § 1927, and the
12 inherent power of federal courts to levy sanctions. *Id.* at 7–10, 20, 40–44. Defense
13 Counsel filed her Rule 72(a) objection on Monday, September 16, 2019. Doc. No. 105.
14 Defense Counsel argues that the Magistrate Judge failed to consider a recent Supreme
15 Court case, which would have rendered the sanctions improper. *See* Doc. No. 105 at 2–4.
16 Additionally, Defense Counsel claims that the Magistrate Judge's previous discovery
17 orders made her conduct permissible. *See* Doc. No. 105 at 4–6.

18 LEGAL STANDARD

19 A district judge's review of a magistrate judge's order on a nondispositive motion
20 is limited. "[A] party may serve and file objections to the order *within 14 days* after
21 being served with a copy. *A party may not assign as error a defect in the order not*
22 *timely objected to*. The district judge in the case must consider timely objections and
23 modify or set aside any part of the order that is clearly erroneous or is contrary to law."
24 Fed. R. Civ. P. 72(a) (emphasis added); *see also* 28 U.S.C. § 636(b)(1)(A) ("A judge of
25 the court may reconsider any pretrial matter under this subparagraph (A) where it has
26 been shown that the magistrate judge's order is clearly erroneous or contrary to law.");
27 *Grimes v. City & Cty. of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991) ("The district
28 court shall defer to the magistrate's orders unless they are clearly erroneous or contrary to

1 law.”). Under Rule 72, the reviewing district judge may not supplant his or her own
2 judgment in place of the deciding magistrate judge. *Grimes*, 951 F.2d at 241.

3 The decision whether to impose sanctions is a nondispositive matter. *See* 28
4 U.S.C. § 636(b)(1)(A); Civ. Loc. R. 72.1(b); *see also Grimes*, 951 F.2d at 241 (noting
5 that discovery sanctions are nondispositive and thus magistrate judges may “may impose
6 prospective sanctions pursuant to Rule 37 where such sanctions are necessary to enforce
7 compliance with a valid discovery order”); *Apple Inc. v. Samsung Elecs. Co.*, 888 F.
8 Supp. 2d 976, 985–89 (N.D. Cal. 2012) (holding that a magistrate judge has the inherent
9 power to issue spoliation sanctions); *Keithley v. Homestore.com, Inc.*, 629 F. Supp. 2d
10 972, 974 (N.D. Cal. 2008) (deeming monetary sanctions for attorneys’ fees and costs to
11 be a nondispositive ruling).

12 DISCUSSION

13 Plaintiff argues Defense Counsel’s objection is untimely because she failed to seek
14 relief within the 14-day deadline under Rule 72(a). Doc. No. 107 at 5. Plaintiff asserts
15 that Defense Counsel was thirty (30) days late based on the Magistrate Judge’s oral ruling
16 at the August 16, 2019 hearing. *Id.* at 6.

17 As noted above, an objecting party under Rule 72(a) must “file objections to the
18 order within 14 days” of the magistrate judge’s order. Fed. R. Civ. P. 72(a). In
19 computing time, the Court must “(A) exclude the day of the event that triggers the period;
20 (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
21 (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal
22 holiday, the period continues to run until the end of the next day that is not a Saturday,
23 Sunday, or legal holiday.” *Id.* at 6(a)(1).

24 Here, the Magistrate Judge issued a written ruling granting Plaintiff’s Motion for
25 Sanctions on Friday, August 30, 2019. Doc. No. 103. Defense Counsel filed her
26 objection on Monday, September 16, 2019. Doc. No. 105.

27 As a preliminary matter, Plaintiff’s argument that that the objection is 30 days late
28 based on the August 16, 2019, hearing is unavailing. The date of the hearing did not start

1 the 14-day objection window because Rule 72(a) addresses “objections to the order.”
2 Fed. R. Civ. P. 72(a). Thus, the Magistrate Judge’s August 30 Order triggered the 14-day
3 objection window. To be certain, the Magistrate Judge stated at the hearing: “What I’ve
4 placed on the record here is not the written order. A written order will issue shortly.”
5 Doc. No 104 at 27:17–19. Therefore, the “order” prompting the 14-day objection
6 window is the August 30, 2019 order.

7 Pursuant to Federal Rule of Civil Procedure 6, the 14-day period in which to
8 object began the following day on Saturday, August 31, 2019. *See* Fed. R. Civ. P.
9 6(a)(1)(A). Starting the computation on Saturday August 31, 2019, the Court counts each
10 day. The final day of the 14-day objection window fell on Friday, September 13, 2019—
11 a weekday and nonholiday that does not trigger the Rule 6(a)(1)(C) tolling provision.
12 Therefore, because the objection was due Friday, September 13, 2019, and Defense
13 Counsel filed her objection on Monday, September 16, 2019, Defense Counsel’s
14 objection is untimely.

15 An untimely objection to a nondispositive magistrate judge’s order is a procedural
16 defect that forecloses relief under Rule 72(a). *See* Fed. R. Civ. P. 72(a) (“A party may
17 not assign as error a defect in the order not timely objected to.”); *CNPq-Conselho*
18 *Nacional de Desenvolvimento Cientificoe Tecnologico v. Inter-Trade, Inc.*, 50 F.3d 56,
19 59 (D.C. Cir. 1995) (holding that a Rule 72 objection made one day late fails to preserve
20 the objection for appeal); *Baker v. Ensign*, No. 11-CV-2060-BAS WVG, 2014 WL
21 4055353, at *6 (S.D. Cal. Aug. 14, 2014) (holding an untimely Rule 72(a) objection did
22 not entitle the objecting party to relief under a Rule 60(b) motion and also relief was not
23 warranted on the merits); *Maisonet v. Genett Grp., Inc.*, 863 F. Supp. 2d 138, 143 (D.P.R.
24 2012) (“Because a district court is under no obligation to review a portion of a magistrate
25 judge’s report unless an objection to it has been filed, the belated submission of
26 plaintiff’s objection is enough to preclude reexamination of those relevant portions of the
27 R & R.”); *see also Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996)
28 (finding that a failure to file a Rule 72(a) objection at the district court forecloses

1 appellate review of discovery sanctions); *Stemler v. City of Florence*, 126 F.3d 856, 866
2 n.9 (6th Cir. 1997) (stating that failure to make a Rule 72(a) objection waives the
3 objection on appeal). Because Defense Counsel failed to timely object, she forfeited the
4 availability of any relief under Rule 72(a).³

5 **CONCLUSION**

6 Based on the foregoing, the Court finds the objection untimely and declines to rule
7 on the merits of Defense Counsel’s objection to the Magistrate Judge’s sanctions order.
8 Accordingly, the Magistrate Judge’s order remains in full force and effect.

9 **IT IS SO ORDERED.**

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11 Dated: October 10, 2019



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13 Hon. Michael M. Anello
14 United States District Judge
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26 ³ Plaintiff further requests the Court impose additional monetary sanctions of at least \$4,600 against
27 Defense Counsel pursuant to 28 U.S.C. § 1927 and the Court’s inherent authority to levy sanctions.
28 Doc. No. 107 at 13–14. Given that Defense Counsel’s objection is procedurally deficient, the Court
declines to address the merits of the objection and, additionally, declines to entertain Plaintiff’s request
for additional sanctions.