

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH J. SCHIRO,)
)
 Plaintiff,)
)
 vs.)
)
 STEPHEN CLARK et al.,)
)
 Defendants.)

3:10-cv-00203-RCJ-VPC

ORDER

Plaintiff is a state prisoner suing several correctional officers and prison officials for several constitutional violations relating to charges brought against him in prison for sexual harassment and sexual assault in 2008. Plaintiff alleges that his former cell mate sexually assaulted him, but that Plaintiff was placed in administrative segregation after merely defending himself against such an assault. Plaintiff also alleges certain constitutional violations relating to his disciplinary hearings and grievances he filed or attempted to file. The Court directed the Clerk to file the Complaint but dismissed some of the claims. Defendants moved to dismiss the remaining claims, or some of them, and the Court adopted the magistrate judge’s report and recommendation to grant the motion in part. Plaintiff moved for leave to file a supplemental complaint. The magistrate judge denied the motion because the proposed supplemental claims were based upon activity occurring before the Complaint was filed, such that the claims were not “supplemental.” Plaintiff had in substance filed a motion for leave to amend, which the

1 magistrate judge denied because, to the extent the claims were not duplicative of already-
2 dismissed claims, it was unreasonably late to add additional claims.

3 Plaintiff asked the Court to review the magistrate judge’s decision denying leave to file a
4 supplemental or amended complaint. Rule 72(a) permits a district court judge to modify or set
5 aside a magistrate judge’s non-dispositive ruling that is clearly erroneous or contrary to law:

6 When a pretrial matter not dispositive of a party’s claim or defense is referred
7 to a magistrate judge to hear and decide, the magistrate judge must promptly conduct
8 the required proceedings and, when appropriate, issue a written order stating the
9 decision. A party may serve and file objections to the order within 14 days after
being served with a copy. A party may not assign as error a defect in the order not
timely objected to. The district judge in the case must consider timely objections and
modify or set aside any part of the order that is clearly erroneous or is contrary to law.

10 Fed. R. Civ. P. 72(a); *see also* Local R. IB 3-1(a). “Under Rule 72(a), ‘[a] finding is “clearly
11 erroneous” when, although there is evidence to support it, the reviewing court on the entire
12 evidence is left with the definite and firm conviction that a mistake has been committed.”
13 *Rafano v. Patchogue-Medford Sch. Dist.*, No. 06-CV-5367 (JFB)(ARL), 2009 WL 789440, at
14 *12 (E.D.N.Y. Mar. 20, 2009) (quoting *Burgie v. Euro Brokers, Inc.*, No. 05 Civ.
15 0968(CPS)(KAM), 2008 U.S. Dist. LEXIS 71386, at *18 (E.D.N.Y. Sept. 5, 2008) (quoting
16 *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602,
17 622 (1993))). “An order is contrary to law when it fails to apply or misapplies relevant statutes,
18 case law or rules of procedure.” *Id.*

19 The Court ruled that the magistrate judge did not err. Since then, Defendants filed a
20 motion for summary judgment. The magistrate judge recommended granting the motion in part,
21 and the Court adopted the Report and Recommendation (“R&R”) in full. While the summary
22 judgment motion was under consideration, Plaintiff asked the magistrate judge to amend the
23 scheduling order to extend discovery, and the magistrate judge denied the motion. Plaintiff
24 asked the Court to overrule the magistrate judge under Rule 72(a). The Court implicitly denied
25 the motion by adopting the R&R on the summary judgment motion. The Court hereby explicitly

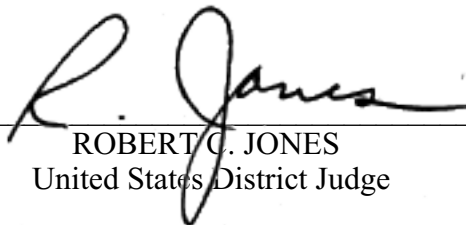
1 denies the motion. The magistrate judge committed no clear error in denying a discretionary
2 extension of discovery.

3 **CONCLUSION**

4 IT IS HEREBY ORDERED that the Objection (ECF No. 100) is DENIED.

5 IT IS SO ORDERED.

6 Dated this 30th day of August, 2013.

7
8 
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ROBERT C. JONES
United States District Judge