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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LANCE REBERGER,

Plaintiff,

v.

MICHAEL KOEHN, et al.,

Defendants.

Case No. 3:15-cv-00468-MMD-CBC

ORDER

Plaintiff Lance Reberger filed a motion for extension of time on the last day of discovery in this case requesting more time to file an objection to an order (compare ECF No. 45 with ECF No. 33) now retired Magistrate Judge Valerie Cooke entered (ECF No. 40) denying his motion to extend discovery for 60 days (ECF No. 37). (ECF No. 45.) Plaintiff later filed his objection. (ECF No. 46.) The Court will grant the motion for extension of time nunc pro tunc to the date Plaintiff filed the objection—May 2, 2018.

The Court however overrules Plaintiff's objection (ECF No. 46)<sup>1</sup> because Judge Cooke did not clearly err in concluding that Plaintiff failed to show good cause why discovery should be extended, and discovery has long been closed.

In reviewing a magistrate judge's non-dispositive pretrial order, the magistrate's factual determinations are reviewed for clear error. 28 U.S.C. § 636(b)(1)(A); see also Fed.

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<sup>1</sup>The Court has considered all documents relevant to Magistrate Judge Cooke's order and Plaintiff's objection. (ECF Nos. 33, 37, 45, 53, 54, 64, 65, 66.) Local Rule IB 3-2(a) allows for an objection and a response and provides that "[r]eplies will be allowed only with leave of court." LR IB 3-2(a). Here, Plaintiff filed a reply (ECF No. 66) only after moving for extension of time to file a reply (ECF Nos. 53 and 54). However, per ECF No. 102, the Court will consider Plaintiff's reply, albeit the reply was unwarranted.

1 R. Civ. P. 72(a). “A finding is clearly erroneous when although there is evidence to support  
2 it, the reviewing body on the entire evidence is left with the definite and firm conviction that  
3 a mistake has been committed.” United States v. Ressam, 593 F.3d 1095, 1118 (9th Cir.  
4 2010) (quotation omitted). A magistrate’s pretrial order issued under § 636(b)(1)(A) is not  
5 subject to de novo review, and the reviewing court “may not simply substitute its judgment  
6 for that of the deciding court.” Grimes v. City & County of San Francisco, 951 F.2d 236,  
7 241 (9th Cir. 1991).

8 Here, Plaintiff’s requested discovery extension was based on his claim that he was  
9 unable to write interrogatories, admissions or letters because he had no legal documents.  
10 (ECF No. 37.) Judge Cooke found that Plaintiff’s claim “[was] belied by the fact that  
11 [Plaintiff continue[d] to file] motions with the [C]ourt.” (ECF No. 40.) Accordingly, Judge  
12 Cooke concluded that Plaintiff had “not shown good cause to extend discovery at this time”  
13 and denied Plaintiff’s request. (Id.)

14 In his objection, Plaintiff seeks “reversal” of Judge Cooke’s order. (ECF No. 46.)  
15 However, Plaintiff concedes that he in fact had been making filings in this Court as Judge  
16 Cooke noted in the order denying his discovery extension request (ECF No. 46 at 2) but  
17 argues that he had “to sacrifice” his personal mail supplies for his legal supplies to do so  
18 (id.at 2–3). Plaintiff attempts to support his argument that he lacked legal documents or  
19 supplies providing that he “did not serve any admissions or interrogatories on defendants  
20 until 3-22-18 [when] he was able to mail them out only after he received his property and  
21 case files.” (Id.) He also notes that Judge Cooke “was not aware of all the[se] facts” when  
22 she denied his request to extend discovery. (ECF No. 46 at 3.)

23 Defendants filed an opposition to Plaintiff’s objection (ECF No. 47), noting that  
24 Plaintiff had “served request for production of documents on February 19, 2018, and a  
25 total of nine requests for admission and interrogatories to defendants on March 22, 2018[,]  
26 . . . [which] has been answered by Defendants.” (Id. at 3.) It appears however that the  
27 impetus for Plaintiff’s request for 60-days-extension of discovery was that he had served  
28 a second request for discovery on Defendants on April 26, 2018, and wanted to “serve

1 additional interrogatories and admissions” on Defendants once the additional discovery  
2 had been received. (ECF No. 46 at 4.) In their opposition to Plaintiff’s objection,  
3 Defendants revealed that they were “in the process of answering” Plaintiff’s additional April  
4 26, 2018 requests. (ECF No. 47 at 3.)

5 Plaintiff filed a reply to Defendant’s opposition to his objection, attempting to support  
6 his contention that he lacked property to serve discovery before March 22, 2018, with  
7 exhibits he purports prove his contention. (ECF No. at 3–4.) However, the largely blank  
8 “inmate inventory transfer” forms constituting Plaintiff’s exhibits merely shows many of  
9 Plaintiff’s personal items were missing. (see *id.*) The exhibits however do not directly  
10 support Plaintiff’s claim of lacking his “legal” documents or supplies. Moreover, in the reply  
11 Plaintiff concedes he had served requests for discovery on Defendants on February 19,  
12 2018. (*Id.* at 1.)

13 The Court concludes Magistrate Judge Cooke did not clearly err in finding that  
14 Plaintiff has not shown good cause to extend discovery. Judge Cooke had a reasonable  
15 basis to conclude that Plaintiff’s reason for seeking to extend discovery—that he had no  
16 legal documents (or supplies)—was essentially incredible. As noted, Plaintiff concedes in  
17 his objection that he had continued to file legal documents with the Court (ECF No. 46 at  
18 2) and in his reply that he had served discovery on Defendants (ECF No. 66 at 1) before  
19 when he claims to have received his legal documents or supplies. Plaintiff’s after-the-fact  
20 explanation that he had “to sacrifice” his personal supplies to file legal documents does  
21 not render Judge Cooke’s order denying his request to extend discovery clearly  
22 erroneous. Further, discovery is now closed, and the Court finds that it would be  
23 unreasonable and create unjustifiable delay to reopen discovery at this time.

24 It is therefore ordered that Plaintiff’s motion for extension of time to file objection  
25 (ECF No. 45) is granted nunc pro tunc to the date Plaintiff submitted his objection—May  
26 2, 2018.

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It is further ordered that Plaintiff's objection to Magistrate Judge Cooke's order denying his request to extend discovery (ECF No. 46) is overruled.

DATED THIS 7<sup>th</sup> day of January 2018.



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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE