FILED
United States Court of Appeals
Tenth Circuit

December 2, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BO ZOU,

Plaintiff - Appellant,

v.

LINDE ENGINEERING NORTH AMERICA, INC.,

Defendant - Appellee.

No. 20-5099
(D.C. No. 4:19-CV-00554-JFH-JFJ)
(N.D. Okla.)

ORDER

Before **TYMKOVICH**, Chief Judge, **PHILLIPS**, and **EID**, Circuit Judges.

Pro se Appellant Bo Zou filed a notice of appeal from the magistrate judge's September 21, 2020 order that imposes a discovery limit on witness depositions, prohibits Mr. Zou from making further discovery requests absent leave of court, and prohibits Mr. Zou from filing further motions for contempt or sanctions with respect to current discovery. This court entered an order to show cause why the appeal should not be dismissed for lack of jurisdiction. Mr. Zou has filed a response. Upon consideration, we dismiss this appeal for lack of appellate jurisdiction.

This court generally has jurisdiction to review only final decisions of district courts. 28 U.S.C. § 1291; *see also Riley v. Kennedy*, 553 U.S. 406, 419 (2008) (describing final decisions as those that end the litigation on the merits and leave nothing

for the court to do but execute the judgment). Orders entered by magistrate judges and not passed upon by the district court are not final and appealable. *See* 28 U.S.C. § 636 (magistrate judge authority); *Phillips v. Beierwaltes*, 466 F.3d 1217, 1222 (10th Cir. 2006). Additionally, the magistrate judge's discovery order entered during the course of litigation is not appealable under the collateral order doctrine. *See SEC v. Merrill Scott & Assocs., Ltd.*, 600 F.3d 1262, 1270 (10th Cir. 2010). Finally, although Mr. Zou describes the magistrate judge's order as an "injunction" to allow appellate review under 28 U.S.C. § 1292(a)(1), the magistrate judge's order which imposes limits on discovery, prohibits further discovery requests absent leave of court, and prohibits further contempt/sanctions motions with respect to discovery, is not considered an injunction and is not appealable under § 1292(a)(1). *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) ("An order by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction and therefore is not appealable under § 1292(a)(1).").

Accordingly, we lack jurisdiction to consider this appeal.

We also deny all pending motions and objections.

APPEAL DISMISSED.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

FILED
United States Court of Appeals
Tenth Circuit

December 31, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BO ZOU,

Plaintiff - Appellant,

v.

LINDE ENGINEERING NORTH AMERICA, INC.,

Defendant - Appellee.

No. 20-5099
(D.C. No. 4:19-CV-00554-JFH-JFJ)
(N.D. Okla.)

ORDER

Before **TYMKOVICH**, Chief Judge, **PHILLIPS**, and **EID**, Circuit Judges.

This matter is before the court on Appellant Bo Zou's *Petition for Panel Rehearing and Rehearing En Banc.*

The petition for panel rehearing is denied pursuant to Fed. R. App. P. 40.

The petition for rehearing *en banc* was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, the petition for rehearing *en banc* is denied pursuant to Fed. R. App. P. 35(f).

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BO ZOU,	)	
	)	
Plaintiff,	)	
	)	**Case No. 19-CV-554-JFH-JFJ**
v.	)	
	)	
LINDE ENGINEERING NORTH AMERICA, INC.,	)	
	)	
	)	
Defendant.	)	

OPINION AND ORDER

Before the Court are numerous pending discovery motions and/or motions referred to the undersigned for disposition. (ECF Nos. 18, 40, 42, 51, 54, 60, 80, 86, 89, 94).[1]

I. Defendant's Request for Special Discovery Management Order (ECF No. 80, Part VIII.F, referred by ECF No. 92)

In the Status Report filed July 24, 2020, Defendant requests that both parties be limited to four fact witness depositions and that Plaintiff be required to seek leave of Court before serving any additional written discovery requests on Defendant. ECF No. 80 at 8-9.[2] Upon referral of this issue, the Court gave Plaintiff the opportunity to respond. ECF No. 103. Plaintiff objects to any limits on the number of depositions, arguing that all ten proposed deponents have relevant information and that ten depositions is proportional to the needs of the case. Plaintiff also argues that Defendant should not be permitted to change its original position, which was that each party could conduct a range of six to ten fact-witness depositions. *See* ECF No. 16 at 5.

[1] Plaintiff's Motion for Contempt (ECF No. 89) has not been expressly referred but relates to Defendant's alleged discovery failures. The Court rules on this motion pursuant to General Order 05-09, which refers all discovery matters in civil cases to the assigned magistrate judge.

[2] The Court addresses Defendant's request to prohibit or limit further written discovery in the context of the Motion for Protective Order addressed *infra* Part VII.

Federal Rule of Civil Procedure 26(b)(2)(A) provides that "[b]y order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36." Rule 26(b)(2)(C)(i) and (iii) provide that the Court must limit discovery if it determines that the proposed discovery is "unreasonably burdensome or duplicative" or "outside the scope permitted by Rule 26(b)(1)," *i.e.*, not relevant or proportional to the needs of the case. Proportionality requires consideration of "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues; and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1).

This is an employment discrimination case that will turn on whether Plaintiff was subject to discriminatory treatment during a reduction in force. The Court is familiar with Plaintiff's theory of the case, Defendant's defenses, and the damages at issue, based on: (1) the Court's review of written discovery requests by both parties, (2) Plaintiff's proposed deponents and Plaintiff's description of their proposed testimony, and (3) the two Joint Status Reports setting forth detailed factual summaries. After consideration of the likely benefit of ten fact witness depositions, compared to the burden and expense of permitting that number of depositions, the Court finds Plaintiff's requested number to be excessive and finds Defendant's proposed limit to be reasonable and proportional.

Contrary to Plaintiff's arguments, Defendant permissibly changed its position regarding the number of depositions that should be allowed between the time of filing the original Joint Status Report on January 8, 2020, and the second Status Report, on July 24, 2020. The district judge first assigned to the action did not set a schedule or rule on any issues presented in the original Joint Status Report. When the case was reassigned to a new district judge, he ordered a

new report for the purpose of setting a schedule. The reassigned district judge was well within his discretion to order a new status report and refer any discovery management issues presented therein. In turn, Defendant was entitled to propose new discovery limits and deadlines, based on developments in the case during this time.

Defendant's Request for Special Discovery Management Order (ECF No. 80, Part VIII.F) is GRANTED. Exercising its discretion under the above rules, the Court initially limits both parties to four fact witness depositions. The parties may seek relief from this deposition limit, but only after conducting the number of authorized depositions and upon a showing of good cause.

II. Defendant's Motion to Quash and for Protective Order (ECF Nos. 51, 54)

These motions seek a protective order pursuant to Federal Rule of Civil Procedure 26(c), for the purpose of preventing the ten depositions noticed by Plaintiff for the week of June 23, 2020. The Court granted Defendant's motion to stay the depositions pending the Court's ruling on this Motion to Quash and for Protective Order. *See* ECF No. 58.

The Court has now placed limits on the number of fact-witness depositions pursuant to Rule 26(b)(2)(A), as requested by Defendant. Plaintiff shall inform Defendant of his four requested deponents no later than one week from the date of this Order, and the parties shall confer regarding these depositions. With the limits imposed, the parties may be able to resolve further disputes, and the Court denies the current motion without prejudice to refiling. The Court finds inadequate justification to conduct these depositions at the courthouse, as requested by Defendant, and will permit any depositions to proceed at the office building selected by Plaintiff.

Defendant's Motion to Quash and for Protective Order (ECF No. 51, 54) is DENIED as moot, without prejudice to refiling.

III. Plaintiff's Motion to Compel and for Sanctions (ECF No. 60)

This motion relates to Plaintiff's third set of requests for production and second set of Interrogatories, which were served on April 6, 2020. Plaintiff moves to compel Request for Production ("RFP") 1, 2, 3, & 5 and Interrogatory ("ROG") 20.

RFP 1, 2, 5 – Denied. The Court granted Plaintiff's motion to compel ESI, including emails relevant to the case, by identifying two custodians and ordering Defendant to search certain terms. The Court outlined the scope of proportional ESI discovery, and this is an attempt by Plaintiff to circumvent that ruling with additional requests. Further, with respect to RFP 2, Defendant already produced responsive documents and has re-run its search to determine if further responsive documents exist.

RFP 3, ROG 20 – Denied. Plaintiff now has the entire employment history for Sharp and Duncan. Defendant has explained that the word "tenured" did not refer to any specific promotion, but instead referred to these two employees being senior to Plaintiff at the time of the reduction in force. Defendant need not produce further documents or provide further explanation.

Plaintiff's Motion for Sanctions is premised on Defendant's delay in producing a signed verification, which has now been produced.

Plaintiff's Motion to Compel and for Sanctions (ECF No. 60) is DENIED.

IV. Plaintiff's Motion to Compel and for Sanctions (ECF No. 86) and Plaintiff's Motion for Contempt (ECF No. 89)

This motion relates to Plaintiff's fourth set of requests for production, which were served on May 11, 2020. Plaintiff moves to compel RFP 5 and 6.

RFP 5 – Denied. This request for communications between Defendant and ICC has already been denied by the Court, and the Court maintains its prior ruling.

RFP 6 – Denied. Defendant is not withholding responsive documents and represented that it will produce any responsive documents in its possession, custody, or control.

Plaintiff's requests for sanctions and contempt are based on Defendant's alleged perjury in discovery responses, falsifying documents, failing to meet deadlines, and failing to produce documents ordered by the Court. The Court has reviewed the correspondence between the parties, including emails from Plaintiff requesting additional documents or discovery, and responding emails from Defendant. Following is an example of a response from Defendant:

> On RFP's 2, 3, 4, and 7, you cannot agree to narrow the request for production and then attempt to have Defendant "follow Plaintiff's requirements" as set forth in the original RFP's. We have complied with the Court's order and produced all documents as ordered by the Court. On RFP 21, as I've said repeatedly, we do not have any additional documents responsive to this request. For the balance of your email, we have produced all email correspondence that references you, your performance, your complaint, and your termination in compliance with the Court's order.

ECF No. 94-1.

Upon review of the correspondence submitted by both parties and Defendant's discovery responses, the Court finds no grounds for imposing sanctions upon Defendant or holding Defendant in contempt. The Court finds no cogent or persuasive argument that Defendant has misled the Court, fabricated evidence, failed to comply with Court orders, or otherwise engaged in anything resembling sanctionable or bad-faith litigation conduct.

Plaintiff's Motion to Compel and for Sanctions (ECF No. 86) and Plaintiff's Motion for Contempt (ECF No. 89) are DENIED.

V. Plaintiff's Motion for Change of Magistrate Judge (ECF No. 40)

Plaintiff's Motion for Change of Magistrate Judge, which expressly references 28 U.S.C. § 455(a), was referred to the undersigned. Plaintiff seeks the undersigned's disqualification based on the following: (1) displaying a "high favoritism to Defendant and antagonism to Plaintiff" in

the undersigned's ruling on discovery motions on May 19, 2020; and (2) permitting Defendant to submit an *ex parte* letter to the Court in support of its assertion of privilege. *See* ECF No. 4.

The recusal statutes require a judge to disqualify himself if "his impartiality might reasonably be questioned," or if "he has a personal bias or prejudice concerning a party." 28 U.S.C. § 455(a) & (b)(1). A judge must recuse himself when there is the appearance of bias, regardless of whether there is actual bias. *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 659 (10th Cir. 2002). "The test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *Id.* The "recusal statute should not be construed so broadly as to become presumptive or to require recusal based on unsubstantiated suggestions of personal bias or prejudice." *See Switzer v. Berry*, 198 F.3d 1255, 1258 (10th Cir. 2000). The decision to recuse is committed to the sound discretion of the district court, and the movant bears a substantial burden to demonstrate the judge is not impartial. *United States v. Burger*, 964 F.2d 1065, 1070 (10th Cir.1992).

The undersigned has no relationship with Defendant, its lawyers, or its witnesses. Plaintiff's assertions of bias are based on the undersigned's substantive discovery rulings. The undersigned will briefly address these frivolous arguments. First, a review of the May 19, 2020, discovery Order reveals no bias in favor of Defendant or against Plaintiff. The undersigned granted Plaintiff's motion to compel in part and ordered Defendant to produce a significant amount of ESI over its objection. The undersigned found that language used by Plaintiff in a letter to a third party was threatening and inappropriate, caused the Court concern about Plaintiff's abuse of the discovery process, and warranted a limited protective order regarding third-party subpoenas. However, these rulings were based on the facts and law presented, rather than based on bias. Second, permitting *ex parte* submission of allegedly privileged documents does not show favoritism. In the motion to compel, Plaintiff successfully argued that Defendant's assertion of

work-product privilege was improper, based on information in Defendant's privilege log. The Court agreed with Plaintiff and ordered Defendant to produce the documents to Plaintiff, or submit further information *ex parte* in support of its privilege assertion. Defendant elected to produce the documents to Plaintiff rather than further pursue its privilege assertion, and Plaintiff prevailed on this issue. The undersigned's impartiality cannot reasonably be questioned based on discovery rulings or other facts.

Plaintiff's Motion for Change of Magistrate Judge (ECF No. 40) is DENIED.

VI. Plaintiff's Motions for Chinese (Mandarin) Translator (ECF Nos. 18, 42)

Upon filing his Complaint, Plaintiff requested a Chinese translator. The district judge originally assigned to the case stated in a minute order: "There are no hearings set at this time, and the plaintiff's Complaint is coherent and is filed in English. As the litigation progresses, if a translator becomes necessary for purposes of accommodating plaintiff's accent (e.g. during deposition, court hearings) or for any other reason, the Court will consider a renewed motion for appointment of a translator." ECF No. 9. In his first renewed motion, Plaintiff "requests that the Court find a Chinese (Mandarin) translator for the case hearing and trial because of plaintiff's some English accent." ECF No. 18. In his second motion, requests a translator at a hearing requested by Plaintiff in ECF No. 41. These two motions were referred to the undersigned.

The Court has not scheduled or conducted any pretrial hearings. Plaintiff's briefs demonstrate his strong command of the English language, and Plaintiff has fully and adequately represented himself on all issues. Plaintiff has suffered no prejudice based on the Court's failure to appoint a translator. To the extent Plaintiff requests a translator for purpose of the specific hearing requested in ECF No. 41, the motion is denied as moot, because the district judge did not schedule a hearing on the motion.

To the extent Plaintiff is requesting that the Court appoint a translator for trial, depositions, or hearings that may be scheduled in the future, the Court denies the motion. *Pro se* parties in civil cases are generally not entitled to a court-provided translator. *See Desulma v. Goolsby*, No. 98CIV.2078(RMB)(RLE), 1999 WL 147695, at *1 (S.D.N.Y. Mar. 16, 1999) ("In general, a pro se civil plaintiff is not entitled to an interpreter or translator."); *Vargas-Rodriguez v. Ortiz*, No. CV 18-2628(RMB), 2019 WL 2366968, at *6 (D.N.J. June 5, 2019) (collecting cases). Plaintiff elected to file the lawsuit, Plaintiff is not indigent, and Plaintiff shall be required to locate and provide his own translator for future court proceedings at which he desires the presence of a Chinese translator.[3]

VII. Defendant's Motion for Protective Order (ECF No. 94)

In this motion for protective order, which was filed August 11, 2020, Defendant seeks a protective order that (1) requires Plaintiff to seek leave of Court before filings any further pleadings or motions; (2) requires Plaintiff to seek leave of court before serving Defendant with any additional discovery requests or notices of depositions; and (3) excuses Defendant's obligation to respond to ECF Nos. 85, 86, and 89. ECF No. 94 at 6-7. On August 12, 2020, by minute order, the Court excused Defendant's response obligations and prohibited Plaintiff from filing further motions on a temporary basis, until the Court had the opportunity to rule on Defendant's motion for protective order. ECF No. 95.[4] The Court then ordered Plaintiff to respond to the motion for protective order, and Plaintiff filed a substantive response. ECF No. 104. Plaintiff argues that

[3] This ruling may be revisited at the time of any scheduled hearing or trial, or upon assessing the difficulty of conducting proceedings if Plaintiff fails to provide his own translator. This ruling will not be revisited for purposes of depositions.

[4] This minute order was not intended as a permanent filing restriction or other sanction. Instead, it was intended to pause Plaintiff's filings while the Court resolved the motion for protective order and numerous other motions. This effort was largely unsuccessful, as Plaintiff filed six different "objections" following the Court's minute order. ECF Nos. 100-105.

Defendant has been "abusing protective orders" and that Defendant has blatantly misled the Court on numerous occasions. *Id.* at 1.

The Court may issue a protective order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense in responding to discovery. Fed. R. Civ. P. 26(c)(1); *Boughton v. Cotter Corp.*, 65 F.3d 823, 829-30 (10th Cir. 1995) ("Rule 26(c) is broader in scope than the attorney work product rule, attorney-client privilege and other evidentiary privileges because it is designed to prevent discovery from causing annoyance, embarrassment, oppression, undue burden or expense not just to protect confidential communications.").

Defendant has adequately shown the need for protection from undue burden in relation to Plaintiff's discovery practices. To be clear, Plaintiff has filed non-frivolous discovery motions, including his original motion to compel discovery responses. However, following the Court's ruling on his first motion to compel, Plaintiff filed several frivolous motions to compel burdensome and repetitive discovery requests that directly contradict this Court's orders. In total, Plaintiff has now issued eleven different sets of discovery, including five sets of requests for production. Plaintiff has also filed frivolous motions for sanctions and contempt, accusing Defendant of deceitful and sanctionable discovery conduct without justification. Plaintiff has also objected to every unfavorable ruling issued by the Court, requiring Defendant to respond to frivolous objections. This has posed an undue burden on Defendant and the Court's docket.

Based on Plaintiff's conduct to date, the Court finds good cause for issuance of a limited protective order pursuant to Rule 26(c)(1) to manage discovery, avoid unnecessary expense, and avoid burdensome discovery-related motion practice. The Court issues a protective order that prohibits Plaintiff from: (1) issuing any further written discovery requests to Defendant, either in the form of interrogatories or requests for production, absent leave of Court; or (2) filing further motions for contempt or sanctions in relation to any of Defendant's written discovery responses.

Defendant is excused from filing responses to ECF Nos. 85, 86, and 89, which the Court finds to be frivolous discovery-related motions that do not require a response.

The Court lifts the prohibition on Plaintiff's ability to file motions. *See* ECF No. 95. At this time, the Court declines to impose any permanent filing restrictions as a sanction under Federal Rule of Civil Procedure 11 or to invoke the Court's inherent powers to control abusive litigation conduct. *See generally Hutchinson v. Hahn*, No. 05-CV-453-TCK PJC, 2007 WL 2572224, at *5 (N.D. Okla. Sept. 4, 2007) (explaining Rule 11 sanctions, court's inherent power to impose sanctions, and notice requirements prior to imposing sanctions). The Court declines to do so for two reasons. First, Defendant's motion was styled as one for protective order and did not expressly reference "sanctions" in the title, causing a potential notice problem. Second, the motion was automatically referred to the undersigned because it was styled as a motion for protective order. Any motion for Rule 11 sanctions, or sanctions under the Court's inherent power, are within the province of the district judge, absent an express referral. If Defendant seeks to impose sanctions against Plaintiff under Rule 11 or otherwise, it shall file a properly styled motion that clearly triggers procedural rules governing such motions.

VIII. Conclusion

It is hereby ORDERED that:

1. Defendant's request for special discovery management limitations (ECF No. 80, Part VIII.F, referred by ECF No. 92) is GRANTED. The Court imposes a discovery management limit of four (4) fact witness depositions for both parties.

2. Defendant's Motion to Quash and for Protective Order (ECF Nos. 51, 54) are DENIED without prejudice to refiling.

3. Plaintiff's Motion to Compel and for Sanctions (ECF No. 60) is DENIED.

4. Plaintiff's Motion to Compel and for Sanctions (ECF No. 86) and Plaintiff's Motion for Contempt (ECF No. 89) are DENIED.

5. Plaintiff's Motion for Change of Magistrate Judge (ECF No. 40) is DENIED.

6. Plaintiff's Motions for Chinese (Mandarin) Translator (ECF Nos. 18, 42) are DENIED.

7. Defendant's Motion for Protective Order (ECF No. 94) is GRANTED in part, and the Court enters the following protective order. Plaintiff is prohibited from:
   (1) issuing any further written discovery requests to Defendant, absent leave of Court; and
   (2) filing any further motions for contempt or sanctions in relation to any of Defendant's current discovery responses.[5]

8. The Court declines to impose the sanction of filing restrictions at this time, and the temporary restriction imposed by ECF No. 94 is lifted.

SO ORDERED this 21st day of September, 2020.

JODI F. JAYNE, MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

[5] The Court's prior Protective Order, which requires Plaintiff to seek leave of court to issue third-party subpoenas and avoid threatening or harassing behavior to third parties, also remains in place. *See* ECF No. 37 at 10.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BO ZOU,	
Plaintiff,	
v.	**Case No. 19-cv-00554-JFH-JFJ**
LINDE ENGINEERING NORTH AMERICA, INC.,	
Defendant.	

ORDER

Before the Court are the Motion for Objecting to Magistrate Judge's Order to Prohibit Plaintiff from Filing any Further Motions for Sanction or Contempt, and Motion to Dissolve, Deny or Remove Magistrate Judge's Preliminary Injunction [Dkt. No. 111] and the Motion for Objecting to Magistrate Judge's Opinion and Order, and Motion to Deny or Remove Magistrate Judge's Injunctions [Dkt. No. 114] filed by Plaintiff Bo Zou ("Plaintiff"). Pursuant to Federal Rule of Civil Procedure 72, Plaintiff requests the Court to modify Magistrate Judge Jayne's Opinion and Order entered September 21, 2020 [Dkt. No. 109]. Defendant filed Response in Opposition. Dkt. No. 122. Plaintiff submitted a Reply. Dkt. No. 125.

BACKGROUND

In this litigation, there have been a number of discovery motions filed. Plaintiff takes issue with Judge Jayne's most recent Opinion and Order [Dkt. No. 109] ruling on a number of outstanding discovery issues. Plaintiff argues Judge Jayne's Opinion and Order was contrary to law and clearly erroneous.

STANDARD OF REVIEW

Rule 72(a) of the Federal Rules of Civil Procedure permits a party to file objections to a magistrate judge's non-dispositive order within fourteen (14) days after being served with the order. "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." Fed. R. Civ. P. 72(a). "The district court must defer to the magistrate judge's ruling unless it is clearly erroneous or contrary to law." *Hutchinson v. Pfeil*, 105 F.3d 562, 566 (10th Cir. 1997).

"To overturn the magistrate judge's decision as clearly erroneous under Rule 72(a), the district court must have 'a definite and firm conviction that a mistake has been committed.'" *Sartori v. Susan C Little & Assoc., P.A.*, No. CIV 12-0515, 2013 WL 4401383, at *2 (D.N.M. July 30, 2013) (quoting *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988)); *see also Parts and Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228,233 (7th Cir. 1988) ("to be clearly erroneous, a decision must strike us as more than just maybe or probably wrong . . . ."). Under the "contrary to law" standard, the district court conducts a plenary review of the magistrate judge's legal determinations, setting aside the magistrate judge's order if it applied an incorrect legal standard. *Sartori*, 2013 WL 4401383, at *2. "The burden of proving that the magistrate's discovery ruling is clearly erroneous or contrary to law is a heavy one, and lies squarely on the party seeking reconsideration of the order." *Hildebrand v. Steck Manufacturing Company, Inc.*, No. 02-WY-1125, 2005 WL 8160065, at *3 (D.Colo. Oct. 5, 2005) (citations omitted). "In sum, it is extremely difficult to justify alteration of the magistrate judge's nondispositive actions by the district judge." *Id.* (citations omitted).

ANALYSIS

I. Discovery Rulings

The majority of Plaintiff's objections focus on Judge Jayne's discovery rulings. *See* Dkt. No. 111 at 1, 4-5; Dkt. No. 114 at 5-9 (contending Judge Jayne erred in ruling on Plaintiff's Motion to Compel and for Sanctions [Dkt. Nos. 60 and 86]); Dkt. No. 111 at 3 and Dkt. No. 114 at 2, 15 (contending Judge Jayne impermissibly provided Defendant with "injunctive relief"); Dkt. No. 111 at 3 and Dkt. No. 114 at 2, 13 (contending Judge Jayne erroneously granted Defendant's Motion for Protective Order [Dkt. No. 94]); Dkt. No. 114 at 2–4 (contending Judge Jayne impermissibly limited depositions of fact witnesses); and Dkt. No. 114 at 5 (contending Judge Jayne did not give him adequate time to supply his list of deponents).

"A district court has substantial discretion in handling discovery requests under Rule 26(b)." *Murphy v. Deloitte & Touche Group Ins. Plan*, 619 F.3d 1151, 1164 (10th Cir. 2010). "Control of discovery is entrusted to the sound discretion of the trial courts . . . ." *Punt v. Kelly Services,* 862 F.3d 1040, 1047 (10th Cir. 2017) (quoting *Martinez v. Schock Transfer & Warehouse Co.*, 789 F.2d 848, 850 (10th Cir. 1986)). "Broad discovery is not without limits and the trial court is given wide discretion in balancing the needs and rights of both plaintiff and defendant." *Gomez v. Martin Marietta Corp.*, 50 F.3d 1511, 1520 (10th Cir. 1995).

> [A] judge may designate a magistrate judge to hear and determine *any pretrial matter pending before the court*, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntary dismiss an action.

28 U.S.C. § 636(b)(1)(A) (emphasis added). In conformity with Section 636(b)(1)(A), the Local Rules of this Court provide: "unless otherwise directed by a district judge, disposition of all discovery matters shall be by order of the magistrate judge. Magistrate judge's orders shall remain

in full force and effect as an order of the Court until reversed or modified by a district judge." LCvR 37.2(a). In this case, the district judge has not ordered otherwise. "[A] magistrate judge has broad discretion in the resolution of nondispositive discovery disputes and a district court generally grants the magistrate judge great deference and overrules the magistrate's determination only if this discretion is clearly abused." *Cuenca v. University of Kansas,* 205 F. Supp. 2d 1226, 1228 (D. Kan. 2002) (internal citations and quotations omitted). Furthermore, the Court has the inherent authority to control its docket. *United Steelworkers of America v. Oregon Steel Mills, Inc.*, 322 F.3d 1222, 1227 (10th Cir. 2003).

The Court has reviewed Judge Jayne's Opinion and Order and Plaintiff's objections. The Court concludes that Judge Jayne appropriately considered and ruled on Plaintiff's positions. Plaintiff takes issue with Judge Jayne's order imposing limits on discovery and classifies it as an "injunction." *See* Dkt. No. 111 at 3 and Dkt. No. 114 at 2. However, "an order by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction . . . ." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988). Plaintiff has not carried his heavy burden of proving Judge Jayne's discovery rulings were clearly erroneous or contrary to law. Instead, the Court concludes Judge Jayne's Opinion and Order appropriately controlled the docket and the progression of discovery in this case.

II. Judge Jayne's Temporary Filing Restriction

This case is still in the discovery phase and already has over one hundred filings. While Judge Jayne was considering the pending discovery motions, she entered the following minute order: "Plaintiff shall not file any further motions until the Court has ruled on Defendants Motion for Protective Order." Dkt. No. 95. Judge Jayne explained in her Opinion and Order:

> This Minute Order was not intended as a permanent filing restriction or other sanction. Instead, it was intended to pause Plaintiff's filings while the Court

> resolved the motion for protective order and numerous other motions. This effort was largely unsuccessful, as Plaintiff filed six different "objections" following the Court's minute order. ECF Nos. 100-105.

Dkt. No. 109 at 8, n.3. Now, Plaintiff contends "Magistrate judge intentionally and willfully violated Fed. R. Civ. P. 65 and 28 U.S. Code § 636(b)(1)(A), and prohibited Plaintiff from filing any further motions on August 12, 2020 (Dkt. No. 95), and motions for contempt or sanctions, i.e. preliminary injunction . . . ." Dkt. No. 114 at 2; *see also* Dkt. No. 111 at 1, 3. Judge Jayne explicitly "lift[ed] the prohibition on Plaintiff's ability to file motions. *See* ECF No. 95." Dkt. No. 109 at 10. Further, Judge Jayne "decline[d] to impose any permanent filing restrictions as a sanction under the Federal Rule of Civil Procedure 11 or to invoke the Court's inherent powers to control abusive litigation conduct." *Id.*

Contrary to Plaintiff's assertion, Judge Jayne's temporary filing restriction was not an "injunction." Instead, the Minute Order was intended to temporarily stay the action. This Court has inherent authority to control its docket, which includes the power to stay cases in the interest of judicial economy. *United Steelworkers of America,* 322 F.3d at 1227. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.,* 299 U.S. 248, 254 (1936). The Court concludes Judge Jayne's temporary stay was not clearly erroneous or contrary to law.

Judge Jayne did issue a protective order wherein she prohibited Plaintiff from "filing further motions for contempt or sanctions in relation to any of Defendant's written discovery responses." Dkt. No. 109 at 9. To the extent Plaintiff challenges this ruling, the Court does not find it to be contrary to law or clearly erroneous. Plaintiff has issued eleven (11) different sets of discovery, including five (5) sets of requests for production. Dkt. No. 109 at 9. Additionally,

Plaintiff has filed six (6) motions for sanctions. *See* Dkt. Nos. 22, 30, 34, 59, 60 and 86. Plaintiff has also filed one (1) separate motion for contempt. *See* Dkt. No. 89. Plaintiff has had ample opportunity to address any issues related to his eleven (11) sets of discovery requests. Judge Jayne's limitation appropriately controlled the docket in this case. *United Steelworkers of America,* 322 F.3d at 1227.

III. Judge Jayne's Ruling on the Motion for Contempt [Dkt. No. 89]

Plaintiff also objects to Judge Jayne ruling on his Motion for Contempt [Dkt. No. 89]. Dkt. No. 111 at 2 and Dkt. No. 114 at 2, 8. Plaintiff argues he did not consent to Judge Jayne deciding his Motion for Contempt and her doing so without his consent violated 28 U.S.C. § 636(e)(4). *Id.* The basis of Plaintiff's Motion for Contempt was Defendant's alleged failure to produce documents. *See* Dkt. No. 89. The Local Rules of this Court provide: "unless otherwise directed by a district judge, disposition of all discovery matters shall be by order of the magistrate judge . . . ." LCvR 37.2(a). Therefore, Judge Jayne appropriately considered Defendant's Motion as it related to discovery. Additionally, 28 U.S.C. § 636(e)(4) is inapplicable to this case because Judge Jayne is not presiding over the case with consent of the parties nor did she exercise any civil contempt authority. Finally, the Court agrees with Judge Jayne's conclusion that there are "no grounds for imposing sanctions upon Defendant or holding Defendant in contempt. The Court finds no cogent or persuasive argument that Defendant has misled the Court, fabricated evidence, failed to comply with Court orders, or otherwise engaged in anything resembling sanctionable or bad-faith conduct." Dkt. No. 109 at 5. Therefore, Plaintiff did not carry his burden to prove Judge Jayne's ruling was clearly erroneous or contrary to law.

IV. Lack of Hearing and Chinese Translator

Next, Plaintiff takes issue with the fact that Judge Jayne did not provide Plaintiff with a hearing concerning his multiple motions. *See* Dkt. No. 114 at 4, 11-12. However, Plaintiff is not entitled to a hearing. Federal Rule of Civil Procedure 78 provides, "[b]y rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings." Fed. R. Civ. Pro. 78(b). The Local Rule of this Court states, "[o]ral arguments or hearings on motions or objections will not be conducted unless ordered by the Court." LCvR 78.1. Therefore, Judge Jayne's decision to rule on the motions without a hearing was in conformity with the Federal Rules of Civil Procedures and the Local Rules of this Court.

Additionally, Plaintiff contests Judge Jayne's ruling on his Motion for a Chinese (Mandarin) Translator. Dkt. No. 114 at 11-12. However, as Judge Jayne noted, no hearings have been held on the various motions. Dkt. No. 109 at 7-8. Plaintiff's request was specifically "for the hearing." Dkt. No. 42. Furthermore, Plaintiff does not cite any authority that, as a civil litigant, he is entitled to a translator provided by the Court. Therefore, Plaintiff has not demonstrated that Judge Jayne's failure to hold a hearing or provide a translator was clearly erroneous or contrary to law.

V. Motion for Change of Magistrate Judge

Lastly, Plaintiff re-urges his position that Judge Jayne should recuse from this matter. Dkt. No. 114 at 9-11. Plaintiff contends the fact that Judge Jayne permitted the Defendant to submit allegedly privileged documents for *in camera* review "demonstrates that magistrate judge strongly displayed a deep-seated favoritism to Defendant, and antagonism to Plaintiff, too." *Id.* at 10. Plaintiff further re-urges his previously stated arguments contending Judge Jayne's other rulings demonstrate she is biased against him. *See id.* at 9-11.

The recusal statute, 28 U.S.C. § 455, requires a judge to disqualify himself if "his impartiality might reasonably be questioned," or if "he has a personal bias or prejudice concerning a party." 28 U.S.C. § 455(a) and (b)(1). A judge must recuse himself where there is an appearance of bias, regardless of whether there is actual bias. *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 659 (10th Cir. 2002). "The test is whether a reasonable person, knowing all relevant facts, would harbor doubts about the judge's impartiality." *Id.* "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." *Liteky v. United States,* 510 U.S. 540, 551 (1994) (quoting *In re J.P. Linahan, Inc.*, 138 F.2d 650, 654 (2d Cir. 1943)). A litigant is not entitled to a new judge every time he or she loses a contested matter. *In re Rafter Seven Ranches, LP*, No. 05-40483, 2009 WL 161317, at *2 (Bankr. D. Kan. Jan. 8, 2009).

Plaintiff's contention that Judge Jayne should recuse is based on his dissatisfaction with her rulings. Plaintiff has not articulated a justifiable reason requiring Judge Jayne to recuse. Judge Jayne appropriately considered the recusal statute and concluded that her recusal is not appropriate. The Court agrees. Judge Jayne's decision concerning her recusal was not clearly erroneous or contrary to law.

CONCLUSION

IT IS THEREFORE ORDERED that the Motion for Objecting to Magistrate Judge's Order to Prohibit Plaintiff from Filing any Further Motions for Sanction or Contempt, and Motion to Dissolve, Deny or Remove Magistrate Judge's Preliminary Injunction [Dkt. No. 111] and the Motion for Objecting to Magistrate Judge's Opinion and Order, and Motion to Deny or Remove Magistrate Judge's Injunctions [Dkt. No. 114] are **DENIED.**

IT IS FURTHER ORDERED that the case remains stayed pending resolution of this Court's ruling on Defendant's Motion for Sanctions [Dkt. No. 112]. *See* Dkt. No. 130.

DATED this 14th day of December, 2020.

JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE